



US Army Corps
of Engineers
St Paul District

PUBLIC NOTICE

Comment Period Begins: 07 NOV 2022

Comment Period Ends: 22 NOV 2022

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This Special Public Notice announces the preliminary intent of the Saint Paul District of the U.S. Army Corps of Engineers (St. Paul District) and the Chicago District of the U.S. Army Corps of Engineers (Chicago District) to accept and expend funds from Milwaukee Metropolitan Sewerage District (MMSD) to expedite processing of MMSD's Department of the Army (DA) permit applications pursuant to Clean Water Act Section 404 (13 U.S.C. 1344) and/or Rivers and Harbors Act Section 10 (33 U.S.C. 403) and Section 408 Program (33 U.S.C. 408) requests for permission. This Public Notice solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by MMSD to expedite the evaluation of St. Paul District DA permit applications and Chicago District Section 408 Program requests.

Authority to accept funds: Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity, public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. The authority to accept and expend funds under Section 214 has been delegated from the Secretary of the Army to District and Division Commanders, including the Commanders of the St. Paul District and Chicago Districts, U.S. Army Corps of Engineers. The authority to accept and expend funds from non-Federal public entities was made permanent by the passage of the Water Resources Reform and Development Act (WRRDA) of 2014 (Public Law No. 113-121) on June 10, 2014.

The District Commanders for the St. Paul District and Chicago District are negotiating an agreement with MMSD to accept and expend funds to expedite evaluations of permit applications and Section 408 requests submitted by MMSD.

Definition of non-Federal public entity: Non-federal public entities include state and local governmental agencies or government public authorities, as well as Federally-recognized Indian Tribes. They include, but are not limited to, local transportation agencies, port authorities, flood and storm water management agencies, and governmental economic development agencies. MMSD is a non-federal public entity.

How the Corps would expend the funds: The Corps' Regulatory Program and Section 408 Program are funded as congressionally appropriated line items in the annual Federal budget. Additional funds received by the St. Paul District from MMSD would be used to augment the St. Paul District Regulatory budget, in accordance with the provisions of Section 214, as amended. St. Paul District employees would charge their time against such account when working on MMSD DA permit applications deemed a priority. Additional funds received by the Chicago District from MMSD would be used to augment the Chicago District Section 408 budget, in accordance with the provisions of Section 214, as amended. Chicago District employees assigned to a Section 408 Review Team for MMSD requests would charge against such account when reviewing MMSD Section 408 requests.

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The St. Paul District and Chicago District would each establish separate accounts (for the Regulatory Program and Section 408 Program separately) to track receipt and expenditure of the funds.

Purpose of accepting funds and how this will expedite reviews: Funds may be accepted by the St. Paul District to expedite permit review for projects proposed by MMSD with a public purpose. Expediting can mean shorter review times, early coordination that supports a more efficient review process, or development of tools and training to facilitate streamlined reviews. The St. Paul District is unable, within current staff resource constraints, to provide expedited evaluation of applications for MMSD. Funds may be accepted by the Chicago District to expedite Section 408 request review for alterations to USACE Civil Works projects proposed by MMSD with a public purpose. Expediting can mean shorter review times, early coordination that supports a more efficient review process, or development of tools and training to facilitate streamlined reviews. The Chicago District is unable, within current staff resource constraints, to provide expedited evaluation of requests for MMSD.

Activities for which funds will be expended: Funds would be expended by St. Paul District primarily on the labor and overhead of District personnel, including coordination with the Chicago District Section 408 review team (where applicable), participation in pre-application consultation meetings including site visits, coordination meetings, and preliminary design reviews; application completeness review; preparation and distribution of public notices; preparation of jurisdictional determinations; participation in agency scoping meetings; coordination with other federal agencies as needed; development of programmatic efforts to support efficient decision-making; expedited permit evaluation; coordination concerning endangered species and cultural resources; respond to inquiries in a timely manner, including verification of coverage under Regional General Permits; alternatives analysis; and compensatory mitigation proposal review; public interest review; preparation of environmental assessments and permit decision documents; outreach to MMSD and their consultants about the St. Paul District regulatory program; attendance at recurring meetings to evaluate the effectiveness of the funded activities, and provision of an accounting of activities and performance. Funds may also be expended to pay for support services to perform select duties such as technical writing or review of documents such as cultural resources surveys or biological assessments. No non-compliance resolution or enforcement activities would be paid from monies received from MMSD.

If the MMSD funds are fully expended and are not renewed, the remaining permit applications would be processed like those of other applicants pursuant to St. Paul District policies.

Funds would be expended by the Chicago District primarily on the labor and overhead of District personnel, and necessary travel expenses, for all aspects of the Section 408 process, including synchronization with the St. Paul District Regulatory Program. This could include coordination and pre-request meetings and site visits; request completeness evaluation; participation in agency scoping meetings; coordination with other federal agencies as needed; development of programmatic efforts to support efficient decision-making; expedited permit evaluation; public interest review; engineering, operations, and construction technical reviews; preparation of environmental assessments and permission summaries of findings; post-permission construction oversight; outreach to MMSD and their consultants about the Chicago District Section 408 program; attendance at recurring meetings to evaluate the effectiveness of the funded activities,

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and provision of an accounting of activities and performance. No non-compliance resolution or enforcement activities under Section 408 would be paid from monies received from MMSD.

If the MMSD funds are fully expended and are not renewed, any remaining or future Section 408 requests would be processed like those of other requesters pursuant to Chicago District policies.

Procedures to be used to ensure impartial decision-making:

- a. All final permit/permission decisions, including general permit verifications, will be reviewed and signed by at least one level above the decision-maker.
- b. All documents involved in the decision-making process must be reviewed and signed by the one-level-above reviewer as defined above.
- c. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded Regulator reviewed and agreed with the determination.
- d. All final permit/permission decisions, including all general permit verifications, for cases where these funds are used will be made available and updated monthly on the applicable District's web page in an area separate from any other final actions, clearly identifiable as being for projects funded through this authority.
- e. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
- f. The St. Paul District and Chicago District must comply with all applicable laws and regulations.
- g. Funds will not be expended for the review of the decision maker's decision.
- h. Funds will not be used for enforcement activities.

Impacts to the Regulatory Program: The St. Paul District does not expect priority review of MMSD projects to negatively impact the St. Paul District's Regulatory Program or to increase the time for permit evaluations of other projects as there will be no decrease in the permanent staffing level of the non-funded reviews.

Impacts to the 408 Program: The Chicago District does not expect priority review of MMSD requests to negatively impact the Chicago District's Section 408 Program, or to increase the time for requests regarding other proposed alterations as there will be no corresponding reduction in Section 408 funding from the USACE Headquarters for non-funded reviews in the Chicago District. The Section 408 Program nationally has had insufficient funds to cover all requests for all but one fiscal year in its history, and so funding agreements provide more stability to the overall Section 408 program for funded and non-funded reviews alike.

Consideration of Comments: The St. Paul District and Chicago District are soliciting comments from the public, federal, state and local agencies and officials, and other interested parties. Comments will be made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the St. Paul District Commander and Chicago District Commander each determines, after considering public comments, that the acceptance and expenditure of the funds is appropriate in consideration of the requirements under the applicable statutory authority, is in compliance with Section 214 of WRDA 2000, and is not otherwise contrary to the general public interest, the St. Paul District and Chicago District will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement (MOA) with MMSD and will accept the funds from MMSD. A second public notice will be issued regarding the

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final decision of each District Commander on this matter. In the event only one District Commander decides to accept and expend funds, only that District would enter into an MOA.

Provided that the purpose for accepting funds remains the same as that described in this notice, a new public notice is not required in the event that an MOA executed by one or more Districts is amended to extend the term of the agreement; to modify the types of projects identified in the MOA; or to adjust the amount or other terms of the payments contemplated under the MOA.

We are seeking public comment. Anyone wishing to comment is encouraged to do so.

Comments should be submitted in writing within the comment period specified at the top of this notice and refer to the Proposed Acceptance of Funds from MMSD. Replies may be sent via email to ryan.m.malterud@usace.army.mil or can be addressed to: Corps of Engineers – Regulatory Division, 332 Minnesota Street, Suite E1500, St. Paul, Minnesota 55101. All comments received will be shared with the Chicago District. If you have any questions, please contact Ryan Malterud (St. Paul District Regulatory Program) at (651) 290-5286 and/or Colin Smalley (Chicago District Section 408 Program) at (312) 846-5538.