

for such determination. If the Regional Administrator has not removed his objection within 15 days, the district engineer will submit a report of his determination to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain the analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(d) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

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AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 51 FR 41236, Nov. 13, 1986, unless otherwise noted.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this part apply to any Department of the Army (DA) permit. Special procedures and additional information

are contained in 33 CFR parts 320 through 324, 327 and part 330. This part is arranged in the basic timing sequence used by the Corps of Engineers in processing applications for DA permits.

(b) *Pre-application consultation for major applications.* The district staff element having responsibility for administering, processing, and enforcing federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential applicants to contact the district engineer or the regulatory staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This early process should be brief but thorough so that the potential applicant may begin to assess the viability of some of the more obvious potential alternatives in the application. The district engineer will endeavor, at this stage, to provide the potential applicant with all helpful information necessary in pursuing the application, including factors which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a DA permit and which may involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential applicant indicates the intent to submit an application for work which may require the preparation of an environmental document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other

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actions, including the scoping process if appropriate, leading to a decision by the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each potential applicant or his consultants so as to assure that the potential applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for use in preparing an environmental assessment or an environmental impact statement (EIS) in accordance with 33 CFR part 230, Appendix B.

(c) *Application form.* Applicants for all individual DA permits must use the standard application form (ENG Form 4345, OMB Approval No. OMB 49-R0420). Local variations of the application form for purposes of facilitating coordination with federal, state and local agencies may be used. The appropriate form may be obtained from the district office having jurisdiction over the waters in which the activity is proposed to be located. Certain activities have been authorized by general permits and do not require submission of an application form but may require a separate notification.

(d) *Content of application.* (1) The application must include a complete description of the proposed activity including necessary drawings, sketches, or plans sufficient for public notice (detailed engineering plans and specifications are not required); the location, purpose and need for the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made. See § 325.3 for information required to be in public notices. District and division engineers are not authorized to develop additional information forms but may request specific information on a case-by-case basis. (See § 325.1(e)).

(2) All activities which the applicant plans to undertake which are reasonably related to the same project and

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for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. Certification under section 401 of the Clean Water Act is required for such discharges into waters of the United States.

(5) If the activity would include the construction of a filled area or pile or float-supported platform the project description must include the use of, and specific structures to be erected on, the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(7) For activities involving discharges of dredged or fill material into waters of the United States, the application must include a statement describing how impacts to waters of the

United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. (See § 332.4(b)(1) of this chapter.)

(8) *Signature on application.* The application must be signed by the person who desires to undertake the proposed activity (*i.e.*, the applicant) or by a duly authorized agent. When the applicant is represented by an agent, that information will be included in the space provided on the application or by a separate written statement. The signature of the applicant or the agent will be an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. An application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area and each owner submits a statement designating the same agent.

(9) If the activity would involve the construction or placement of an artificial reef, as defined in 33 CFR 322.2(g), in the navigable waters of the United States or in the waters overlying the outer continental shelf, the application must include provisions for siting, constructing, monitoring, and managing the artificial reef.

(10) *Complete application.* An application will be determined to be complete when sufficient information is received to issue a public notice (See 33 CFR 325.1(d) and 325.3(a).) The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

(e) *Additional information.* In addition to the information indicated in paragraph (d) of this section, the applicant will be required to furnish only such additional information as the district engineer deems essential to make a public interest determination including, where applicable, a determination

of compliance with the section 404(b)(1) guidelines or ocean dumping criteria. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Fees.* Fees are required for permits under section 404 of the Clean Water Act, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and sections 9 and 10 of the Rivers and Harbors Act of 1899. A fee of \$100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A \$10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to the basis for a fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws the application at any time prior to issuance of the permit or if the permit is denied. Collection of the fee will be deferred until the proposed activity has been determined to be not contrary to the public interest. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of federal, state or local governments will not be required to pay any fee in connection with permits.

[51 FR 41236, Nov. 13, 1986, as amended at 73 FR 19670, Apr. 10, 2008]

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned