

United States Army Corps of Engineers Regulatory Program

Small Hydropower Development in the United States

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US Army Corps of Engineers
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Corps' Regulatory Program Mission

To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.



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Regulatory Program Quick Facts

- Over \$220 billion of economic development is affected by 1,200+ Corps regulators
- ~73,000 written authorizations affecting waters of the U.S., including wetlands
 - ▶ 75% on private property
 - ▶ 25% on government, tribal, NGO lands
- Large-complex-controversial to small-simple-routine projects
- ~80,000 jurisdictional determinations
- About 2,500 enforcement cases
- About 60 appeals cases (permit denials, jurisdictional determinations)



Primary Governing Laws (Regulatory Program)

- Rivers and Harbors Act,
Section 10
[33 U.S.C. 403]
- Clean Water Act,
Section 404
[33 U.S.C. 1344]



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Authorities

- Section 10 of the Rivers and Harbors Act
 - ▶ All work in navigable waters including “dredging”
 - ▶ All construction in navigable waters “docks, marinas, etc”
 - ▶ Pipelines etc over and under navigable waters
 - ▶ **Generally, the FERC license for a hydropower project satisfies the Corps’ Section 10 requirement**
- Section 404 of the Clean Water Act
 - ▶ Discharge of dredged or fill material into “waters of the US”
 - ▶ “Waters” include streams, lakes, wetlands
 - ▶ **EPA has oversight and ability to elevate or “veto” specific permit decisions**



Permit Types and Decisions

- Individual Permits: Large projects, public notice (30 days), Environmental Assessment or EIS
- Letters of Permission: Streamlined IP, public notice to resource agencies
 - ▶ U.S. Fish and Wildlife Service (endangered species)
 - ▶ Environmental Protection Agency
 - ▶ National Marine Fisheries Service
 - ▶ State fish and game agencies
 - ▶ State water quality agencies



Permit Types and Decisions

- Nationwide permits (NWP): Specific activities, streamlined process, 30-45 day process, no public review, no EA, less than 0.5 acre impact, 5 year limitation
- Regional General Permits (RGP): Regionally specific permits issued by one or more districts for 5 years
 - ▶ streamlined process
 - ▶ can be geographic or activity specific
 - ▶ generally small impacts, i.e., less than 5 acres
- Connected Actions (e.g., one project with many stream and/or wetland crossings) must have one single permit



Permit Evaluation Criteria

- **Criteria**
 - ▶ Public Interest Review – all permit actions
 - ▶ Section 404(b)(1) Guidelines – all 404 actions
- **Decision-Making**
 - ▶ Corps determines compliance with criteria
 - ▶ Criteria applied on all GPs and IPs
 - ▶ Corps prepares NEPA documents for each GP and IP decision (environmental assessment (or EIS) and statement of findings)



Corps Regulatory and FERC

- Existing MOU with FERC on non-federal hydropower projects
- Under the Federal Power Act, FERC can issue Section 10 permit with conditions
- Regulatory may only be responsible for a small component of the overall project (i.e. the discharge of fill material into WOUS)



The Corps and FERC

- Corps *Engineering and Regulatory* should be involved early in FERC's NEPA process
- Minimize lengthy delays at the end of the process
- Reduces redundancy
- Informs decision-making
- Regulators do not have time to check the FR for NOIs so early coordination can help inform Regulatory when an action is forthcoming



“408” Approval

- Any modification to an authorized Corps project will require a “408” approval from the Chief of Engineers (33 U.S.C. 408)
- Approval authority has not been delegated to the division or district
- In-house, vertical team review
- Regulatory should not be the lead business line with respect to coordination and review under 33 U.S.C. 408
- Regulators lack engineering expertise to make this determination
- Regulatory lacks the resources to work on the 408 review
- **404 CWA review and 408 approval reviews should be concurrent and one may help inform the other**
- Ideally, the Corps 408 and 404 reviews should be concurrent with the FERC’s NEPA and licensing process



“408” Approval

- Corps continues to work to refine 408 approval process
- Strive to have applicants submit single application that would satisfy 408 and 404 needs
- Continue to work closely with FERC to reduce burden on project proponents and eliminate duplicative NEPA processes
- Understand that the information necessary to fulfill various statutory requirements is different



Questions?

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