



**US Army Corps
of Engineers**
Chicago District

Public Notice



REGION 5

Applicant: _____

GENERAL PUBLIC

Date: _____

15 JULY 1999

In Reply Refer To: _____

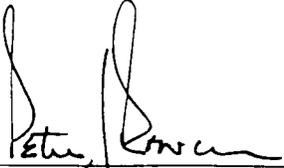
Section: 404 of Clean Water Act

ANNOUNCEMENT OF EXERTION OF DISCRETIONARY AUTHORITY OVER SELECTED WATERS OF THE UNITED STATES WITHIN MCHENRY COUNTY, ILLINOIS

1. The Great Lakes and Ohio River Division, U.S. Army Corps of Engineers has authorized the exertion of discretionary authority to require individual permits for the discharge of dredged and/or fill activities in wetlands or waters of the United States which the McHenry County Advanced Identification of Wetlands (ADID) study identifies as high quality and unsuitable for such activities. The McHenry County ADID study identifies two categories of high quality wetlands and waters of the United States: high habitat value wetlands and/or high functional value wetlands. Specifically, the following nationwide permits are eliminated for activities in the ADID sites: 7, 12, 13, 14, 17, 18, 23, 26, 29, 31, 33 and 36, as well as any future replacements to Nationwide Permit 26, and to the nationwide permit program as a whole. A list of the current nationwide permits (NWP) is noted as attachment 2.
2. The U.S. Army Corps of Engineers has regulatory authority under Section 404 of the Clean Water Act to require permits for the discharge of dredged or fill material into waters of the United States. The Chief of Engineers has authorized certain discharges under nationwide permit program. Exertion of discretionary authority means that the District prefers to evaluate proposed fill activities in ADID wetlands under the individual permit process unless determined otherwise. After a case-by-case review, the District may determine that a project, with appropriate special conditions, can be authorized with one of the nationwide permits rather than evaluating the project under an individual permit process.
3. Assumption of discretionary authority was based on concerns for the aquatic environment, including wetlands, as expressed in the guidelines published by the Environmental Protection Agency pursuant to Section 404(b)(1) (Reference 40 CFR Part 230). Discretionary authority allowing the District to pursue an individual permit review enables the District to conduct a more thorough review of proposals to discharge dredged and fill material into special aquatic sites that would normally be done under nationwide permits. Only those projects that are determined not contrary to the public interest will be permitted. The Chicago District may decide to authorize minor discharges for essential activities under existing nationwide permits on a case-by-case basis. The *Section 404(b)(1) Guidelines will be applied in every case to protect the functional value of ADID sites.*

4. Additional information is available from the Regulatory Branch, U.S. Army Corps of Engineers, Chicago District, 111 N. Canal Street, Chicago, Illinois 60606-7206, telephone number 312/353-6428.

7 July 1999
DATE



PETER J. ROWAN, P.E.
Lieutenant Colonel, U.S. Army
District Engineer

NOTICE TO POSTMASTERS:

It is requested that this notice be conspicuously and continuously posted for 30 days from the date of issuance.

US ENVIRONMENTAL PROTECTION AGENCY AND CORPS OF ENGINEERS
ADVANCED IDENTIFICATION OF WETLANDS STUDY
IN McHENRY COUNTY ILLINOIS

RESPONSE TO COMMENTS

Region 5 of the U.S. Environmental Protection Agency (USEPA) and the Chicago District of the Army Corps of Engineers (District) issued a public notice on March 5, 1998, describing the preliminary results of an Advanced Identification (ADID) Study in McHenry County, Illinois. Comments were received on the proposed ADID findings for 45 days. On March 18, 1998, the USEPA and the District held a public meeting at the McHenry County Courthouse in Woodstock, Illinois to receive further public input. The public comment period expired on April 20, 1998.

The March 5, 1998 public notice described a proposal which identified high quality wetlands in McHenry County as generally unsuitable for the discharge of dredged or fill material. We have proposed this action because McHenry County contains many valuable wetlands which are subject to loss or degradation due to the high rate of development in the County.

This comment summary addressed the major issues raised during the public comment period. This summary included both written comments received in response to the public notice and verbal comments made at the public meeting. We have attempted to address all of the comments that are within the expertise of the USEPA and the District and which directly relate to the proposed action.

Concurrent with this ADID proposal, the District proposed exerting discretionary authority over sites identified as high quality habitats or high functional value wetlands according to the ADID evaluation methodology. While this proposal is closely related to the McHenry County ADID, it is legally and administratively a separate action. The decision to exert discretionary authority over these areas rests solely with the District. Therefore, the District has prepared separate documentation describing its decision regarding this issue.

Thirty-five comment letters were received in response to the public notice. In addition, 91 people signed attendance cards at the public meeting. Approximately 200 people attended the meeting and individuals or representatives of groups or businesses gave 12 statements. Local or state government officials gave no statements. Three comments indicating concern regarding the District's discretionary authority action were received. Two comments were made regarding specific sites mapped and identified by the ADID process. The remaining comments either did not raise issues related to the ADID or did not express an opinion on the results. A summary of the public comments and the responses to the comments is provided below. Most of the comments received regarding the McHenry County ADID and the Corps discretionary authority can be summarized into five concerns or issues.

1. The ADID Study and wetland evaluation should be ongoing so that wetland, stream and lake resources that were missed or that change in the future to support significant plant and/or animal communities may be included.

RESPONSE: The USEPA, the District and all other cooperating agencies and governments will be using the McHenry County ADID methodology as a standard evaluation tool by which to assess value of wetlands, streams and lakes. Before any wetland can be filled a Section 404 permit would be needed from the District. Permit applications submitted to the District typically include a wetland delineation, and soil and topography maps to facilitate the District's review process. In addition, the McHenry County ADID methodology will be available to other Federal, state and local agencies, local governments, groups, organizations and individuals. In addition, there are several municipal wetland ordinances in place in McHenry County. Annexations to these municipalities would not affect the District's application process and wetland review for ADID criteria. In anticipation of the increasing public awareness, concern for wetland protection, and development of a County ordinance, the ADID Policy and Planning Committee (PPC) has discussed the need to establish a database for updating ADID status and standard operating procedures for reviewing and revising ADID data. As resources permit, USEPA will work with the PPC to update the map product.

2. Wetlands protection will benefit wildlife preservation, local water quality needs and minimize cumulative impacts as development and urbanization increase in McHenry County.

RESPONSE: The intent of the ADID is to provide a tool that facilitates the development of a wetland protection strategy for McHenry County. The ADID is essential for identifying high quality wildlife habitat and plant communities requiring a higher level of protection, protecting local water quality needs and minimizing cumulative impacts to wetlands. The ADID study will be accessible to local governments, private businesses, and citizen organizations. The information provided through the ADID will be useful in providing watershed-based information on wetlands, streams and lakes in planning for development, in evaluating the effects of development on the water quality and flooding potential in the watershed, in selecting sites for restoration and preservation, in identifying potential mitigation banking sites, and in identifying areas that are unsuitable for fill.

3. The Corps' discretionary authority process should allow opportunity for public comment regarding proposed Section 404 activities in high functional value and high habitat value wetlands.

RESPONSE: Discretionary authority will eliminate coverage of certain nationwide permits for activities in high habitat value and high functional value wetlands. However, the District would retain the authority to determine the most appropriate authorization processes for all activities, on a case-by-case basis. Public comment would be very important to the District's review during the individual permit process and one of the goals of the ADID is to protect local water quality needs and minimize cumulative impacts within the watersheds of McHenry County. Knowing that there are some limitations in the ADID data, the District would evaluate these limitations and applicability of the ADID criteria to each potential project site. The Corps would also solicit comments from other natural resource agencies such as the USEPA, the U.S. Fish and Wildlife Service, the Illinois Department of Natural Resources, the McHenry County Conservation District prior to making its decision. In instances where the potential impact in jurisdictional areas are clearly minimal, clearly not contrary to public interest or a limitation in the applicability of ADID criteria exists a nationwide permit may be granted.

4. The District's discretionary authority process should not be based solely on ADID evaluations, maps and data. The Corps and other regulatory agencies should exercise professional judgement so that unnecessary time delays and engineering costs are minimized.

RESPONSE: The McHenry County ADID provides good information on the quality of wetlands within McHenry County. While the information provided on the ADID maps does not provide detailed information on every wetland in the county, it does highlight areas of significant quality that should be assessed carefully. If a project is proposed for one of these high value areas, the District staff is alerted that more detailed information on the site is necessary before a permit decision can be made. The District in consultation with other Federal agencies, will use their best professional judgement to determine whether projects proposed for the high quality wetlands identified in the ADID Study are minor in impact and can be authorized under nationwide permit. If this is not the case, an individual permit will be required. This process will afford an extra level of review for high quality wetlands while at the same time allowing for the use of nationwide permits when they are appropriate. The assumption of discretionary authority will allow for the minimization of permit related time delays and costs for minor projects, while at the same time protecting these valuable resources from significant adverse impacts and/or degradation.

5. The objective of the ADID study and the District's discretionary authority is unclear. The District's discretionary authority seems redundant or burdensome to applicants.

RESPONSE: The McHenry County ADID has identified a number of sites which have been determined to be of exceptional value. Since these sites have been identified as aquatic resources of importance, these sites deserve an added level of review during the permitting process in order to insure the functions and values of these sites are protected. This is best accomplished by asserting discretionary authority over these areas. We feel discretionary authority is the best way to ensure that the functional values of these high quality sites are protected from adverse impacts and degradation due to activities regulated under Section 404 of the Clean Water Act. Discretionary authority would result in individual permits being required for these sites resulting in a more detailed review of project impacts. If impacts resulting from a proposed project are determined to be minor and the project would qualify for a nationwide permit, at the District's discretion, a nationwide permit could be used to authorize such work.

NATIONWIDE PERMIT SUMMARY TABLE

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures
8. Oil and Gas Structures
9. Structures in Fleeting/Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Discharges
13. Bank Stabilization
14. Road Crossings
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. Headwaters and Isolated Waters Discharges
27. Wetland and Riparian Restoration/Creation Activities
28. Modifications of Existing Marinas
29. Single Family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects
32. Completed Enforcement Actions
33. Temporary Construction and Access
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection
38. Cleanup of Hazardous and Toxic Waste
39. Reserved
40. Farm Buildings