

SUPPORTING STATEMENT – PART A

Application for Department of the Army (DA) Permit and Nationwide Permit Pre-Construction Notification (PCN) Forms – 0710-0003

1. Need for the Information Collection

The Corps of Engineers (Corps) is required by three Federal laws to regulate certain construction-related projects in United States (U.S.) waters. This is accomplished through the review of applications for, and issuance of, permits to conduct this work. If this information collection is approved, the Corps will make available two forms related to collections of information under these authorities. First, Engineer form 4345 would collect information necessary to evaluate applicants' requests for a Corps permit for: (1) a dredging or construction-related activity that would affect navigable waters of the U.S., under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403); (2) the discharge of dredged or fill material into waters of the U.S. as defined by regulations issued by the Department of the Army and the Environmental Protection Agency (EPA) (33 U.S.C. 1344); and (3) the transportation of dredged or fill material for the purpose of ocean disposal, under section 103 of the Marine Protection, Research and Sanctuaries Act ("Ocean Dumping Act") (33 U.S.C. 1413). The ENG form 4345 is intended to be used for Individual Permits, as described below (see Categories of Permits, paragraph 2). However, the Corps will accept the information provided on this form to support an application for whichever DA Permit type it determines is required for a proposed activity.

Second, Engineer form 6082 would collect information necessary to evaluate, specifically: applications for authorization by nationwide permit (NWP) when the terms and conditions of the NWP require the applicant to submit a pre-construction notification; and, requests for confirmation from the Corps that an activity is authorized by an NWP. The Corps must collect certain information from all applicants for these types of requests, so the Corps developed ENG 6082 to expedite the application process. If ENG 6082 is approved, it would be used in lieu of ENG 4345 for these types of requests. The proper usage of each form will be noted in the instructions for the forms and when NWPs are periodically reissued by publication in the Federal Register. If an applicant submits the incorrect form, the Corps will not require the applicant to fill out another form but will contact the applicant to request the additional information needed for the evaluation process.

The Corps implementing Regulations for these three laws are codified at 33 CFR parts 320 - 332. The regulations at 33 CFR part 330 are specific to the Nationwide Permit program. NWPs are issued under section 404(e) of the Clean Water Act, which provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. The Secretary's authority to issue permits has been delegated to the Chief of Engineers and his or her designated representatives. NWPs are a type of general permit issued by the Chief of Engineers and are designed to regulate with little, if any, delay or paperwork certain activities in jurisdictional waters and wetlands that have no more than minimal adverse environmental impacts (see 33 CFR 330.1(b)). Activities authorized by NWPs and other general permits must be similar in nature, cause only minimal adverse environmental

effects when performed separately, and will have only minimal cumulative adverse effect on the environment (see 33 U.S.C. section 1344(e)(1)). Some NWP, based on the terms of an NWP or the general conditions that apply to all NWP, require the submission of a Pre-Construction Notification (PCN) before any work can begin. PCNs may also be voluntarily submitted in cases where pre-construction notification is not required but the project proponent wants confirmation that the activity is authorized by an NWP. The Corps' Regulatory Program reviews these voluntarily submitted PCNs and renders a decision on whether an NWP authorization is granted. A favorable decision is provided in the form of a DA permit.

2. Use of the Information

Categories of Permits

The Corps Regulatory Program authorizes proposed activities by using two categories of permits. One category is Individual permits (IPs). This category includes Standard permits (SPs), the issuance of which may require public notice that seeks comments from the public and from Federal, State, and local agencies. The Individual permit category also includes Letters of Permission (LOP), a type of permit issued through an abbreviated processing procedure and which includes coordination with Federal and State fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act; an LOP also involves a public interest evaluation. However, an individual public notice is not published with an LOP.

General permits (GPs) are the second category of permits. GPs authorize categories of activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, both individually and on a cumulative basis. These permit types are issued every five years. Each authorized activity is then verified to determine if it meets the terms and conditions of the issued GP. There are three types of GPs: Nationwide permits (NWP) issued on a national basis used to streamline authorization of regulated activities; Regional General permits (RGPs) issued by individual Corps districts to authorize regulated activities in a specific geographic area; and Programmatic General permits (PGPs) issued to reduce duplication with other Federal, State, or local regulatory programs.

Project proponents applying for Department of the Army authorization via standard permits, letters of permission, regional general permits, and programmatic general permits may use ENG Form 4345. Project proponents applying for Department of the Army authorization via the NWP program and making a pre-construction notification, should use ENG Form 6082. Applicants seeking confirmation that an activity is authorized by an NWP may also use ENG Form 6082, even when pre-construction notification is not required. Although the Corps accepts information from applicants not using these forms, to expedite processing and ensure the application contains the required information, the Corps strongly encourages use of the appropriate form.

Forms/Instruments for Permit Requests

ENG Form 4345 (Application for Department of the Army Permit). ENG Form 4345 is used by project proponents to apply for standard individual permits, letters of permission, regional

general permit verifications, and programmatic general permit verifications. Those permit applications are evaluated under the Corps' three permitting statutes: Sections 9 and 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. ENG Form 4345 is based on the Corps' regulations concerning the content of a permit application, which are at 33 CFR 325.1(d). The information required for ENG form 4345 is the basic information necessary for the Corps to begin its evaluation of the proposed activity. This form can be accessed at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>. The form will collect information on the proposed project or activity such as the applicant's name; the proposed location description; project purpose; dimensions of proposed structures or quantities of proposed fill; and, a list of adjacent property owners and other agency certifications obtained.

ENG Form 6082 (Nationwide Permit Pre-Construction Notification). ENG Form 6082 is a new application form to collect certain information needed specifically for: applications for authorization by nationwide permit (NWP) when the terms and conditions of the NWP require the applicant to submit a pre-construction notification; and, requests for confirmation from the Corps that an activity is authorized by an NWP. Because approximately 50 to 60% of all permits issued/verified by the Corps on an annual basis are NWPs and not all of the information needed for NWPs is collected on ENG Form 4345, it benefits the Corps and the regulated public to develop an application form that collects the specific information needed to apply for certain NWP authorizations. Some NWP conditions are common to more than one NWP while other conditions are unique to a particular NWP. Therefore, ENG 6082 collects general information about the proposed project or activity and also information on how the particular request meets certain terms and conditions of the applicable NWP. Examples of information collected on the form include: contact information for the applicant; the name, location, and description of the project or activity; the particular NWP being applied for; mitigation measures (general condition 23); a delineation of special aquatic sites; the location of any endangered species or historic properties (general condition 18 and 20); whether a section 408 review is believed to be required (proposed alteration or modification to a federal project – general condition 31); and, a section for the applicant to provide information specific to the NWP being applied, for as outlined in the general conditions for that NWP.

An applicant must complete and submit ENG Form 6082 when the terms or conditions of the NWP that the applicant wishes to use require pre-construction notification to the Corps before proceeding with the proposed activity. An applicant may also voluntarily submit ENG Form 6082 when pre-construction notification is not required but the applicant wants confirmation that an activity is authorized by an NWP, in which case the Corps will use the information provided on the form to verify whether an NWP applies to the activity. ENG Form 6082 contains the minimum number of fields needed for the Corps to evaluate whether the applicant's proposal meets the terms and conditions of the NWPs established by Corps Headquarters through the rulemaking process. If the proposed activity does not qualify for an NWP, the Corps may, to minimize the burden on the applicant, use the information provided on the completed form to evaluate what form of authorization is required for the proposed activity (for example, a standard permit, letter of permission, regional general permit, or programmatic general permit). In such a case, the Corps would then request any additional information not

already provided on the ENG Form 6082, such as information regarding adjacent property owners. The Corps also may request any required certifications needed to evaluate whether to grant the type of permit required. The Corps does not expect to make such additional requests very frequently, but when it does the Corps will work with the applicant to explain the regulatory process and to ensure they understand what information is needed and why. Whether or not a PCN is required can vary by Corps district depending on regional conditions that may be added during consultation with resource and other agencies when the NWP's are developed on a national level every five years. Finally, there is summary information on PCNs posted on the Corps Headquarters website. Information on any location-specific requirements is available on the Corps website for the district responsible over the geographic area in which the activity will occur. There is also an extensive outreach process to ensure applicants are aware of any requirements unique to a Corps district, through the use of special public notices and use of social media, and webpage updates.

Joint & State Forms. Applicants in some cases may use a joint federal and state form to apply for permits in certain Corps districts, generally where the state has a regulatory program similar to the Corps' program. In those states, applicants fill out one form to provide information needed by both programs. Such forms are used by 23 Corps districts currently. State and local regulatory programs may also have additional information needs specific to their programs and authorities that are not required for Corps authorizations. Where applicable, the information collection is presented to applicants as a joint Federal and state application form. Collecting the information on a single, joint form allows both the Corps and the state to collect the information necessary for each to render a decision, while reducing redundancy for the applicant. The Corps collects the same types of information on these joint application forms, and uses it for the same purposes, as it does with ENG form 4345 or, in the case of voluntary submissions to verify that an activity is covered by an NWP, the proposed ENG form 6082.

Follow-up Information/Clarifying Information

The Corps may request clarifying information from applicants if the information provided on any application form is incomplete, appears to be incorrect or otherwise needs clarification. In these cases, the Corps will request the information needed to fully evaluate the project proposal. This additional information request may take the form of a letter or phone call. Examples of incomplete application information includes, for example, missing or inadequate project/impact descriptions and insufficiently detailed information on plans. The most common deficiencies relate to items required for a public notice, such as, unclear delineation of waters/resources, unclear impacts and project description, insufficient plans, missing adjacent property owner information, and failure to include an avoidance & minimization statement. How often this happens is difficult to quantify, although some insight can be provided by comparing the additional information requests entered in the Corps' permit tracking database with the total number of applications evaluated in a given fiscal year. In FY2016, an additional information request subaction was entered about 20% of the time. In other words, for the applications received that year, Corps districts had to ask for additional information for 20% of those applications to make them complete to begin the evaluation process. This total accounts for requests for additional information based on the reasons described above.

Corps districts may also need to obtain regionally specific information and may ask an applicant for that additional information. The type of information requested varies 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. For example, our IP requests are more often incomplete than the GP verification requests because the activities authorized by general permits often result in smaller impacts than those authorized by individual permits. Reasons for GPs being incomplete are usually unclear project descriptions, lack of sufficient plans and unsigned applications. In addition, our GPs can have regional conditions developed during the GP renewal process which may add regionally specific requirements based on the types and locations of the aquatic resources in the area.

During the permit evaluation process, the Corps may request additional information from project applicants in order to comply with environmental laws and regulations. This is done on a case by case basis when, for example, the proposed activity may affect a listed endangered or threatened species or its critical habitat, historic properties, or essential fish habitat, or when tribal consultations are required. These additional environmental compliance requirements also occur about 20% of the time and may be closely correlated to the number of additional application requests entered. The type of additional information needed for these reviews can include the names of listed species for non-Federal applicants, how compliance with Section 7 of the Endangered Species Act (ESA) was completed for federal applicants, identification of any historic properties (vicinity map), how federal applicants comply with Section 106 of the National Historic Preservation Act, and information for Essential Fish Habitat consultation for activities along the marine and estuarine coasts. Additional examples of information needed for ESA consultations may include a list of endangered or threatened species and designated critical habitat that may be affected by the proposed activity, descriptions of how the proposed activity will affect those listed species and designated critical habitat, and a discussion of measures proposed by the applicant to avoid or minimize effects to listed species or designated critical habitat. Districts often provide check lists when ESA compliance requirements are triggered to assist applicants with their ability to provide needed information. A cultural resources assessment survey may also be needed for historic properties consultations.

By focusing on providing the information required for the permit evaluation process, applicants can be assured they are providing the minimal amount of information required without duplicative procedures.

Public outreach done by Corps districts is an important mechanism to help make applicants aware of the information requirements for permit applications since the information needed to reach a permit decision can vary across the nation for the reasons listed above. This also explains why one form or a series of supplemental forms could not cover every scenario that may arise during the permit evaluation process, and how the Corps' reviews are tailored to the specific circumstances for each proposed activity. Requiring all permit applicants to provide all the same information that might potentially be needed would be more burdensome to the public because they would be required to provide information that does not have a direct relationship to their proposed activity and the Corps would not use that information in its evaluation process. In other words, it would require many permit applicants to expend time and money to provide information that is not relevant to the Corps' evaluation process for the particular application being submitted. Focusing the application process on requesting the basic information that is

needed for all permit applications, and allowing districts to request project-specific information that is necessary to address activity-specific circumstances has helped the Corps streamline information requirements and minimize burdens on the public.

3. Use of Information Technology

Applicants may save common information (if using a fillable Portable Document Format (pdf)) and enter new project specific information for each subsequent application. The forms are available electronically to the public via the Internet, and email. The information can be submitted to the Corps via fillable pdf or can be handwritten; the mechanism for completing the form is not prescribed, although the document needs to be legible. The application forms can be submitted through email, although the Corps is not able to accept automated application submissions at this time. Applications are received via email, post mail, or courier for large applications/plans. We estimate about half of all application forms are received electronically. This percentage is increasing as more applicants become familiar with our program and are emailing in their completed pdf. Additional outreach efforts to describe the submittal process can increase the 50% estimate.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Business

This information collection does not impose a significant economic impact on a substantial number of small businesses or entities.

6. Less Frequent Collection

Without the information contained in the form, the Corps could not evaluate the impacts of a proposed project, as required by law. The submittal of information is needed when an application for a DA permit is received by Corps offices to start the evaluation process. Our regulations specify certain information needed for a complete application for a standard permit (33 CFR 325.1(d)), which is contained on the application form. If the form is not used, it is unlikely that applicants will submit all of the information required by regulation for a complete application, which will delay the permit evaluation process with requests for additional information. In addition, substantial delays in the permit evaluation process could result in an increase in unregulated projects, which are built without required modifications or mitigation, resulting in significant damage to the environment and private property, as well as creating hazards to public health and safety. The same holds true for the ENG Form 6082, where information needed is tailored to the NWP program and using this form would reduce the time it takes to collect and provide needed information to the Corps.

7. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

Part A: PUBLIC NOTICE

A 60-Day Federal Register Notice (FRN) for the collection published on Wednesday, May 2, 2018). The 60-Day FRN citation is Volume 83 FRN 19261.

No comments were received during the 60-Day Comment Period.

A 30-Day Federal Register Notice for the collection published on Monday, July 30, 2018. The 30-Day FRN citation is 83 FRN 36561.

Part B: CONSULTATION

Prior to the next request for renewal, a small sample of respondents will be contacted directly to request feedback on the ease of filling out the form, how the forms could be made more clear, or further streamlined.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection

10. Confidentiality

The application contains a privacy act statement. Information provided becomes part of the administrative record and a statement is included in the privacy act statement on the application form, notifying the applicant that the information provided may be shared with the Department of Justice or other federal, state, and local government agencies, and the public and may be made available a part of a public notice as required by law.

A draft copy of the SORN, [#A1145b, Regulatory Program Files], has been provided with this package for OMB's review.

A copy of the PIA has been provided with this package for OMB's review.

In accordance with Army Regulation (AR) 25-400-2, records are maintained in the current file area for 6 years after expiration of permits/applications, then destroyed.

11. Sensitive Questions

No questions considered sensitive are being asked in this collection.

12. Respondent Burden, and its Labor Costs

a. Estimation of Respondent Burden

1. ENG Form 4345 (Application for Department of the Army Permit) and any Federal and state joint application forms. These totals are derived from the annual number of incoming applications (regardless of which form was used) tracked in our ORM2 database. This is a high annual average over the past several years – of the 80,000 applications received per year, approximately 35,000 are reviewed as a Nationwide Permit and have been included in the burden estimate for the proposed form ENG 6082 (item 2). The remainder have been included in this burden estimate for ENG Form 4345 (item 1). Notably, this burden estimate includes only those joint applications that the Corps in fact reviews. As described above, in some cases the Corps may accept information from an applicant using a joint application. This can occur when a state implements similar, but independent state law regulatory requirements, and a joint application has been developed to reduce redundancies in information collected from the public. A joint application may be submitted in one of two ways: to the state only, in cases when only state requirements must be met. Or, a joint application may be submitted to the state and also provided to the Corps, in cases when a proposed activity would also require a Corps permit. This burden estimate includes only the latter instances. That is, the burden estimate does NOT include the burden on the public from the state execution of its authorities, independently from the Corps Regulatory Program. However, the burden estimate does include the burden from the cases when a joint application form is provided to the Corps. These joint applications are a stream lining tool.

- a. Number of Respondents: 45,000
- b. Number of Responses Per Respondent: 1
- c. Number of Total Annual Responses: 45,000
- d. Response Time: 11 hours
- e. Respondent Burden Hours: 495,000 hours

2. ENG Form 6082 (Application for a Nationwide Permit (NWP) Preconstruction Notification) – Estimate derived from the annual number of NWP verifications.

- a. Number of Respondents: 35,000
- b. Number of Responses Per Respondent: 1
- c. Number of Total Annual Responses: 35,000
- d. Response Time: 11 hours
- e. Respondent Burden Hours: 385,000 hours

3. Total Submission Burden (Summation or average based on collection)

- a. Total Number of Respondents: 80,000
- b. Total Number of Annual Responses: 80,000
- c. Total Respondent Burden Hours: 880,000 hours

b. Labor Cost of Respondent Burden

1. Application for Department of the Army Permit (ENG 4345)

- a. Number of Total Annual Responses: 45,000
- b. Response Time: 11 hours
- c. Respondent Hourly Wage: \$25.53
- d. Labor Burden per Response: \$280.83
- e. Total Labor Burden: \$12,637,350

2. Application for Department of the Army PCN Form (ENG 6082)

- a. Number of Total Annual Responses: 35,000
- b. Response Time: 11 hours
- c. Respondent Hourly Wage: \$25.53
- d. Labor Burden per Response: \$280.83
- e. Total Labor Burden: \$9,829,050

3. Overall Labor Burden

- a. Total Number of Annual Responses: 80,000
- b. Total Labor Burden: \$22,466,400

The respondent average hourly work wage was obtained from the Bureau of Labor Statistics website and is reported above. This figure represents the average wage for of all US workers, and may be too high or too low, depending on the occupation of each applicant.

<http://www.bls.gov/news.release/empsit.t19.htm>

13. Respondent Costs Other than Burden Hour Costs

There are no annualized costs to the respondents other than the labor burden costs addressed in Section 12 of this document to complete this action.

14. Cost to the Federal Government

a. Labor Cost to the Federal Government

1. ENG Form 4345 (Application for Department of the Army Permit)

- a. Number of Total Annual Responses: 45,000
- b. Processing Time per Response: 24 hours
- c. Hourly Wage of Worker(s) Processing Responses: \$38.12/hour
- d. Cost to Process Each Response: \$914.88
- e. Total Cost to Process Responses: \$41,169,600

2. ENG Form 6082 (PCN Form)

- a. Number of Total Annual Responses: 35,000
- b. Processing Time per Response: 20 hours
- c. Hourly Wage of Worker(s) Processing Responses: \$38.12/hour
- d. Cost to Process Each Response: \$762.40
- e. Total Cost to Process Responses: \$26,684,000

2. Overall Labor Burden to Federal Government

- a. Total Number of Annual Responses: 80,000
- b. Total Labor Burden: \$67,853,600

b. Operational and Maintenance Costs

- a. Equipment: \$0
- b. Printing: \$0
- c. Postage: \$0
- d. Software Purchases: \$0
- e. Licensing Costs: \$0
- f. Other: \$0
- g. Total: \$0

- 1. Total Operational and Maintenance Costs: \$0
- 2. Total Labor Cost to the Federal Government: \$67,853,600
- 3. Total Cost to the Federal Government: \$67,853,600

15. Reasons for Change in Burden

The burden has increased since the previous approval due to higher expected labor costs associated with completing the application form. Postage costs are also included in this submission. The forms themselves and the Corps' estimates on the average time to complete the forms remain the same.

16. Publication of Results

The results of this information collection will not be published.

17. Non-Display of OMB Expiration Date

We are not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

We are not requesting any exemptions to the provisions stated in 5 CFR 1320.9.