



October 20, 2016

Mr. Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

***Subject: Expediting Reissuance of Army Corps of Engineers
Nationwide General Permits under the Rivers and Harbors Act and the Clean
Water Act***

Dear Mr. Shelanski:

The Environmental Council of the States (ECOS), the Association of Clean Water Administrators (ACWA), and the Association of State Wetland Managers (ASWMA) request the attention of your office to an issue of real importance to the states, the environment, and the American public.

The Nationwide General Permits (NWP) - which are used to protect the aquatic environment and the public interest while efficiently and effectively authorizing activities that have minimal individual and cumulative adverse effects under the Rivers and Harbors Act and the Clean Water Act (CWA) - are reissued every five years under a formal rulemaking process. The current NWP expires on March 18, 2017, less than 6 months from now and ***they cannot be administratively extended***. Furthermore, following publication of the final rule for the NWP, states must certify that the NWP 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.

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 reissuance of the NWP, would delay the effective date of the NWP, 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 workload.

Importance of the Nationwide General Permit process. The U.S. Army Corps of Engineers (USACE) and states have worked diligently over many decades to develop a highly efficient and effective process which minimizes the burden on the public, while maintaining resource

protection. A wide array of construction projects that impact aquatic resources – ranging from highway and airport construction and commercial development to housing and smaller private projects – require permits from USACE. Approximately 65,000 of these projects are routinely authorized annually under 50 NWP's with limited regulatory review and in close coordination with the states, and thus, minimize costs or delays to the permit applicant for activities that will have a minimal environmental impact. By contrast, only about 3,500 projects are authorized under the much more complex and time consuming individual permit process that can take many months to finalize.

Essential to the reissuance is state certification that the proposed NWP's 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 CZMA). The states typically work closely with their respective Corps Districts to develop regional conditions to the NWP's in a way that will support certification. This process is completed *following* issuance of a final rule and it is therefore important for the final NWP rule to be issued 60 to 90 days prior to the date the new nationwides go into effect. ***Therefore, from the states' perspective, a final rule should be issued in early January.*** While complex, this well-organized system of state and federal regulatory cooperation provides for environmental protection and economic development and is broadly supported by the regulated community and stakeholders.

Potential impact of failure to meet the deadline for NWP reissuance. If the NWP's are not renewed and effective prior to March 18, 2017, USACE and its state partners would need to address all these projects through the individual permit process. This will place an expanded burden on state and USACE staff, result in substantially increased cost and construction delays, and possible adverse local economic and public works project impacts by delaying an entire building season - which typically begins in March across the U.S.

In short, reissued NWP's *without* time for state certification, means that states must individually review and certify each authorization until they can complete §401 certification and coastal zone consistency analysis under a new rule. Again, the result is adverse local and public works economic consequences as projects affected by these authorizations are delayed.

Action needed. Clearly, it will be a challenge to complete the NWP reissuance process by the March 2017 deadline. An expedited Office of Management and Budget (OMB) review provides one of the few opportunities to achieve on-time reissuance and state approval of the NWP's. It is important to note that while states have not seen the final NWP's, we anticipate that state concerns expressed during the comment period will be addressed in the package sent to OMB. As such, this letter focuses not on the content of the NWP's, but on the time sensitivity of OMB's review.

Our organizations are prepared to support the states throughout the process. We strongly urge your assistance in expediting review when USACE forwards the final rule to OMB, and wish to make the importance of timely reissuance to the state agencies, and the regulated public, totally clear.

We certainly hope you are able to address these concerns. Should you require additional information, please contact us.

Respectfully,



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