

Corps of Engineers: NWP's and Mitigation

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NWPs Reissued

- γ “Effective” – March 19, 2007
- γ 401 Certifications, CZMA Concurrences, Regional Conditions not yet been issued
- γ During “Gap” period, individual 401s/concurrences needed to use NWPs
- γ Ecology must notice applications
- γ Grandfathering under expired NWPs

NWPs: What's New?



- γ All NWPs reissued (with many changes), six new NWPs – see Enclosure 1
- γ NWP 29 – all residential development; NWP 39 – commercial & industrial development
- γ National Condition 25 – Transfers
- γ National Condition 20 – Mitigation required if loss exceeds 1/10 acre & PCN required
- γ “Loss of waters” definition includes post-**Rapanos** jurisdictional ephemeral streams
- γ 300 linear foot limit – district engineer waiver

National Condition 27



γ Pre-construction notification (PCN)

- Where mitigation is required, PCN must include statement how mitigation will be addressed; Corps must approve mitigation before work commences
- Where NC 17 ESA or NC 18 NHPA notification is given, non-federal permittee cannot begin work until notified by district engineer
- PCN required for all NWP 39 activities (industrial and commercial)

National Condition 20



γ Mitigation

- Compensatory mitigation required for all losses exceeding 1/10 acre and requiring PCN
- Avoid & minimize adverse effects (temporary and permanent) to maximum extent practicable at project site
- Minimum 1:1 for all wetland losses unless waived in writing
- Buffers for projects in or near streams

Mitigation



- γ Section 314(b), PL 108-136 (2004), directed Corps to issue regulations establishing performance standards and criteria for use under section 404

Proposed Compensatory Mitigation Rule (3/28/06)



- γ Applies to all Corps permits
- γ Watershed approach – maintain and improve quality and quantity of aquatic resources in watershed
- γ Use functional assessment methods, if available, to determine how much mitigation is required
- γ Performance standards determine if mitigation meets objectives
- γ **Minimum** 5 years monitoring & reporting
- γ Adaptive management plan & financial assurances to ensure mitigation project is successful
- γ Monitoring reports provided to federal, tribal, state, and local resource agencies and public on request
- γ Agency representatives may conduct annual on-site inspections

RGL 06-03 (8/3/06)



- γ Applies to all Corps permits
- γ Provides guidance on:
 - **Minimum monitoring requirements for compensatory mitigation**
 - **Content for 10-page monitoring report**
- γ **Minimum 5 years monitoring; may be more frequent in early years**
- γ Monitoring report required for all compensatory mitigation projects
- γ Monitoring report must include “Conclusion” – is project meeting performance standards?
- γ Mitigation requirements not fulfilled until permittee has received written concurrence from Corps