



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Section 404 Nationwide
Permits--Revised Regulations

Date: JAN 2 1997

From: Director, Office of Environment and Planning

Reply to
Attn. of: HEP-40

To: Regional Administrators
Federal Lands Highway Program Administrator

On December 13, the Corps of Engineers (COE) issued a final regulation that revises and reissues Nationwide Permits under Section 404 of the Clean Water Act. The COE reissued most of the Nationwide Permits either without revision or with only minor clarifications. There should be little, if any, affect on the types of highway projects that currently use these permits. There are, however, revisions to other permits which will impose significant limitations. Attached is a detailed discussion of the permits which could be used by highway agencies. Emphasis is given to changes which may affect highway project activities.

The most significant changes established by the rule occur in Nationwide Permit 26, which covers activities in headwaters and isolated waters. Highway agencies may commonly use this permit, particularly for minor actions affecting small headwater tributaries and isolated wetlands (potholes, playa lakes, etc.). The final rule establishes a number of new threshold criteria that will substantially limit the use of this Nationwide Permit. For example, the rule places a new limit on the acreage of impacted area. Previously, the permit could be used for actions affecting up to 10 acres. The new rule establishes the limit at 3 acres. By itself, this reduction may dramatically reduce the use of this general authorization.

The revised Nationwide 26 also establishes new reporting requirements. Any action affecting one-third to 3 acres of headwaters or isolated waters must now be reviewed and approved by the COE in consultation with the Environmental Protection Agency and the U.S. Fish and Wildlife Service. Actions affecting less than one-third acre may proceed without prior contact, but a report must be completed and sent to the COE when the work is finished. These coordination and reporting requirements bring the general authorization of Nationwide 26 very close to the process required for an individual permit.

Finally, Number 26 has been the most controversial permit since the inception of the Nationwide Program. During this reauthorization, the COE received numerous comments on whether to retain the permit as part of the Nationwide Program. In the end, the COE determined that the authorization should be scaled back and then phased out over the next 2 years. Consequently, Nationwide Permit 26 expires early in 1999. Beginning at that time, the types of actions previously utilizing this authorization would require an individual permit unless some other nationwide or regional general permit could be used. The COE has indicated that additional permits will be developed in the future to cover some of the specific types of activities that now utilize the general authorization of Nationwide 26.

Please direct your questions and requests for assistance on the Nationwide Permit Program to either Fred Bank at (202) 366-5004 or Paul Garrett at (202) 366-2067 in the Environmental Analysis Division, or Fred Skaer at (202) 366-2058 in the Environmental Operations Division.


Kevin E. Heanue

Attachment

FHWA:HEP-40:FBank:nb:65004:12/18/96

Revised:12/23/96

Disk:Fred's, File name:np26regs.mem

cc: HPD-1, HEP-1, HEP-40, HEP-30, PDT,
EPT, AQPT, AQTT, NT, NCRT(FBank),
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