



US Army Corps
of Engineers
Alaska District

Public Notice

Date:
10 July 2008

Identification Number:
SPN POA-2008-834

In reply to the above identification number

Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
Elmendorf AFB, Alaska 99506-0898

FINAL MITIGATION RULE

On Thursday April 10, 2008, the Final Mitigation Rule was published in the Federal Register/Vol. 73, No. 70/Rules and Regulations. This affects Department of Defense, Department of the Army (DA), Corps of Engineers (Corps), 33CFR Parts 325 and 332, and the Environmental Protection Agency (EPA), 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources, Final Rule. The Final Rule modifies the sequencing of compensatory mitigation through environmentally preferable solutions to assure the mitigation success of DA permits issued pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and/or sections 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to wetlands, streams and other aquatic resources authorized by Clean Water Act section 404 permits and other DA permits. As such, compensatory mitigation is a critical tool in helping the federal government to meet the longstanding national goal for "no net loss" of wetland acreage and function. For impacts authorized under section 404, compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem pursuant to 40 CFR part 230 (i.e., the CWA Section 404(b) (1) Guidelines).

The mission of the Corps Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible, and balanced permit decisions.

Alaska Regulatory Division-Mitigation Statement: All proposed actions will avoid, minimize, and compensate for permitted impacts to Alaska's aquatic resources. The Regulatory Division shall implement measurable, enforceable ecological performance standards based on the best available science and watershed approach, focusing on results, with monitoring to assure success.

Effective Immediately

In accordance with 33 CFR 325.1(d) (7), "For activities involving discharges of dredged or fill material into waters of the U.S., the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement

explaining why compensatory mitigation should not be required for the proposed impacts."

Should your permit result in the need for a compensatory mitigation plan please be aware of the following requirements:

For Individual Permits:

- A final compensatory mitigation plan must be approved prior to issuance of permit.
- If using a mitigation bank or In-Lieu Fee (ILF) program, the permit must identify the specific bank or ILF program.

For General Permits:

- A conceptual or detailed mitigation plan may be approved to meet general permit timeframes.
- A final mitigation plan must be approved before commencing work in waters of the U.S.
- If using a mitigation bank or ILF program, the specific bank or ILF program can be identified ahead of time, or be approved later.

Additional information on the Final Rule can be obtained by internet access through the Alaska District's Regulatory Division web page at <http://www.poa.usace.army.mil/reg>, clicking on the Regulatory Web Page and then clicking on Latest News; information is obtainable from clicking on subject titles under 10 April 2008, Final Compensatory Mitigation Rule.

You may connect directly to the Final Mitigation Rule web sites at <http://www.usace.army.mil/cw/cecwo/reg/citizen.htm> or <http://www.epa.gov/wetlandsmitigation>

You may contact our office in writing by sending questions/comments to:

U.S. Army Engineer District, Alaska
CEPOA-RD Mitigation Team
PO Box 6898
Elmendorf AFB, Alaska 99506-0898

Please contact the Alaska District Regulatory Division at (907) 753-2712, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at regpagemaster@usace.army.mil if further information is desired concerning this notice.

District Commander
U.S. Army, Corps of Engineers