The U.S. Army Corps of Engineers (Corps) announced the re-issuance of nationwide permits (NWPs) in a Federal Register notice dated January 15, 2002. The NWPs become effective on March 18, 2002 and expire on March 18, 2007. The intent of the NWP program is to simplify the process of permit review and issuance for projects that have no more than minimal impacts (from a site-specific and cumulative standpoint) on the aquatic environment. However, key errors were discovered in the body of the final document that required the Corps to provide clarification. On February 13, 2002, the Corps issued a correction notice, which discusses these errors.

Q. *Why is the U.S. Army Corps of Engineers issuing a correction notice to its January 15, 2002 Federal Register notice which reissued the Corps nationwide permits? What does the correction do?*
A. The purpose of the correction notice is to provide clarification and correct errors and oversights in the original notice. The correction notice does not address technical or policy issues.

Q. *Has the Corps issued correction notices before?*
A. Yes, on several occasions. Most Corps regulatory documents are long, complex, and subjected to numerous revisions. The January 15, 2002 Federal Register notice is 75 pages long. It is not surprising then, that there are errors and oversights to correct. The important thing is to fix mistakes quickly.

Q. *Why didn't the Corps get it right the first time?*
A. The Corps regrets the confusion caused by these errors, and sincerely apologizes to those affected. Though we employ thorough, talented professionals, we hope those we serve understand that it is not impossible for a long and complex document, completed under a tight deadline, to contain a few errors.

Q. *When does the correction notice become effective and how does it impact expiration dates for new and expiring nationwide permits?*
A. The correction notice becomes effective on the date of publication in the Federal Register. It does not affect either the effective dates or the expiration dates of the nationwide permits.

Q. *Regarding ephemeral streams, wouldn't it be more appropriate to go through the rule-making procedure and ask for public comment, rather than addressing this policy change as an error within a correction notice?*
A. In fact, the Corps is pursuing both of these processes. The relevant language is located within nationwide permit 39 and the definition of "Loss of Waters". Pertinent language in these sections would have had the effect of excluding ephemeral streams from acreage calculations pertaining to pre-construction notification and maximum acreage limits of the nationwide permits; the Corps did not propose that change, and did not intend to make it. A rule-making procedure would be applicable if the Corps were to propose to remove ephemeral streams from all nationwide permit acreage limits; the Corps never did propose such a change. However, the issue is whether pertinent language in the January 15, 2002 Federal Register notice was ever proposed by the

Corps, so that all segments of the public would have been put on notice that the Corps was considering a significant change in the Corps NWP program affecting ephemeral waters. We have concluded that the Corps never proposed the changes in question, and thus never gave all members of the public fair and clear notice that such a significant change was under consideration, so all could provide their comments and views. Therefore, a correction notice is appropriate and that correction is needed now to correct an important mistake and to clarify the policy and its intent, misstated in the January 15, 2002 Federal Register notice.

We believe that correcting pertinent language through the publication of this correction notice is appropriate. Nevertheless, in order to give all parties further opportunity to comment on this matter, we intend to publish a Federal Register notice to solicit public comments on the relevant corrections.

Q. *How are stakeholders reacting to the correction notice?*
A. The Corps has received a number of calls, most asking for clarification or pointing out oversights. Regarding the aforementioned language on ephemeral streams, those representing development interests would prefer the language remain the same. They have also stated that correcting the relevant language is inappropriate and that a rule-making procedure is more appropriate.

Q. *The Administration has not yet issued final guidance to address the Supreme Court's decision on the Solid Waste Agency of Northern Cook County (SWANCC) case. The Corps should not take any action to revise the current nationwide permits policy regarding ephemeral streams until this guidance is completed.*
A. The Supreme Court's decision in the SWANCC case dealt with the extent of geographic jurisdiction of the Clean Water Act: the SWANCC decision did not deal with the Corps' NWP program. The Corps is not establishing any policy regarding Clean Water Act jurisdiction over any category of water bodies, including ephemeral streams, in the NWP or in the recently published NWP package. The Corps and the EPA intend to issue guidance that addresses the separate issue of geographic jurisdiction under the Clean Water Act in view of the Supreme Court holding in SWANCC at a later date.

Q. *What are the details of the notice?*
A. To read the full correction notice, go to the USACE Regulatory home page,