



US Army Corps
of Engineers
Alaska District

Special Public Notice

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
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DATE: October 28, 2012

IDENTIFICATION NO.: POA-2006-1944-M1

(In reply, please reference above number)

SUBMIT COMMENTS BY: November 28, 2012

INTERIM MEASURES FOR GENERAL PERMIT 2006-1944-M1 SPECIAL PUBLIC NOTICE Placer Mining Activities within the State of Alaska

The Alaska District, United States (U.S.) Army Corps of Engineers (Corps), in accordance with regulations pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 *et. seq.*) proposes interim steps to implement requirements associated with the potential October 31, 2014, reissuance of General Permit (GP) POA-2006-1944-M1, which would authorize the placement of dredged and/or fill material into waters of the U.S., including wetlands, for placer mining activities within the State of Alaska. The GP applies to placer mining operations of ten acres or less of disturbance area in wetlands and uplands, and/or stream diversions of up to 2,000 linear feet.

In 2014, the GP will undergo substantive changes. The Corps proposes a phase in of new requirements, to allow resource agencies and the mining industry time to implement the changes.

As of January 1, 2013, applicants submitting an Annual Placer Mining Application (APMA) for the purpose of obtaining their Corps GP for placer mining must include an aerial photo of their operation. The Corps will use the photo to determine limits of jurisdiction. The Corps has jurisdiction over the discharge or placement of fill material into streams and wetlands, including stream diversions, mechanical land clearing of wetlands, construction of roads and camps, and reclamation.

- The photo must be of good enough quality to clearly differentiate uplands, wetlands, and vegetation types. The photo must clearly show all mine activities, including stream diversions, mechanical stripping, cuts and fills, roads, camps, and overburden stockpiles.
- This requirement applies to miners working on state, federal, and private claims.
- There will be a **May 31, 2013, deadline** for Corps receipt of APMAs to be used for general permits in 2013.
- APMAs submitted without legible photos will be returned as incomplete. Operations that continue without proper authorization may be subject to a Notice of Violation.

Background and Proposed Changes:

In June 2006, the “Rapanos v. United States” case decision by the U.S. Supreme Court changed how the Corps established jurisdiction. The GP must be updated to reflect the changes. In November 2011, the Alaska District

issued a Special Public Notice (SPN), outlining proposed changes to the GP, including requirements for photos. The SPN may be viewed online at website:
http://www.poa.usace.army.mil/Portals/34/docs/regulatory/specialpns/2006-1944-M1_SPN%20PlacerGP%20Reissue%20.pdf.

In April 2012, the existing GP was extended on an interim basis for 2.5 years, to allow time for review and consideration of prospective changes. The new and revised GP would be scheduled for proposed reissuance in October, 2014.

1. Preliminary vs Approved JDs

Explanation: The Corps now uses two types of jurisdictional determination (JD), Preliminary and Approved.

- Most operations will receive a preliminary JD. A preliminary JD is based on best available information, and makes a reasonable determination that there may be jurisdictional wetlands at a site. Preliminary JDs are non-binding and may not be appealed.
- Some operations will receive an approved JD. An Approved JD is an official Corps determination that jurisdictional “waters of the United States,” or “navigable waters of the United States,” or both, are either present or absent on a particular site. Approved JDs are binding and they may be appealed.

2. Requirement for miners to supply aerial photos with the APMA, to be used in conducting a Preliminary or Approved JD.

Explanation: Before a permit can be issued, all permit applicants must submit sufficient information for the Corps to determine jurisdiction. Since 2010, the Alaska District has generally required the use of consultant supplied JDs. Currently, most APMAs do not contain this information. Recognizing the expense a consultant supplied JD could present for small operators, the Corps has been working to get site specific information for placer mines which could result in a JD. On a trial basis, the Corps is willing to accept aerial photos supplied by the operator with the APMA.

- Placer mining operations that take place entirely in uplands or old tailings, and that do not have a stream diversion, do not require a Corps permit. An Approved JD is required. Operators may request an Approved JD and submit photos that document the upland operation. A No Permit Required letter will be provided.
- Placer mining operations with ten acres or less disturbance area in wetlands and uplands, and/or stream diversions of up to 2,000 linear feet require the GP. A preliminary JD may be used. Your signature on the APMA indicates acceptance of the Preliminary JD. A General Permit letter will be provided. At any time you may request an Approved JD.
- Placer mining operations that exceed the limits of the GP must submit a DA application ENG Form 4345 for a DA Individual Permit. Additional requirements for establishing jurisdiction apply.

Comment Period: The comment period for this Public Notice is 30 days, ending on November 26, 2012. Any questions or requests for additional information should be directed to: Alaska District, Corps of Engineers, ATTN: Ms. Leslie W. Tose, Regulatory Division, Post Office Box 6898, JBER, Alaska 99506-0898, email leslie.w.tose@usace.army.mil , phone (907) 753-2712 or toll free in Alaska at (800) 478-2712.

District Engineer
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