



US Army Corps
of Engineers
Alaska District

Special Public Notice

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

DATE: November 2, 2011
IDENTIFICATION NO.: POA-2006-1944-M1
(In reply, respond to above number)

SUBMIT COMMENTS BY: December 2, 2011

PROPOSAL TO RE-ISSUE GENERAL PERMIT 2006-1944
SPECIAL PUBLIC NOTICE
Placer Mining Activities within the State of Alaska

The Alaska District, United States (U.S.) Army Corps of Engineers (USACE), in accordance with regulations pursuant to Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 *et. seq.*) proposes to reissue General Permit (GP) POA-2006-1944-M1, formerly known as GP 2006-1944, authorizing placement of dredged and/or fill material into waters of the United States (U.S.), including wetlands, for placer mining activities within the State of Alaska.¹ The GP applies to placer mining operations of ten acres or less of disturbance area, and stream diversions of up to 2,000 linear feet.

We propose to reissue the GP for two and one half years, until October 31, 2014, under the same terms and conditions as GP 2006-1944. This GP would otherwise expire May 12, 2012. The new expiration date is proposed to align the renewal cycle of the USACE permit with the renewal cycle of the Alaska Department of Environmental Conservation (DEC) Alaska Pollutant Discharge Elimination System (APDES) Permit for Mechanical Mining Operations.² Currently the APDES permit is due to expire on October 31, 2014. Prior to this date, a Public Notice containing the new GP proposal will be released for comment before final reissuance. The reason for this action is to provide miners and agencies with a consistent expiration date and comment period for two of the permits required for placer mining.

What this would mean for permittees and applicants

- Permittees whose permit expires on or before May 11, 2012, will receive an automatic time extension until October 31, 2014.
- New applicants in 2012 and 2013 will receive the interim GP, expiring October 31, 2014.
- Applicants with a lapsed USACE permit who plan to continue work in 2012 and beyond, must submit an updated APMA as a USACE application for the GP.
- Activities permitted under this reissuance will have the customary 12 months grace period after October 31, 2014 to complete their activity and make sure their permits are current under the new GP.

¹ Information is available at the District Office to show that placer mining activities are eligible for consideration under a GP.

² On October 31, 2010, DEC assumed permit authority from the Environmental Protection Agency (EPA) for the NPDES program.

Anticipated Changes to the 2014 GP:

Over the past several years, there have been national level changes as to how the USACE implements the Clean Water Act (CWA). The 2014 GP must be updated to incorporate these changes:

1. Requirements for miners to supply site photos and/ or other information with the APMA, to be used in determining the limits of USACE jurisdiction over individual mining operations. Currently, most APMAs do not contain enough information for the Corps to make a jurisdictional determination (JD).

Explanation: In June 2006, the “Rapanos” decision by the U.S. Supreme Court changed how the USACE establishes jurisdiction. For each project, the USACE must link the project with downstream navigable waters. Because of workload, size of state, limited staff, and short field season, the USACE has, since 2010, officially encouraged applicants to use consultants to submit jurisdictional reports for approval. All applicants, no matter how small or large the project, must submit sufficient information for the Corps to determine jurisdiction before a permit can be issued. Recognizing the expense a consultant supplied JD could present for a small operator, the USACE proposes to work with miners and agencies to formalize alternate methods for obtaining site information which could result in a JD.

2. The potential requirement for compensatory mitigation for mining activities and access roads located in waters of the U.S. Currently, use of compensatory mitigation for placer mining is limited. Avoidance and minimization, along with site reclamation accepted by the land manager, have been sufficient. However, in some reclaimed areas there are post mining problems with recovery, including instability of stream channels and mined ground, and slow regrowth of riparian areas, resulting in loss of wetland, and/ or stream function.

Explanation: GPs cover activities that are similar in nature, and, that cause minimal individual and cumulative impacts to aquatic resources. Under the CWA, the USACE is responsible for evaluating those impacts that occur under GP authorization. When the loss of aquatic resources is determined to be greater than minimal, compensatory mitigation may be required. Nationwide Permits (NWP) are one type of GP. Under the NWPs, compensatory mitigation is required after 0.10 acre impact.

The Mitigation Rule (33 CFR 332) came out in 2008 and applies to all projects where compensatory mitigation is required. The basic requirements are not new: the Section 404 (b)(1) Guidelines (40 CFR 230), issued in 1980, require applicants to avoid, minimize, and mitigate for impacts to waters of the U.S. from their projects. The rule clarifies how to implement compensatory mitigation.

With this SPN, the USACE proposes to work with miners and agencies to explain the rule and options for regional flexibility, as well as to develop measures that fit the scale of small mining operations, that will satisfy compensatory mitigation requirements. Prior to October 31, 2014, a Public Notice with the new GP proposal will be released for comment before final reissuance.

Comment Period: The comment period for this Public Notice is 30 days, ending on **December 2, 2011**. Any questions or requests for additional information should be directed to: Alaska District, Corps of Engineers, Attention: **Ms. Leslie W. Tose**, Regulatory Division, Post Office Box 6898, CEPOA-RD, JBER, Alaska 99506-0898, via email at **leslie.w.tose@usace.army.mil** , phone (907) 753-5515 or toll free in Alaska at (800) 478-2712.

District Engineer
U.S. Army, Corps of Engineers