

**MEMORANDUM FOR:** U.S. Army Corps of Engineers Districts and Divisions and U.S. Environmental Protection Agency Regional Offices

**SUBJECT:** Coordination between the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) on Geographic Jurisdiction under Section 404 of the Clean Water Act (CWA)

1. On July 8, 2015, the Corps and EPA (the agencies) issued a memorandum that called for improvements to the CWA Section 404 permit process. Corps and EPA headquarters convened a workgroup to evaluate existing permitting tools and procedures, and to identify helpful changes for reducing costs, delays, and frustration in section 404 permitting. This joint memorandum is a product of the workgroup and details three key areas for improvements: the process for coordinating approved jurisdictional determinations (AJDs)<sup>1</sup>; enhancing cooperative efforts to leverage information; and enhancing availability of AJD information for the public. While affirming that the coordination processes and timeframes established under existing memoranda should continue, this joint memorandum also calls for district and regional section 404 staff to undertake several steps that will improve the efficiency of such coordination.

**a. Coordination:**

- (1) Contents of a Draft AJD Package for Coordination. The agencies call upon the Corps districts and EPA regional offices to expeditiously compile a joint checklist of the minimum information necessary for EPA to review a draft AJD as called for by the coordination memoranda (see footnote 1). The checklist may include information such as maps, latitude/longitude coordinates, available consultant reports, and other materials that the district and regional office jointly conclude is relevant to the AJD. In addition, the list also may include identification of publicly available remote tools that both agencies would use to increase efficiency for both desktop and field-based AJDs. Jointly developing the information checklist in advance will provide more predictability to the development of an AJD and the associated coordination process and may reduce the time to complete an AJD. Once the checklist of the minimum contents of a draft AJD package is completed, Districts and Regions are encouraged to share the checklist with the regulated public to improve understanding of what information is necessary to coordinate an AJD, via local workshops or other outreach methods as appropriate.

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<sup>1</sup> See Memorandum on the Process for Coordinating Jurisdictional Determinations Conducted Pursuant to Section 404 of the Clean Water Act in Light of the Rapanos and SWANCC Supreme Court Decisions, dated 28 January 2008 (for AJDs involving significant nexus determination); and Memorandum on EPA and Corps Coordination on Jurisdictional Determinations (JDs) under Clean Water Act (CWA) Section 404 in Light of the SWANCC and Rapanos Supreme Court Decisions, dated 5 June 2007 (for AJDs involving isolated determination).

SUBJECT: Coordination between the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) on Geographic Jurisdiction under Section 404 of the Clean Water Act (CWA)

- (2) Field-Level Process Agreements. The agencies encourage the Corps districts and EPA regional offices to develop or revise Field Level Agreements with processes that deliver efficiencies in draft AJD coordination. These process agreements might, for example, identify specific watersheds, aquatic resource types, areas with regional general permits (RGPs), or other priority issue areas upon which to focus coordination efficiencies. For example, in the past some EPA regional offices and Corps districts have agreed to coordinate only draft AJDs that conclude no significant nexus is present.
- (3) Effective Communication During Coordination. The agencies encourage EPA regional offices and Corps districts to communicate effectively and efficiently during the coordination process, so that overall review times are reduced whenever possible. For example, Districts should notify their EPA regional counterparts in advance when a complex draft AJD will be submitted for coordination. Regional staff should notify the District early during the coordination period if they have a question, comment, conclusion, or if the regional office has no comments. If information on the joint checklist is missing from the draft AJD package being coordinated, or additional information is necessary to reach a conclusion for a complex draft AJD, the regional office should notify the District promptly. Similarly, the District should respond to the regional office's request for additional information in a timely manner. Nothing in this part modifies the timelines provided in the joint memoranda for coordinating AJDs (see footnote 1). The agencies note that with a jointly developed checklist in place, we anticipate the need for additional information requests will be substantially reduced.

Comments provided during the coordination period should reflect substantive matters regarding the basis for the AJD to ensure sufficient documentation and a fully supported determination. With effective communication early in the coordination process, it should not be necessary to have additional materials for the record following a coordination conclusion. The goal for coordination is an AJD that is consistent with applicable regulations and science, while concurrently reducing overall review times and minimizing delays in delivering final AJDs to the requestor.

**b. Cooperative Efforts:**

EPA and the Corps agree that cooperative efforts will allow our agencies to leverage information to benefit the AJD process, and enhance the protection of our nation's aquatic resources. The agencies are committed to such cooperative efforts at both headquarters and field offices, and therefore call upon the staff in the Corps districts and EPA regional offices to:

SUBJECT: Coordination between the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) on Geographic Jurisdiction under Section 404 of the Clean Water Act (CWA)

- (1) Share information on JD tools and resources, including geospatial and other remote-based tools to support documentation of AJDs, and
- (2) Identify and take advantage of cross-training opportunities regarding geographic jurisdiction.

**c. Availability of Approved Jurisdictional Determinations (AJDs) to the Public:**

The Corps will continue to maintain the ORM2 database and the Corps publicly available AJD viewer and will continue to transfer ORM2 data to EPA per the existing procedures. EPA, in coordination with the Corps, is developing a website posting all CWA final AJDs, which will be available at <http://www3.epa.gov/waters/cwa/CWA-JDs/>. By making AJD information publicly available and readily accessible in several venues and formats, the Corps and EPA intend to improve transparency regarding the number and types of jurisdictional aquatic resources identified to clarify the factors being evaluated in these determinations.

2. The relationship between the Corps and EPA is critical for the overall protection of our nation's aquatic resources. The above steps will strengthen this relationship and facilitate more accurate and timely Section 404 JDs by leveraging the expertise, resources, and initiative of district and regional office staff to effectively achieve the mission of our agencies under the CWA.

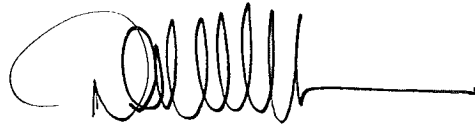
If you have any questions please contact Ms. Stacey M. Jensen at 202-761-5856, or Ms. Donna Downing at 202-566-1367.



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DEC 21 2016

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Date



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