



April 2, 2018

U.S. Army Corps of Engineers
ATTN: CECW-CE/3E62
441 G Street NW
Washington, DC 20314

RE: Docket Number COE-2018-0003

PNWA comments on Draft Engineer Circular (EC) 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC. 408

Thank you for the opportunity to provide comment on the draft guidance relating to Section 408 reviews by the Corps of Engineers. Our comments are submitted on behalf of the membership of the Pacific Northwest Waterways Association (PNWA). PNWA represents over 130 member organizations from Washington, Oregon, and Idaho. Our membership is comprised of port authorities, marine cargo facilities, towboat companies, steamship operators, cargo shippers, agricultural producers, forest products manufacturers and other economic development interests in the Pacific Northwest region of the U.S. Nearly all of our members are partners of the Corps, and often serve as non-federal sponsors of civil works projects. A listing of our member organizations is attached to this document.

In addition to our comments below, PNWA would like to note that we are supportive of the comments submitted by the National Waterways Conference (NWC). We work closely with this organization on a number of items and support their perspective on suggested modifications to improve the Section 408 process, specifically with regard to increased stakeholder input and scope of the Corps review process.

PNWA appreciates the efforts of the Corps to address stakeholder concerns in the updated EC. Specifically, we believe the following guidance updates included in the document will improve efficiencies and help ensure a fair and timely review process:

Section 7(g) – Funding Agreements. Given the limited Corps budget for Section 408 reviews, we support expediting the contributed funds process per Section 1156(a)(2) of WRDA 2016, as well as through continued use of Section 214 of WRDA 2000.

Section 9(c) – Multiphase Review. Establishing a multi-phase review option for large scale projects with complex engineering and design or multiple construction phases will help provide certainty for applicants. Predetermined milestones, with interim reviews and assurances, will ensure compliance with Corps policy while progressively advancing the project in a predictable fashion.

Section 10(a) – Statement of No Objection. PNWA appreciates clarification of the role of the non-federal project sponsor, to ensure any “statement of no objection” solely documents the

non-federal project sponsor's awareness and non-objection of the Section 408 request. It does not signify an endorsement for a Section 408 permission or for the requestor's project.

Section 12 – Notification and Review Timelines. The EC establishes timelines for a completeness determination and for the review and decision phases of the Section 408 process. This predictability will allow stakeholders an efficient, effective and productive planning process, as well as keep project costs in check.

Section 13 - Decision Authority. PNWA appreciates that Section 408 decisions will no longer need approval from Corps Headquarters. Delegating decision making to the District/Division will allow for a more efficient process at the local/regional level.

In addition to these items, we also believe that there continue to be areas of improvement that could benefit from further clarification in the following sections:

Section 7 – Program Governance:

Section 7(a) - Program Oversight. Stakeholder input is a key mechanism for understanding the success of the program. PNWA recommends that an annual survey of 408 applicants be included as part of the assessment of consistency within the Section 408 program. There should be an ability for regular client input to the Corps' audit and improvement processes. A summary of these comments should be made public on the Section 408 webpage.

Section 7(b) - Section 408 Coordinator. We believe this section could also benefit from increased stakeholder involvement. Coordinators should be encouraged to seek regular input and feedback from applicants through surveys and various public forums, and to include such information received in lessons learned reports.

Section 7(d) – Section 408 Database. A public database will be helpful to applicants. To be most constructive, the database should include processing times for both completeness determinations and 408 decisions, by District and Division, to facilitate comparison of efficiencies in program execution across the Corps.

Section 7(h) – Coordination. It is extremely important for seamless integration of the Corps Regulatory Branch permit functions and the Civil Works Branch Section 408 review functions. For projects that require Regulatory Branch permits in addition to Section 408 approval from the Civil Works Branch, it is imperative that these two processes operate with common starting or entry points and a means to resolve any conflicts within the programs. This would allow applicants to meet dual purposes with their submitted information and set parallel and timely schedules. While we laud the substantial improvements to the Section 408 process detailed in the Director's Policy Memorandum (DPM CW 2018-0) we strongly urge that coordination with the Regulatory Branch be addressed in detail in the final Engineering Circular as a means to improve predictability and schedules of the Section 408 process.

Sections 10 – 13 - Basic Requirements through Decision Authority. As noted above, PNWA supports the decision to delegate Section 408 decisions to the District/Division level. As

decision authority shifts to the local/regional level, however, we encourage the Corps to have mechanisms in place to ensure that there is consistency in application of these policies across the Corps. It is widely recognized that consistent and efficient application of policy across Corps Divisions and Districts is a challenge in other Corps Regulatory programs. The “lessons learned” in those programs should be applied to establishing a monitoring mechanism and a public input mechanism, both of which can be used to identify and correct inconsistent application of 408 policy across the Corps.

Section 12(a) - Completeness Determination. As noted above, PNWA is appreciative of the Corps setting predictable timelines for Section 408 reviews. We believe, however, that since an affirmative completeness determination “starts the clock” on the 90-day decision deadline, there could be some reluctance to issue satisfactory completeness determinations in a timely manner. Therefore, we recommend that the Corps establish a mechanism to review and evaluate a District’s completeness determinations to ensure approvals are made as expeditiously as possible.

PNWA thanks the Corps for their work to improve the Section 408 process. We encourage the agency to make appropriate edits and implement the draft EC in an efficient manner, to make much needed program improvements as quickly as possible. We would be happy to answer any questions you have and we look forward to working with you as you further refine the Section 408 review process.

Sincerely,



Kristin Meira
Executive Director
Pacific Northwest Waterways Association (PNWA)

Attachment:
PNWA Membership Listing