

DEPARTMENT OF DEFENSE**Department of the Army****Corps of Engineers****Proposal to Issue a Nationwide Permit**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: As a part of our effort to improve the regulatory program, the Army Corps of Engineers is proposing to issue a new nationwide general permit (NWP) under Section 404 of the Clean Water Act and Section 10 of the Rivers & Harbors Act for single-family residential development. The NWP will provide for effective protection of the aquatic environment while substantially reducing regulatory burdens on landowners.

In August 1993, the Clinton Administration announced a comprehensive package of improvements to the Federal wetlands program that identified measures to enhance the fairness, flexibility, and effectiveness of the wetlands program. A major focus of the Administration's Wetland Plan is intended to address the concerns of landowners by streamlining Section 10 and 404 permitting programs where possible while maintaining needed environmental protection.

The public is invited to provide comments on this proposal and is being given the opportunity to request a public hearing on the proposed NWP.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Comments should be submitted in writing to: Office of the Chief of Engineers, ATTN: CECW-OR, 20 Massachusetts Avenue NW, Washington, DC 20314-1000. Comments will be available for examination at the Office of the Chief of Engineers, Room 6225, Pulaski Building, 20 Massachusetts Avenue NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Kube or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272-0817.

SUPPLEMENTARY INFORMATION:**Background**

The White House Office on Environmental Policy announced the President's Wetlands Plan on August 24, 1993. The plan set forth a comprehensive package of improvements to the Federal wetlands protection programs. A major goal of the plan is to ensure that programs are fair, flexible, and effective. To achieve this

goal, the Corps regulatory program must continue to provide effective protection of wetlands while conveying to the public a clear understanding of regulatory requirements. In its implementation, the regulatory program must be administratively efficient, flexible yet predictable, and avoid unnecessary impacts to private property and the regulated public.

We are proposing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP would authorize activities in wetlands related to the construction or expansion of a single-family home. This would allow, for example, a couple to build a retirement home on wetlands property they own without applying for an individual Section 404 permit. The NWP includes limits and conditions to minimize impacts on the aquatic environment.

There is a perception by many in the country that the regulatory process has become too burdensome on small landowners simply desiring to build a home. This nationwide general permit has been developed to reduce the regulatory burden on small landowners proposing to build or expand a single-family home while simultaneously maintaining environmental safeguards. It seeks to strike this balance by allowing a landowner to build or expand a home with minimal regulatory oversight while protecting the aquatic resource through specific limitations. If finalized, the new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Further, as the Corps realizes workload savings resulting from this NWP it should be able to improve service to other sectors of the regulated public (e.g., large developments).

Proposed NWP for Single Family Housing

In order to address the above concerns, the Corps proposes to issue the following NWP.

Discharges of dredged or fill material into non-tidal wetlands for the construction or expansion of a single-family home and attendant features, such as a garage, driveway, storage shed, and/or septic field, provided:

- a. The discharge into waters of the United States does not cause the loss of more than 1/2 acre;
- b. The permittee notifies the District Engineer in accordance with the "Notification" general condition (as modified for this NWP only);
- c. The permittee has taken necessary actions to minimize the on-site and off-site impacts of the discharge. For

example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

- d. The discharge is part of a single and complete project and that for any subdivision created after March 6, 1995 the permittee notifies the District Engineer of any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/2 acre; and
- e. an individual may use this nationwide permit only once.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. (Sections 10 & 404)

The above NWP is being proposed under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Discussion

We are requesting comments on the following specific issues:

MAXIMUM ACREAGE: General permits are designed to authorize categories of activities in waters of the United States that will have minimal individual and cumulative impacts. This NWP would allow discharges affecting up to 1/2 acre of non-tidal waters and wetlands for the construction or expansion of a single-family home and attendant features, such as the construction of a driveway, garage, and/or septic field. For purposes of this NWP, impacts include the filled area plus any wetlands adversely affected by flooding, excavation, or drainage. The actual loss of wetlands that would be authorized under the NWP would be limited to the minimum necessary for construction of the house and attendant features. (See discussion below on mitigation.) The NWP may not be used in combination with other general permits if the cumulative impacts from all activities are more than minimal.

We believe that 1/2 acre is sufficient for the vast majority of single-family homes. However, we are interested in receiving comments regarding the maximum acreage of impact to be allowed under this authorization. Should the maximum acreage be reduced to 1/8 or 1/4 acre or should the maximum acreage of impact be increased to 3/4 or 1 acre? The maximum acreage allowed under this NWP will be dependant on how the term "attendant features" is defined. We are interested in comments regarding a definition of

the term "attendant features". Should the authorization be limited to fill for foundations and building pads or should fill also be allowed for any attendant amenity as currently proposed, such as a yard, tennis courts, and/or swimming pool under this NWP?

2. PRE-CONSTRUCTION

NOTIFICATION: Individuals proposing to use the NWP will have to first notify the Corps in accordance with procedures of General Condition #13, Notification, as modified below. We propose to streamline the pre-construction notification (PCN) procedure by not requiring the Corps to coordinate with the Federal resource agencies, nor requiring the applicant to submit advance notice to the Fish & Wildlife Service or the State Historic Preservation Officer. Specifically, the Notification condition would be modified for this NWP as follows:

13. Notification. (a) The prospective permittee must notify the District Engineer with a Pre-construction Notification (PCN) as early as possible and shall not begin the activity authorized by this NWP:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) The notification must be in writing and include the following information:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(3) of this General Condition.

(d) In reviewing an activity under the notification procedure, the District

Engineer will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any agreed upon special conditions and/or mitigation. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit.

(e) Wetlands Delineations: When necessary, wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the wetland. However, there may be some delay if the Corps does the delineation and the 30-day period will not start until the wetland delineation has been completed.

We are requesting comments on the PCN. Should the requirement for Corps and applicant coordination of project impacts with the resource agencies be retained? Is the PCN to the Corps needed in all cases? Should there be a size limit such as $\frac{1}{10}$, $\frac{1}{8}$, $\frac{1}{4}$ acre where no PCN is required?

3. **MITIGATION:** No compensatory wetland mitigation is required under this authorization. However, the landowner must take reasonable on-site measures to minimize adverse impacts to aquatic resources. For example, the location of a home may need to be adjusted on-site to avoid flooding of adjacent property. Further, on-site minimization steps must be taken to minimize the loss of waters of the United States. For example, if a landowner currently owns 20 acres of land, 15 acres of which is non-wetland, we do not believe it is unreasonable to require the use of the non-wetland portion of the property where practicable.

We are requesting comments on our proposal to require no compensatory mitigation for this NWP. Should we require mitigation for all wetland losses as a result of this permit or should we require it if the fill exceeds a certain acreage, such as $\frac{1}{4}$ acre? Alternatively, should compensatory mitigation only be

required for certain attendant features such as the fill necessary for a yard?

4. **SUBDIVISIONS:** In order to ensure that only minimal individual and cumulative impacts occur, this authorization is not intended to allow individual landowners to impact more than a total of $\frac{1}{2}$ acre of waters of the United States. Discharges authorized by this NWP must be part of a single and complete project and individuals may use this NWP only once for all property owned now and in the future. For any real estate subdivision legally created or subdivided before March 6, 1995, the owner of each legally plated lot site may use this NWP. Should we allow individuals to use this nationwide permit more than once (e.g. twice, for a primary residence and a second home) or should its use by individuals not be limited.

For any real estate subdivision created or subdivided after March 6, 1995, discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of $\frac{1}{2}$ acre for the entire subdivision. For purposes of this NWP, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

March 6, 1995 is being proposed because that is the date this NWP was announced to the public. Should the March 6, 1995 date be changed to be consistent with the NWP #26 subdivision clause of October 5, 1984, or some other date? Also, are there other options, rather than the Subdivision provision, that would prevent developers from dividing and selling building sites, in the future, to circumvent the limits of this nationwide permit?

Nationwide Permit Conditions

This proposed NWP will be subject to the conditions that apply to all nationwide permits. These conditions are found at 33 CFR Part 330 Appendix A(C). As noted above, condition #13 has been modified for purposes of this NWP only.

Regional Conditions

Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. In addition to the NWP conditions being proposed by the Chief of Engineers, the Division and District Engineers may propose regional

conditions or propose revocation of NWP authorization for all or portions of this NWP. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. Comments on the **Federal Register** notice that address national concerns relating to the proposed NWP and its conditions should be sent to the U.S. Army Corps of Engineers, CECW-OR, 20 Massachusetts Avenue N.W., Washington, D.C 20314-1000. Comments on regional issues and regional conditions should be sent to the appropriate District Engineer as indicated below.

ALABAMA

Mobile District Engineer, ATTN:
CESAM-OP-S, P.O. Box 2288,
Mobile, AL 36628-0001

ALASKA

Alaska District Engineer, ATTN: CENPA-
CO-R, P.O. Box 898, Anchorage, AK
99506-0898

ARIZONA

Los Angeles District Engineer, ATTN:
CESPL-CO-R, P.O. Box 2711, Los
Angeles, CA 90053-2325

ARKANSAS

Little Rock District Engineer, ATTN:
CESWL-CO-P, P.O. Box 867, Little
Rock, AR 72203-0867

CALIFORNIA

Sacramento District Engineer, ATTN:
CESPK-CO-O, 1325 J Street,
Sacramento, CA 95814-4794

COLORADO

Albuquerque District Engineer,
ATTN: CESWA-CO-R, P.O. Box
1580, Albuquerque, NM 87103-
1580

CONNECTICUT

New England Division Engineer,
ATTN: CENED-OD-R, 424 Trapelo
Road, Waltham, MA 02254-9149

DELAWARE

Philadelphia District Engineer, ATTN:
CENAP-OP-R, Wannamaker
Building, 100 Penn Square, East
Philadelphia, PA 19107-3390

FLORIDA

Jacksonville District Engineer, ATTN:
CESAJ-RD, P.O. Box 4970,
Jacksonville, FL 32232-0019

GEORGIA

Savannah District Engineer, ATTN:
CESAS-OP-F, P.O. Box 889,
Savannah, GA 31402-0889

HAWAII

Honolulu District Engineer, ATTN:
CEPOD-CO-O, Building 230, Fort
Shafter, Honolulu, HI 96858-5440

IDAHO

Walla Walla District Engineer, ATTN:
CENPW-OP-RF, Building 602,
City-County Airport, Walla Walla,
WA 99362-9265

ILLINOIS

Rock Island District Engineer, ATTN:
CENCR-OD-S, Clock Tower
Building, P.O. Box 2004, Rock
Island, IL 61201-2004

INDIANA

Louisville District Engineer, ATTN:
CEORL-OR-F, P.O. Box 59,
Louisville, KY 40201-0059

IOWA

Rock Island District Engineer, ATTN:
CENCR-OD-S, Clock Tower
Building, Rock Island, IL 61201-
2004

KANSAS

Kansas City District Engineer, ATTN:
CEMRK-OD-P, 700 Federal
Building, 601 E. 12th Street, Kansas
City, MO 64106-2896

KENTUCKY

Louisville District Engineer, ATTN:
CEORL-OR-F, P.O. Box 59,
Louisville, KY 40201-0059

LOUISIANA

New Orleans District Engineer, ATTN:
CELMN-OD-S, P.O. Box 60267,
New Orleans, LA 70160-0267

MAINE

New England Division Engineer,
ATTN: CENED-OD-R, 424 Trapelo
Road, Waltham, MA 02254-9149

MARYLAND

Baltimore District Engineer, ATTN:
CENAB-OP-R, P.O. Box 1715,
Baltimore, MD 21203-1715

MASSACHUSETTS

New England Division Engineer,
ATTN: CENED-OD-R, 424 Trapelo
Road, Waltham, MA 02254-9149

MICHIGAN

Detroit District Engineer, ATTN:
CENCE-CO-L, P.O. Box 1027,
Detroit, MI 48231-1027

MINNESOTA

St. Paul District Engineer, ATTN:
CENCS-CO-R, 190 Fifth Street,
East, St. Paul, MN 55101-1638

MISSISSIPPI

Vicksburg District Engineer, ATTN:
CELMV-CO-O, P.O. Box 80,
Vicksburg, MS 39180-0080

MISSOURI

Kansas City District Engineer, ATTN:
CEMRK-OD-P, 700 Federal
Building, 601 E. 12th Street, Kansas
City, MO 64106-2896

MONTANA

Omaha District Engineer, ATTN:
CEMRO-OP-R, P.O. Box 5, Omaha,
NE 68101-0005

NEBRASKA

Omaha District Engineer, ATTN:
CEMRO-OP-R, 215 North 17th
Street, Omaha, NE 68101-4978

NEVADA

Sacramento District Engineer, ATTN:
CESPK-CO-O, 1325 J Street,
Sacramento, CA 95814-2922

NEW HAMPSHIRE

New England Division Engineer,

ATTN: CENED-OD-R, 424 Trapelo
Road, Waltham, MA 02254-9149

NEW JERSEY

Philadelphia District Engineer, ATTN:
CENAP-OP-R, Wannamaker
Building, 100 Penn Square East,
Philadelphia, PA 19106-2991

NEW MEXICO

Albuquerque District Engineer,
ATTN: CESWA-CO-R, P.O. Box
1580, Albuquerque, NM 87103-
1580

NEW YORK

New York District Engineer, ATTN:
CENAN-OP-R, Jacob K. Javits
Federal Building, New York, NY
10278-0090

NORTH CAROLINA

Wilmington District Engineer, ATTN:
CESAW-CO-E, P.O. Box 1890,
Wilmington, NC 28402-1890

NORTH DAKOTA

Omaha District Engineer, ATTN:
CEMRO-OP-R, 215 North 17th
Street, Omaha, NE 68102-4978

OHIO

Huntington District Engineer, ATTN:
CEORH-OR-F, 502 8th Street,
Huntington, WV 25701-2070

OKLAHOMA

Tulsa District Engineer, ATTN:
CESWT-OD-RF, 1645 South 101
East Avenue, Tulsa, OK 74128-
4629

OREGON

Portland District Engineer, ATTN:
CENPP-PL-R, P.O. Box 2946,
Portland, OR 97208-2946

PENNSYLVANIA

Baltimore District Engineer, ATTN:
CENAB-OP-R, P.O. Box 1715,
Baltimore, MD 21203-1715

RHODE ISLAND

New England Division Engineer,
ATTN: CENED-OD-R, 424 Trapelo
Road, Waltham, MA 02254-9149

SOUTH CAROLINA

Charleston District Engineer, ATTN:
CESAC-CO-P, P.O. Box 919,
Charleston, SC 29402-0919

SOUTH DAKOTA

Omaha District Engineer, ATTN:
CEMRO-OP-R, 215 North 17th
Street, Omaha, NE 68102-4978

TENNESSEE

Nashville District Engineer, ATTN:
CEORN-OR-F, P.O. Box 1070,
Nashville, TN 37202-1070

TEXAS

Ft. Worth District Engineer, ATTN:
CESWF-OD-O, P.O. Box 17300, Ft.
Worth, TX 76102-0300

UTAH

Sacramento District Engineer, ATTN:
CESPK-CO-O, 1325 J Street, CA
95814-4794

VERMONT

New England Division Engineer,
ATTN: CENED-OD-R, 424 Trapelo

Road, Waltham, MA 02254-9149
VIRGINIA

Norfolk District Engineer, ATTN:
CENAO-OP-P, 803 Front Street,
Norfolk, VA 23510-1096

WASHINGTON

Seattle District Engineer, ATTN:
CENPS-OP-RG, P.O. Box 3755,
Seattle, WA 98124-2255

WEST VIRGINIA

Huntington District Engineer, ATTN:
CEORH-OR-F, 502 8th Street,
Huntington, WV 25701-2070

WISCONSIN

St. Paul District Engineer, ATTN:
CENCS-CO-R, 190 Fifth Street,
East, St. Paul, MN 55101-1638

WYOMING

Omaha District Engineer, ATTN:
CEMRO-OP-R, 215 North 17th
Street, NE 68102-4978

DISTRICT OF COLUMBIA

Baltimore District Engineer, ATTN:
CENAB-OP-R, P.O. Box 1715,
Baltimore, MD 21203-1715

PACIFIC TERRITORIES

Honolulu District Engineer, ATTN:
CEPOD-CO-O, Building 230, Fort
Shafter, Honolulu, HI 96858-5440

PUERTO RICO AND VIRGIN ISLANDS

Jacksonville District Engineer, ATTN:
CESAJ-RD, P.O. Box 4970,
Jacksonville, FL 32232-0019

State Certification of Nationwide Permits

Section 401 of the Clean Water Act: This **Federal Register** notice of this NWP serves as the Corps application to the states or EPA, where appropriate, for 401 water quality certification of the activities authorized by this NWP. The states and EPA, where appropriate, are requested to issue, deny, or waive certification pursuant to 33 CFR 330.4(c) for this NWP.

Section 307 of the Coastal Zone Management Act: This **Federal Register** notice serves as the Corps determination that the activities authorized by this NWP are consistent with States' coastal zone management programs, where applicable. This determination is contingent upon the addition of State CZM conditions and/or regional conditions or the issuance by the state of an individual consistency concurrence, where necessary. The states are requested to agree or disagree with this consistency determination

pursuant to 33 CFR 330.4(d) for this NWP.

Environmental Documentation

We have made a preliminary determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Preliminary environmental documentation has been prepared for the proposed nationwide permit. This documentation includes a preliminary environmental assessment and a preliminary Section 404(b)(1) Guidelines compliance review. Copies of these documents are available for inspection at the office of the Chief of Engineers and at each Corps District office. Based on these documents the Corps has provisionally determined that the proposed NWP complies with the requirements for issuance under general permit authority.

Dated: March 15, 1995.

Stanley G. Genega,

Major General, USA, Director of Civil Works.
[FR Doc. 95-7206 Filed 3-21-95; 9:25 am]

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