

Supplementary Information: Telephone/Letter Follow-up
USACE Regulatory Program
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Every application or request for Department of the Army authorization pursuant to the Corps Regulatory Program authorities is unique. Therefore, follow-up information requests subsequent to the receipt of an application or request for Nationwide permit verification are individually tailored to a specific proposal, based on the facts that an applicant provided. In other words, there are no “scripts” of identical questions that Corps Regulatory project managers use when telephoning applicants to obtain follow-up information to inform a permit evaluation.

A comprehensive list of every question that could be asked or has been asked is not possible to provide; however, we have compiled into a general format the most commonly asked follow-up questions related to the Standard Permit application form (ENG 4345). Many questions relate to the completeness or correctness of the information provided on the application because an application sometimes does not fully describe the project or it is unclear whether an applicant may have omitted information. We envision similar questions may need to be asked when the Pre-construction notification (PCN) form is approved and provided to applicants and consultants. In addition, we have provided categories that these information requests commonly fall in, as the application is received, reviewed, and evaluated to ensure compliance will all required laws, regulations, policy, and guidance.

One important note: fewer than 25% of submitted applications require follow-up calls from a Corps project manager to obtain enough information to make them complete for processing.

Common questions related to information contained on the ENG 4345 and proposed PCN form ENG 6082

Clarify the name, location, and description of the project or activity (blocks 12 – 22):

- Clarify the location of project because the initial information provided by applicants is sometimes incorrectly sited or is incomplete.
- Questions are asked to ensure the correct location is provided and to determine the relationship of where the project or activity is proposed relative to waters of the United States, including wetlands.
- Description of project can be incomplete – are all proposed activities listed and shown on the enclosed plans?

Dredged or Fill Material Questions (blocks 20 – 22):

- Have all impacts been quantified and adequately described?

Questions related to block 23 – Is it possible to adjust the project to avoid or minimize impacts to wetlands? Are you proposing to do any compensatory mitigation to offset the impacts to waters and wetlands? If so, what is it?

Questions related to block 24 – Is any of the work already completed? Is this new work, work either not subject to, or exempt from Corps authorization, or work performed without authorization from the Corps?

Questions related to block 25 – Provide the information regarding all adjoining property owners.

Questions related to block 26 – Provide more information concerning other agency approvals or denials because the information provided on the form is incomplete or inaccurate.

Questions related to block 27 – Would you please sign the application form and return it?

Information requested on the PCN form. Although not in use yet, questions asked may be similar to those on the ENG 4345. For blocks 18 – 20 information requested about the nationwide permit (NWP) proposed to be used, description of activities (is it complete and correct?), description of mitigation (is it complete and correct?), Block 21 – purpose (is it described fully?), quantification of impacts to wetland and waters (are all impacts included and correctly calculated?, is the proposed compensatory mitigation adequately described? (block 24), Blocks 26 – 29 relate to information need to comply with other federal laws: section 7 of the Endangered Species Act, section 106 of the National Historic Preservation Act, the Wild and Scenic Rivers, and section 14 of the Rivers and Harbors Act of 1899 (obtaining a 408 permission to occupy or alter a federal water resources project). Is the PCN form signed (block 33)?

Categories of follow-up requests. Information is also needed to determine which section of the Corps regulations apply to the proposed activity and which of the five types of permits (Standard Permit, Letters of Permission, Nationwide Permit, Regional General Permits or Programmatic General Permit) will be used. These questions can be grouped in the following categories:

1- Requesting clarifying information or information omitted from the application form.

Clarifying information may be needed from applicants if the information provided on any application form submitted to the Corps is incomplete or appears to be inaccurate. This request for additional information varies depending on whether project-specific circumstances require more information on the project. It is also related to the complexities of the Regulatory Program (e.g., the requirements for a subset of regulated activities to comply with other applicable statutes such as the Endangered Species Act, National Historic Preservation Act, and Magnuson-Stevens Act), and the individual nature of each applicant's specific project and the characteristics of the site on which the proposed project is located. Clarification may also be needed by the Corps because the responses provided are based on an applicant's interpretation of the information requested and may not fully inform the Corps evaluation. Information may

be incorrect or omitted from the application form and clarifying information is sometimes needed to fully evaluate the project proposal and comply with applicable laws and regulations. Examples of incomplete application information includes inadequate project descriptions, incomplete or inaccurate characterization of proposed impacts and mitigation measures, and incomplete or inaccurate project plans. This additional information request may take the form of a letter or phone call.

Sample questions may be:

- Your application references a multiple houses in a housing development but the plans only show two houses. Can you clarify?
- We are missing information on your application form needed to review your project and what work you propose to do. Can you provide more specifics on the following missing items? [*List the items that are missing from the application, the most common if which are described in the next paragraph.*]

The most common items missing from a submitted permit application are:

- clearly delineated waters/resources,
- appropriately quantified proposed impacts,
- a complete project description,
- clear plans,
- adjacent property owner information, and
- an inadequate or missing avoidance and minimization statement (i.e., items that are required for the Corps to issue its public notice).

How often this happens is difficult to quantify, although some insight can be provided by looking at additional information requests entered in our permit tracking database vs. the total number of applications evaluated in a given fiscal year. In FY2016, an additional information request subaction was entered into the database for approximately 20% of the submitted permit applications. In other words, for the applications received that year, Corps districts had to ask for additional information for approximately 20% of those applications to make them complete to begin the evaluation process. This total accounts for requests for additional information required to make the application complete as well as providing information to satisfy additional regulatory requirements.

Additionally, questions related to delineations of waters and wetlands submitted with the permit application are also asked. Commonly asked questions include:

- Many aquatic resources are evident (aerial imagery or site visit) that do not appear on your plans, can you either revise your plans or explain why those aquatic resources are not shown on your plans?

- It is unclear from the plans submitted that only 0.1 acre of wetlands will be impacted while Block 22 of your application/PCN form states that the proposed fill is greater than 0.1 acre. Can you please clarify?
- Can the proposed structure/fill be relocated to avoid or minimize impacts to wetlands/streams?

Other questions asked to make the permit application complete include:

- No adjacent property owners are listed on your application. Can you please provide their names and addresses?
- Your project description is vague. It states that you intend to “build a house.” Are there other activities associated with this project that include the discharge of fill material? For example, will you also be building a driveway in wetlands or through a stream? Will you be building fill pads in wetlands for a shed or other structures?

2 - Information needed for a specific permit type (e.g., a nationwide permit has information on what is required by general condition 32 of that regulation/permit, while a regional or programmatic general permits may also have unique information needs).

Districts also need to obtain regionally specific information and may ask an applicant for additional information necessary to evaluate the application and make a permit decision. The type of information requested can also vary based on the type and extent of the proposed activities, the characteristics of the site where the proposed activity will be conducted, and the effects of the proposed activity on the aquatic environment and other resources (e.g., endangered or threatened species, historic properties, tribal trust resources). For example, individual permit applications are more often incomplete than applications requesting general permit authorization because general permits authorize specific categories of activities and project proponents usually design their projects to qualify for authorization under specific general permits. In addition, the activities authorized by general permits have impacts that are much smaller than those authorized by individual permits. Reasons for applications for general permit authorization being incomplete are usually unclear project descriptions, lack of sufficient plans, and unsigned applications. In addition, our nationwide permits can have regional conditions developed during the nationwide permit reissuance process which may add regionally specific requirements based on the types and location of the aquatic resources and other types of resources in the region.

Examples of specific questions could include –

- Please explain how the proposed activity complies with Regional Condition C for NWP 3, which authorizes maintenance activities. Regional condition C requires that NWP 3 activities involving in-stream work be conducted outside of the sturgeon spawning season, which runs from May 1 to June 30.

- Paragraph (b)(8) of NWP general condition 32 requires federal permittees to include documentation of compliance with section 106 of the National Historic Preservation Act in their pre-construction notification. Please provide a copy of your documentation, or an explanation of why the proposed activity has no potential to cause effects to historic properties.
- Our records indicate that the proposed activity will interfere with the federal navigation channel in Mill Creek. Nationwide permit general condition 31 states that an NWP cannot authorize an activity that occupies or interferes with a federal water resources project unless the proponent also obtains a 408 permission. Please inform us whether you have applied for a 408 permission for the proposed activity.
- We have reviewed your NWP pre-construction notification and have made a preliminary determination that the proposed activity will result in more than minimal adverse environmental effects. You have the option of submitting a mitigation plan to reduce the adverse environmental effects so that they are no more than minimal. For additional information on the mitigation requirements of the NWPs, please see general condition 23. You can also contact the Corps project manager assigned to review your pre-construction notification to discuss mitigation options. If you choose not to submit a mitigation plan, please let us know as soon as possible so that we can begin processing an individual permit application for your proposed project.

3 Information needed during the permit evaluation process

During the permit evaluation process, the need to comply with other environmental laws and regulations may require additional information requests from project applicants. This is done on a case by case basis and most often done during permit evaluations for projects where the activities may affect an endangered or threatened species or their critical habitat (section 7 of the Endangered Species Act), whether the activity being evaluated may impact historic properties (section 106 of the National Historic Preservation Act), is located in essential fish habitat (the Essential Fish Habitat provisions of the Magnuson-Stevens Act), or requires tribal consultations (the Corps' tribal trust responsibilities). These additional environmental compliance requirements occur for approximately 20% of the submitted permit applications.

Districts may provide an applicant-specific check list to assist an applicant in organizing his/her thoughts when preparing information in response to a request for information of this type (the check list is not for submission back to the Corps). A cultural resources assessment survey may also be needed for historic properties consultations.

Examples of specific questions include:

- Have you contacted the U.S. Fish and Wildlife Service to determine if there are any threatened and endangered species on this property or in the vicinity that might be affected by the proposed work?

- Please describe your efforts to identify historic properties in the vicinity of the proposed project, including any correspondence or other communications you may have had with the State Historic Preservation Officer or a designated tribal representative.
- Was an archeology survey done for cultural resources shown on your plans?
- We have determined that your proposed activity may affect the following listed species: *[insert the names of the Endangered Species Act listed species]*. We need additional information for the biological assessment needed to initiate ESA section 7 consultation with the U.S. Fish and Wildlife Service, including a description of how the proposed activity will affect those listed species and any conservation measures you plan on implementing to minimize take of those species.
- For your individual permit application for your proposed fill into jurisdictional wetlands, we need information on practicable alternatives to determine whether the proposed project complies with the 404(b)(1) guidelines. Have you considered any alternatives to the proposal submitted in your application, including off-site alternatives that may have less adverse effects on the aquatic environment?
- The project purpose described in Block 19 of ENG 4345 is not detailed enough for the Corps to evaluate the overall project purpose. Please provide a fuller description of the project purpose.
- We need the following additional information to prepare the environmental assessment for your individual permit to comply with the requirements of the National Environmental Policy Act: *[list that additional information]*

Regional conditions may also be added during development of nationwide permits by Corps division offices to account for regional variations in jurisdictional waters and wetlands, ensure compliance with other applicable laws and policies (e.g., the Corps' tribal trust responsibilities, the Endangered Species Act), and to ensure the nationwide permits only authorize those activities that have no more than minimal adverse environmental effects. For regional and programmatic general permits, general conditions may also be added during the development of those permits that require applicants to submit information to demonstrate compliance with those general conditions. Conditions for general permits further streamline the evaluation process and clearly articulate any additional information requirements.

State and local regulatory programs may also have additional information needs specific to their programs and authorities that are not required for Corps authorizations, but are submitted as part of a joint application to satisfy both the Corps' and the state's requirements to streamline the authorization process and reduce duplication among the Corps and state permit programs. In many states, this helps establish a "one-stop shopping" process for regulated entities. This information request is often presented to applicants as a joint federal and state application form to assist the reviews of multiple regulatory reviews and to ensure the applicant only needs to provide one completed form to the Corps and the state. These joint forms are produced by state or local agencies and the Corps affirms that the information it needs to inform its reviews,

which is normally captured on ENG 4345 and will be captured on the new PCN form, is reflected in the state and/or local “joint form.” Therefore, these joint forms are included in this ICR as means by which the Corps receives information from the public. By focusing on the information required and through outreach programs, applicants can be assured they are providing the amount of information required for the Corps and the state to initiate their reviews without duplicative procedures.

Corps district offices are committed to robust public outreach to ensure applicants are aware of the information requirements for their specific area. Additionally, Corps regulations stipulate the availability of a pre-application process in which applicants may learn the regulatory requirements for unique project proposals in order to ensure the most efficient and effective regulatory processing. Having a single form, or a single form with a series of supplemental forms to cover every scenario that may arise during the permit evaluation process is not a viable option for a regulatory process that processes approximately 80,000 unique actions per year and tailors each review to the specific circumstances for each proposed activity.

Requiring all permit applicants to provide the all the information that might potentially be needed in any circumstance would confuse the general public if certain information did not apply to their situation. In addition, it would require many permit applicants to expend time and money to provide information that is not relevant to the Corps’ evaluation process. Focusing the application process on requesting the basic information that is needed for all permit applications and shifting the burden to the Government to then evaluate that information and follow-up only when necessary to address activity-specific circumstances has helped the Corps streamline information requirements and provide efficient public service.