

Final U.S. Army Corps of Engineers Nationwide Permits Rule: White House Regulatory Freeze? (Update)

Arkansas Environmental, Energy, and Water Law Blog



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A blog post yesterday noted the application of the January 20th White House Regulatory Freeze (“freeze”) to the United States Corps of Engineers (“Corps”) January 6th final rule that revised and modified the Clean Water Act Nationwide Permits (“NWP”).

The post cited the publication Field Notes which is published by Wetland Studies and Solutions, Inc.

<http://www.mitchellwilliamslaw.com/final-us-army-corps-of-engineers-nationwide-permits-rule-white-house-regulatory-freeze>

Field Notes has provided an update to this article noting that the NWP final rule has been granted an exception from the freeze. The publication states it received an email from the Public Affairs Office of the United States Army Corps of Engineers which states:

Earlier today an exception from the regulatory freeze was granted by the Office of Management and Budget’s Office of Information and Regulatory Affairs for the 2017 nationwide permits, which were published in the Federal Register on Jan. 6, 2017 (82 FR 1860). The final rule for the issuance of the 2017 nationwide permits was subject to the Jan. 20, 2017, White House Chief of Staff memorandum entitled “Regulatory Freeze Pending Review.” The U.S. Army Corps of Engineers submitted documentation on Feb. 7 to the Office of Management and Budget to ask that that the 2017 nationwide permits be excepted from the regulatory freeze. The 2017 nationwide permits will go into effect on Marcy 19, 2017, as originally scheduled.

Yesterday’s post had noted that groups such as the construction industry have argued that it is important for the Corps to maintain a streamlined permit program that avoids duplication with other federal and state regulatory agencies. The NWP has been cited as regulatory provision providing the kind of flexibility required for construction jobsites that are temporary and often changing.

Three state environmental agency trade associations had contacted the White House Office of Management and Budget about the importance of the NWP. The Environmental Council of the States, the Association of Clean Water Administrators, and the Association of State Wetland Managers sent a February 6th letter to the Office of Information and Regulatory Affairs of the White House Office of Management and Budget noting:

If the NWP are not renewed on March 19, 2017 when the existing NWP expire, the USACE would require individual permits for all activities until the rule reissuing the NWP goes into effect. Even if this reissuance is delayed only a few days, USACE would need to issue national guidance informing Corps Districts on how to proceed in the absence of the nationwide permits. This would likely lead to confusion

among permit applicants nationally and that confusion can be easily avoided if an emergency exception is granted. The consequences of a delay in the finalization of this rule would place unnecessary burden on states.

[A copy of the February 6th letter from the three trade associations can be downloaded here.](#)