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U.S. Army Corps of Engineers reissues Nationwide Permits, strengthens commitment to wetlands protection, "no net loss"

WASHINGTON, D.C., (Jan. 14, 2002) – The U.S. Army Corps of Engineers (USACE) will issue nationwide permits (NWPs) in the Jan. 15, 2002, *Federal Register*. Nationwide permits ensure appropriate environmental protections when authorizing discharges of small amounts of dredge and fill material into waters of the U.S.

"Overall, the permits are undergoing several small but important changes," said John Studt, Chief of the U.S. Army Corps of Engineers Regulatory Branch. "The revised permits will do a better job of protecting aquatic ecosystems while simplifying some administrative burdens for the regulated public. The changes also reinforce and clarify the Corps' commitment to the 'no net loss' of wetlands goal."

USACE sought public comment for proposed changes to the permits in August 2001. The permits are being reissued with several changes from the August proposal based on numerous public and federal agency comments.

The reissued NWPs maintain the protective acreage thresholds established in 2000, which reduced permissible acreage impacts under a nationwide permit from 3 acres to ½ acre, to help ensure minimal impacts to the aquatic environment.

The three significant modifications from the August proposal to the reissued NWPs are:

1) **A greater emphasis on protecting the "no net loss"** of wetlands standard, responding to public concerns. The reissued nationwide permits require USACE regulatory offices to meet and measure their success regarding the "no net loss" goal programmatically. While Corps districts are not required to provide a one-for-one replacement for impacted acreage for each individual project, they must meet or exceed that goal for their entire program. This allows districts to make more flexible decisions to issue timely permits while ensuring protection of the aquatic ecosystem on a watershed basis. For Nationwide Permits in calendar year 2000, the Corps authorized impacts to 4,374 acres of waters (which include wetlands and open waters) and required 4,261 acres of mitigation. Nationally, the latest USACE statistics show that in fiscal year 2001, 25,000 acres of wetlands were filled, while 43,000 acres of wetlands were required to be created, restored or enhanced to compensate for those impacted.
2) **Strengthens protections for streams.** The August proposal would have waived a previous prohibition of no more than 300-linear-foot impacts for perennial and intermittent streams. The

reissued permits make a distinction between intermittent and perennial (more established, permanent) streams, and allow the waiver for intermittent streams only. To receive a nationwide permit for work that impacts a perennial stream, the applicant can not fill more than 300 linear feet of that stream. Anything above that would be considered more than a minimal impact and could not be authorized with a nationwide permit.

3) **Strengthens protections for mining-related permits.** The reissued permits call for re-evaluating NWP 21, which permits activity associated with surface coal mining, once a regional environmental impact statement jointly prepared by the Corps, the State of West Virginia, the U.S. Environmental Protection Agency (EPA), and other federal agencies is complete. In the meantime, the reissued permits will maintain the additional environmental protections in the proposal. These protections enhance the mitigation and case-by-case review requirements for using NWP 21. Corps districts will require full mitigation to offset any impacts of discharges to waters of the United States, even though this may include mitigation beyond what is required by a state under the project's coal mining permit. The Corps will also require case-by-case review of all projects seeking to use this permit to ensure that any adverse effects of the permitted activity are no more than minimal, both individually and cumulatively.

The revised permits are the result of extensive coordination with the EPA and other federal agencies. The full text of the nationwide permits will be posted in the Jan. 15, 2002, *Federal Register* at http://www.access.gpo.gov/su_docs/aces/aces140.html. To compare the revised permits to the August 2001 document, look under the August 9 entry in the *Federal Register*.

"Nationwide permits are general permits that authorize categories of activities which the Corps has determined will have minimal impacts on the aquatic environment, individually and cumulatively, when conducted in accordance with the permit conditions," Studt explained. "However, the Corps will continue to require an individual permit for any project, whether covered by a general permit or not, which it determines would have more than minimal environmental impact."

The replacement nationwide permits will take effect March 16, 2002, 60 days after being published in the *Federal Register*.

For more information on the U.S. Army Corps of Engineers Regulatory Program, visit the program's Web page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

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