



DEPARTMENT OF THE ARMY
PACIFIC OCEAN DIVISION, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

09 FEB 2015

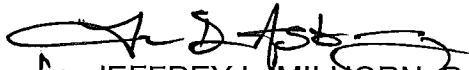
CEPOD-PDC

MEMORANDUM FOR RECORD.

SUBJECT: Addendum to the Supplement to the Decision Document for the Nationwide Permits and Regional Conditions – Withdrawal of Regional Condition C (Chemically Treated Wood) for the Alaska District.

1. Alaska District added Regional Condition C (Chemically Treated Wood) to the 2012 Nationwide Permits (NWP) to provide a unified pathway in Alaska to address concerns related to treated wood products leaching chemical contaminants into aquatic ecosystems with the potential for adverse effects to resident aquatic species both individually and cumulatively. Regional Condition C currently outlines specific restrictions to the use of treated wood for new materials, re-use of treated wood materials, work in freshwater systems and work in marine systems.
2. New considerations of Regional Condition C indicate that a blanket prohibition against the use of treated wood under the NWP program may not be the best approach. Rather, Alaska District proposes to conduct case-by-case review, during which time the District will determine whether the proposal meets the terms and conditions of the 2012 NWPs and whether the proposal may affect species listed under the Endangered Species Act or their designated habitat.
3. Based on the considerations discussed in the addendum to the supplemental decision documents, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that withdrawal of Regional Condition C is warranted and that processes are in place to ensure that actions authorized by the NWPs do not result in more than minimal individual and cumulative adverse effects on the aquatic environment.
4. POC for this action is Ms. Cindy Barger, Regulatory and Civil Works Environmental Program Manager, (808) 835-4626, or e-mail, Cindy.S.Barger@usace.army.mil.

Encl


for: JEFFREY L. MILHORN, P.E.
Brigadier General, USA
Commanding



DEPARTMENT OF THE ARMY
PACIFIC OCEAN DIVISION, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

CEPOD-DE

30 January 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Assumption of Command

1. Reference, AR 600-20 (Army Command Policy), Para 2-8a(1), 6 November 2014.
2. The undersigned assumes command of U.S. Army Engineer Division, Pacific Ocean (W2SNAA/W073AA), Fort Shafter, Hawaii 96858-5440, effective 30 January 2015.

A handwritten signature in black ink, appearing to read "T. D. Asbery", written over a horizontal line.

THOMAS D. ASBERY
Lieutenant Colonel, EN
Acting Commander

DISTRIBUTION:
Individuals Concerned
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DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 6898
JBER, AK 99506-0898

CEPOA-DE

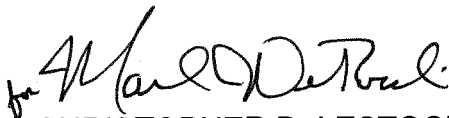
February 4, 2015

MEMORANDUM FOR Commander, Pacific Ocean Division (CEPOD-DE), Building 525,
Ft. Shafter, HI 96858-5440

SUBJECT: Request for Approval of Addendum to the Supplement to the Decision Document for Nationwide Permits and Regional Conditions – Withdrawal of Regional Condition C (Chemically Treated Wood) for the Alaska District

1. Enclosed is an Addendum to the Supplement to the Decision Document for Nationwide Permits and Regional Conditions – Withdrawal of Regional Condition C (Chemically Treated Wood). Regional Condition C applies to all Nationwide Permits authorized in Alaska when the regulated activity involves the use of wood preservative products in waters of the United States.
2. Regional Condition C was added by Alaska District to the 2012 Nationwide Permits to provide a unified pathway in Alaska to address concerns related to treated wood products leaching chemical contaminants into aquatic ecosystems with the potential for adverse effects to resident aquatic species both individually and cumulatively. New considerations of Regional Condition C indicate that a blanket prohibition against the use of treated wood under the nationwide permit program may not be the best approach.
3. I have determined withdrawing Regional Condition C will allow for appropriate case-specific review of proposals using treated wood or an alternative product. During this case-specific review, the Corps will determine whether the proposal meets the terms and conditions of the applicable 2012 Nationwide Permit(s) and whether the proposal may affect species listed under the Endangered Species Act or their designated critical habitat.
4. If you have any questions regarding the enclosed addendum, please contact Ms. Shelia Newman of my staff via email at Sheila.M.Newman@usace.army.mil or (907) 753-5556, or toll free at (800) 478-2712.

- 2 Encl
1. Addendum
2. Regional Conditions


CHRISTOPHER D. LESTOCHI
COL, EN
Commander

ADDENDUM TO THE SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMITS AND REGIONAL CONDITIONS – WITHDRAWAL OF REGIONAL CONDITION C (CHEMICALLY TREATED WOOD)

1. Regional Condition C (Chemically Treated Wood) was added by the Alaska District to the 2012 Nationwide Permits to provide a unified pathway in Alaska to address concerns related to the leaching of chemical contaminants from treated wood products into aquatic ecosystems with the potential for adverse effects to resident aquatic species both individually and cumulatively. During the development of the Regional Conditions, Alaska District coordinated with the National Marine Fisheries Service, Alaska Department of Environmental Conservation, United States Fish and Wildlife Service and other stakeholders to draft a regional condition consistent with agency standards that would provide a level of certainty to the permit applicant as they design their project. Regional Condition C states in part the “Permittee shall not allow wood products treated with biologically harmful leachable chemical components...to be placed over or come in contact with waters or wetlands.” Regional Condition C goes on to indicate acceptable alternatives to treated wood include steel, concrete, and plastic lumber.
2. Division Engineers may use discretionary authority to modify Nationwide Permit authorizations by adding regional conditions to Nationwide Permit authorizations. Discretionary authority may be asserted whenever the Division Engineer “determines sufficient concerns for the environment under the section 404(b)(1) Guidelines or any other factor of the public interest so requires, or if he otherwise determines that the Nationwide Permit would result in more than minimal adverse environmental effects either individually or cumulatively.” 33 CFR § 330.4(e)(1). For the reasons discussed below, it is no longer necessary for the Division Engineer to exercise his discretionary authority to modify the Nationwide Permit authorizations by adding the treated wood regional condition.
3. New considerations of Regional Condition C indicate that a blanket prohibition against the use of treated wood under the nationwide permit program may not be the best approach. There may be some instances where the use of treated wood may be acceptable. Such situations might include projects located in harsher marine environments and project designs where the treatment used is not likely to leach at all or where any leaching will be in minimal amounts that are not likely to be toxic to the aquatic ecosystem. Also, there may be instances where the use of alternative products may have adverse effects that need to be considered.
4. Withdrawal of the condition will have no effect on species listed under the Endangered Species Act or their designated critical habitat because no activity is authorized under any Nationwide Permit which “may affect” a listed species or critical habitat, unless consultation under Section 7 of the Endangered Species Act has been completed. See Nationwide Permit General Condition 18. Projects which may be eligible for Nationwide Permit authorization will be subject to case-by-case review, during which time the Corps will determine whether the proposal meets the terms and conditions of the 2012 Nationwide Permits and whether the proposal may affect species listed under the Endangered Species Act or their designated critical habitat.

5. The withdrawal of this condition remains consistent with the action that was considered and analyzed in the March 12, 2012 Supplement to the Decision Document for Nationwide Permits and Regional Conditions ("Supplement to the Decision Document"). The Supplement to the Decision Document is a supplement to the Decision Documents prepared at the national level for the Nationwide Permits ("National Decision Document"). The National Decision Documents evaluated the effects of each Nationwide Permit. The Supplement to the Decision Document evaluated the effects of the regional modifications and conditions for each Nationwide Permit. The terms and conditions of the Nationwide Permits, including the preconstruction notification requirements and the regional conditions previously approved, will ensure the Nationwide Permits authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment. Through the preconstruction notification process, the Corps will review certain activities on a case-by-case basis to ensure those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the District Commander can add special conditions to a Nationwide Permit authorization to ensure the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. Alternatively, the District Commander can exercise discretionary authority and require an individual permit for those activities determined to result in more than minimal individual and cumulative adverse effects on the aquatic environment.

Findings: Withdrawing Regional Condition C will allow for appropriate case-specific review of proposals using treated wood or an alternative product. During this case-specific review, the Corps will determine whether the proposal meets the terms and conditions of the 2012 Nationwide Permits and whether the proposal may affect species listed under the Endangered Species Act or their designated critical habitat.

Attachment. Alaska District Regional Conditions for 2012 Nationwide Permits



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PACIFIC OCEAN DIVISION
BUILDING 525
FORT SHAFTER, HAWAII 96858

CEPOD-PDC (1145b)

19 March 2012

MEMORANDUM FOR COMMANDER, ALASKA ENGINEER DISTRICT

SUBJECT: Alaska District Area of Operation Regional Conditions and Supplemental Decision Documents for the Re-issuance of Nationwide Permits

1. References.

a. 40 Code of Federal Regulations, Part 230, Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, Clean Water Act of 1977.

b. 33 Code of Federal Regulations, Part 330 – Nationwide Permit Program, Subparts 330.4, paragraph(e)(1) and 330.5, paragraph (c), 1991.

c. *Federal Register*, Vol. 77, No. 34, page 10184, Tuesday, February 21, 2012.

2. In reference 1.c., the U.S. Army Corps of Engineers announced the following actions, all of which are effective March 19, 2012.

a. reissuance of 48 existing Nationwide Permits (NWP) and 28 existing NWP general conditions.

b. issuance of two new NWP and three new NWP general conditions.

3. For each of the reissued and new NWP, Headquarters, U.S. Army Corps of Engineers (HQUSACE) issued a national decision document that contains an Environmental Assessment (EA), Statement of Findings, public interest review, and, if the NWP authorizes discharges of dredged or fill material into waters of the United States, a Section 404(b)(1) Guidelines (reference 1.a.) analysis. In compliance with reference 1.b., the Division Engineer has the authority to issue supplemental decision documents and associated regional conditions to address regional factors relating to the public interest, compliance with reference 1.a., and any potential adverse effects on the human environment, to ensure that the NWP, as augmented by the regional conditions, authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the aquatic environment.

4. Each supplemental decision document prepared by the Alaska District discusses, as appropriate, regional conditions that are necessary to ensure that activities authorized by the NWP result in no more than minimal individual and cumulative adverse effects on the aquatic environment. Alaska District has developed fourteen (14) regional conditions that may be used

CEPOD-PDC

SUBJECT: Alaska District Area of Operation Regional Conditions and Supplemental Decision Documents for the Re-issuance of Nationwide Permits

individually or in combination with the 2012 NWP. These regional conditions are described in enclosure 1 and those that apply to a specific NWP are listed in paragraph 10 of each of the supplemental decision documents in enclosure 2.

5. The supplemental decision documents also explain why the suspension or revocation of a specific NWP is necessary. Based on the considerations addressed in paragraph 13 of the supplement decision document for NWP 48 (Commercial Shellfish Aquaculture Activities), and Regional Condition N, I hereby revoke application of NWP 48 in Alaska.

6. In accordance with reference I.b., and based on the considerations discussed in each of the supplemental decision documents developed by Alaska District and recommended by the Alaska District Commander, I hereby issue NWPs numbers 1-25, 27-46 and 49-52 including the limitations, terms and conditions, and applicable regional conditions contained in enclosure 1, to take effect in Alaska District's area of operation. I am issuing these NWPs based on my determination that they will authorize only activities that result in no more than minimal individual and cumulative adverse effects on the aquatic environment.

7. Please direct any questions to my Regulatory Program Manager, Mr. Thom E. Lichte, (808) 438-0397, or Thom.E.Lichte@usace.army.mil.



RICHARD L. STEVENS
Brigadier General, USA
Commanding

Encls

1. Regional Conditions
2. Supplemental Decision Documents