MEMORANDUM FOR: U.S. Army Corps of Engineers Divisions and Districts and U.S. Environmental Protection Agency Regional Offices

SUBJECT: Action items from the joint Department of the Army and EPA memorandum dated 08 July 2015, Paragraph 3, "Improving the Permit Process"

1. The Corps and EPA (the agencies) are issuing this joint memorandum in response to Department of the Army and EPA joint memoranda related to the Clean Water Act permit process, transparency and coordination.[1] The agencies' headquarters (HQs) convened a workgroup to evaluate existing permitting tools and procedures and to identify the changes needed to further reduce costs, delays, and frustration in federal permitting, while improving Clean Water Act (CWA) protections. This memorandum describes the actions that the agencies will take to ensure that potential permit applicants benefit from these program improvements.

2. Representatives from the agencies' HQs met regularly from September 2015 through February 2016 to review and discuss options for joint improvement to the CWA Section 404 program. This resulted in the identification of nine (9) action items that are intended to improve delivery of jurisdictional determinations (JDs) to the permitting process, increase efficient information sharing and coordination between the EPA and the Corps during the application review process, and develop joint training and outreach.

3. Subsequently, in April 2016, the agencies coordinated the proposed actions with Corps Divisions and Districts and EPA Regions to validate the action items and seek feedback for implementation. This memorandum provides direction for implementation of the action items based on the work of the agencies' HQs workgroup and the feedback from the field. A separate memorandum is being issued addressing efficiencies in coordinating jurisdictional determinations as part of the permit process. The list of action items reviewed for joint improvement to the CWA Section 404 program is included in Appendix A for reference.

a. <u>Increase use of pre-application meetings to facilitate review of major projects</u>: Corps Districts and EPA Regions will work together to maximize participation in pre-application meetings and joint field visits as appropriate. The Corps Districts should coordinate the meetings and visits as appropriate and send timely notifications to the EPA Regions for attendance. Subject to resource availability,

[1] Joint memoranda on "Implementation of the Clean Water Rule" of 8 July 2015 and "Administration of the Clean Water Act Programs in Light of the Stay of the Clean Water Rule; Improving Transparency and Strengthening Coordination" of 16 November 2015.

EPA Regions should incorporate into their annual workplans appropriate resources to attend joint meetings and visits.

b. Train all Regions to sharpen effectiveness and utility of comment letters: EPA has developed a Section 404 Intermediate Training Workshop at the regional level to improve the quality and effectiveness of written comments to public notices and inter-agency/intra-agency coordination. In fiscal year (FY) 2016, EPA held its first Intermediate Training and is planning additional trainings in the upcoming fiscal years. As part of the training design, EPA Regions reach out to Corps Districts to gather feedback on specific issues with comment letters per Region. Corps Districts and EPA Regions will continue to work together to inform the development of these training and complete training in all Regions by FY 2021, contingent on available resources and funds.

c. Publish instructional materials, reference documents, past decisions, and coordinated review procedures to aid applicants: The agencies will seek opportunities to conduct joint outreach on available materials that could expedite review of permit applications, including:

(1) Permit Reference Materials: Over the last two years the Corps has worked to develop our Knowledge Management (KM) Program at HQs, Divisions, and Districts. The Corps established the Regulatory Community of Practice Sharepoint site as the repository of information, reference materials, checklists, templates/examples, etc., for easy access to all regulators in the field. As part of this effort the Corps compiled a list of available outreach and instructional materials on the permit application process and other information that could expedite review of permit applications and posted it internally at https://cops.usace.army.mil/sites/RD/default.aspx. In addition, a similar list will be posted in our Corps public website.

(2) Avoidance and Minimization: In FY 2017, EPA intends to refresh and update its "Avoidance and Minimization Project" (AMP) intranet site. The AMP website is designed to inventory and annotate existing reference materials that address aquatic resource avoidance and minimization issues including regulations and guidance, CWA Section 404(q) elevation findings and 404 (c) vetoes, court cases, example EPA comment letters on proposed aquatic resource impacts, Section 404 training materials, and published reviews of the Section 404 program. This is intended to serve as a dynamic "EPA Section 404 Project Officer Handbook" for project review and training of new personnel. EPA will also post a compilation of materials available for joint outreach on its public website at https://www.epa.gov/cwa-404.

(3) *Red Book*[2] Concepts: The concepts discussed in the 2015 *Red Book* (*Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects*) will be applied by the agencies for reviews of Section 404 permit applications. The Corps and EPA will look for opportunities to host joint agency webinars for field staff, including EPA's Office of Federal Activities, to promote widespread understanding and application of the contents of the *Red Book*.

(4) Compensatory Mitigation: The Corps has prepared outreach materials on appropriate use of the watershed approach, mitigation site protection instruments, long-term management of mitigation sites, and financial assurances, based on available technical documents. These materials are posted on our Sharepoint site at https://cops.usace.army.mil/sites/RD/default.aspx and the Corps public website at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/. EPA will post the materials as well on the AMP intranet site at http://intranet.epa.gov/owow/wetlands/AMP/ and its public website at https://www.epa.gov/cwa-404/compensatory-mitigation.

4. Inform states, tribes, and the public about General Permit examples and opportunities: Corps Districts and EPA Regions will work together to continue to protect aquatic resources while retaining efficiencies from general permit tools. With active support from EPA, the Corps will continue to develop new Regional General Permits (RGPs) and State Programmatic General Permits (SPGPs) as appropriate. To facilitate broader consideration, adoption, and use of these permit tools, the Corps compiled a list of existing general permits for reference. The list is posted in our Sharepoint site at https://cops.usace.army.mil/sites/RD/default.aspx and the Corps public website at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/. The EPA will post a link to the list on the AMP intranet site at http://intranet.epa.gov/owow/wetlands/AMP/ and its public website at https://www.epa.gov/cwa-404/.

5. Our agencies' staff are a hardworking group of professionals committed to achieving the mission of our agencies under the CWA. We anticipate that the above steps will advance our joint goals of improving the efficiency and effectiveness of the Section 404

[2] https://www.environment.fhwa.dot.gov/strmlng/Redbook_2015.pdf

permitting process and the CWA protections. If you have any questions please contact Ms. Myrna Lopez at 202-761-4591, myrna.i.lopez-ortiz@usace.army.mil; or Mr. Chris Hunter at 202-566-1454, hunter.christopher@epa.gov.

JOEL BEAUVAIS
Deputy Assistant Administrator
Office of Water
U.S. Environmental Protection Agency

DEC 21 2016

Date

DONALD E. JACKSON
Major General, U.S. Army
Deputy Commanding General
for Civil and Emergency Operations

DEC 21 2016

Date

APPENDIX A
Action items per Paragraph 3 of the joint Army and EPA memorandum dated 08 July 2015

1. Identify appropriate contents to be included in a draft approved jurisdictional determination (AJD) package for coordination between the agencies.
EPA Regions and Corps Districts jointly identify what elements of an AJD are needed to ensure an effective review in coordination between the agencies. Rather than having ad hoc discussions on the materials needed to review a coordinated draft AJD, the agencies would compile a list of the minimum information necessary from the Corps for an efficient and effective review by EPA. These materials must be items that are available and accessible and would not place additional burden on the landowner. The list could include the identification of remote tools that both agencies would utilize to increase efficiency for both desktop and field-based AJDs. Identifying and agreeing to this information in advance would provide more predictability and may reduce the time required to complete an AJD. This information could also be shared with the regulated public to improve understanding of what the Corps needs to complete an AJD and what EPA may request if an AJD will be coordinated. This information would be presented to the public via local workshops, as appropriate. Specific products could include checklists and example completed forms for AJDs, including wetland delineations.

2. **Reiterate coordination process for draft AJDs review.** EPA and the Corps would reemphasize to their respective field staff the established coordination procedures and timeframes for coordination of draft AJDs per the applicable Army/EPA memorandums. The agencies would also identify specific District-Regional processes that deliver efficiencies in coordination and provide these practices to all field staff. For example, the agencies would explicitly encourage EPA Regions to communicate with Corps Districts as early as possible during the coordination period once they have a question, comment, or conclusion in order to expedite resolution of issues or notify the Corps as soon as possible if the Agency has no comments. In addition, once the coordination period has concluded and/or EPA has decided not to elevate, additional resources providing comments should not be expended. Reducing EPA review times whenever possible will minimize delays in delivering final AJDs to the landowner or to the permit process.

3. **Prioritize and encourage the use of regular interagency pre-application meetings with agencies and potential applicants.** Ensure EPA Regions are participating in Corps Districts' pre-application meetings, as well as joint field visits and project meetings as appropriate. In order to minimize travel time, Districts and Regions will be encouraged to schedule other interagency meetings and visits in similar timeframes when feasible, as opposed to on an ad hoc basis. Many field staff report that pre-application meetings with potential applicants provide valuable coordination and early identification of environmental concerns and potential actions to address these concerns. These meetings could turn even more productive when also attended by representatives from other Federal or State agencies. As a method for encouraging greater usage, Corps HQs and HQEPA could issue a joint memo to the field offices

recommending that these pre-application meetings be regularly scheduled with invitations sent to relevant agencies, and encouraging EPA Regions to incorporate the time and travel costs for these regular meetings into their annual workplans.

4. **Improve the technical quality of comment letters for individual permits.** Letters submitted to the Corps in response to public notices are one of the most important vehicles for EPA to convey recommended environmental improvements on proposed discharges and can facilitate applicant understanding of agency concerns and expectations for response. Recognizing this, and the importance of providing clear constructive feedback as part of the public record, EPA could expand and continue a pilot training course for Regional employees on effective commenting and coordination. This training could include local Corps District perspectives and suggestions to improve clarity of comments on areas of EPA expertise, and on how Aquatic Resources of National Importance, as established in the 1992 404(q) Memorandum of Agreement, are discussed. Improving the quality of the technical comments received by EPA, specific to the areas within its expertise and authority, can reduce the potential for confusion between the agencies and the need for follow-up coordination, thus resulting in reduced application review times and faster permit decisions.

5. **Encourage joint outreach on available materials, checklists, examples, and other support documents that might be necessary to complete the evaluation of a permit application.** This could expedite District review, as well as reduce applicant/District coordination time and requests for additional information. Additionally, depending on available resources, Districts and Regions could hold public workshops locally to discuss process and submittals with the general public, including consultants, on a biannual basis.

6. **Prepare outreach materials on available technical documents regarding compensatory mitigation**. The Corps and EPA could prepare outreach materials on long term management of mitigation sites, appropriate use of the watershed approach, real estate instruments for protection of mitigation sites, and financial assurances, based on available technical documents. The implementation of the 2008 Compensatory Mitigation Rule has resulted in an increase of the use of mitigation banks and in-lieu fee programs, as well as a reduction in overall application processing times when these options are available and utilized. Disseminating this information to the public could provide a greater understanding of the CWA program requirements and expectations, which can assist field staff in conducting more efficient reviews of proposed compensatory mitigation.

7. **General Permits (GPs):** The Corps and EPA would encourage robust engagements from Districts and Regions in the development of regional conditions on the NWPs to protect aquatic resources while retaining GP efficiencies. The Corps, with active support from EPA, would continue to advocate the development and use of new RGPs and SPGPs, as appropriate. EPA will remain closely engaged through the established procedures to provide comments on the issuance or reissuance of GPs, compliance with NEPA, and the 404(b)(1) Guidelines. In response to the July 8, 2015,

joint memo, HQs of EPA and the Corps have engaged in pre-coordination discussions for the 2017 NWPs. A product of such engagement could include a national catalogue of existing RGPs and SPGPs to facilitate broader consideration, adoption, and use of these mechanisms.

8. **Availability of Information to the Public.** The Corps will continue to maintain the ORM2 database, the Corps publicly available AJD viewer[1] and continue to transfer data to EPA per the existing procedures. EPA, in coordination with the Corps, is developing a webpage with all CWA final AJDs. The webpage will enable the public to search for AJDs based on location and waterbody type and/or other search criteria of interest. With this capability, applicants will be able to gain a better understanding of CWA jurisdiction as they design their projects. EPA is working on an initial version of the website where all final AJDs will be housed. By making this information publically available in several venues and formats, the Corps and EPA intend to improve transparency regarding the number and types of AJDs being made and improve clarity regarding the factors being evaluated in these determinations.

9. **Synchronization of Permit Reviews.** The Corps and EPA will continue to outreach on the practices explained and promoted in the Red Book[2] and the benefits of synchronized reviews. We will look for opportunities to host joint agency webinars for field staff, including EPA's Office of Federal Activities, to promote widespread understanding of the contents of the Red Book. Multiple districts have been working cooperatively for several years with Federal and State agency partners to review Federal-aid transportation projects concurrently, instead of sequentially. The concepts discussed in the Red Book could be applied by EPA Regions in working with Corps Districts for their environmental reviews of Section 404 permit applications.

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[1] The Corps posts all final AJDs at http://corpsmapu.usace.army.mil/cm_apex/f?p=340:11:0::NO::: Information posted includes the Corps tracking number, project name, overall project location, and the final AJD form. Links to the AJD form posted on district websites are visible until the expiration date of the AJD. Additional information regarding these AJDs can be obtained by contacting the district office that issued them.

[2] https://www.environment.fhwa.dot.gov/strmlng/Redbook_2015.pdf