

Contents of a Complete Application

Regulatory Program Workshop April 2015

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Topics

- Application Completeness items
 - ▶ Individual and Nationwide Permits
 - ▶ Regulations and references
 - ▶ Highlights
- Timing aspects of completeness reviews
- Tips
- Quiz!



What constitutes a Complete Application?

- Individual Permit

- ▶ 33 CFR 325.1 (c), (d) & (e) – *Applications for Permits*
- ▶ 33 CFR 325.3 – *Public Notice*

- Nationwide Permit

- ▶ General Condition 31. *Pre-Construction Notification*



IP - When is it Complete?

- An application is determined to be complete when **sufficient information** is received to issue a public notice
- The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application

325.1(d)(10)



Public Notice

- The notice must... include **sufficient information** to *give a clear understanding* of the nature and magnitude of the activity to generate meaningful comment

325.3(a)

- Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest

325.3(a)(13)



Specific Items

Completed application form (ENG 4345)

- ▶ Signed by applicant or by duly authorized agent
 - i. Agent authorization on form or separate written statement.

A large, stylized handwritten signature in black ink that reads "John Hancock". The signature is written in a cursive style with a large loop at the end.

325.1(c)
325.1(d)(8)



Contents of Application

1. a) Complete Description
- b) Drawings, sketches, or plans sufficient for public notice (Engineering plans and specs are not required)
- c) Location
- d) Purpose & Need
- e) Scheduling of Activity
- f) Names & addresses of adjoining property owners
- g) List of authorization required/received/denied (federal, state, local)



325.1(d)(1)



Contents of Application

2. Reasonable related activities

- a) All activities which the applicant plans to undertake which are *reasonably related* to the same project and for which a DA permit would be required should be *included in the same permit application*.

325.1(d)(2)



Contents of Application

3. For **Dredging** in Navigable Waters
- a) A description of the type, composition and quantity of the material to be dredged;
 - b) The method of dredging; and
 - c) The site and plans for disposal of the dredged material.

325.1(d)(3)



Contents of Application

4. **Discharge** of dredged or fill material
- a) The source of the material;
 - b) The purpose of the discharge;
 - c) A description of the type, composition and quantity of the material;
 - d) The method of transportation and disposal;
and
 - e) The location of the disposal site. 325.1(d)(4)



Contents of Application

5. If activity involves construction of a filled area or pile or float-supported platform
- a) The use of; and
 - b) Specific structures to be erected on the fill or platform

325.1(d)(5)



Contents of Application

6. Construction of an **impoundment structure**
- a) Demonstrate that the structure complies with established state dam safety criteria;
 - b) Designed by qualified persons; or
 - c) Independently reviewed by similarly qualified persons.

325.1(d)(6)



Contents of Application

7. Mitigation Statement

- a) How impacts to waters of the US are to be avoided and minimized; and
- b) How impacts to waters of the US are to be compensated for; or
- c) Why compensatory mitigation **should not be required** for the proposed impacts.

325.1(d)(7)



Federal Mitigation Rule

33 CFR Part 332 (April 2008)

- Does not alter existing Regulations including Section 404(b)(1) Guidelines
- Guidance in 325.1(d)(7) stands in terms of needing to provide a mitigation statement.



Items Not Required

****But still needed to evaluate an application****

1. Info to support Sec. 7 ESA
2. Info to support Sec. 106 NHPA
3. Delineation report
4. Information on alternative methods and sites to support 404(b)(1) analysis
5. Draft compensatory mitigation plan



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Timing Aspects: IPs

- 15 days – review period upon receipt of a new application.
- Requests for information to support application completeness should be made within 15 days.
- Generally, 30 days provided to respond to request.
- If info not received - can withdraw after 30 days or other **reasonable period** thereafter.
- **The permit's evaluation clock starts at the time when a complete application is received.**



IP - Summary

- An application is determined to be complete when **sufficient information** is received to issue a public notice
- 15 days for Corps to review and publish PN if application is complete
- Ample processing information needs are **NOT** required for a complete application, but are often sensible to include in the package to avoid the “30-day” info needs.



Topics

- **Application Completeness items**
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NWP - Pre-Construction Notification

Contents of PCN – General Condition 31(b)

Made in Writing

1. **Name**, address, and telephone numbers of prospective permittee
2. **Location** of the proposed project



Contents of PCN

3. **Project Description** — **sufficient detail** to determine minimal adverse effects and need for compensatory mitigation
- a) Project purpose;
 - b) Direct and indirect impacts;
 - c) Amount of loss of waters of the US in acres or linear feet;
 - d) Other NWP authorizations or IP for any part of project or related activity;
 - e) Sketches (e.g. conceptual plan) - illustrative description of the proposed activity



Contents of PCN

4. Delineation of Waters

- a) Wetlands and other waters
- b) Prepared in accordance with “current method...”
- c) May request Corps to complete the delineation, however there “may be a delay...”



Contents of PCN

5. Mitigation Statement

- a) If loss of greater than 1/10-acre:
 - b) How impacts to waters of the US are to be compensated for; or
 - c) Why adverse effects are minimal and why compensatory mitigation should not be required for the proposed impacts.
- *Stay tuned for SPK's Regional Conditions to the 2012 NWP's for more insight on mitigation info needs.*



Contents of PCN

6. Federally-listed species or Critical Habitat

- a) Non-federal applicants: names of listed species
- b) Federal applicants must provide documentation demonstrating compliance with Sec 7 of ESA

7. Historic Properties

- a) Identify the historic property
 - i. Vicinity map
- b) Federal applicants must provide documentation demonstrating compliance with Sec 106 of NHPA



Onto Regional Conditions...



Regional Conditions

1. Either SPD PCN Form or ENG 4345**

- a) A **written statement** describing how the activity has been designed to **avoid and minimize** adverse effects, both **temporary and permanent**, to waters of the United States.

*Note: more specific than NWP GG 31(b)(5):
avoidance, minimization, temporary impacts*

**** With an attachment providing information on compliance with all of the General and Regional Conditions.**



Regional Conditions - #1 (con't)

1. Either SPD PCN Form or ENG 4345

b) Plan view and cross-section view

- i. Location, size, and dimension of activity
- ii. Location of delineated waters
- iii. Amount (cubic yards) and area (acres) of fill
- iv. Ordinary high water mark/high tide line

c) Pre-project color photographs



Regional Conditions

5. Description of the proposed temporary fill

- a) Type and amount of material;
- b) The area proposed to be impacted; and
- c) Proposed plan for restoration of temporary fill including re-vegetation plan;
- d) Reason why avoidance of temporary impacts is not practicable



Regional Conditions

23. Requests to **waive the 300 linear foot limitation**

- a) A narrative description of the stream - Volume and duration of flow; Length, width, and depth; A description of the adjacent vegetation community; A statement regarding the wetland status of the adjacent areas; Surrounding land use; Water quality; Cumulative impacts in the watershed; any other relevant information
- b) Analysis of impacts as described in #1
- c) Measures to avoid and minimize losses to waters of the US
- d) A compensatory mitigation plan



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Timing Aspects: NWPs

- 30 days – review period to determine completeness of new application.
- Once NWP considered complete, the 45-day clock starts.
 - ▶ E.g., if delineation submitted as last completeness item, 45-day clock starts then.
 - ▶ If Corps asked to do delineation, 45-day clock starts when we have completed delineation.
- NWP can't be verified before compliance is confirmed with ESA and NHPA

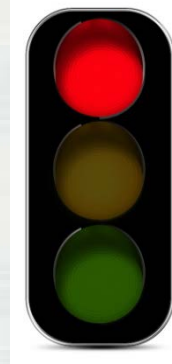


LOP – Completeness Items

- Minor Impact Letter of Permission (LOP)
- A type of **Individual Permit** issued by SPK
- Include all the information for an IP, except for names/addresses of adjoining landowners (agency notification only for LOPs)
- See list in LOP (Part B, #1-15) for specific submittal items.
 - ▶ Delineation required
 - ▶ Compensatory mitigation plan



Incomplete



IP – Applicant notified, Corps requests additional information within 15 days of receipt of the application.

NWP – Prospective permittee notified, Corps requests additional information within 30 days of receipt of the PCN.

- a) Specify the information needed to make the PCN Complete
- b) “General Rule” request additional information only once



Complete



IP – Issue Public Notice within 15 days of receipt of the complete application.

NWP – Verify use of NWP within 45 days of receipt of the complete PCN.

- ***Must complete compliance with Sec 7 of ESA and Sec 106 of NHPA***



Tips

- To support timely processing:
 - ▶ Do your best to submit a complete application
 - ▶ Include other necessary processing items (e.g., Sec. 7 ESA and Sec. 106 NHPA supporting materials)
- Use a template – ours, yours
 - ▶ Effectively required by IP, LOP and NWP's Regional Condition requirements.
- When in doubt, refer to the regs or call us



Quiz: True or False

- IP: A verified wetland delineation needs to be submitted.
- NWP: A delineation was submitted; Corps does not agree with findings. Is PCN complete?
- 401 WQC: Is a copy of application required to be submitted for completeness?
- ESA & NHPA: A biological assessment and cultural resources report needs to be submitted.



Thank You

