

REGULATORY UPDATE

Ms. Andrea Murdock-McDaniel
Operations and Regulatory Chief
Southwestern Division
Date: 21 March 2019



US Army Corps
of Engineers®



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DIRECTOR'S POLICY MEMORANDUM
CIVIL WORKS PROGRAMS

US Army Corps of Engineers
 No. DPM CW 2018-10 Issuing Office: CECW Issued: 17 August 2018 Expires: Indefinite

SUBJECT: Strategy for Synchronization of the Regulatory and 408 Programs

CATEGORY: Directive and Policy

1. References.

- Engineer Circular (EC) 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408, in process of finalization.
- Director's Policy Memorandum (No. DPM CW 2018-06), Designation of a Lead USACE District for Permitting of Non-USACE Projects Crossing multiple Districts or States, 15 May 2018.
- HON R.D. James, Assistant Secretary of the Army for Civil Works letter to Corps Team, 20 April 2018.

2. Purpose. The purpose of this memorandum is to provide direction for the synchronization of U.S. Army Corps of Engineers (USACE) business processes related to the Regulatory Program and the Section 408 Program. This effort enables effective and efficient internal coordination, leveraging of information, alignment of decisions, increased timeliness of decision-making, tracking of USACE permit decisions, and improved service to the public seeking USACE permits. For the purpose of this memorandum, the term "applicant," "permit applications," "permit decisions," and "proposed activity" are used in reference to both Regulatory Program actions (Section 10/404/103 reviews) and 408 Program actions (Section 408 reviews).

3. Applicability. This memorandum is applicable to all Headquarters, USACE (HQUSACE) elements, divisions, districts, and field operating activities responsible for executing the statutory authorities under Section 10 of the Rivers and Harbors Act of 1899 (RHA), Section 404 of the Clean Water Act (CWA), and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Section 10/404/103) and Section 14 of the RHA (codified at 33 USC 408 (Section 408)).

4. Background. The USACE Regulatory Program is responsible for executing regulatory authorities under Section 10/404/103, for work performed in, over or under a navigable water of the U.S.; for discharge of dredged or fill material into waters of the U.S., including wetlands; and for transportation of dredged material to the ocean for disposal. With over a century of implementation experience, the Regulatory Program has a well-structured permit application procedure, environmental and public interest review requirements, multiple efficiency measures,

WORKSHEET FOR OFFICER EMPLOYEE INFORMATION
 OFFICE OF MANAGEMENT AND ENTERPRISE
 MANAGEMENTAL DOCUMENT
 30 SEP 2018 09:00 AM

September 26, 2018

34-18-23

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Mick Mulvaney
 Director

SUBJECT: Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System

On August 15, 2017, the President signed Executive Order (EO) 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects." EO 13807 seeks to modernize the process for Federal environmental review and authorization decisions by making it more coordinated, predictable, and transparent, while protecting public health, safety, and the environment.

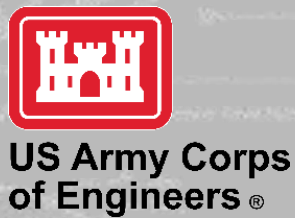
In accordance with EO 13807, through this Memorandum, the Office of Management and Enterprise (OME) in consultation with the Council on Environmental Quality (CEQ) and the Federal Permitting Improvement Steering Council, is establishing and setting guidance to implement a performance accountability system that tracks the environmental review and authorization decision process for major infrastructure projects, engages agency officials in regular reviews of agency performance, and facilitates achievement of the Cross-Agency Priority Goal (CAP Goal) to Modernize Infrastructure Permitting. This Memorandum provides guidance to Federal agencies on how to comply with the new performance accountability system.

Performance Accountability System Overview

The performance accountability system established by OMB through this Memorandum requires agencies to track compliance with the Clean Federal Decision (CFD) policy and related provisions of EO 13807. The information submitted to the system will allow agencies to determine the appropriate focus on resources, diagnose problems, and find opportunities for improvement. Over time, we envision will facilitate agency implementation of strategic objectives and performance plans, reduce long-term decision making, and provide a basis for incorporating lessons learned into future agency program goals.

OMB will review agencies' performance accountability through the new system at least once each quarter and will publish a quarterly scorecard of agency performance and overall progress toward achieving CAP Goal targets. Section 4(b)(9)(D) of EO 13807 requires the Director of

- CAP Goals were established by the Environmental Performance and Results Modernization Act of 2018, Public Law 111-152



Texas Water Development Board **EPA**
 United States Environmental Protection Agency

In the fall of 2015, the U.S. Army Corps of Engineers, Southwestern Division (USACE); the U.S. Environmental Protection Agency (USEPA), Region 6, and the Texas Water Development Board (TWDB) entered into a dialogue focused on improving interagency coordination related to large water supply projects in Texas. Generally, large or major water supply projects are those projects whose predictable impacts are significant enough to warrant the development of an Environmental Impact Statement, as required by the National Environmental Policy Act.

The attached Permitting Agreement (Agreement) was developed from that initial dialogue. The Agreement focuses on the group's efforts to produce actionable items, while giving Clean Water Act Section 404 permit applicants a greater understanding of the future permit evaluation process and related efficiencies.

The TWDB continues to participate with the USACE and the USEPA by sharing its expertise in Texas water planning. The TWDB is not a regulatory agency and is not part of the Section 404 permit process, therefore ultimate decisions about that process will be made by USACE and USEPA. TWDB does recognize that its institutional knowledge of the Texas water planning process presents an opportunity for all three agencies to identify efficiencies.

Following the Federal agencies approval of this Agreement, the agencies will work expeditiously, with existing staffing and budget, to complete the action items. Beyond the specific action items associated in the agreement, the three agencies see this effort as an opportunity to develop a closer working relationship.

Jeff Walker *David C. Hill* *Ron Curry*
 JEFF WALKER DAVID C. HILL RON CURRY
 Executive Administrator Brigadier General, U.S. Army Regional Administrator
 TWDB Commanding EPA Region 6
 7/27/16 8/27/16 07/27/2018
 Date Date Date



ONE FEDERAL DECISION



-Executive Order 13807 Modernize Infrastructure Permitting Cross-Agency Priority Performance Goal Accountability System

-Issued 15 August 2018

-Memorandum of Understanding (MOU) to establish a cooperative relationship for the timely processing of environmental reviews and authorization decisions for proposed major infrastructure projects.

-Provide a more predictable, transparent and timely Federal review and authorization process for delivering major infrastructure projects

-Establish standard operating procedures for how the Federal Government will make concurrent and synchronized reviews for major infrastructure projects; and eliminate duplication of effort among agencies, improve the efficiency of project delivery, make better-informed decisions and promote good environmental, community and economic outcomes.



SECTION 404/408 SYNCHRONIZATION



-Director's Policy Memorandum Civil Works Programs No. DPM CW 2018-10

-Issued 17 August 2018

-Purpose to synchronization of USACE Business processes related to Regulatory Program and the Section 408 Program

-This effort enables effective and efficient internal coordination, leveraging of information, alignment of decisions, and improved service to the public.

-SWD Regulatory is complete with Phase I and has created Standard Operating Procedures of establishing a single point of contact for inquiries, "One USACE Decision" for certain actions, and linking the Regulatory database with 408 database.

-SWD Regulatory is actually ahead of schedule and very soon will be Full Implementation of Phase II.