

MEMORANDUM OF AGREEMENT  
BETWEEN THE DEPARTMENT OF TRANSPORTATION  
AND THE DEPARTMENT OF THE ARMY

1. Authority: Section 404(q) of the Clean Water Act.
2. Purpose: The purpose of this agreement is to establish policies and procedures to implement Section 404(q) of the Clean Water Act to “minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits.”
3. Applicability: Review of Department of the Army Permit applications under:
  - a. Section 10 of the River and Harbor Act of 1899.
  - b. Section 404 of the Clean Water Act.
  - c. Section 103 of the Ocean Dumping Act.
4. General Rules: Policy and procedures for review of permit applications are in 33 CFR 320-330. Procedures for preparation of environmental documentation including lead and cooperating agency responsibilities are in 40 CFR 1500-1508.
5. Policy:
  - a. In the vast majority of the cases, the Department of Transportation (DOT) will be the lead agency and Army will be the cooperating agency for NEPA documentation, for compliance with NEPA procedures and for all other procedures involving-both agencies.
  - b. Both agencies will cooperate fully in early and continuing coordination during development of projects, environmental documentation, and public involvement processes, including joint public notices and, if required, joint hearings.
  - c. Each agency will recognize the overriding need to eliminate duplication and will accept to the maximum extent possible decisions and environmental documentation of the other agency with respect to the other agency’s responsibilities and expertise.
  - d. The Army will limit its review to the immediate geographic area of the specific activity requiring a Department of Army permit.
  - e. The Department of Transportation fully supports the Department of the Army’s development of general permits for DOT activities which will eliminate duplication of effort between agencies.

6. Procedures for Elevating Cases:

- a. If a District Engineer (DE) proposes to deny or to condition in a substantial and unacceptable manner a permit involving an activity to be constructed or wholly or partially funded by DOT, the DE will so notify in writing the applicant and the DOT agency responsible for the project and will defer final action for 15 working days unless otherwise instructed by the Assistant Secretary of the Army for Civil Works (ASA(CW)).
- b. Within 15 working days of the DE's letter, the head of the DOT agency responsible for the project may request of the ASA(CW) that the case be reviewed by higher authority. The request will be written and will provide a discussion of the issues and how they impact on national transportation policies.
- c. Within 15 working days of the date of the letter from the DOT agency, the ASA(CW) will decide whether or not the case will be reviewed at a higher level and, if so, at which level the final decision will be made. He will notify in writing the agency officials involved.
- d. In the vast majority of cases, the entire elevation process, when activated, should be completed within 90 calendar days of the DE's notice of intent to issue a permit. In no case should the elevation process exceed 120 calendar days. The official designated to decide an elevated case will reach his decision within the time specified and will immediately notify the applicant and appropriate officials of both agencies.
- e. Each agency will ensure that all letters to the other agency as required by this paragraph will be received within one day of signature using messenger, electronic transmittal or other appropriate means.

7. Coast Guard Bridge Permits: This agreement does not contravene the U.S. Coast Guard/Chief of Engineers Memorandum of Agreement dated April 18, 1973. However, DOT and Army will seek to reduce duplication in their respective permitting roles associated with bridges.
8. This agreement will be effective on the last signature date below and will continue in effect for five years unless sooner modified or revoked by agreement of both parties.
9. The Memorandum of Agreement between the Secretary of Transportation and the Secretary of the Army on permit processing dated March 24, 1980, is hereby terminated.

/s/ \_\_\_\_\_  
Andrew L. Lewis, Jr.  
Secretary of Transportation  
  
\_\_\_\_\_  
1/18/83  
Date

/s/ \_\_\_\_\_  
John O. Marsh, Jr.  
Secretary of the Army  
  
\_\_\_\_\_  
12/18/82  
Date