



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

OCT 26 2010

CECW-CO-R

**MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS**

SUBJECT: Minimum Level of Documentation Required for Permit Decisions

1. Purpose and Background:

a. As part of the Regulatory Program's Public Service Commitment, Corps Regulators are accountable for appropriately documenting permit decisions. Section 22 of the Standard Operating Procedures (SOP) for the U.S. Army Corps of Engineers Regulatory Program, dated 1 July 2009, describes proper procedures for documentation of a permit decision. The SOP indicates several components that shall be included in the decision document for an individual permit and includes a discussion of the combined Environmental Assessment/Statement of Findings (EA/SOF), commonly used to document individual permit decisions. In addition, the SOP indicates that a short memorandum shall be prepared to document general permit verifications.

b. The General Accountability Office (GAO) issued a report in May 2007 entitled "The Corps of Engineers Needs to Ensure that Permit Decisions Made Using Funds from Non-Federal Public Entities Are Transparent and Impartial (GAO-07-478)." While the report was directed at implementation of funding agreements with non-federal public entities, the report involved the review of several permit files and indicated that documentation of permit decisions should be improved. The Corps Regulatory Program strives to provide fair, flexible, and reasonable decisions that are transparent to the general public. Transparency in decisions may be enhanced through standardized documentation practices, which is recommended by the 2007 GAO Report. Therefore, Headquarters has developed two templates for use by districts to document affirmative permit decisions.

c. Attached to this memorandum is a template for a combined EA/SOF for affirmative individual permit decisions which includes public interest review factors, Clean Water Act 404(b)(1) Guidelines evaluation criteria (for use when applicable), and other necessary elements that satisfy procedural documentation requirements for both the National Environmental Policy Act and also mitigation decisions. This template, when completed, should be in the record for these decisions. A second template, to support all types of general permit decisions (e.g. Nationwide Permits, Regional General Permits), is also attached.

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2. Implementation:

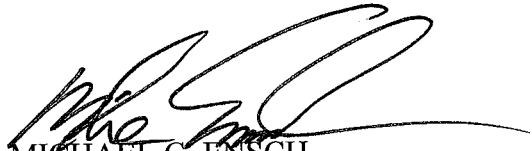
a. Effective immediately, the reasoning and decisionmaking process for all individual permit decisions and all general permit verification requests to the Corps from the public will be documented in project files. The level of documentation must contain, at a minimum, the level of detail and information included in the enclosed templates. These templates are recommended for use to ensure consistent and appropriate documentation and information is included in permit files and the decision record as well as to improve consistency in documentation nationwide. Format changes to the templates are acceptable but not encouraged.

b. To ensure consistent and thorough documentation of the reasoning and decisionmaking process behind compensatory mitigation requirements associated with individual permit decisions and general permit verifications (where applicable) in accordance with the 2008 Mitigation Rule, the mitigation section of each template must be used as written. Additional information on mitigation may be added to the end of the mitigation section for clarification or explanation purposes.

c. The attached templates were not developed for use when denying an Individual Permit or when asserting discretionary authority on a project that otherwise qualifies for authorization under a General Permit. These decisions also must be fully and clearly documented in project files.

3. If you should have any questions, please contact Ms. Jennifer Moyer, Deputy Chief, Regulatory Community of Practice at (202) 761-4598.

FOR THE COMMANDER:


MICHAEL G. ENSCH
Chief, Operations & Regulatory Division
Directorate of Civil Works