



[Submitted by Email to: CEHO-NEPA@usace.army.mil]

August 4, 2025

Mr. Milt Boyd
U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street, NW
Washington DC 20314-1000

Re: NWC Comments on Army Corps of Engineers Interim Final NEPA Rules: Procedures for Implementing NEPA; Processing of Department of the Army Permits, Including Section 408 Permissions (Docket ID: COE-2025-0006, RIN 0710 AB20); and Procedures for Implementing NEPA; Removal (Docket ID: COE-2025-0007, RIN 0710 AB28)

Dear Mr. Boyd,

On behalf of the National Waterways Conference (NWC), we are providing written comments on the subject U.S. Army Corps of Engineers (Corps) Interim Final National Environmental Policy Act (NEPA) rules published in the Federal Register on July 3, 2025 (at 90 Fed. Reg. 29465 and 29461, respectively).

NWC is the only national organization that advocates for the entire range of water resources infrastructure, including navigation, flood risk management, water supply, hydropower, ecosystem restoration, and recreation. NWC's membership is diverse and includes the full spectrum of non-Federal water resources interests, including flood control associations, levee districts, waterways shippers and carriers, agricultural interests, industry and regional associations, hydropower producers, port authorities, shipyards, dredging contractors, regional water supply providers, engineering consultants, and state and local governments across the Nation. Many of these members are non-Federal water resources project sponsors and other water resources interests who rely on Corps Civil Works Regulatory program permits or Section 408 program permissions to operate, maintain, and improve water resources projects nationwide, so they have a direct interest in the development and implementation of these NEPA rules.

We appreciate the Corps' decision to modernize its NEPA procedures affecting the processing of Corps Civil Works Regulatory program permits and Section 408 program permissions, and commend the Corps and the Office of the Assistant Secretary of the Army for Civil Works (ASACW) for initiating a public comment period and inviting the perspectives of interested parties.

Below we offer several practical recommendations to help the new Part 333 rules deliver the certainty Congress intended in implementing NEPA while preserving local flexibility and safety.

COMMENTS

Until now, the Corps' Section 408 program relied on the Civil Works NEPA regulation in 33 CFR Part 230, while the Regulatory program (*e.g.*, permits under Clean Water Act Section 404, Rivers and Harbors Act Sections 9 and 10, and Marine Protection, Research, and Sanctuaries Act Section 103) used 33 CFR Part 325, Appendix B. The Corps now has moved forward and deleted both sets of regulations and created a new Part 333, which expressly combines 408 permissions as well as Corps Civil Works Regulatory program permits under one common NEPA implementation rule. As of July 3, 2025, all 408 permission decisions (along with all Civil Works Regulatory program permitting decisions) must follow the requirements of Part 333 for NEPA compliance, which are oriented towards and applicable to the Regulatory program.

As discussed further below, the Corps should take several steps to help ensure that the Corps' NEPA implementation rules support both national policy goals and address the practical realities faced by local non-Federal interests. The Corps can accomplish this by providing a clear, consistent, and efficient NEPA process, reasonable permitting time frames, expanded use of categorical exclusions, and early and meaningful consultation with non-Federal interests.

1. The Corps Has Not Sought Comments from Potentially Affected Interests or Considered the Potential Economic or Other Impacts of the Rule Changes, Prior to Issuing these Final Rules.

Many non-Federal interests are concerned that the U.S. Army Corps of Engineers developed the new NEPA interim final rules without early engagement or transparency. The Corps did not seek input from potentially affected stakeholders, including non-Federal sponsors of water resources projects, before issuing the rules. No informal consultations were held, nor were comments solicited prior to finalizing the rules. Moreover, the Corps has not considered the potential economic and other regulatory impacts on non-Federal interests of the changes made to

NEPA implementation by the new rules, or the impacts of applying these new rules to Section 408 permissions and the processing of permits under the Corps' Regulatory program. As part of this, the Corps has not sought to consider ways to minimize the regulatory burdens that these new rules may impose on non-Federal interests.

All of this is concerning because the Corps is bypassing the Administrative Procedure Act (APA) and the transparency requirements and protections provided by the APA for small entities. Many small entities that could be impacted by these rules include the many local governments that are non-Federal sponsors of water resources projects and other water resources interests who rely on Corps Regulatory program permits or Section 408 program permissions to operate, maintain, and improve water resources projects. Early engagement of interested parties and analysis of potential impacts of the rules would have supported transparency and a stronger alignment between process and policy.

Recommendations:

NWC is pleased that the Corps is engaging in outreach to interested parties on the NEPA rules through their requests for comment. However, NWC believes the Corps should have solicited such input prior to finalizing these interim rules, to provide greater transparency and make for a better set of NEPA rules up front for processing permits under the Corps' Regulatory program and for permissions under the 408 program. The Corps should take into consideration the input, concerns, and recommendations that the Corps will receive from interested parties during the public comment period and conduct regulatory and economic impact analyses of the impacts the new NEPA rules will have on non-Federal interests, including small entities. As part of this, the Corps needs to consider ways to minimize the regulatory burdens that these new rules may impose on non-Federal interests, including small entities.

2. The New Part 333 NEPA Rules Could Impact Section 408 Sponsors.

As noted above, until now, the Section 408 program relied on the Civil Works NEPA regulation in 33 CFR Part 230, while the Regulatory program used 33 CFR Part 325, Appendix B. In these rulemakings, the Corps has moved forward and deleted both sets of regulations and created new Part 333, which expressly combines 408 permissions as well as Corps Civil Works Regulatory program permits under one common NEPA implementation rule.

As of July 3, 2025, all 408 permission decisions must (along with all Civil Works Regulatory program permitting decisions) follow the requirements of Part 333 for NEPA compliance that are oriented and applicable to the Regulatory program, even though policy and procedure considerations under the 408 permissions program differ in a few respects from those

for permitting under the Regulatory program. These differences may encompass the purpose, focus, scope, and applicable standards and procedures of processing a 408 request as compared to a Corps permit application, as well as applicable technical review, funding, timeline, and other key considerations.

Many non-Federal interests have observed the increasing complexity of the Section 408 approval process in recent years, and are concerned that, by applying formal permitting program requirements to permissions under the 408 program, the net effect of these changes will be to further morph Section 408 “permissions” into a more complex, bureaucratic, and burdensome “permitting” program. The end result of this is that many 408 applications, even for activities which are of limited scope or potential impact, could have to satisfy excessive and unnecessary NEPA implementation requirements, thereby needlessly burdening 408 applicants and delaying projects.

The Corps has not evaluated the substantive and procedural differences between permitting under the Regulatory program and permissions under the 408 program, or considered the potential impacts that such differences would have on non-Federal interests of applying Part 333’s requirements to the two different programs. This is concerning, as increasing bureaucracy and burden will exacerbate already resources-constrained activities and further delay projects. This will cost applicants time and money, and also delay projects that reduce flood risk or provide other benefits to communities, imposing a societal cost.

Recommendations: The Corps, in its implementation of NEPA, needs to evaluate and address the differences between permitting under the Regulatory program and permissions under the 408 program, and develop a separate NEPA rule or supplementary guidance specific to the Section 408 program which acknowledges the 408 program’s unique policy goals and operational context. This will enable the Corps to more closely tailor its implementation of NEPA to the substantive and procedural aspects and needs of the Corps Regulatory program and of the 408 program, respectively. The Corps also needs to provide a fair, flexible, and consistent process for conducting reviews of various 408 requests, and ensure that Section 408 coordinators throughout the Corps are adequately supported with appropriate staffing and funding, including implementing NEPA procedures.

3. Statutory Review Clocks Must Allow for Orderly Project Funding and Design.

The new rules in Part 333 bring Section 408 reviews under the time limits set forth in the Fiscal Responsibility Act, namely, one year for an environmental assessment and two years for an environmental impact statement. (*See Fiscal Responsibility Act*, P.L. 118-5, Title III (“Permitting Reform”)) (Jun. 3, 2023).) District Engineers must, for 408 permission reviews,

meet the same NEPA deadlines Congress imposed on formal permit reviews, closing the file once a decision letter is issued. As a result, non-Federal sponsors will need to assemble complete data packages quickly or risk schedule slips. In addition, annual appropriations and multi-season construction windows can make the one-year clock difficult for some 408 proposals that depend on outside technical reviews (e.g., for levee lift projects or lock repairs), levee board meeting cycles, or otherwise involve potentially longer timelines.

Without flexibility, the statutory clocks could force rushed decisions on complex proposals, thereby undermining engineering integrity and the trust of non-Federal interests, and compromising decision-making.

Recommendations: The Corps needs to consider differing timelines inherent in various 408 permission reviews, and build in needed flexibility to ensure adequate and timely 408 review decisions. Providing for tiered environmental documents for multi-phased reviews may not be enough. The Corps should consider creating a streamlined track for routine operations and maintenance or other relatively minor work, with an abbreviated information checklist, shorter forms, realistic schedules, and pre-approved best practices, and a toll stop that pauses the clock until a sponsor submits all required data.

4. Expand and Clarify Categorical Exclusions.

The new rules in Part 333 recodify the existing categorical exclusions from 33 CFR Part 325, Appendix B and include a reference to the list of categorical exclusions that the Corps has relied on when evaluating 408 requests for permissions. However, there are additional instances where an expanded list of categorical exclusions would make either the permitting or the 408 permissions process more efficient. The Corps has the ability to create categorical permissions in order to expedite and streamline NEPA reviews and decisions of Section 408 requests that are similar in nature and that have similar impacts to a Corps project and the environment. The Corps also may develop categorical exclusions for circumstances when a separate review is not needed. Categorical exclusions and permissions provide an effective and efficient review process for applications that are repetitive, regular, or standard in nature and generally relatively minor in scope.

Recommendations: The Corps needs to utilize the continued expansion of categorical exclusions to expedite projects without significant environmental impacts. The Corps needs to develop a consistent process for identifying when and how an individualized NEPA review is to be conducted, or when and how a categorical exclusion can be developed and applied. As part of this, the Corps should evaluate adding additional typical non-Federal sponsor activities to the list of applicable categorical exclusions, and provide a transparent public outreach process for

proposing additional exclusions under new Section 333.14. For example, under the 408 program, frequently performed sponsor activities – such as rip-rap replacement, minor pump-station upgrades, tie-in of small flood walls, or sediment sampling – should be evaluated for future addition to the categorical exclusions list. This would help reduce the burdens both on non-Federal applicants and on the Corps. The Corps also could establish a publicly posted list of candidate categorical exclusions and adopt a periodic review process to evaluate and incorporate recommendations of interested parties.

5. Apply a Consistent Yet Flexible Level of Review and Scope of Analysis.

The new rules in Part 333 limit the appropriate level of NEPA review to the proposed action’s “reasonably foreseeable effects” (rather than the consideration of an unreasonably broad standard of “cumulative effects”). (See Section 333.12 of the new rules.) Providing for reasonably foreseeable levels of review is more sensible because non-Federal interests can more practically evaluate and manage reasonably foreseeable impacts of their specific project, rather than more speculative and indirect cumulative effects of other past, present, and future activities and issues.

The new rules in Part 333 also limit the scope of a NEPA review to parts of a larger undertaking that fall within Corps control or legal authority, and do not require the Corps to analyze effects from actions beyond the action the Corps itself is taking or authorizing. (See Section 333.18 of the new rules.) This narrower lens can keep, for example, routine repairs and minor utility crossings, from being swept into full-project reviews. Non-Federal interests will welcome this clarity regarding the scope of issues for analysis in an environmental document, but believe that the Corps should elaborate (such as through providing additional examples) on how to identify and differentiate substantive issues, which meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, from non-substantive issues, on connected actions, which should be addressed in the same environmental document, from non-relevant separate components, etc., to provide consistent yet flexible application of the rules from project to project and across Corps districts.

Recommendations: *The Corps needs to issue supplementary guidance that elaborates on the appropriate level of NEPA review, and on the scoping process, under the new rules, including how to identify (as discussed above) reasonably foreseeable effects from more speculative indirect cumulative effects, substantive from non-substantive issues, connected components from non-relevant separate components, etc., to provide consistent yet flexible application of the rules from project to project and across Corps districts. The Corps should include examples that show how scoping works for common activities or actions (such as utility crossings, levee toe roads, or*

bridge pier rehabilitations). Such examples will support greater consistency and predictability across Corps districts, reducing confusion and unnecessary project delays.

6. Facilitate Coordinated, Efficient Reviews When Permits and Permissions Overlap.

Many alterations need both a permit from the Corps Regulatory program (such as a Section 10 or 404 permit) and a Section 408 permission. Some non-Federal interests are concerned that separate actions with separate notices and documents risk duplicative and conflicting requirements and deadlines.

The new rules in Section 333.36 (“Integrating NEPA with Other Environmental Requirements”) generally aim to address this by encouraging the integration of NEPA documents with other Federal environmental requirements to minimize duplication, but the Corps should do more to coordinate efficient reviews.

Recommendations: *The Corps needs to elaborate on specific ways in which it will coordinate efficient reviews. For example, the Corps should allow a single joint public notice, one administrative record, and a combined decision document when the same activity needs multiple Corps authorities. This will provide more consistent processing of permits and permissions, and avoid duplicate comment periods and conflicting deadlines. The Corps should also issue national-level guidance to ensure these coordination measures are implemented consistently across all districts.*

7. Support for Non-Federal Sponsor Applicants in Meeting Information Requirements.

The new rules, in Part 333, direct District Engineers to identify needed data early and allow applicant-prepared environmental documents under Corps supervision. (See New Section 333.51.) The new rules provide generally that the District Engineer is responsible for providing guidance to applicants, and collaborating with an applicant in defining the purpose and need, developing alternatives, and scheduling the preparation of the draft environmental document. However, non-Federal interests are concerned that the new rules provide little specific information or templates to help applicants in meeting the information requirements.

Recommendations: *The Corps needs to issue supplementary guidance to help applicants, and particularly small entities, in meeting the information requirements. Such guidance should, among other things, provide national templates for environmental assessments, statement of findings, and supporting studies so smaller entities without in-house NEPA staff or resources to hire outside consultants can prepare complete environmental review packages efficiently and*

effectively. The Corps also should clarify which review costs are reimbursable through existing cost sharing authorities.

8. Encourage Early Coordination and Pre-Application Support.

The new rules provide generally for early meetings and schedule-setting with applicants for permits or 408 permissions, so that potential impacts to the environment are considered early to facilitate informed decision-making and timely reviews. (*See, e.g., 90 Fed. Reg. 29467.*) Non-Federal interests recognize the importance of and welcome early coordination and pre-application support from the Corps, but they are concerned that the Corps should do more to encourage such coordination and support, and implement this consistently across Corps districts.

Recommendations: *The Corps needs to elaborate on specific means it will use to provide applicants early coordination and pre-application support. As part of this, the Corps needs to require districts to offer a pre-application meeting within thirty days of request and to share a checklist of expected studies and other requirements to be provided in support of the application, before the NEPA clock starts.*

CONCLUSION

Thank you for the opportunity to provide comments on the subject Interim Final NEPA rules, and hope that the Corps will address our comments as it proceeds with this rulemaking process. NWC stands ready to serve as a resource to the Corps and the Office of the Assistant Secretary of the Army for Civil Works throughout this process.

For more information, or if there are any questions, please contact me at (703) 224-8007 or by email at julie@waterways.org.

Sincerely,



Julie A. Ufner
President and Chief Executive Officer
National Waterways Conference

cc: Adam Telle – Assistant Secretary of the Army for Civil Works