

## Nationwide permits to expire without replacements

The Clean Water Act requires the Corps to reauthorize its wetlands nationwide permits (NWP) every five years. The existing NWPs were issued in 2002, and will expire on March 19, 2007.

The final NWP regulation must be published at least sixty days in advance of its effective date so that the Corps' Districts have time to finalize Regional Conditions and the states and tribes have time to issue their Water Quality Certifications and Conditions. Because the Corps did not meet that January 19 deadline, there will be a gap in permit coverage (i.e., a time during which no new permits can be issued). In addition to possibly delaying new permits, the new NWPs also have the potential to impact ongoing projects.

Although the Corps proposed replacement permits in September 2006, it has not yet finalized them, thus their content is unknown. While the proposal contained relatively few significant changes for residential construction projects, it is uncertain whether those proposed changes will be adopted and, if so, what their impact will be. For example, the proposed permit limits impacts to no more than 300 linear feet of ephemeral streams, while the existing permit limits applied to only perennial streams. More importantly, it is uncertain how (or even if) the Corps will "grandfather" ongoing projects that are already permitted. In the meantime, what is a project proponent to do?

- 1. If you already have an NWP.** You must either commence the activity or be under contract to commence the activity prior to March 19, 2007 or you will forfeit the permit (i.e., the permit will expire and you must reapply). If you either commence the activity or are under contract to commence the activity prior to March 19, 2007, you have twelve months (i.e., until March 18, 2008) to complete the project according to the terms and conditions of your permit. If you are in this situation, take additional care to document your commencement and/or contract. You may even choose to send a letter along with the evidence of commencement to the Corps prior to March 19, 2007.
- 2. If you are close to submitting a Preconstruction notification for an NWP.** It is suggested that you file your notification as soon as possible and urge your permit writer to process it before March 19 (because of the notification and interagency coordination requirements for certain NWPs, this could be cutting it close, but given the alternatives, it is likely worth the try).
- 3. If you are still planning your project.** Move ahead cautiously as you wait for the new NWPs to be issued, then plan your project to meet the new requirements. Another option is to seek coverage under another type of general permit, such as a regional or programmatic, or under an Individual Permit.

NAHB will provide notification when the NWPs are released, including a synopsis of the permit conditions and their effective date.

**NOTE: Please feel free to use the information contained in this report in your own publications and member outreach materials. For additional information, please contact Susan Asmus, x8538, Marolyn Parson, ext. 8157, or Tom Ward, x8230.**