Public Notice

U.S. Army Corps of Engineers, Norfolk District

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Compensatory Mitigation Regulations

On April 10, 2008, the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency issued new regulations governing compensatory mitigation for unavoidable impacts to the nation's wetlands and streams. These regulations will enable the agencies to promote greater consistency, predictability and ecological success of compensatory mitigation projects under the Clean Water Act.

There will be a 60-day interim period prior to implementation of the regulations. After June 9, 2008, the regulations will go into effect. All mitigation banking instruments and in-lieu fee program instruments approved after July 9, 2008 (90 days after the regulations were published) will be required to comply with the regulations.

Some of the anticipated benefits of the compensatory mitigation rule include:

- Greater predictability, increased transparency, and improved performance of all compensatory mitigation projects;
- Establishment of equivalent standards for all forms of mitigation (mitigation banks, in-lieu fee programs, and project specific mitigation);
- Incorporation of the recommendations of the National Research Council to improve the success of wetland mitigation projects;
- Establishment of clear science-based and results-oriented performance standards nationally while allowing for regional variations;
- Increased opportunity for public participation in review of compensatory mitigation proposals;

Other features of the new regulations include:

- Alteration of the focus on compensatory mitigation site location, placing greater emphasis on consideration of watershed or landscape needs.
- Retention of the emphasis on the "mitigation sequence" which requires that proposed projects avoid and minimize potential impacts to wetlands and streams before proceeding to compensatory mitigation.
- A requirement for any application for an activity involving the discharge of dredged or fill material into waters of the United States to describe how impacts to waters of the United States will be avoided and minimized, to describe how the unavoidable impacts are to be compensated for, or to provide an explanation why compensatory mitigation should not be required. This information will be required for an application to be considered complete.
- Any public notice for a proposed activity involving the discharge of dredged or fill material in waters of the United States must contain a statement explaining how impacts associated with the proposed activity will be avoided, minimized, and compensated.
- A final mitigation plan must be submitted and approved by the District Engineer before an individual permit may be issued.

A copy of the compensatory mitigation regulations may be downloaded at: http://www.usace.army.mil/cw/cecwo/reg/news/final_mitig_rule.pdf. Questions and answers on these compensatory mitigation regulations may be found at http://www.usace.army.mil/cw/cecwo/reg/news/comp_mitig_finalrule_qa.pdf.

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