Environmental and Stormwater Management
Breakout Session #1

September 19, 2018
John Leonard – Moderator
Urban Program Manager, Local Assistance Division
Environmental and Stormwater Management

2017 NEPA Programmatic Agreement
Angel Deem, Environmental Division Administrator, VDOT

Environmental Activities in LAP Project Schedules
John Simkins, Planning & Environmental Lead, FHWA

USACE Regulatory 101
Kimberly Prisco-Baggett, Deputy Chief, Regulatory Branch, USACE

Capstone Documents to support WQ Permitting
Jim Cromwell, NEPA Programs Manager, VDOT Environmental

Roles & Responsibilities for E&S and Stormwater Management
Chris Swanson, Assistant Division Administrator, Location & Design, VDOT
2017 NEPA Programmatic Agreement

Angel Deem
Environmental Division Administrator
VDOT Central Office
2017 NEPA Programmatic Agreement

- Background and Legislative Changes
- New One-time PCEs (OTPCEs)
- Signature Authorities
- VDOT QA/QC of all NEPA deliverables
- LAP Manual Requirements and Updates to Chapter 15
Environmental Activities in LAP Project Schedules

- Environmental Review Process (ERP)
  - Activity 17E
  - 75 days*
  - NEPA Document (Federally Funded Projects or Federal Action)
    - Activity 25
    - 80 days*
    - Performance Metric
  - Permit Acquisition (Water Quality Permits)
    - Activity 70
    - 170 days*
    - Performance Metric
    - Tracked on the VDOT Dashboard

* Working days
Tracking Permit Acquisition

- Only 18% of LAP projects have task in schedule
- Schedule templates now include Activity 70
  - Tracking is the same for VDOT and Locality Projects
- Activity 70 must be maintained in schedule
- Establish reasonable dates prior to closing scoping
Activity 25
NEPA Document

- Schedule templates now include Activity 25
  - Manual adjustments have normalized data
  - Activity 33 only used for EA and EIS

- Performance Metric
  - Public Hearing & ROW Acquisition often dependent on NEPA Completion

- Activity 25 must be maintained in the schedule

- Establish reasonable dates prior to closing scoping
Environmental Schedule Take Aways

1) Establish reasonable schedule before Scoping closes
   • Hiring consultant
   • Complete scoping and prepare permit sketches
   • State and Federal agency coordination

2) Correct activities in Schedule - Minimum
   • Environmental Review (17E), NEPA Document (25), Permit Acquisition (70)

3) Coordinate when activities are started & completed
   • Communication is key
   • If dates are not entered the project will not accurately be reflected on performance metrics or Dashboard
Environmental Activities in LAP Project Schedules

John Simkins
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FHWA
NORFOLK DISTRICT
REGULATORY BRANCH

Kimberly Prisco-Baggett
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September 2018

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NORFOLK DISTRICT REGULATORY BRANCH

Legal Basis:

1776 US Constitution
   Commerce Clause

Rivers and Harbors Act of 1899
   (Sec. 9, 10, 13 & 14)
   Regulates use of Nations navigable waters

Clean Water Act of 1972
   (Sec. 404)
   To restore and maintain the chemical, physical, and biological integrity of the Nations waters.

Marine Protection, Research and Sanctuaries Act
   (Sec. 103)
   Regulate the dumping of all types of material into ocean waters.
Rivers and Harbors Act:
(Sections 9 & 10)

Ensures full and free public use of the nation's navigable waters supporting interstate and international commerce.

**Geographic Jurisdiction**

33 CFR 329.4

- Tidal waters
- Transportation of Interstate or foreign commerce
- Mean High Tide Line or OHWM
- Seaward to 3 nautical miles

**Activity Jurisdiction**

- Corps permit required for any work or construction in, over or under navigable waters
Clean Water Act:
(Section 404)

To restore and maintain the chemical, physical and biological integrity of the Nation’s waters including streams and wetlands.

- Water storage and flood abatement
- Water quality
- Habitat
- Nutrient cycling
- Pollution Removal
- Erosion control

Administered by EPA

Section 404 permits issued by the Secretary of the Army
CLEAN WATER RULE – GEOGRAPHIC JURISDICTION

A(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(2) All interstate waters, including interstate wetlands;
(3) The territorial seas;
(4) All impoundments of waters otherwise identified as waters of the United States under this section;
(5) All tributaries, as defined in paragraph (c)(3) of this section, of waters identified in paragraphs (a)(1) through (3) of this section;
(6) All waters adjacent to a water identified in paragraphs (a)(1) through (5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;
(7) All waters in paragraphs (a)(7)(i) through (v) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section.
(8) All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1) through (3) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section.
Clean Water Act: (Section 404)

Activity Jurisdiction: (33 CFR 323.3)

Unless specifically exempted under 33 CFR 323.4, and discharge of dredged or fill material into waters of the United States, including streams and wetlands, require a permit from the Corps.
DO YOU NEED A PERMIT?

1. Is the activity or water regulated per regulation?

2. Is the activity exempt?

3. Is there geographic jurisdiction?

4. Is there activity jurisdiction?
Permitting:

The Regulatory Branch works with private individuals, developers, and government agencies through the permitting process.

The Corps, in making permit decisions, must consider a range of factors including environmental impacts, socioeconomic impacts and property ownership rights, and balance public benefits against public detriments.
Permitting:

The Regulatory Branch, in making permit decisions, must not only follow the procedures of the Rivers and Harbors Act and the Clean Water Act but must also ensure compliance with many other laws including:

- Section 401, Clean Water Act
- Coastal Zone Management Act
- National Environmental Policy Act (NEPA)
- Fish and Wildlife Coordination Act
- Endangered Species Act (Section 7)
- National Historic Preservation Act (Section 106)
- Tribal – 7 Virginia Tribes Federally Recognized
- Essential Fish Habitat (EFH)

2 basic types of permits:
- General Permits
- Individual Permits
Enforcement:

When an individual discharges dredged or fill material in waters of the US or works in navigable waters without a permit, or violates any permit condition, the Corps may initiate enforcement actions including administrative penalties and/or restoration.
For Regulatory purposes, the NAO area of responsibility includes the entire Commonwealth (exceptions: Ft. Belvoir, Ft. Myers, Dalgren Weapons Lab, Harry Diamond Lab and Cameron Station). NAO Regulatory Branch has a main office located in the Waterfield Bldg. and 10 field offices located throughout Virginia.
LAP CHALLENGES

1. Purpose and Need – the problem you are trying to solve
2. Alternatives Analysis – the ways you can solve the problem
3. Preferred Alternative
4. Areas to be impacted – by resource type and duration
   a. Mapping – design plan and cross sectional
   b. Table (tie impacts areas back to design plans)
5. Specific construction activities
6. Identify all access and stormwater requirements
7. Consider secondary impacts
8. Document any avoidance and minimization efforts undertaken
9. Mitigation statement or plan
10. Clearly identify who the appropriate contacts are
11. Documentation that Section 106 (including tribal), Section 7, and EFH were completed and are still valid
Capstone Documents to support WQ Permitting

Jim Cromwell
NEPA Programs Manager
VDOT Environmental
Capstone Documents Support WQ Permitting

• Conclusion of Coordination/Consultation must be documented to support WQ Permitting Decision

  ➢ VDHR (SHPO) - Section 106
  ➢ USFWS - Section 7
  ➢ NMFS - EFH

• Needed for VDOT Certification prior to Advertisement
Erosion and Sediment Control & Stormwater Management
Roles and Responsibilities of Localities and VDOT for Locally Administered Projects

Chris Swanson
Assistant Division Administrator
VDOT Location & Design
Erosion & Sediment Control and Stormwater Management

- Plan Review and Approval
- Construction Administration
- Post-Construction
- Documentation
ESC and SWM Plan Development

• The ESC and SWM plan review and approval
  – VESCP/VSMP Authority (Approves)
  – VDOT District Hydraulic Engineer (Reviews)
    • Congruence with applicable VDOT standards
    • may require plan revision independent of the local VSMP Authority review
  – Prior to the issuance of a Land Use Permit
ESC and SWM Documentation

• Design information for any BMPs to be accepted by VDOT shall be provided.
  – SWM Plan including computations
Construction

- The LPA is responsible for coordination with the VDOT Construction Project Monitor (CPM) and VDOT District staff for inspections of facilities during construction.
  - This may include inspections at critical construction milestones and must include a final acceptance inspection.
Construction

• LPA projects that discharge to VDOT’s Municipal Separate Storm Sewer System (MS4) is expected to comply with VDOT’s MS4 permit
Construction Documentation

- The LPA will be responsible for documenting record drawings, certifications, inspections and acceptance, and completing the LD445D form and signifying as such under the LPA Project Certification – VDOT MS4/SWM Program Checklist.
Nutrient Credits

• Nutrient credits shall be considered the preferred alternative when available and economically feasible.

• VDOT may be able to assist in purchasing nutrient credits/offsets through statewide contract vehicles (with charges apportioned to the LPA or project).
Total Maximum Daily Loads

- Credit for net reductions from redevelopment areas will be claimed by VDOT.
- In the event there are additional pollutant reductions.
  - The LPA shall quantify and document the credit yield for VDOT to utilize in MS4 and TMDL crediting.
  - Assuming associated BMPs are under VDOT’s long-term O&M.
- LAP projects may also involve others (such as stream channel restoration) which may be of value to both the local community and VDOT.
Questions?