

January 11, 2021

U.S Army Corps finalizes rule modifying and reissuing general permits for CWA Section 404

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The U.S. Army Corps of Engineers (USACE) is taking steps to finalize a rule (https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll7/id/16831?fbclid=IwAR1sqUZ0BkKean05WKsPS_pla5oDqE3HTG9QLBhcL5hpZcfOLIWAakviNHQ) to modify and reissue Section 404 general permits, commonly called nationwide permits (NWP) for the first time since 2017. These permits, authorized under Section 404(e) of the Clean Water Act, cover activities that have “only minimal individual and cumulative adverse environmental effects.” Each NWP authorizes a particular activity across the country and may only be issued for a period of five years. There are currently 52 NWPs, and they authorize a wide variety of activities such as residential developments, utility lines, road crossings, and mining activities.

Last year, USACE proposed to reissue and revise a subset of the existing permits and create several new NWPs. Two of these newly proposed NWPs would directly impact drinking water utilities. One would cover utility line activities for water and other substances, and another could be used for water reclamation and reuse facility projects. AMWA provided comments (<https://www.amwa.net/article/amwa-voices-support-newly-proposed-us-army-corps-general-permits>) November 13 supportive of these two new permits, agreeing with USACE’s analysis that they will bring greater clarity and help to streamline the permitting process. However, the association pushed back on other components of the proposal, including the agency’s decision to remove the 300 linear feet threshold for many of the general permits. Currently, for certain NWPs, a project can only qualify for this quicker and less intense permit review process if it impacts less than 300 linear feet of regulated streams. This proposal sought to change that threshold to 0.5 acres of regulated waters. USACE reasoned that the current threshold does not sufficiently protect larger

riverine systems from determinantal impacts and that the acre threshold will provide better protection.

Within the final rule, USACE is reissuing and modifying 12 existing NWP's and issuing four new NWP's. The proposed removal of the 300 linear feet threshold remains for applicable NWP's, as does the new NWP for utility line activities for water and other substances, which is now labeled NWP 58. The proposed new NWP for water reclamation and reuse facilities has been removed with little explanation as to why. The 40 remaining NWP's, which have not been modified or reissued, continue to be in effect under the 2017 rule. The 16 NWP's impacted by this final rule will go into effect 60 days after publication in the Federal Register.

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