



CHAPTER 3: CORPS OF ENGINEERS WETLANDS PROGRAM

I. PERMIT RESPONSIBILITY

The Department of the Army Regulatory Program is one of the oldest programs in the federal government. Initially, the Regulatory Division served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters, under Section 10 of the Rivers and Harbors Act of 1899. In 1972, the Clean Water Act was signed into law, and the Department of the Army was directed to administer Section 404 of the Act, which regulates the discharge of dredged and/or fill material in waters of the United States. In 1977, the U.S. Army Corps of Engineers jurisdiction included wetlands as part of "waters of the U.S."

The Corps of Engineers responsibility to regulate discharges of dredged and/or fill material in wetlands include the wetlands of the Municipality of Anchorage. This chapter is limited to freshwater wetlands because the Anchorage Wetlands Management Plan focuses only on freshwater wetlands not associated with State parklands, National Forest lands, and most military lands.

Through the Regulatory Program, the Corps of Engineers ensures that environmental impacts on aquatic resources from permitted projects are avoided, minimized or mitigated. The Corps of Engineers is dedicated to protecting Alaska's waters while allowing reasonable and necessary development to move forward.

The decision whether to issue a permit is based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision reflects the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to result from the proposal must be balanced against its reasonable, foreseeable detriments.

All factors which may be relevant to the proposal are considered. Those factors include, but are not limited to:

- Conservation of wetlands
- aesthetics
- economics
- general environmental concerns
- historic values
- flood damage prevention
- land use
- navigation
- recreation
- water supply
- water quality
- energy needs
- safety
- food production
- in general, the needs and welfare of the people

It should be emphasized that a permit issued by the Corps of Engineers under Section 404 authorizes only the placement (discharge) of dredged or fill material into waters of the U.S., including wetlands. However, the applicant for a permit must specify the purpose and need for that discharge. A permittee may not change the use of his or her fill without permission from the Corps of Engineers.

Typical activities in waters of the U.S. requiring authorization under Section 404 include:

- Discharging dredged and/or fill material;
- Site development fill for residential, commercial or recreational projects, including mechanized land clearing;
- Construction of breakwaters, levees, dams, dikes and weirs;
- Placement of riprap; and
- Road fills.

Certain types of work have been exempted from the permit requirement by the Clean Water Act. However, these activities are exempt only if they do not change the use of waters of the United States, do not alter the flow or circulation of waters of the U.S., and do not reduce the reach of such waters of the U.S. These exemptions are outlined in Section 404(f) of the Clean Water Act.

There are three types of permits that the Corps of Engineers issues under Section 404 within the Municipality of Anchorage. These include Individual Permits, Regional General Permits, and Nationwide Permits. Though a project may qualify for use of a Regional General Permit or Nationwide Permit as described below, if it is expected there will be modifications and design changes throughout the life of a project, the applicant should request an Individual Permit as Regional General Permits and Nationwide Permits cannot be modified.

A. INDIVIDUAL PERMIT

Individual Permits are issued following a full public interest review of an individual application for a Section 404 permit. A public notice (usually 30 days in length) is distributed to all known interested parties. The permit decision is generally based on the outcome of a public interest balancing process, in which the benefits of the project are weighed against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest or fails to comply with the Environmental Protection Agency's Clean Water Act, Section 404(b)(1) Guidelines. The 404(b)(1) Guidelines allow the Corps of Engineers to permit only the least environmentally damaging practicable alternative. A practicable alternative is more feasible or capable of being implemented.

B. REGIONAL GENERAL PERMITS

Regional General Permits are issued by the Corps of Engineers, Alaska District Engineer for a general category of activities when the activities are similar in nature and cause minimal environmental impact, both individually and cumulatively.

The Corps re-issued five Regional General Permits in the Municipality of Anchorage on April 15, 2010, which cover permitting in "C"- designated wetlands as classified in the [Anchorage Wetlands Management Plan](#). Depending on the specifics of the project, opinions of compliance for regulated activities under these Regional General Permits have been administered by the Municipality of Anchorage's Community Development Department or verified by the Corps. Regional General Permits are generally issued for 5-year periods. The current Regional General Permits for the Municipality of Anchorage will expire on April 15, 2015. Since the Regional General Permits expire every 5 years, it is important to ensure the latest Regional General Permits are reviewed for eligibility of projects. Copies of the current version can be obtained through the Municipality of Anchorage's Community Development Department or the Corps of Engineers. Note that verifications issued for particular projects are good for only two years. For further details on the Municipality's role in administering the GP, see Chapter 5, Section II.B. General Permit Implementation.

C. NATIONWIDE PERMITS

Nationwide Permits (NWP) authorize specific activities in areas under the Corps of Engineers regulatory jurisdiction. These activities are minor in scope and must result in no more than minimal adverse impacts, when considered individually or cumulatively. Individuals wishing to perform work under a NWP must ensure their project meets all applicable terms and conditions, including the regional conditions specific to Alaska. The Corps of Engineers will verify this, after receipt of a Pre-Construction Notification (PCN). Verifications issued for particular projects are good for only two years. If the conditions of the NWP cannot be met, a Regional General Permit or Individual Permit will be required. Certain NWPs do not require a pre-construction notification; however, the party performing the activity must still comply with the conditions of the NWP. A list of all NWPs currently authorized by the Corps of Engineers, as well as associated regional and general conditions, can be found at: <http://www.poa.usace.army.mil/reg/Permits.htm#Nationwide%20Permits>.

Additional details and specific conditions of verification are available from the Corps of Engineers local office in Anchorage.

D. LETTERS OF PERMISSION

Letters of Permission (LOP) is an alternate form of authorization used in a certain prescribed situations. LOPs are less frequently used as they apply only to Section 10 structures and only to certain activities, not fill placement. They are used when the proposed work would be minor, not have significant individual or cumulative impacts on environmental values, and would encounter no appreciable opposition. For an LOP, the proposal is coordinated with all concerned fish and wildlife agencies and adjacent property owners who might be affected, but the public at large is not notified. However, consideration of the public interest is central to the decision-making process. As a local example, the use of LOPs in Anchorage have been primarily for dock structures constructed in Campbell Lake.

II. WETLANDS DETERMINATION RESPONSIBILITY

The Corps' regulations pertaining to the issuance of Section 404 permits identifies wetlands as part of the waters of the U.S. over which the Corps has jurisdiction. The Corps and EPA define wetlands as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Some wetlands, such as swamps or marshes, are often obvious, but other types such as forested wetlands, may not be easily recognized because they can be dry during part of the year or do not appear to be wet at the surface.

To delineate wetlands based upon this definition, a scientific process is followed using the Corps of Engineers Wetland Delineation Manual (1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region, Version 2.0 (COE, 2007). Only if an area exhibits positive criteria for wetland plants, soils and hydrology (three parameters) is it determined to be a wetland under the Regulatory Program.

Use of this three parameter approach allows an accurate identification and delineation of wetlands. For every project in an area that may be wetlands, the Corps is responsible for identifying of the area as either wetland or non-wetland as far as the need for obtaining a Section 404 permit is concerned.

Once an area is identified as a wetland (delineated), the Corps must determine if site is jurisdictional, and then whether the proposed discharge is covered under a Regional General Permit, a Nationwide Permit, or requires an Individual Permit. Additional information regarding the purpose and need of the project, as well as the size, is required before determination can be made concerning the type of permit the project may fall under.

III. CORPS OF ENGINEERS 404 PERMIT PROCESS

The following summarizes the process involved in the Corps Regulatory Program:

1. A wetland delineation is complete and the area is identified as wetlands or non-wetlands. The Corps completes a further review to confirm that the wetland is jurisdictional (Jurisdictional Determination).
2. If a wetland, the proposed project will be reviewed so a determination as to the appropriate type of permit evaluation can be made.
3. When there is a proposed fill project in wetlands within the Municipality of Anchorage, the Corps encourages a pre-application meeting with the applicant at which the project is presented to the resource agencies responsible for the Section 404 review. Wetland values and functions, alternative sites, as well as ways of avoiding, minimizing, and compensating for potential wetland losses are discussed and explained at this pre-application meeting. The applicant should consider redesigning his or her proposal to respond to those concerns.
4. The applicant may then submit to the Corps a complete permit application, which includes a mitigation plan for agency review.
5. If an Individual Permit is required, an application for a Section 404 permit is evaluated. If the discharge is covered by a Regional General Permit or a Nationwide Permit, generally a pre-construction notification is required. In all cases, discretionary authority is retained by the Alaska District Engineer to require an Individual Permit review.
6. The review period commences, and depending on the evaluation, may include a general permit agency coordination notice or a public notice. At that time, the applicant has the option to respond to various incoming comments in the review period and alter the design if necessary. The resource agencies submit final comments to the Corps based on their agency mandate. The Corps develops a decision document that complies with the National Environmental Policy Act (NEPA), and serves as the basis for permit denial or issuance. Permit conditions including mitigation requirements may be added to bring an action into compliance with Section 404. The applicant receives notice of final permit issuance or denial shortly thereafter. Any appeal after permit denial must go to the Corps.

NOTE: Generally, permits for the placement of dredged and/or fill material into wetlands designated "A" will not be issued. The only exceptions will be to permit those activities in "A"-designated wetlands, which would enhance, restore, or preserve the natural character of the wetlands, or projects with substantive public benefit, as determined by the Alaska District Engineer.

Figure A
Permit Process



