US Army Corps of Engineers Permitting Process

Chad Konickson
Chief, Southwest Section
St. Paul District Regulatory Branch

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Outline

• St. Paul District Organization and Staff
• Statutory Authorities and Jurisdiction
• Permit Mechanisms for Transportation Projects
• Permit Evaluation Process
• Permit Application Completeness Requirements
• Information Needed for Project Analyses
• Issues
• Challenges
• Progress
  • Factors that Lead to Longer Review Times
  • How to Shorten Review Times
• Questions
Rivers & Harbors Act

- Oldest Federal environmental law in the U.S.
- Prohibits unauthorized obstruction or alteration of navigable waters (Section 10 RHA)
  - Listed waters, such as Mississippi River, Minnesota River, Lake Superior, and many other rivers and lakes
  - Structures or work in, over, or under navigable waters, or affecting the course, condition, or location of navigable waters
  - Piers, wharfs, breakwaters, bulkheads, jetties, transmission lines, etc.
Clean Water Act

- Restore and maintain the chemical, physical, and biological integrity of the Nation’s waters

- Waters of the United States (WOUS)
  - Typically include navigable waters, their tributaries and most wetlands.

- Types of Activities: Discharges of dredged or fill material into WOUS (Section 404 CWA)
Permit Mechanisms for Transportation Projects

• General Permit (~3500/yr)
  – RGP-003-MN: Impacts < 1/2 acre
  – Individual § 401 certification NOT required

• Letter of Permission (~ 150/yr)
  – LOP-05-MN: Impacts < 5 acres
  – Individual § 401 certification NOT required

• Standard Permit (~50/yr)
  – Impacts > 5 acres or activities not covered by GP/LOP
  – Individual § 401 certification IS required
Overall Permit Evaluation Process

– Determine Jurisdiction
– Determine scope of review and type of permit required
– Solicit input/comment on proposal
– EPA, FWS, Tribes, state agencies often comment
– Prepare NEPA EA or EIS and make finding
– Public Interest Review (weighing and balancing)
– For Section 404 permits, must comply with CWA 404(b)(1) Guidelines (pass/fail)
– Comply with all other applicable federal laws, regulations, executive orders
– Permittee must obtain Section 401 Water Quality Certification/Waiver to obtain a valid Section 404 permit.
– Decision (Issue or Deny Permit)
General Permit Process

- Complete application?
- Request more info if needed
- 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 (already granted with GP)
- National Performance Goal: 75% in < 60 days (2012 = 91%)
Letter Of Permission Process

• Pre-application consultation recommended
• Complete application?
• Request more info if needed
• Confirm that proposal meets LOP requirements
• Post public notice on internet (10 days)
• Coordination with resource agencies
• Determine mitigation requirements
• Prepare decision document and LOP letter
• Individual § 401 water quality certification NOT required
• Section Chief signs LOP letter with conditions
• National Performance Goal: 50% in < 120 days
  (2012 = 75% LOP/SP)
Standard Permit Process

• Pre-application consultation recommended
• Complete application?
• Request more info if needed
• Issue public notice (30 days)
• Coordinate with resource agencies
• Tribal consultation
• Determine mitigation requirements
• Prepare environmental assessment, public interest review, 404(b)(1) analysis
• Individual § 401 water quality certification required
• Branch Chief signs permit decision
• National Performance Goal: 50% in < 120 days
  (2012 = 75% LOP/SP)
Information Needed for Complete Permit Application

- Name (POC), address, signature and date
- Purpose and need for project
- Description of project & location
- Drawings/plans showing ALL proposed activities
- Name/address of adjoining property owners
- Description of fill - type, quantity, locations
- List of all authorizations required for proposal, including all approvals received/denied
- Statement addressing avoidance and minimization measures and compensatory mitigation

Source: 33 CFR 325.3
Purpose and Need

- Purpose and need statement describes the transportation problem
- It is the foundation for decision-making
- It drives the alternatives analysis
- Possible Source: CATEX, EA, project memo
Information for Permit Decision

• Waters/wetlands accurately identified (boundary concurrence)
• Thorough analysis of alternatives to avoid/minimize impacts
  • Dismiss alternatives if:
    - they do not meet project purpose or
    - are not practicable or
    - are more damaging to the natural environment
• Demonstration of no practicable alternative to placing fill in wetlands
• Compensatory mitigation plan for unavoidable losses
404(b)(1) Guidelines

Alternatives analysis (40 CFR 230.10)

“No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem” (LEDPA)

• Least damaging to aquatic resources

• Practicable alternatives: available and capable of being done considering cost, existing technology, and logistics in light of overall project purpose

• Applicant required to submit necessary information for Corps to determine compliance with the guidelines.
Primary Issues

• Increasing complexity of regulatory standards

• Shrinking fiscal resources

• Timeliness
Challenges

- Federal Mitigation Rule published – 2008
- Rapanos Guidance (JDs) – 2008
- Regional Delineation Supplements 2008-2012
- St. Paul District Mitigation Policy - 2009
- Designated critical habitat for Canada Lynx - 2009
- Increased emphasis on Tribal Consultation - 2009
- National minimum standards for permit decision documentation - 2010
- Compliance issues: NHPA Section 106 and ESA Section 7 – 2010
- National Wetland Plant list – 2012
- Staff Turnover: Corps, FWS, SHPO
Progress

• Corps/MnDOT/USFWS Agreement - 2004
• Corps/MnDOT/SHPO Agreements - 2004, 2012
• Preliminary Jurisdictional Determinations - 2008
• MnDOT SALT/Corps Permit Guide
  – Published summer 2012, on line
• Joint BWSR/Corps Outreach Training
• MnDOT/Corps Shared Historian
  – Established Fall 2012
• Application Checklist
  – Developed in 2012, released update Jan 2013
• Application Acknowledgement Card, March 2013
More Progress?

• Update joint permit application form to aid in complete applications
• Opportunity to incorporate permit process earlier in project development schedules
• Increased Corps use of other environmental analyses for permit authorizations
• Potential GP for routine road work?
• Corps Transportation Liaison/Project Manager?
• In-Lieu-Fee Mitigation (LGRWRP)?
Factors that Lead to Longer Review Times

- Presence of endangered species or critical habitat
- Historic properties or archaeological resources
- Inadequate delineations, particularly when submitted outside the growing season
- Incomplete description of impacts to aquatic resources
- Unclear Purpose and Need
- Lack of detail on project plans
- Lack of detail regarding avoidance and minimization measures
- Lack of detail regarding compensatory mitigation
- Missing or insufficient alternatives analysis
How to Shorten Review Times

• Read the Minnesota Local Road Authority Reference Guide to US Army Corps of Engineers Permits

• Use the US Army Corps of Engineers Permit Application Checklist
How to Shorten Review Times

• Coordinate early and often with the Corps

• Schedule a review of the next 2-5 years of planned projects

• Start the permit process early (including the delineation)

• Communicate the planned start date – ask for a permit process timeline
How to Shorten Review Times

• Request a **pre-application meeting** early in the planning process
  – Determine who has jurisdiction and what will be regulated
  – Identify permit category
  – Identify potential issues
  – Discuss additional information that may be needed for permit review
How to Shorten Review Times

• Identify federally listed species, critical habitat, or state or tribal sensitive species early in the planning process

• Identify and begin consultation regarding historic properties and archaeological resources early in the planning process

• Hire experts when needed
How to Shorten Review Times

• Delineations
  – Prepare them early; you don’t have to wait until you apply for a permit
  – Plan for Corps review during the growing season
  – Follow the current delineation guidance (May 2013)
  – Use the correct delineation method
  – NWI alone is not sufficient
  – Delineate ALL aquatic resources
  – Submit detailed delineation reports
How to Shorten Review Times

• Submit a complete application so a Public Notice can be published as quickly as possible

• Provide detailed purpose and need of the proposal
How to Shorten Review Times

• Provide a complete and legible tabulation and depiction of all impacts to aquatic resources
  – By type of impact
    • Fill
    • Cut
    • Conversion
    • Drainage (lateral effect)
  – By resource affected
    • Wetland type
    • Tributary
  – By permanence
    • Permanent
    • Temporary
How to Shorten Review Times

• Provide project plans that clearly and accurately illustrate:
  – Project location
  – Existing and proposed conditions
  – Location and type of aquatic resources
  – Location and type of impacts
  – Plans must be at a scale that is both legible and reproducible
How to Shorten Review Times

• Provide details regarding specific avoidance and minimization measures

• Provide specific compensatory mitigation plan
  – LGRWRP
    • GPs: Identification of bank and proof of debit required prior to work
    • LOPs/SPs: Identification of bank required prior to permit issuance; proof of debit required prior to work
How to Shorten Review Times

• Provide detailed alternatives analysis
  – Alternative ways to achieve project purpose with fewer impacts
  – Detail commensurate with degree of impacts

• Share any environmental analysis or coordination already done (EA, CATEX, Project Memo)
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Questions?

More Information and Resources:


Telephone: 651-290-5525

Email: mvp-reg-inquiry@usace.army.mil