Section 404 Clean Water Act

and

Section 10 Rivers and Harbors Act

Permit Guidance Manual

A cooperative effort of the
St. Paul District Corps of Engineers
and the Minnesota Department of
Transportation

Kelly Urbanek, USACE
Sarma Straumanis, MnDOT
John Mackner, MnDOT
Overview

§ Reason and Purpose of the Manual

§ Manual Key Messages
  Ø Early Coordination
  Ø Differences in funding and levels of permitting
  Ø Wetland Identification is Necessary
  Ø Accurate Impact Assessment

§ NEPA/404
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**Vision – why do this manual??**

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Early Coordination

§ Discussion and Dialogue

§ Applicant → (expectations) ← Regulator
Issues Covered in Early Coordination

§ Project scope

§ Project rationale (Purpose and Need)
  - NEPA and CWA 404, Federal or State design and safety standards

§ Supporting information
  - Preliminary Determination and Impact Assessment

§ Anticipated Level of Review and Permit
  - Is preliminary impact near 5 acres?

§ Project and Permitting Timeline
Early coordination can include:

§ Phone calls
§ Email
§ Direct mail (plans & layouts)
§ Conference calls
§ Meetings
§ Field reviews
Wetland impacts to include in permit application:

§ Fill  *
§ Cut  *
§ Temporary disturbance  *
§ Drain  *
§ Wetland type conversion  *
  * Replacement required
Temporary Impacts

Pipe Jacking Pit
40' x 20'

Receiving Pit
16' x 30'

Temporary Impacts
Restored after work completed

Topsoil stripping
(prior to grading)

R/W

Temporary Impact

Tension to measure accurately,
used as erosion control BMP.

Trees temporarily removed,
Stumps allowed to regrow.
Identifying Wetlands

§ National Wetland Inventory (NWI)

Ø not to be used as a regulatory tool
Ø many wetlands in ag areas missed
Ø not comprehensive in heavily forested areas
Ø may be sufficient for preliminary maps
Ø couple with soils, high-res aerial photos
Identifying Wetlands

§ Wetland delineation = a prescribed method of determining presence, absence and limits of wetland (using guidance from the Corps 1987 manual & supplements).

§ Based on three criteria – soils, hydrology, vegetation

§ Regional differences and wetland identification in agricultural areas
§ ROUTINE METHOD
Ø Level 1 (what we’ve been calling a “determination”) data sheets usually not necessary
Ø Level 2 (standard data sheet approach)
Ø Level 3 (using level 1 or level 2 on a basin-by-basin approach)
§ COMPREHENSIVE METHOD (data sheets, multiple transects, etc.)
§ Offsite methods, problem areas (ag lands)
Effect of Funding

§ How does project funding affect transportation planning and/or project sponsors?
Ø SP versus SAP
Ø When is NEPA compliance required?
  • SP- funds federalize project (FEMA, Federal Lands- USFS, BIA and FHWA, Federal Transit)
Ø NEPA – how is it completed?
Ø Sec 106 and ESA
§ How does funding affect Corps CWA 404 permitting levels?
  • It doesn’t

§ How does funding affect the Permitting Process?
  • if federal funds used – seek to integrate lead agency NEPA with Corps NEPA and 404

§ In the absence federal funds, does the requirement for a CWA Section 404 permit federalize a project?
  • Yes

Ø Fulfill three levels of analysis required for issuance of CWA 404 permit?

Ø CWA Section 404 B1 guidelines (LEDPA) (40 CFR)
Ø NEPA (33 CFR Part 325 Appendix B and CEQ)
Ø Public Interest Review (33 CFR Part 325)
Section 404 Permitting Mechanisms

§ General Permits (30-60 days)
  – Programmatic
  – Nationwide Permit (NWP)
  – Regional General Permit (RGP)

§ Individual Permits (IP)
  – Letter of Permission (60-90 days)
  – Standard IP (3 months to a year)
Types of Permits

§ General Permit, GP-003-MN
  ► (~3,400/year) (all GPs, District-wide)
  ► Impacts under 1/2 acre

§ Letter of Permission, LOP-05-MN
  ► (~150/year)
  ► Impacts under 5 acres

§ Individual Permit, IP
  ► (<50/year)
  ► Impacts > 5 acres or cannot otherwise be authorized under the GP or LOP.
GP Process

§ Complete application? (Wetland Identified and Impacts)
§ Request more info
§ Confirm that proposal meets GP requirements*
§ Generally, no coordination with resource agencies†
§ Determine mitigation requirements
§ Project Manager issues GP letter
§ Individual § 401 water quality certification NOT required (granted/waived with GP)

† GP-1 requires coordination with resource agencies (e.g. SHPO)

* 404 B1, public interest review and NEPA EA already completed
LOP Process

§ Complete application?
§ Request more info
§ Confirm proposal meets LOP requirements *
§ Post public notice on internet (10 days)
§ Coordination with resource agencies
§ Prepare abbreviated analysis
§ Determine mitigation requirements
§ Section Chief issues LOP letter with conditions
§ Individual § 401 water quality certification NOT required (granted/waived with LOP)

* 404B1, Public interest review and NEPA EA completed
Individual Permit Process

- Pre-application consultation recommended
- Complete application?
- Request more info
- Issue public notice (30 days)
- Coordinate with resource agencies
- Tribal consultation
- Prepare environmental assessment, public interest review, 404(b)(1) analysis
- Individual § 401 water quality certification required
- Branch Chief signs permit decision
Permit Timeline

- 30 days: GP with field review
- 90 days: LOP
- 120 days: LOP coordination
- 6-12 mos: IP field review, agency coordination, compliance laws, scope of analysis

BUILDING STRONG®
§ SP project – Is the NEPA documentation sufficient to fulfill Corps NEPA requirements? 404B1 requirements?

§ A project that receives a CAT EX (CE) could require an Individual Permit (404).

§ SAP project – project sponsors could provide Corps similar SP Project Memo information for the Corps NEPA and 404B1.

§ SAP projects and design standards and Road Replacement Program (8820 and 8420).

§ SAP projects also must demonstrate compliance with Sec 106 (cultural resources and historic structures) and ESA.
§ Questions
NEPA-404 Merger

§ Usually described as Concurrence Points Process

§ Expected Goals or Successes

Ø Addresses conflicting goals up front
Ø Avoids starting over
Ø Good customer care
Ø Better project execution
Ø Predictable project execution
Ø Good use of Federal resources

§ Different levels or degrees
NEPA/404 Concurrence Points

The Key to Successful Merger Process is Agency Agreement at Critical Decision Points.............

§ Generally Accepted Concurrence Points:
► Purpose and Need
► Identification and Selection of Alternatives (reasonable and practicable)
► Selection of Preferred Alternative/Identification of LEDPA
► Design Phase avoidance and minimization
Goal

§ The key is defining a purpose that meets both agency’s needs.

► Transportation Planning, CEQ, FHWA
► Clean Water Act
► Executive Order on Wetlands
► Identify project with high probability of being executed
Alternatives

§ NEPA (reasonable):
   Ø Procedural – does not prescribe outcome

§ CWA (practicable)
   Ø Least environmentally damaging practicable
   Ø Substantive – prescribes an outcome
Alternatives Carried Forward

§ Practicable
§ Meet the Purpose and Need
§ Least aquatic impact
§ Least overall environmental impact
§ Agency preferred alternative
Levels of NEPA/404 Integration

§ Routine Projects – reconstruction on existing alignment
  ► Delineation of waters and wetlands in corridor
  ► Identification and avoidance sensitive resources
  ► Design phase minimization impacts to aquatic resources
  ► Topography or construction techniques (soil)
Levels of NEPA/404 Integration

§ Non-routine Projects – new road corridor or major re-alignment

- Landscape level analysis (NWI, soils, photo interpretation)
- Functional assessments of aquatic resources
- Habitat inventories, cultural resources
- Infrastructure constraints, access