



***US Army
Corps of Engineers
Vicksburg District***

**ALBL Briefing on 408 Permit Request to Alter
Projects within the Federal System
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Topics



Background – Why the revision to EC 1165-2-216,
Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408?

- Process Overview – How?
- Key Policy Highlights –
 - Consistent application across USACE and applies to all types of Civil Works projects.
 - No 408 authority to regulate outside of project ROW.



Background



33 USC 408 - Provides the Secretary of the Army authority to grant permission to alter a USACE civil works project if:

- *Does not impair usefulness of the project*
- *Not injurious to the public interest*



Purpose of EC Revision



1. Improve consistency in the way USACE considers, processes, and documents decisions for requests for alterations to Civil Works projects.
2. Create a process that is applicable to all types of Civil Works projects.
3. Be transparent on what information is required.
4. Create a process that can be tailored by districts to the appropriate scope, scale, and complexity of a proposed alteration.



What does this EC apply to?



- All USACE Civil Works projects
- Alterations within real estate interests of the federal project
- Actions that build upon, alter, improve, move, occupy, or otherwise could affect the federal project



What does this EC not apply to?



- Routine operations and maintenance activities
- Shoreline Management and Master Planning Programs
- Certain Real Estate Outgrants



Basic Layout of the EC



- The main EC applies to all Section 408 requests
- The appendices provide supplemental guidance -
 - a. Dams and Reservoirs (including Navigation Dams)
 - b. Non-Federal Hydropower Development
 - c. Levee, Floodwall or Flood Risk Management Channel Projects
 - d. Navigation Channels, Harbors, Locks, Jetties, Bridges, and Features
 - e. Accepting funds through Section 214
 - f. System Performance Analysis

Process Overview



Basic Steps



Step 1: Pre-Coordination

Step 2: Written Request

Step 3: Required Documentation (analysis/design, H&H, Environ. Compliance, RE, EO 11988 flood plain development, O&M impacts).

Step 4: District Agency Technical Review

Step 5: Summary of Findings

Step 6: Division Review, if required

Step 7: HQ Review, if required

Step 8: Notification

Step 9: Post-Permission Oversight



Team Members



1. Non-federal sponsor
2. Applicant, if not the non-federal sponsor
3. District Section 408 Coordinator
 - a. To ensure coordination across business lines
 - b. To provide requestors with one point of contact
4. Appropriate Regional Integration Team

Key Policy Highlights



Alterations Outside of Project ROW



- USACE legal has told us we do not have authority to regulate outside of the project right of way.
- Working with legal on language that may be used for outside of ROW, i.e., best management practices.



Sharing of Sensitive Information



- Information that could pose a security risk
- Coordination with the district operational security office
- Limit information to information necessary for the proposed alteration
- Requesters will have limitations on sharing sensitive information provided
- USACE will not release information provided to us by other agencies
- Information can be withheld



Non-federal Sponsor's Role



Because non-federal sponsors are cost-share partners and/or have O&M responsibilities –

- Section 408 requests must come from/have written concurrence of the non-federal sponsor (MVK - must come from NFS).
- If there are multiple sponsors, each sponsor must provide concurrence.
- Written acknowledgment and acceptance of any new O&M requirements associated with the proposed alteration.
- Reminder that 33 CFR 208.10 focuses on sponsors' responsibilities. Decision to issue a Section 408 permission is a USACE responsibility. Processes for both can work together, but one does not replace the other. (MVK – District will grant permission and LB will issue the permit)



Environmental Compliance



- EC states that a Section 408 decision is a federal action and NEPA and other environmental compliance is required.
- Scope of analysis limited to the federal project areas that would be directly or indirectly affected by proposed alteration.
- NEPA documentation – the requester’s proposal will be identified as the “requester’s preferred alternative.”
- Alternatives analysis is limited to 1) no action and 2) requester’s preferred alternative.



Environmental Compliance



- Categorical exclusions may apply
- Leverage existing NEPA documentation
- EAs will not be circulated without Division approval
- EISs do not have to come up to HQ before released for public review



Coordination with Regulatory



- When a Section 408 request also requires a Section 10/404/103 decision, close coordination is required
- Section 10/404/103 decisions are separate decisions and require separate decision documentation
- Leverage information between the two processes
- Note, “injurious to the public interest” for Section 408 is not the same as “contrary to the public interest” for Section 10/404/103
- Section 408 decision must be made before the Section 10/404/103 decision is issued



Review Requirements



- Section 408 review requirements are not covered in detail in Engineer Circular 1165-2-214 (review policy)
- Type I Independent External Peer Reviews (IEPRs) are not required
- Review requirements are determined by the district based on the scope and scale of the alteration.
- The requester is responsible to develop a review plan for Type II IEPRs (and quality control as determined by the district).
- The district is responsible to develop a review plan to cover the district's review of the Section 408 request.
- Cost of review by the district to be born by the requestor.



District Review Plans



- Cover district-led Agency Technical Review (ATR) of the Section 408 requests
- ATR will make three determinations –
 - Impair the usefulness of the federal project
 - Injurious to the public interest
 - Legal and policy compliance



Decision Level



- Delegation of authority: From ASACW to Chief of Engineers to Director, Civil Works
- The Division can create a regional process
- DCW has delegated certain Section 408 requests to the District Commanders
- The required documentation is based on the alteration and should be the same regardless of decision level



Division/HQ Review



- Questions in which the answer "yes" would require a Division/HQUSACE review and decision
 1. Type II IEPR?
 2. EIS?
 3. Change how authorized purpose is met?
 4. Impact study alternatives?
 5. Crediting being sought?
 6. Installation of hydropower facilities?
 7. Is ASACW approval needed under Section 204(f)?
- Only complete "Summary of Findings" should be submitted to Division then to HQ.
- The Division Commander has the ability to deny the request prior to reaching HQ.



Categorical Permission



New Concept

- Similar to a General Permit for the Regulatory Program.
- Cover alterations similar in nature with similar impacts.
- Provide public notice of the potential activities.
- Create a validation process.
- Generally, bulk of permits should fit into a categorical permission mold.



WRRDA 2014



1. Section 1006: Policy for accepting funds under Section 214 of WRDA 2000 will be updated
2. Section 1007:
 - a. Post *process* for public comment within one year
 - b. Establish specific timelines
 - c. Create a public database for tracking
3. Section 1008: Provision for expedited hydropower projects



Bottom Line



- Alteration requests within ROW are the focus of EC 1165-2-216.
- Activities outside of the ROW requires close coordination between COE and non-federal sponsor and may require elevation to HQ level/legal action.
- Corps will issue permission directly to the requestor where the Corps serves as the levee board.
- MVK working with legal office on issues regarding consideration of best management practices (Outside ROW).



Submit internal and external feedback on USACE Civil Works webpage at

<http://www.usace.army.mil/Missions/CivilWorks>