



## Upcoming Environmental Issues Summary

*June 2011*

### **2011 COE and EPA Wetlands Guidance**

New Wetlands Guidance is out for comments until July 1, 2011 and becomes effective at some date after that. The EPA in a leaked memo stated that the goal was to greatly increase the scope of COE and EPA jurisdiction over Waters of the U.S. Representatives of EPA stated in a meeting with the NAHB EIC that they believed that this would take us back to a post SWANCC and pre Rapanos jurisdictional state.

There is a lot of troubling changes reflected in this guidance over the guidance currently in effect.

- ⊙ Covers All Waters of the U.S. Programs
- ⊙ “And” vs. “Or” in Significant Nexus Definition
- ⊙ Navigable Waters Definition Changed
- ⊙ Adds Interstate Waters
- ⊙ Adds Ecological Connections
- ⊙ Adds Subsurface Flow Connections
- ⊙ Similarly Situated Waters now considered
- ⊙ OHWM = Jurisdiction?
- ⊙ Drainage Ditches rules have changed
- ⊙ Tributary definitions changed

### **2011 EPA Construction General Permit**

The EPA is revising their CGP which will take effect on January 31, 2012. The current CGP expires June 30, 2011 but EPA is behind schedule. The comment period closes June 24, 2011. This is the first CGP to include the EPA Construction and Development (C&D) Rules.

This permit only applies in 4 states, DC and territories but is also to be used as a starting point for delegated States. In discussions with DNREC, they confirmed that they will be incorporating the items in the CGP into the State rules.

- ⊙ All waters of U.S. get 50 foot buffer (or equivalent) during construction
- ⊙ New BMP requirements (ie. Minimum 50 feet stabilized entrance)
- ⊙ Pollution prevention measures (wastewater, fuels, soaps, toxics, waste and debris)
- ⊙ New Inspection, Maintenance and Corrective Action Requirements
- ⊙ Numeric Turbidity Limit (Effluent Limitation Guidelines) – Sampling Protocols
- ⊙ Additional Water Quality Requirements for discharges in impaired waters including monitoring