

Patrick J. Murphy

Acting Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

May 4, 2016

***Subject: Urgent need to expedite reissuance of Army Corps of Engineers***

***Nationwide General Permits under the Rivers and Harbors Act and the Clean Water Act***

Dear Mr. Secretary:

The Association of Clean Water Administrators (ACWA) and the Association of State Wetland Managers (ASWM) request the immediate attention of your office to an issue of very real importance to the U.S. Army Corps of Engineers (USACE), the states, and the American public. The Nationwide General Permits (NWP’s) - 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’s expire on March 18, 2017, less than 10 months from now and they cannot be extended. The new permits for the next five years have not yet been proposed. Failure to provide adequate time for mandatory public review, state coordination under CWA §401, and the coastal consistency provision of the Coastal Zone Management Act (CZMA) that are required as part of reissuance of the NWP’s, would 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 USACE and the 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 airports 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 NWPs with limited review and in close coordination with the states, but without unnecessary cost or delay 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 NWPs will not result in violation of state water quality standards (as mandated §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 condition the NWPs 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 7-8 months from now. While legally 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 public. Thus you will understand why we are growing increasingly concerned that the USACE will fail to complete rulemaking in time for the states to comply with their responsibilities under the CWA and CZMA.

**Potential impact of failure to meet the deadline for NWP reissuance.** If the NWP’s are not renewed prior to March 18, 2017, then Corps and their state partners would need to address all of these projects through the individual permit process - placing a greatly expanded burden on Corps and state staff, and resulting in substantially increased cost and construction delays – possibly resulting in delays for an entire building season which typically begins in March in much of the nation. We are certain that you can appreciate the impact of such a situation on the economy, and on public works projects. If USACE reissues the NWP’s *without* providing time for state certification, then states would be obligated to individually review and certify each authorization under a nationwide permit, until such time as they could complete §401 certification and coastal zone consistency analysis under the new rule.

**Action needed.** Immediate action is needed to avoid the impacts described above. States recommend without delay that the USACE publish the proposed rule in the *Federal Regis*ter for public comment. This will in turn initiate discussions among the states and their respective Corps Districts regarding permit conditions needed to achieve state certification and coastal zone consistency. Multiple additional legal steps are then required, including review and consideration of public comments, preparation of a final rule, final OMB interagency review, and publication of the final rule in the *Federal Register.* Completion of the State §401/Coastal Zone approval processes then follows publication of the final rule. Presidential elections tend to lead to a slowdown in formal rulemaking during the transition to a new Administration. Such realities only make the need for current action more urgent.

Even with immediate action on behalf of the Department of Army, it will be a challenge to complete the NWP process by the deadline. We wish to assure you that ASWM and ACWA are both prepared to assist the states throughout the process. We appreciate your attention to an issue that is obviously very specific but highly problematic, and also very resolvable. Should you or your staff require additional information, please do not hesitate to contact either of us. Thank you for your time and attention; we look forward to your response.

Respectfully,

Jeanne Christie

jeanne.christie@aswm.org

Executive Director

Association of State Wetland Managers

Julia Anastasio

janastasio@acwa-us.org

Executive Director and General Counsel

Association of Clean Water Administrators

cc: Vlad Dorjets, Office of Management and Budget

Jennifer Moyer, U.S. Army Corps of Engineers

Joel Beauvais, U.S. Environmental Protection Agency, Office of Water

Susan Bodine, Senate Environment and Public Works Committee, Fisheries, Water, and Wildlife Subcommittee

 Jon Pawlow, House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee