

Fact Sheet  
Proposed General Permit (GP) POA-2014-55  
Mechanical Placer Activities within the State of Alaska

Introduction:

Under Section 404 of the Clean Water Act (CWA), the U.S. Army Corps of Engineers (Corps) regulates the placement of dredged and/or fill material into waters of the United States (U.S.), which include wetlands and streams. The Corps does this by verifying permits for projects that propose to place fill into waters of the U.S.

A General Permit (GP) is a type of permit that is intended to authorize groups of projects that are similar to each other, and that cause minimal individual and cumulative impacts to the aquatic environment. The Corps has authorized small mechanical placer mining operations in Alaska under a GP since 1988. These projects share similar processes, footprints, and impacts on streams and wetlands.

There are a number of changes proposed in GP POA-2014-55, which will make this new permit different from the placer mining GP that has been in place since 1988. There are several reasons for the changes. The CWA has evolved during the past twenty five years, in response to changing social, environmental, and legal conditions. The GP must be reissued to require accurate data to complete jurisdictional determinations, ensure minimal impacts to the aquatic ecosystem, and comply with the 2008 Mitigation Rule.

Outreach:

The Corps has been working since September 2011 with miners and agencies to ensure they know and understand these changes; to provide extended lead time and expanded opportunities for public input; and to develop a regionally flexible approach, including options to keep costs low for small operators. The Corps has made an effort to increase field presence and has been conducting regular outreach meetings with stakeholders over the past two years to keep them apprised of developments. The Corps has issued several Special Public Notices (SPNs)<sup>1</sup> explaining what changes were coming, and what reasons were behind the upcoming changes.

Despite the lead time, the Corps has received many comments expressing uncertainty about the proposed changes. The miners' main concern is that the requirement for Compensatory Mitigation will put the small miner out of business. The Corps has put considerable effort into adapting one method of Compensatory Mitigation - Permittee Responsible Mitigation – so as to be more appropriate for use by small miners. Small miners are not exempt from the CWA – the Corps must treat small miners the same way they treat all other similar applicants. However, the details that make up the

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<sup>1</sup> POA-2006-1944-M1 Proposal to Re-Issue GP 2006-1944 on November 2, 2011; POA-2006-1944-M1 Interim Measures on October 28, 2012; POA-2006-1944-M1 two and one half year Re-Issuance on April 18, 2012. All SPNs are available on our website <http://www.poa.usace.army.mil/Missions/Regulatory/SpecialPublicNotices.aspx>

framework of this proposal represent an effort by the Corps to provide a means for miners to continue mining and remain in compliance with the CWA.

Proposed Changes:

The following is a list of changes proposed for this new permit.

1. Impacts to wetlands and streams only: The current permit (POA-2006-1944-M1) applies to activities in uplands, wetlands, and streams. This proposed GP (POA-2014-55) is only for work in wetlands and waters of the U.S., subject to Section 404 of the CWA. Miners will be required to submit baseline information about their site related to presence of wetland and streams. Operators working in uplands do not need a Corps permit. As a service, Corps will supply letters stating that "No Permit is Required" to operators who supply photos of their operations in uplands.
2. Two Categories: To achieve minimal impacts, the Corps is proposing to change the size limit from ten (10) acres of wetlands and uplands, and up to 2,000 linear feet (lf) of stream diversion to a system with two size categories of operation:
  - Tier 1: One Acre or less of wetlands, Minimal Streambank Disturbance, and No Stream Channel Bypass or Diversion. Operations may submit a Corps Pre-Construction Notification (PCN) or a State of Alaska Annual Placer Mining Application (APMA) and information for a Wetland Jurisdictional Determination (Wetland JD). They would be automatically permitted; some additional responsibilities apply.
  - Tier 2: One to Five Acres of wetlands, up to 1,000 linear feet (lf) of Streambank Disturbance and up to 1,000 lf of Stream Channel By-Pass or Diversion. Operations may submit a Corps PCN or an APMA, and, a supplemental Corps GP Packet, discussed below, before receiving a permit.
3. Draft Corps GP Packet: Under the current GP (POA-2006-1944-M1), the Corps accepted the APMA to request a Corps permit. The APMA works well for state land management purposes, but is insufficient for meeting Federal requirements of the CWA. The Corps is proposing a supplemental packet (Corps GP Packet) to include this information. A draft of this packet is included, containing the following:
  - a. (Attachment 1) "Wetland" Jurisdictional Determination (Wetland JD)
  - b. (Attachment 2) Mitigation Statement
  - c. (Attachment 3) Proposed Mitigation Plan for "Permittee Responsible Mitigation for Alaska Miners"
  - d. (Attachment 4) Signed Certificate



- a. Wetland JD (Attachment 1): SPN POA-2006-1944-M1, dated October 28, 2012, required miners to provide information for a Wetland JD starting January 1, 2013, either by providing a consultant supplied Wetland JD or, by supplying aerial photos and/or site photos of their operations that are clear, legible, and reproducible.
  - This information is required in order to determine if a permit is required and if so, how many acres of impacts need to be permitted.
  - Once the Corps completes a Wetland JD for your operation, it is good for 5 years unless you modify your operation.
- b. The Mitigation Statement (Attachment 2): Applicants start their Section 404 permit application by completing a Mitigation Statement, which describes their plan to avoid, minimize, and provide compensatory mitigation for adverse impacts to waters of the U.S. (including wetlands and streams) at their project site.
  - Many miners have completed one of these statements previously.
  - A new version of the Mitigation Statement is provided with this permit. It is in a checklist format and includes options for Compensatory Mitigation.

Compensatory Mitigation is not a new requirement in the CWA. It is defined as: actions taken to offset unavoidable adverse impacts to aquatic resources that happen when a project is permitted under the CWA. It was included in the 1986 CWA regulations (33 CFR320.4 (r)) and also in the Section 404 (b)(1) Guidelines (40 CFR 230). In those regulations, mitigation is outlined as a three step sequence of avoidance, minimization, and compensatory mitigation. Mitigation overall is described as a balancing process that occurs throughout permit evaluation and project implementation. "Compensatory mitigation" is the final step in the sequence and is not required until all practicable steps have been taken for avoidance and minimization.

In 2008, The Final Mitigation Rule was issued to clarify how Compensatory Mitigation could be more consistently implemented. The 2008 Mitigation Rule contains definitions, procedures and timelines. The new GP needs to be updated so that it is clear to miners when compensatory mitigation will be required, and what actions can be taken to satisfy the requirement.

When Compensatory Mitigation Will Be Needed for Placer Mining Projects: As a whole within the Section 404 program, the Corps determines the need for many aspects of compensatory mitigation on a case by case basis. In their Mitigation Statement, applicants may propose to not do Compensatory Mitigation and request Corps approval. However, for mechanical placer operations falling into the Tier 2 category, with one to five acres of wetland impacts, up to 1,000 lf streambank disturbance and up to 1,000 lf stream by-pass or diversion, the Corps proposes requiring Compensatory Mitigation to

ensure that the impacts to the aquatic ecosystem are minimal, individually and cumulatively.

Three methods : There are three methods of compensatory mitigation described in the 2008 Mitigation Rule:

- Mitigation Banks
- In-Lieu Fee Mitigation (ILF)
- Permittee-Responsible Mitigation (PRM)

Twelve Steps: All of these methods require a Mitigation Plan, which contains the following twelve elements: Objectives; site selection criteria; site protection mechanism (e.g., conservation easement); baseline information (for impact and compensation sites); credit determination methodology; mitigation work plan; maintenance plan; ecological performance standards; monitoring requirements; long-term management plan; adaptive management plan; and financial assurances. All of these twelve elements must be accounted for.

Mitigation Banks and "In lieu Fee" (ILF) programs: The 2008 Mitigation Rule establishes an order – also known as a preference hierarchy – for choosing a method of compensatory mitigation. The Corps generally requests use of credits from a Mitigation Bank or ILF (where such programs are available) before considering use of PRM. Mitigation Banks and ILFs are regarded as less risky and more certain as sources for providing successful mitigation than PRM because they have a secure site location, they have completed a Mitigation Plan and they have appropriate long term management, site protection and financial assurance arrangements in place.

Permittee Responsible Mitigation, as outlined in the 2008 Mitigation Rule: In contrast to Mitigation Banks and ILFs, the permittee is responsible for generating the Mitigation Plan under Permittee Responsible Mitigation. The plan must be approved by the Corps prior to the start of work. As its name implies, the permittee is responsible for ensuring that the compensation activities are completed and successful, and in setting up a long term plan with financial assurances that the mitigation project will remain in place "in perpetuity".

c. PRM for Alaska Miners (Attachment 3):

This is an additional program being proposed by the Corps for use by Alaska miners. It is an adaptation of PRM as described in the 2008 Mitigation Rule. It is being developed to provide regional flexibility and scale appropriate options for small operators, while containing measures to ensure minimal adverse individual and cumulative impacts to aquatic resources. The program proposes a number of features, such as: to allow onsite mitigation, to waive the directive for a site protection mechanism on mining claims, and to



leave long term management responsibilities up to the land manager. There is a proposal, however, to require financial assurances under certain circumstances for PRM. The program specifically proposes the possibilities of utilizing 25 to 50 feet wide vegetated stream buffers, shallow ponds in some locations, re-constructed wetlands where practicable and construction Best Management Practices to satisfy Compensatory Mitigation requirements for small miners.

- d. Signed Certificate (Attachment 4): The new permit will include a signed certificate that the information contained in the Corps GP Packet and that the APMA is acknowledged by the miner to truthfully represent his/her mining operation. This establishes a basis for Federal permit compliance and/or enforcement where the operator acknowledges responsibility for conditions at his/her mine applicable to Section 404 of the CWA.