

Compliance with Department of the Army Permits

Presentation for

Road Authority Wetland Workshops

by

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US Army Corps of Engineers
BUILDING STRONG®



Presentation Outline

- Permit Compliance Overview
- Case Study
- Resolving Permit Noncompliance
- What You Need to Know



Permit Compliance

- Compliance with Department of the Army Permits
 - In FY 2010 the St. Paul District issued 1,153 permits for activities in waters of the United States in Minnesota (1,048 general permits and 105 individual permits)
 - Each year the Corps physically inspects only a small percentage of these projects
 - Compliance with the terms and conditions of Department of the Army authorizations is assumed when a permit or verification letter is issued by the Corps (an implied honor system)



Permit Compliance

- Why do we do compliance inspections?
 - To ensure the public interest is being protected
 - To establish and maintain a deterrence value for non-compliance and unauthorized activities
 - To continually assess, refine, and improve our approaches, techniques, and procedures



Permit Compliance

- Why do we do compliance inspections?
 - The Corps of Engineers has direct and sole authority for enforcing compliance with the terms and conditions of its permits
 - District Engineers will, at their discretion, take reasonable measures to inspect permitted activities to ensure compliance with permit terms and conditions (33 CFR 326.4(a))
 - To meet National Performance Goals



Permit Compliance

- What do we inspect?
 - Direct impact sites associated with the permitted activities
 - Borrow Areas
 - Access Roads
 - Causeways
 - Disposal Areas
 - Compensatory mitigation sites
 - Avoidance areas identified in the permit
 - Any other prohibitions and/or requirements in the permit



Permit Compliance

- What are we looking for?
 - Authorized impacts are consistent with those described in the permit
 - Compensatory mitigation is constructed and/or provided in accordance with the schedule and plan contained in the permit
 - Erosion control measures are properly installed, maintained, and functioning
 - Compliance with other requirements in the permit



Permit Compliance Case Study

- Background
 - In February of 2006 the Corps issued a permit for the discharge of dredged or fill material into 3.27 acres of wetland associated with a highway bypass project.
 - In March of 2008 the Corps was notified of significant sediment and erosion control problems along the construction corridor and that additional impacts to waters of the U.S. were occurring as a result of the deficiencies.
 - The Corps conducted two compliance inspections and determined that discharges into waters of the U.S. had occurred at two locations and that proper erosion control techniques would have prevented the discharges.





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Permit Compliance Case Study

- Background
 - A noncompliance letter was sent in early April identifying the two permit violations and expressing concern over the potential for additional violations if corrective actions were not immediately implemented.
 - Later in April the Corps conducted a third inspection and identified four additional locations where poor erosion control practices resulted in impacts to waters of the U.S.
 - The total amount of additional impacts to wetlands from the six permit violations was 5,942 square feet and an undetermined amount of sediment released into a tributary.





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Permit Compliance Case Study

- Resolution
 - The Corps pursued a Class I Administrative penalty against the permittee for noncompliance with the terms and conditions of the permit.
 - Ultimately, the permittee paid a \$27,500 fine, restored all the impacted wetlands, and upgraded the erosion control and storm water management plans for the corridor.



Resolving Permit Noncompliance

- In FY10 the St. Paul District documented 13 permit noncompliance cases. As of August 29, 2011, 8 of these had been resolved.
 - Voluntary compliance: 7
 - Referral for legal action: 1
- The vast majority of permit violations are resolved voluntarily in a relatively short time frame. However, in the past 3 years we have referred 1 case for legal action, suspended 1 permit, and issued 3 administrative penalties.



Resolving Permit Noncompliance

- Appropriate resolution should take into account the environmental importance of non-compliance, compliance history of permittee, degree of Corps jurisdiction over the non-compliance, and the economic benefit of non-compliance
- Options for resolving permit violations include:
 - Voluntary compliance
 - Permit modification
 - Written compliance order
 - Permit suspension/revocation
 - Administrative Penalties
 - Legal Action



Complying with Permits

- As the Permittee, staying in compliance with your Department of the Army permit is ***your*** responsibility. Responsibility does not shift to a contractor ***unless*** the permit is transferred.
- Read your permit carefully to become familiar with and understand the following:
 - Impact limitations
 - Permit expiration dates
 - Special Conditions
 - General and Standard Conditions
 - Mitigation requirements



Complying with Permits

- Before you start your project, review the permit and determine if there have been any changes to the design or construction plan since the permit was issued. If so, coordinate those with the Corps and, if necessary, obtain a modification.
- Provide copies of the permit to everyone working at the site and make sure they understand the impact limitations and constraints imposed by the permit.
- If you don't understand or if circumstances change then contact the Corps and discuss the issue.



Complying with Permits

- The primary point of contact for questions regarding a Corps permit is the Project Manager assigned to the county the project is located.
- Assistance can also be obtained by calling the Corps general information line at (800) 290-5847 ext. 5525
- District Enforcement and Compliance staff are also available to assist permittees with specific questions regarding permit compliance.
 - Mr. Ben Cox, Enforcement Specialist (651) 290-5377
 - Mr. Tim Smith, Enforcement and Compliance Coordinator (651) 290-5432.



Compliance with Department of the Army Permits

Questions?



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