

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 3/5/2018 11:04:43 PM
To: Leah Pilconis [pilconisl@agc.org]
CC: Jimmy Christianson [christiansonj@agc.org]
Subject: RE: AGC of America - Infrastructure / USACE Areas Need Improvement

Thanks! This is very helpful and I appreciate the quick turnaround.

From: Leah Pilconis [mailto:pilconisl@agc.org]
Sent: Monday, March 5, 2018 5:48 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Jimmy Christianson <christiansonj@agc.org>
Subject: AGC of America - Infrastructure / USACE Areas Need Improvement

Tate –

Thanks again for asking AGC for input. Please let me know if you have any questions or would like additional information. Have a great evening!

Take care,

Leah

From the Associated General Contractors of America – following are four (4) top areas within the Army Corps' program that need to be improved, in order to speed up the delivery of critical infrastructure work ...

1. **CONCURRENTLY PROCESS RHA 408 AND CWA 404: The U.S. Army Corps of Engineers (Corps) should concurrently process the River and Harbors Act (RHA) Section 408 permission and the Clean Water Act (CWA) Section 404 permit on all infrastructure projects, where both are applicable.**
 - **Problem:** Construction projects are being delayed because of Section 408 burdens. The Corps will not even begin to process many CWA Section 404 Nationwide and individual permits until the 408 permission is granted. This means that delay on the RHA Section 408 side puts off the CWA Section 404 review process and further delays construction. And, many of the reviews required under RHA Section 408 may be reviewed, yet again, under the CWA Section 404 process.

2. **LIMIT JOINT ADMINISTRATION OF 404 PROGRAM: Congress should grant the Corps greater authority to run the CWA 404 permit program – see [NOTE #1](#) for a detailed description of the U.S. Environmental Protection Agency's (EPA) role in the 404 program.**
 - **Problem:** Currently, project proponents face inconsistencies and uncertainty because of their overarching fear that they will not be able to rely on Jurisdictional Determinations (JDs) and Section 404 permits received from the Corps. What is more, they face the continuing question whether EPA will also get involved in the permit process or disagree with the Corps' decision-making *after* the permit is duly issued, and relied upon by the project proponents.

[NOTE 1 - The Corps has responsibility for running the day-to-day permitting under Section 404 of the CWA. In its supporting role, EPA develops and interprets environmental criteria for evaluating permit applications; has final authority to determine the scope of geographic jurisdiction; approves and oversees state assumption; identifies activities that are exempt from permitting; reviews and comments on individual permits; has authority to prohibit, deny or restrict the use of any defined area as a disposal site (CWA

Section 404(c)); can elevate specific proposed Corps permits (CWA Section 404(q)); and enforces Section 404 provisions. In addition, EPA and the Corps are standing members of the mitigation banking Interagency Review Teams (IRT), an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank or an in-lieu fee programs.]

3. INCENTIVIZE PROJECT COMPLETION: Congress must separate project funds from Corps salaries and provide incentives for Corps staff to meet and exceed project delivery benchmarks.

- **Problem:** Corps project staff salaries are currently paid through project funds. When the project ends, so too may Corps staff employment (or at a minimum, they may have to move to the next Corps' project in a less desirable location). As a result, there is little incentive for these Corps employees to deliver a project on time and on budget, let alone underbudget and ahead of schedule.

4. IMPROVE CHANGE MANAGEMENT: Mandate the Corps electronically record and track change order data on their projects and report such information on an annual basis to Congress. Data should be maintained noting: (1) when the need for a change order was recorded either by the contractor or USACE; (2) when any change order proposals are presented, rejected and accepted; (3) initiation and completion of work on the change order; and (4) time of final payment for the work completed on the change order. As it stands, there is little to no accountability for change order management at the project field level.

- **Problem:** Construction projects are subject to a wide array of variables that may require USACE to alter its initial plans through a change order. Consequently, reasonable delays and changes may be required to meet conditions on the ground. The concern is not with reasonable delays and changes to the initial contract. Rather, the problem rests with USACE failing to execute change orders and make payment to contractors for months—and even years—at a time. Unsurprisingly, this delay causes serious harm to the project schedule and has a deleterious impact upon payment to the prime and subcontractors, especially small businesses, which depend upon that cash flow to remain in business. (See page 60 of [this USACE Contract Administration Document](#) to see a chart that epitomizes the problem with USACE project delivery and this issue).

Leah F. Pilconis

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