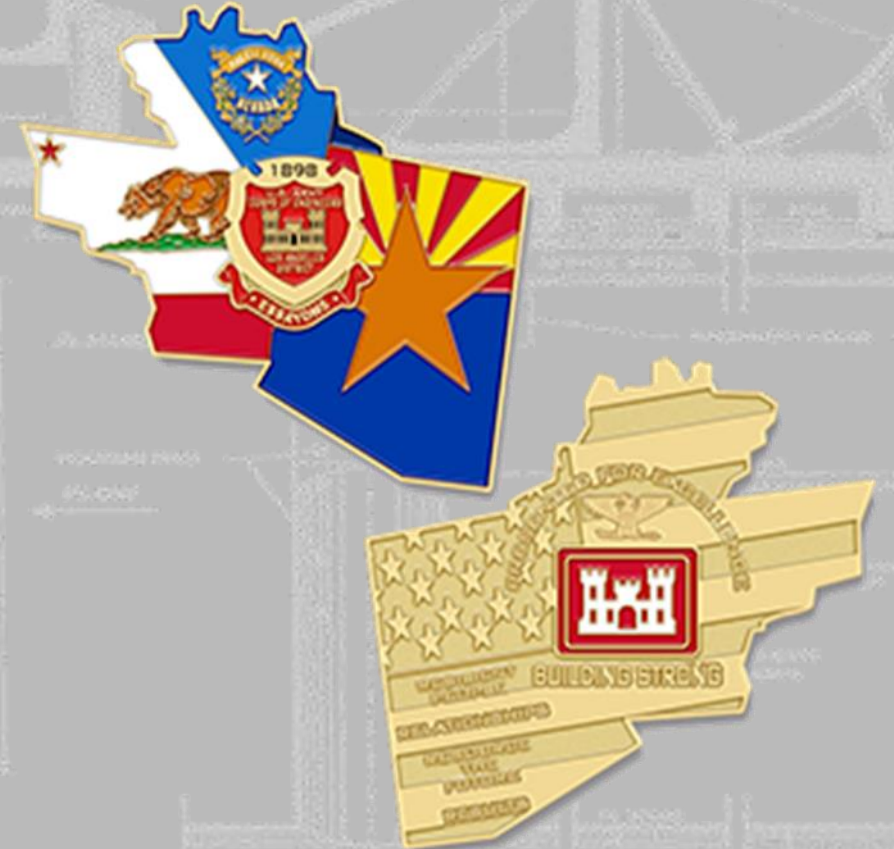


CLEAN WATER ACT SECTION 404 STATE ASSUMPTION PROCESS

ADMINISTRATION STREAMLINING INITIATIVES

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21 March 2019



US Army Corps
of Engineers®



REGULATORY FRAMEWORK



- CWA Section 404(g) – State or Tribal Assumption
- Only CWA Waters of the U.S. can be assumed
- Corps retains regulatory authority over Navigable Waters under Rivers and Harbors Act (Section 10 Permits)
- 404(g) implementing regulations at 40 C.F.R. § 233.14
- EPA pursuing rulemaking to update/clarify § 233.14
- Must be at least as protective as federal program
- No federal funding
- State program requires EPA approval
- State and Corps MOA



ARIZONA ASSUMPTION PROCESS



Arizona:

- DEC 2017 – Initiated Public Stakeholders Workshops
- MAR 2018 – Corps provided Program Cost and Permit Timeframes
- JUL 2018 – Technical Working Groups Formed (White Papers)
- FEB 2019 – Executive Working Group Formed (Review WPs)

Corps of Engineers Role:

- Strict neutrality on state's proposal
- Help ensure correct and factual information for State/Stakeholders



CORPS – STATE MOA TO...



- maintain cooperation and coordination and work in partnership to assure successful and effective implementation of the programs regulating the discharge of dredged or fill material into waters of the United States
- update and modify the MOA as needed
- afford joint coordination to ensure Corps is notified of activities in retained waters
- address disposition of existing & pending permits and permit mod requests
- administer existing mitigation banks and in-lieu fee programs
- review of state program permits for: R&H Act Sec 10; Sec. 14 (aka Sec. 408); unsatisfied EPA objections to state permits; etc...
- enforcement of unauthorized actions and compliance on issued permits
- communications and sharing of records



RECENTLY PUBLISHED STUDY



- Title: “*Evaluating environmental permitting process duration: the case of clean water act Section 404 permits*”
- Journal of Environmental Planning and Management
- 28 JAN 2019 NPR report opened with: “*Receiving a decision on a construction permit under section 404 of the Clean Water Act takes longer in Arizona than in any other Southwestern state, a new study found...*” and reported that permit decisions in Arizona take 67% longer



RECENTLY PUBLISHED STUDY



- Focused only on SIPs (< 5%); excluded NWP, RGP, LOP
- Grouped applications by project type, complexity and state
- Public Notices to determine coordination with agencies
- NPR report misrepresented the study results, claiming that permit decisions in Arizona take “about 67% longer”
- Study found Arizona permits 67% less likely to receive a permit decision as quickly as a project in CA (no statement about the overall difference in those processing times)



PERMITTING STATS IN ARIZONA



Permits Issued by Type

Permit Type	2014	2015	2016	2017	2018
NWP, RGP, LOP	530	193	384	241	347
SIP	8	11	5	6	6
% Permits = SIP	1%	5%	1%	2%	2%

Processing Time Metrics

Performance Metric	2014	2015	2016	2017	2018
80% GPs <60 days	96%	96%	88%	93%	98%
50% LOPs <120 days*	97%	100%	98%	92%	100%
50% of SIPs <120 days*	75%	36%	100%	50%	50%

* Did not exclude SIPs with ESA Consultations



ADMINISTRATION INITIATIVES



MAY 2018 Dir. Civil Works Policy Memo

- Designation of Lead District for Permitting Project Crossing Multiple Districts or States
- Regulatory and 408 permits
- Pipelines, highways, electrical transmission projects, etc
- Leverage and strengthen relationships with states
- Ensure consistent review processes and inter-district and inter-program consistency



ADMINISTRATION INITIATIVES



JUL 2018 ASA(CW) Memo RE: Section 404(g)

- State assumption of CWA Section 404 Program
- Historically only NJ and MI. FL and AZ pursuing.
- Encourages Corps districts to minimize “retained waters”
- EPA SEP18 letter to governors and tribes about 404(g)



ADMINISTRATION INITIATIVES



AUG 2017 E.O. 13807 (SEP2018 HQ Memos)

- One Federal Decision for Major Infrastructure Projects
- New Projects with single EIS/ROD w/in 2 years
- Updating National FAST-41 Infrastructure Dashboard
- Accountable to the OMB-led Federal Permitting Improvement Steering Council (FPISC)
- Significant engagement with the FPISC Office of Executive Director sharing and incorporating best practices across agencies.



ADMINISTRATION INITIATIVES



AUG 2018 Dir. Civil Works Policy Memo

- Eliminate duplicative reviews for modifications to authorized CW projects undertaken by non-federal interests
- Synchronize Regulatory and 408 business processes
- Regulatory as the Single Point of Contact for all permits
- New website, district SOP, linked and public databases, 408 EC, 8 internal webinars
- Very significant effort



ADMINISTRATION INITIATIVES



OCT 2018 Reporting of Pending Permits (>3yrs)

- Monthly bullet updates to HQ
- Quarterly factsheet updates to SPD for CW DMR
- HQ contemplating adding >1yr actions

DEC 2018 ASA(CW) Three Policy Directives to Corps

- Purpose: Nationwide Consistency and Adherence to Regulations
- Durations of Permits and JDs
- Timeframes for State 401 Certification
- Application of 404(b)(1) Guidelines to Speculative Projects



ADMINISTRATION INITIATIVES



DEC 2018 EPA Announced Rulemaking to Redefine Waters of the U.S.

- Recent litigation requires use of 2008 Rapanos Guidance in AZ and the 2015 Clean Water Rule in CA.
- Proposed Rule would significantly decrease federal jurisdiction over ephemeral waterways.
- Decreases extent of “adjacent wetlands”.



ADMINISTRATION INITIATIVES



FEB 2019 Corps Regulatory Guidance Letter

- Mitigation Bank Credit Releases and Equivalency in Mitigation Bank and In-Lieu Fee Program Service Areas
- More flexible for bankers allows more early credit releases
- Use same criteria for setting service areas (e.g. watershed, ecoregions, physiographic provinces)



ADMINISTRATION INITIATIVES



FEB 2019 Public Permit Tracking Website (IPs)

- <https://permits.ops.usace.army.mil/orm-public#>
- Shows processing status of pending Individual Permits
- Tabs for Finalized Permits, Emergency Permits, WRDA Funded Permits, Approved Jurisdictional Determinations, and Section 408 permits.



ADMINISTRATION INITIATIVES

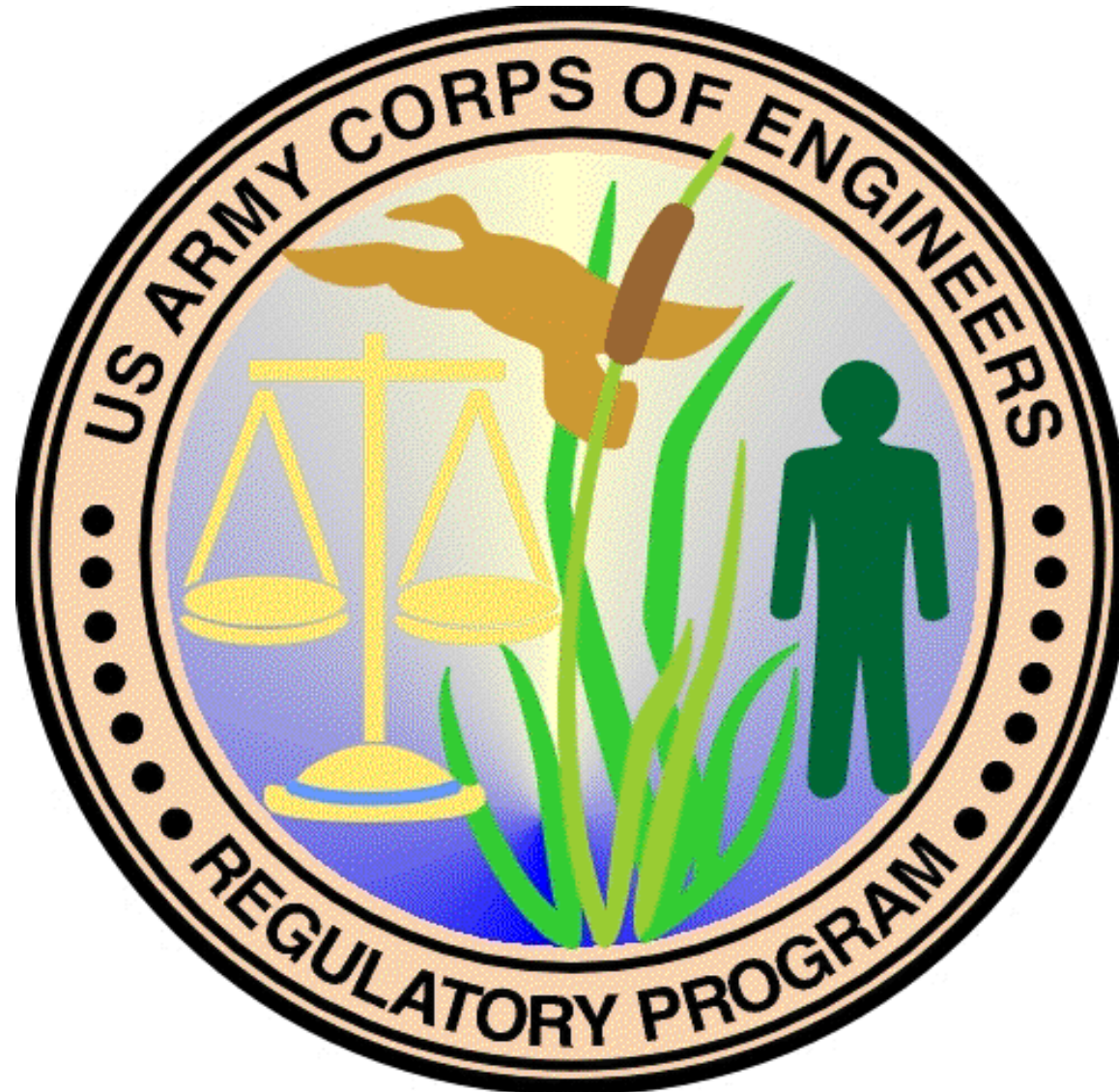


Dates TBD Other Planned Initiatives

- Revisions to the 2008 Mitigation Regulation (33 CFR 332)
- Revisions to the January 2017 Nationwide Permits in response to EOs 13777 and 13783
- Streamline NWP pre-construction notification requirements



QUESTIONS?



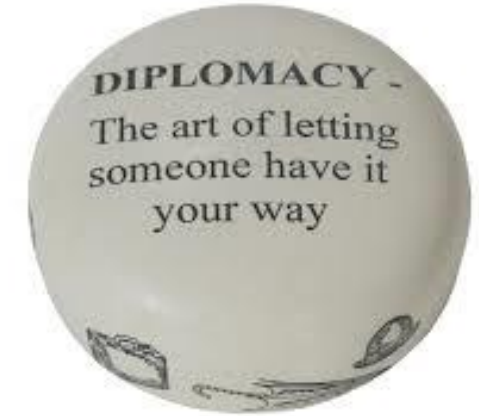
SKILL SETS FOR REGULATORS



Timeliness



Efficiency



Communication



Science



Laws, Regs, & Policies



Industries