Nationwide Permits/Clean Water Act: U.S. Army Corps of Engineers Solicitation of Input on Potential Future Changes



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The United States Army Corps of Engineers ("Corps") published a March 16th Federal Register notice stating that it is seeking input on ways to increase the efficiency of the Clean Water Act nationwide permit ("NWP") program. See 91 Fed. Reg. 1259.

The Corps states it will consider such input in future rulemakings related to NWPs.

Section 404 of the Clean Water Act requires Corps authorization for discharges of dredged or fill material into waters of the United States. An individual permit authorizes specific activities on a case-by-case basis.

In contrast, an NWP is a general permit that provides standing permission for all activities that fit the description of the permit. Such permits provide for preauthorized permission for activities that conform with the standards of the NWP. Certain nationwide permits do require some type of authorization from or notice to the Corps prior to starting work.

The Corps is required to periodically renew expiring NWPs. However, besides renewing existing permits, the Corps also sometimes takes the opportunity to revise or add certain NWPs.

The Corps notes in the March 16th Federal Register notice that pursuant to its regulations at 33 CFR 330.5(b)(1), anyone may at any time, suggest to the Chief of Engineers that he or she consider any new NWPs or conditions for issuance, or changes to existing NWPs. Therefore, the Corps states that the purpose of the March 16th notice is to seek input on the NWPs, including but not limited to:

- Measures to eliminate unnecessary review over activities that require DA authorization;
- Measures to increase permitting efficiency;
- Measures to increase efficiency in the review of pre-construction notifications or issuance of NWP verifications;
- Categories of activities that are similar in nature;
- Measures to improve conditions or processes that would ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental effects;
- Measures to ensure work or structures do not obstruct the navigable capacity of a navigable water of the United States.

The Corps also asks for views on whether any other revisions are needed to the existing regulations regarding the nationwide permit program at 33 CFR part 330, or the implementation of the NWP program.

The Corps also poses 6 questions for stakeholder input which include (paraphrasing):

- What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny?
- What measures should the Corps consider that would improve or maintain efficiency in the review of preconstruction notifications or issuance of NWP verifications?
- What categories of activities that are similar in nature should the Corps consider for establishing new NWPs?
- What measures should the Corps consider to ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental affects both individually and cumulatively?
- What measures should the Corps consider to develop NWPs, terms, general conditions, or processes for the transportation and disposal of dredged material into ocean waters?
- What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the nationwide permit program?

A copy of the Federal Register notice can be found here.