



**US Army Corps
of Engineers®**

DIRECTOR'S POLICY MEMORANDUM

CIVIL WORKS PROGRAMS

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.

a. 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.

b. 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.

c. 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,

DPM CW 2018-10

SUBJECT: Strategy for Synchronization of the Regulatory and 408 Programs

a national database for tracking of application status, and national program performance metrics. On average, the Regulatory Program provides approximately 80,000 permit and permit-related decisions per year. The 408 Program is responsible for processing requests by private, public, tribal, or other federal entities, to make alterations to, or temporarily or permanently occupy or use, any USACE federally authorized Civil Works project. The 408 Program was administered more informally until the first comprehensive implementation guidance (EC 1165-2-216) was issued by HQUSACE in 2014. Since then, more formal and consistent processes evolved. On average, there are 1,200 Section 408 permit applications received by USACE per year.

5. **Direction.** The authorities, jurisdictions, procedures, and scopes of analyses are different between Regulatory Program reviews and 408 Program reviews. However, USACE recognizes the need to further synchronize these reviews in order to better serve the public. To be responsive to the Administration priorities (references 1.c & 1.d) and in support of efforts toward streamlined federal environmental reviews, USACE will follow the phased approach that is described below.

a. **Phase I** – to be complete by the second quarter of FY19. Phase I consists of 1) establishing a single point of contact for all permitting inquiries; 2) establishing “One USACE Decision” for certain Regulatory Program decisions and 408 Program decisions; and 3) linking the Regulatory Program database and the 408 Program database. Divisions and districts will develop standard operating procedures (SOPs) or modify existing SOPs for coordination between the Regulatory Program and the 408 Program accordingly. The following clarifies the intent of these actions:

(1) For immediate action: The District Regulatory Chief or designee will serve as single the point of entry or initial point of contact for inquiries from the regulated public about the Regulatory Program and the 408 Program. The intent is for the applicant to receive a response from a USACE District that identifies appropriate points of contact (POCs) from whom the applicant can receive additional information and clearly defines the process that will be followed. Divisions and districts will develop workflow processes per this direction. For example:

(a) For a proposed activity that needs a USACE permit decision within a single district, the District Regulatory Chief will coordinate internally and reply back to the applicant with the appropriate district POCs and process for obtaining the necessary permit decisions. The designated POCs will promptly follow-up with the applicant, typically within 5 business days. When appropriate, districts put in place formal project delivery business processes for applications where multiple functional equities inform the permit decisions in order to ensure synchronized review.

(b) If a proposed activity crosses district or state boundaries, divisions and districts will follow reference 1.b. to make a lead district determination and the lead District Regulatory Chief will provide the applicant a response that identifies appropriate POCs and defines the process to follow. The designated POCs will promptly follow-up with the applicant, typically within 5 business days. When appropriate, districts will put in place formal project delivery business processes for applications where multiple functional equities inform the permit decisions in order to ensure synchronized review.

DPM CW 2018-10

SUBJECT: Strategy for Synchronization of the Regulatory and 408 Programs

(2) Upon issuance of Engineer Circular (EC) 1165-2-220, (reference 1.a.), divisions and districts will develop SOPs to implement "One USACE Decision" or one single transmittal to applicants related to Regulatory Program actions and 408 Program actions. Prioritization of active requests must occur to maximize coordination, synchronization and timeliness of permit decisions.

(a) Coordination of Public Notices (PNs). Districts will ensure PNs are developed and coordinated in a manner that maximizes public input for both Regulatory Program reviews and 408 Program reviews. The intent is to leverage a single PN process to gather input for both Programs actions. Regulatory will adhere and meet the requirements for PNs consistent with its regulations (i.e., issue PNs within 15 days from the receipt of a complete application). Districts will strive to identify minimum requirements for 408 Program reviews to maximize publication of joint PNs in a timely manner.

(b) Coordination of Decisions. In cases when a Section 408 permit decision and a Regulatory standard individual permit decision are both needed for a proposed activity, the district will conduct these evaluations in a coordinated manner and produce one decision document and one single decision-maker will render both the Section 408 and Regulatory permit decisions. In cases when a Section 408 permit decision and a Regulatory permit decision (other than a standard individual permit) are needed for a proposed activity, a single transmittal with both the Section 408 and Regulatory decisions will be provided to the applicant. Identification of whether or not the proposed activity requires both a Regulatory permit decision and a Section 408 permit decision will be done as soon as possible when a request is received. Districts will encourage applicants to submit their requests in a manner that facilitates concurrent and efficient Regulatory and Section 408 reviews.

(c) Eliminate redundancy between Section 10 and Section 408. For proposed activities in navigable waters within a federal navigation channel, if the scope of analysis for the Section 10 and Section 408 are the same, only a single authorization under Section 10 will be required and will include language indicating that the scope of the authorization includes Section 408. The District Regulatory Chief will make the final determination when a single authorization through Section 10 can be done in these instances.

(d) Synchronized Regulatory Program and 408 Program Database. USACE is establishing a Section 408 database to serve as the system of record for all Section 408 permit applications. Upon completion, the database system will identify when a Section 408 permit application also requires a Regulatory decision. In addition, features are being added to the existing Regulatory Program database (ORM2) to identify when a Regulatory permit application also requires a Section 408 decisions. Data standards for description and geographic location will be similar. Divisions and districts will train their staff on the use of the Section 408 database and the appropriate linking of projects with multiple permit requirements. Divisions and districts will also be responsible for data quality assurance and quality control.

b. **Phase II** – Full Implementation of "One Door to the Corps Permitting." This phase is projected to be completed by the 4th quarter of FY19. USACE will put in place processes that establish one public-facing avenue for the submittal of Regulatory permit applications and 408

DPM CW 2018-10

SUBJECT: Strategy for Synchronization of the Regulatory and 408 Programs

permit applications, including one website to serve permit status information to the public. In addition, based on execution of Phase I, districts will finalize the SOPs developed, modified and tested. Districts will coordinate with divisions and HQUSACE to identify further actions necessary for successful execution of this directive, such as national standards for the coordination of Regulatory Program and 408 Program reviews, changes in regulations, changes in publicly available websites, workload prioritization and funding, or organizational changes.

c. **Phase III** – Assessment of Synchronization Measures and Division Organizational Structure. USACE will identify remaining challenges to ensure long-term sustainment and oversight of the synchronization of Regulatory and Section 408 permit decisions. As determined necessary, USACE may pilot different organizational structures and identify solutions necessary to respond to Administration priorities, national initiatives and Executive Orders. This phase is projected to be completed by the 4th quarter of FY20.

10. This memorandum does not change current requirements for Regulatory Program decisions and 408 Program decisions.

11. **Proponent.** The proponents for this memorandum are Mr. Thomas P. Smith, P.E., Chief, Operations and Regulatory Division, at 202-761-1983 and Dr. Larry McCallister, P.E., Chief, Engineering and Construction Division, 202-761-8826.



James C. Dalton, P.E.
Director of Civil Works