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Subject: NWPs Regional Conditions Comment Period
Date: Friday, August 12, 2016 11:57:34 AM

Karen - one comment on the Regional Conditions. I really intended to get this comment addressed during the HQ NWP review period but did make the cutoff.

Comment is a general one but also applicable to Regional Conditions as Region 10 EPA and Ecology might have a piece:

Background: Naval Base Kitsap (NBK) Bremerton is a large industrial facility in Washington State with 13 piers, 6 dry docks and nearly 2.5 miles of developed waterfront infrastructure. NBK Bremerton is also listed on the National Priorities List (NPL) to address past releases of contaminants under the Comprehensive Environmental Response, Compensation, and Liability Act (CECLA). One of the remediation areas at NBK Bremerton includes the marine waters adjacent to our waterfront due to contaminants in the sediment. As such NBK Bremerton is actively managed under the Navy's Installation Restoration program and cooperatively partners with the EPA, WA State, and the local Native American tribe to address issues related to cleanup sites on this installation. The Navy has performed cleanup in the marine waters which included a combination of dredging and capping and it is now managed by a long term monitoring program.

NBK Bremerton frequently conducts in-water construction projects subject to Army Corps permitting in order to maintain, repair, modify and replace critical assets. The most commonly requested permit is NWP 3, Maintenance. During the past few years it has become common practice for all NWP 3 permit applications for work at NBK Bremerton to be distributed to the CERCLA stakeholders, including EPA, WA Ecology and the Suquamish Tribe, for review. In most cases these reviews add to the permit review timeline and place additional requirements such as sampling and analysis plans and pre & post sediment testing on the construction project. These additional costs can add several hundred thousand dollars to relatively small dollar maintenance/repair projects carried out with ever diminishing Sustainment dollar. It is not clear to the Navy under what authority these reviews and additional conditions are being carried out. Neither the state or EPA currently have 401 conditions requiring such reviews. If this review is being carried out under CERCLA authority then the NWPs, regional and general conditions and accompanying guidelines should specify this and make clear that these protocols are being followed at all CERCLA or State Superfund sediment sites.

By definition Nationwide Permit are "general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects on the aquatic environment." Since the CERCLA sites at NBK Bremerton are actively managed and overseen by the Navy and tribal and regulatory stakeholders, NWP authorized work should not be burdened with CERCLA requirements. This site operates under CERCLA land use controls and a long term monitoring program. These CECLA instruments should take into account that maintenance and repair work will need to occur at this active facility and the cleanup remedy should account for this and manage the implications of said repair/maintenance work. At this time the land use controls for the NBK Bremerton sediment CERCLA site inadequately account for this and in essence the Navy is being double billed for CERCLA requirements. For a parallel, in the upland environment much of the industrial area of NBK Bremerton is also managed under CERCLA for contaminated soil and groundwater. With the current land use controls, long term monitoring and remedy maintenance programs in place, individual construction projects requiring excavation or groundwater withdraw are not burdened by additional CERCLA requirements such as pre and post testing. This is because there is already a CERCLA program in place to gauge remedy effectiveness at very active upland CERCLA sites. The Navy recognizes that large scale projects such as whole pier replacement or navigational dredging will require additional scrutiny and conditions to ensure the sediment remedy is not adversely impacted. However these projects will be receiving individual permits, not NWPs. Our work carried out under NWP 3 authorization presumably qualifies for these permit by having minimal impact on the aquatic environment and therefore should be treated as such by being authorized by the streamlined permitting process the NWP program is intended to provide.

Thanks, Mike

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