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Nationwide Permits/Clean Water Act: State Groups' Urge Expeditious Office of Management and Budget Review of Permit Reissuance

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The Environmental Council of the States, the Association of Clean Water Administrators, and the Association of State Wetland Managers (Collectively "State Groups") sent an October 20th letter to the Administrator, Office of Information and Regulatory Affairs of the United States Office of Management and Budget ("OMB") seeking an expeditious review of the United States Army Corps of Engineers ("Corps") proposed reissuance of the Clean Water Act Nationwide General Permits ("NWP").

The request is driven by concern that the current set of NWPs expire on March 18, 2017 and cannot be administratively extended.

The Corp is required to periodically replace and/or renew these permits. They are issued for a five-year term.

An individual Clean Water Act general permit authorizes specific activities on a case-by-case basis. In contrast, a nationwide permit is a general permit that provides standing permission for all activities that fit the description in the permit. Such permits provide for preauthorized permission for activities that conform to the standards of the nationwide permit. Certain nationwide permits do require some type of authorization after notice to the Corps prior to starting work.

NWPs are intended to provide expedited review of projects that have more limited impact of the aquatic environment. Examples include activities such as linear transportation projects, bank stabilization activities, navigation aids and certain maintenance activities, etc.

Groups such as the construction industry have argued that it is important the Corps maintain a streamlined permit program that avoids duplication with other federal and state regulatory agencies. The general permit is cited as providing the kind of flexibility required for construction jobsites that are temporary and often changing.

As noted the NWPs will cease to exist if a final rulemaking is not in place by the previously referenced date. The State Groups state:

... Furthermore, following publication of the final rule for the NWPs, states must certify that the NWPs will not result in violation of state water quality standards (as mandated by § 401 of the CWA), and that the permits are consistent with state Coastal Zone Plans (as mandated by the Coastal Zone Management Act ("CZMA")). We are concerned that the Administration will be unable to complete rulemaking in time for the states to comply with their responsibilities under the CWA and CZMA.

The State Groups further note:

. . . Failure to provide adequate time for mandatory state coordination under CWA § 401 and the coastal consistency provision of CZMA, both of which are statutorily required as part of issuance of the NWPs, would delay the effective date of the NWPs, and thus have serious economic consequences for the spring building and construction season of 2017. Likewise, further delay could exponentially increase the state and federal administrative load.

The October 20th State Groups' letter addresses:

- Importance of the nationwide general permit process
- Potential impact of failure to meet the deadline for NWP reissuance
- Action that is needed

[A copy of the October 20th letter can be downloaded here.](#)