



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

U.S. Army Corps of Engineers (Vicksburg District)/Special Public Notice: Programmatic Emphasis on Department of the Army Permit Applications

06/06/2024

The United States Army Corps of Engineers (“Corps”) Vicksburg District issued a May 29th Special Public Notice (“SPN”) styled:

Vicksburg District Regulatory Update

Programmatic Emphasis on Department

Of the Army Permit Applications.

The stated purpose of the SPN is to provide an update on the Corps, Vicksburg District’s Regulatory Program.

The Corps Vicksburg District encompasses portions of Arkansas, Louisiana, and Mississippi.

The Vicksburg Corps Regulatory Division states that process refinement:

- Will enable Vicksburg Division to direct greater resource emphasis toward its fundamental mission of regulated activities in United States waters and wetlands.
- Provide the public with more efficient, timely services when reviewing permit applications for projects that propose impacts to Waters of the United States.
- Allow the Regulatory Division to more effectively deliver a common level of service across the Regulatory Program.

The SPN notes that preliminary and approved Jurisdictional Determinations (“JDs”), delineation concurrences, and other documentations verified by the Vicksburg Regulatory Division are not prerequisites for submitting Corps permit applications. Further, the SPN states:

...These approvals and verifications are also not intended to be prerequisites for development approvals by state and local government(s).

Note that the scope of the Clean Water Act definition of Waters of the United States (“WOTUS”) has been in flux for the last few years because of both litigation and regulatory revisions. The United States Supreme Court decision in *Sackett v. EPA* significantly narrowed the scope of what constitutes a WOTUS for purposes of the Clean Water Act. Further, because of *Sackett*, the EPA and the Corps issued a Final

Rule on August 29, 2023, that revised the Clean Water Act definition of WOTUS to conform with the decision.

The Vicksburg District SPN states that effective immediately it is refining its process to emphasize review of Corps permit applications and requests associated with pending applications.

The Vicksburg District Regulatory Project Managers consult the 1987 Army Corps of Engineers Wetlands Delineation Manual and appropriate regional supplements to delineate wetlands and waters for purposes of federal jurisdiction. However, the SPN also notes:

...Private sector environmental consultants who properly rely upon and apply these documents are generally equipped to provide accurate and expeditious delineations to their clients when the Regulatory Division's review of a DA permit application is not immediately required. In accordance with Regulatory Guidance Letter No. 16-01..., the Regulatory Division is routinely engaged with the regulated community in response to standalone requests to discuss what level of verification, if any, is appropriate for the circumstances of a given standalone request. In many cases, the services of private sector environmental consultants may be sufficient to respond to state and local requirements in the absence of the Regulatory Division's review of a DA permit application. It is strongly encouraged that members of the public seeking support not associated with a project requiring a DA permit application solicit the robust community of environmental consultants that serve the Vicksburg District Area of responsibility... for assistance with the independent requirements of state and local governments.

The SPN components include:

- Vicksburg District prioritization of work.
- Review and processing of new DA permit applications.
- Modification of existing DA permits/DA permit transfers.
- JD requests and/or delineation concurrences not associated with a DA permit application submitted with sufficient supporting information.
- Timeframes associated with DA permit actions.
- Delineations/JDs.
- Type of wetland delineation/JDs.
- Delineation concurrence.
- Preliminary Jurisdiction Determination.
- Approve Jurisdictional Determination.
- Priorities for standalone JD/DC requests.

A copy of the SPN can be downloaded [here](#).