



Public Notice

US Army Corps
of Engineers
Alaska District

Regulatory Division (1145)
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Anchorage, AK 99501-5146

Date: March 20, 2012

Identification No: POA-2011-6

PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS

On February 21, 2012, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, three new general conditions, and three new definitions. The NWPs are effective on March 19, 2012, and will expire on March 18, 2017.

With the publication of this *Federal Register* notice, the Alaska District finalized their regional conditions for the new and reissued NWPs (Enclosure 1). Regional conditions provide additional protection for the aquatic environment, and help ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions help ensure protection of high value waters within the Alaska District.

The publication of this *Federal Register* notice also began the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) process for the NWPs. The 60-day period for WQC will end on April 20, 2012.

While the states, Indian Tribes, and EPA complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual WQC or a case-specific WQC waiver. With the exception of Annette Island Indian Reservation, WQC has been received so individual or case-specific WQC waiver will not be required.

The February 21, 2012, *Federal Register* notice is available for viewing at Alaska District U.S. Army Corps of Engineers, located at 2204 3rd Street, Joint Base Elmendorf-Richardson, Alaska, or on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> . As an alternate, Internet users can access the *Federal Register* through the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> .

The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> and Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWPs.

Enclosure 1

2012 REGIONAL CONDITIONS

REGIONAL CONDITION A - Additional Pre-Construction Notification (PCN) Requirements ¹

1. NWP 6, Survey Activities: 3-D seismic surveys employing ocean bottom cables.
2. NWP 13, Bank Stabilization: Projects require a PCN when specified by NWP 13 and/or the proposed methods and techniques are not included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions.

The Guide is available at <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>

Furthermore, applicants proposing projects not contained in the Guide may still qualify for NWP 13 but they shall provide an alternative analysis to the district engineer with the PCN consisting of the bioengineered methods that were considered and rationale as to why these alternatives are not in the applicant's preferred alternative. Applicants subject to the PCN due to a design that is not included in the Guide are encouraged to include measures that minimize impacts to the aquatic environment including methods that improve fish habitat such as vegetated riprap.

3. Any activity proposing pile driving and/or blasting in marine waters, anadromous lakes or anadromous streams.
4. Proposed projects that qualify for NWPs 3, 12, 13, 14, and 18 within the Municipality of Anchorage.

¹ Where required by the terms of the NWP or Regional Condition A, a prospective permittee must notify the district engineer by submitting a preconstruction notification (PCN) as early as possible. See General Condition 31 of the NWPs for the contents of the PCN or visit www.poa.usace.army.mil/reg/NWPs.

REGIONAL CONDITION B – General Permit Agency Coordination

This Regional Condition establishes geographic and habitat areas that will require agency coordination for projects that are less than 1/2 acre. ¹

For projects requiring a Pre-Construction Notification (PCN) **and** occurring within any of the following geographic/habitat areas, the Corps will conduct agency coordination with the appropriate agencies according to General Condition 31, regardless of the amount of loss of waters of the U.S.

- 1) The Municipality of Anchorage.
- 2) Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan.
- 3) Areas designated as "High" or "Moderate" value wetlands in the Homer Wetland Functional Assessment.
- 4) Anadromous lakes or anadromous streams including, but not limited to catalogued streams identified in the *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* (available at <http://www.adfg.alaska.gov/sf/SARR/AWC/>)
- 5) Jurisdictional areas within 500 feet (measured from OHW or HTL) of anadromous lakes or anadromous streams as identified above.
- 6) Marine waters

Agency coordination will also occur if the proposed activity:

- 1) is authorized by NWP 51
- 2) requires a written waiver by the District Engineer; and/or
- 3) involves stream relocation

Local, State or Federal applicants may choose to conduct agency coordination in accordance with this regional condition for projects in the above geographic areas having less than 1/2 acre loss of waters of the U.S. The documentation of agency coordination shall be supplied with the PCN and if the Corps determines the applicant's proposal adequately addresses agency concerns, the project will not be coordinated again.

The Corps (or local, State or Federal applicant, as described above) will coordinate such projects with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and State Historical Preservation Officer or Tribal Historical Preservation Officer. Additionally, project coordination will occur with the State of Alaska's Department of Environmental Conservation and the Department of Fish and Game.

¹ For activities requiring a PCN that result in the loss of greater than 1/2-acre of waters of the U.S., agency coordination will occur according to general condition 31(d) but also include the agencies as specified above.

REGIONAL CONDITION C - Wood Preservatives

This Regional Condition applies to all NWP's when the regulated activity involves the use of wood preservative products in waters of the U.S. ¹

1. For new materials²:

- a) Preservatives for wooden structures shall be applied by pressure treatment.
- b) In fresh waters, wood structures treated with creosote or pentachlorophenol preservative shall not be used.
- c) In marine waters wood structures treated with pentachlorophenol preservative shall not be used.
- d) For marine installations with more than 50 pilings, or where current velocities are less than 10 cm/sec, a site-specific risk assessment shall be conducted to determine the potential adverse effects of using creosote or copper-related wood products.

2. For the reuse of previously treated wood products in marine waters the wood preservative product's use shall be consistent with its original use and may not be treated with any additional wood preservative. (e.g. the reuse for dock piling of creosote treated wood for dock piling is allowable, the reuse for a retaining wall of creosote treated railroad ties is not allowed, etc.).

¹ Wood preservative products allowed for use in the aquatic/marine environments is determined by the Environmental Protection Agency.

² Treated wood products are produced and installed in accordance with the "Best Management Practices for the Use of Treated Wood in Aquatic and Other Sensitive Environments" (August 2006), including amendments published by the Western Wood Preservers Institute (WWPI) (www.wwpinstitute.org) including the standards set forth by the American Wood-Preservers Association (AWPA) (www.awpa.com), the Timber Piling Council (TPC) (www.timberpilingcouncil.org) and/or the American Lumber Standards Committee as appropriate.

REGIONAL CONDITION D - Activities Involving Trenching

Trenches cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to a non-wetland location. The backfilled trench shall achieve the original surface condition, within a year of disturbance unless climatic conditions warrant additional time and is approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

Revegetation of the trench should follow the process outlined in RC E.

REGIONAL CONDITION E - Site Restoration for Projects with Ground Disturbing Activities

Disturbed areas shall be stabilized immediately after construction to prevent erosion. Revegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and soils removed for project construction shall be stockpiled separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used only if identified in the PCN and approved in the NWP verification. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Revegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

REGIONAL CONDITION F - Equipment Standards

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g. ice roads, compacted snow, low psi ground bearing weight, etc) must be taken to prevent soil disturbance.

REGIONAL CONDITION G – Delineation of Project Boundary

Project boundaries shall be staked, flagged, or otherwise clearly delineated prior to the commencement of the authorized activity for projects that involve the placement of fill.

REGIONAL CONDITION H – Maintenance of Hydrology Patterns

Site preparation, excavation, and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures to prevent ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance with this condition. "Excessive" is defined as a measurable change in site hydrology or drainage from the pre-project condition.

REGIONAL CONDITION I – Relocation of Stream Beds

Relocated stream channels shall approximate the length, meander pattern, gradient, channel cross-section, substrate and flow velocity of the original stream channel. Relocated stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the stream channel. The relocation of stream channels shall include establishment of an associated floodplain. The floodplain shall be of similar dimension and form as the original, or sized to convey the 100-year flood while retaining the channel, substrate, and floodplain characteristics without significant down- or head-cutting.

REGIONAL CONDITION J – Culvert Installation

Culverts in fish bearing waters must be installed in accordance with a valid Alaska Department of Fish and Game, Fish Habitat Permit.

REGIONAL CONDITIONS K-N APPLY TO SPECIFIC NWPs

REGIONAL CONDITION K - Seasonal Docks Authorized by NWP 11, Temporary Recreational Structures

Small, seasonal docks shall not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less.

REGIONAL CONDITION L – NWP 40 Agricultural Activities

The following activities are not authorized by NWP 40: a. Drain tiles, ditches, or levees or; b. Mechanized land clearing and land leveling in wetlands within 500' of anadromous lakes or anadromous streams.

REGIONAL CONDITION M – NWP 44 Mining Activities

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit 2006-1944. In Alaska, NWP 44 will only authorize the following activities:

1. Hard rock mining, not including trenching, drilling, or access road construction. Applicable to Section 404 only.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, and/or prior to equipment being removed from site, whichever comes first.

REGIONAL CONDITION N – NWP 48 Existing Commercial Shellfish Aquaculture Activities

NWP 48 is revoked in Alaska. Applicants seeking authorization for this work are encouraged to apply for Regional General Permit POA-2006-1035, Aquatic Farm Structures within the State of Alaska.