

STATEWIDE IMPLEMENTATION AGREEMENT
NATIONAL ENVIRONMENTAL POLICY ACT
AND
CLEAN WATER ACT SECTION 404
CONCURRENT NEPA/404 PROCESSES
FOR
HIGHWAY PROJECTS
IN
IOWA

I. Background

In a May 1, 1992, agreement, the U.S. Department of Transportation, the Department of the Army, and the U.S. Environmental Protection Agency (EPA) adopted the document AApplying the Section 404 Permit Process to Federal-aid Highway Projects. This document endorsed methods to integrate compliance with the National Environmental Policy Act (NEPA) and the requirements of Section 404 of the Clean Water Act.

In a July 31, 1996, agreement, the Federal Highway Administration (FHWA); the Department of the Army, U.S. Army Corps of Engineers, Rock Island District (Corps); and the Iowa Department of Transportation (Iowa DOT) adopted a document entitled "Iowa Local Operating Procedures for Integrating NEPA/404". This document provided some basic agreements on the mutual goal of concurrently processing NEPA and 404 activities, but did not provide a specific process for accomplishing that goal. Also, other Federal and State agencies that are an integral part of the NEPA and 404 processes were not involved in the development of those agreements and did not adopt the July, 1996 document.

In January of 1997, the Iowa DOT Quality Council's "Process" Subcommittee chartered a review team to review the Iowa DOT project development process with the goal of reducing development time while maintaining program integrity and quality. In November of 1997, the team provided a report which outlined a new development process called "Can-Do." Through a streamlined, non-linear process the proposed development time for a typical, non-controversial project was reduced from slightly over eleven years to about five and one-half years. Iowa DOT management approved the process and implementation began in February of 1998.

II. Purpose

This Statewide Implementation Agreement (SIA) is based on the above referenced guidance, continues the spirit of cooperation and agreement contained in the July, 1996 agreement, and implements a concurrent NEPA/404 process for highway projects in Iowa.

This SIA commits its signatories to the following:

- ☐ Potential impacts to waters of the United States, including wetlands, in Iowa shall be

considered at the earliest practical time in project development.

- ∃ Adverse impacts to such waters and wetlands shall be avoided to the extent practicable, and unavoidable adverse impacts shall be minimized and mitigated to the extent reasonable and practicable.
- ∃ Interagency cooperation and consultation shall be diligently pursued throughout the integrated NEPA/404 process to ensure that the concerns of the regulatory and resource agencies are given timely and appropriate consideration and that those agencies are involved at key decision points in project development.

This SIA is intended to:

- ∃ Improve cooperation and efficiency of governmental operations at all levels, thereby better serving the public,
- ∃ Expedite construction of necessary transportation projects, with benefits to mobility and the economy at large,
- ∃ Enable more transportation projects to proceed on budget and on schedule, and
- ∃ Protect and enhance wetlands and other waters of the United States in Iowa, which will benefit the State's aquatic ecosystems and the public interest.

Regulatory and resource agency participation in this process does not imply endorsement of a transportation plan or project. ***Nothing in this SIA is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved.***

III. Applicability

All highway projects in Iowa needing FHWA action under NEPA and a Department of the Army permit under Section 404 of the Clean Water Act are eligible for processing under this SIA. If the NEPA/404 concurrent process is initiated and because of subsequent and more complete information the project is determined to have only very limited impacts, the concurrent process may cease. If it is later determined that more significant project impacts are present, the concurrent process may be reinitiated.

In general, the decision to develop a project using the NEPA/404 concurrent process will be made jointly by the signatory agencies. Eligible projects will be developed using the process unless:

- ∃ After consultation with the signatory agencies, it is determined that the project is not of sufficient complexity to warrant additional coordination and handling, or
- ∃ After consultation with the signatory agencies, it is determined that the discovery of need for an individual permit is too late in project development to revisit purpose and need or alternative points, or
- ∃ After consultation with the signatory agencies it is determined that the project is not suitable for the NEPA/404 process outlined in this agreement.

IV. Implementing Procedures

GENERAL PROCEDURES

A. Concurrence/Concurrence Points

The following definitions for Concurrence and Concurrence points are adopted for the purposes of this SIA.

Concurrence- Confirmation by the agency that information to date is adequate to agree that the project can be advanced to the next stage of project development. Concurrence does not imply that the project has been approved by an agency nor that it has released its obligation to determine whether the fully developed project meets statutory review criteria. If substantial new information regarding a concurrence point is brought forward during project development, the adequacy of the prior concurrence statement may be reconsidered. The further refinement of the project, without a substantive change, will not normally be a reason to revisit the concurrence point. Rather, it should help decision makers select the least environmentally damaging, reasonable and practicable alternative.

Concurrence Points- Points within the NEPA process where the transportation agency requests agency concurrence.

The FHWA and the Iowa DOT shall seek concurrence from the other SIA signatories regarding **Purpose and Need, Alternatives to be Considered, Alternatives to be Carried Forward, and Preferred Alternative**. The intent of the concurrence points in the process is to preclude the routine revisiting of decisions that have been agreed to earlier in the process and encourage early substantive participation by the agencies. The timing of the concurrence points in the environmental process is reflected in the accompanying Iowa NEPA/404 Merger Concurrence Point Chart dated July, 1999. The chart has a degree of flexibility and range built into it within which concurrence can be reached on each of the concurrence points. The method of accomplishing the concurrence reviews will be through joint meetings of the SIA signatories and other agencies as appropriate. The FHWA and Iowa DOT will schedule meetings approximately every six months, or as mutually agreed upon, at which projects ready for one of the concurrence points will be presented for concurrence. Iowa DOT representatives from the Office of Environmental Services will develop the agendas for the meetings. The agendas will include the time and place of the meeting, descriptions of the projects to be discussed, appropriate background information to explain each project, and an indication of the concurrence point for each. Iowa DOT will provide the agenda to the SIA signatories, and other agencies as appropriate, at least 30 days in advance of the meeting to allow the regulatory and resource agencies sufficient time for review and preparation of their comments.

These meetings will promote efficient use of time and personnel resources by bringing together all of the appropriate parties to focus on multiple projects and facilitate the exchange of information necessary to obtain concurrence at the designated decision points. ***The minutes of the meeting, as revised based on review by the regulatory and resource agencies, will serve as documentation of concurrence.*** For major or complex projects or projects on expedited schedules, separate meetings may be scheduled. The Iowa DOT will provide agendas and notification for such meetings as described above and will document concurrence in the meeting minutes.

B. Resolving Disputes at Concurrence Points

It is anticipated that concurrence at each of the concurrence points will be achieved in most cases. In more controversial projects, however, the probability of non-concurrence may increase. Therefore, a process is needed to resolve disputes at any one of the concurrence points when one or more agency(ies) does not concur.

Dispute resolution will consist of informal efforts to reach a general consensus among the participating Federal and State agencies regarding the issues involved at the particular concurrence stage. All parties appropriate to this effort should be involved, but formal concurrence will be required from the agencies with jurisdiction by law.

Attempts will be made to resolve issues at the lowest possible level in each agency. Within 30 days of a finding of non-concurrence at one of the designated points, the FHWA and Iowa DOT will meet with the agency(ies) involved to determine the direction for resolution of the dispute. The direction for resolution will be agreed upon through consensus of the agencies involved.

The NEPA/404 process may continue whether or not attempts to reach concurrence are successful. However, if the dispute remains unresolved, any agency in non-concurrence retains the option to elevate its concerns through existing, formalized dispute elevation procedures at the appropriate point in the NEPA or Section 404 permit process in accordance with Section 404(q) procedures. This will encourage all participating agencies to very carefully consider and accommodate the concerns raised by the resource agencies prior to finalization of the NEPA process and proposed issuance of the permit to avoid processing delays.

C. Data Collection and Analysis

The Iowa DOT will ensure that data collection activities will provide the specific items of information the Corps requires for determining compliance with the Section 404(b)(1) guidelines. Data collection will take place early in the coordination process so information will be available for discussion at the concurrence point meetings. The resource and regulatory agencies will be responsible for reviewing the data and evaluations provided by Iowa DOT and providing supplemental information as appropriate.

D. Systems Planning Process

Iowa transportation planning is accomplished under two separate processes. One is for urbanized areas over 50,000 population, where the plans are developed by the Metropolitan Planning Organization (MPO) designated for the area. The other is for the remainder of the state where the plans are developed by the Iowa DOT. The planning processes are to include the development of transportation plans addressing at least a twenty-year planning horizon and include both long and short range strategies/actions and provide for the development of transportation facilities which will function as an intermodal transportation system.

In the planning processes, the MPOs are to develop a transportation improvement program (TIP) for

the metropolitan planning areas and the Iowa DOT is to develop a statewide transportation improvement program (STIP) for all areas of the state. The TIP and STIP are to cover a period of not less than 3 years and include a separate priority listing of projects to be carried out in each of those 3 years. In cooperation with the MPOs, the Iowa DOT will incorporate the metropolitan area TIPs into the STIP creating a single statewide transportation improvement program for all areas of the State.

The transportation planning process will generally establish the purpose and need for projects. The TIPs and the STIP will identify the mode of transportation to be funded, i.e., highways or transit, including bicycle and pedestrian needs.

The process for development of the TIPs and STIP allows for input by the public and the resource and regulatory agencies and also for their review of the TIPs and STIP. The resource and regulatory agencies should provide their input into the process and review the TIPs and STIP as appropriate. Agency participation, along with the list of projects included in the STIP for implementation, will assist the agencies in identifying and prioritizing future workloads.

E. Scoping

Scoping is a process that considers a range and extent of action(s), alternatives and impacts, including Section 404 permit issues, to be considered in the environmental review process. It is not a single event or meeting but continues throughout the development of an environmental document and includes public involvement, usually a series of meetings, telephone conversations, or written comments from different individuals and groups. No matter how thorough the scoping process, it may become necessary to modify the scope of an environmental document if new issues surface during project development.

Scoping has specific and fairly limited objectives. They are: 1) to identify the public and agency concerns; 2) to facilitate an efficient environmental documentation process through assembling the cooperating agencies, identifying all the related permits and reviews that must be scheduled concurrently; 3) to define the issues and alternatives that will be examined in detail in the environmental document while simultaneously devoting less attention and time to issues which cause no concern; and 4) to save time in the overall process by helping to ensure that draft documents adequately address relevant issues, reducing the possibility that new comments will cause a statement to be rewritten or supplemented.

Scoping begins when the Iowa DOT identifies the affected parties and presents a proposal with an initial list of environmental issues and alternatives. This basic information is necessary to explain to the public and the agencies what their involvement is expected to be. The first stage is to gather preliminary information and compose a clear picture of the action proposed.

A good scoping process will lay a firm foundation for the rest of the decision making process. If the environmental documentation can be relied upon to include all the necessary information for formulating policies and making rational choices, the agency will be better able to make a sound and prompt decision. In addition, if it is clear that all reasonable alternatives are being seriously considered, the public and agencies will usually be more satisfied with the alternative selection process.

SPECIFIC PROCEDURES

The signatory agencies have identified four concurrence points which occur during the Iowa DOT's project development process. These are strategic points in time when the Iowa DOT will present updated project development information to the resource agencies. The resource agencies will review this information and provide concurrence that the Iowa DOT is properly considering and addressing potential natural resource impacts related to the project's development in balance with other social and economic impacts. This process will also serve to satisfy the requirements for sequential mitigation (avoid, minimize, and compensate). The goal is to identify and address agency concerns throughout the development process.

The four concurrence points are: 1) Project Purpose and Need (this will equate to the Section 404 Overall Project Purpose), 2) Alternatives to be Analyzed, 3) Alternatives to be Carried Forward, and 4) Preferred Alternative. The final concurrence will be issuance of the required permits. The following describes the information that will be available to the resource agencies at the time the Iowa DOT seeks resource agency concurrence.

1. Purpose and Need-This concurrence point will occur after the Iowa DOT Commission has given approval to begin development of the project, the Iowa DOT has prepared a draft purpose and need statement for review, and the Iowa DOT has held a public meeting for local citizen and governmental input. The Iowa DOT will provide a draft purpose and need statement that will be partly based on information provided from its long-range systems planning office. A summary of input from the public information meeting will be available for the resource agencies. It is anticipated that the discussion on this concurrence point would be held in an environmental scoping meeting, early in the development process.

2. Alternatives to be Analyzed-During the proposed early environmental scoping meeting, the Iowa DOT will present some preliminary draft alignments on aerial photos and USGS quad maps showing beginning and ending points and known sensitive areas. Sensitive areas include wetlands, woodlands, known 4(f) properties, homes, businesses, roads, known Section 106 sites, threatened and endangered species habitats, utilities, unique landforms, sources of pollution, floodplains, prairies, parks, refuges, etc. This resource information will most likely be obtained from secondary sources. Discussion will be based on general environmental knowledge of the area and aerial photo interpretation. The agency concurrence will acknowledge that the range, number and scope of alternatives to be studied is likely adequate to satisfy permitting requirements. The Iowa DOT will seek guidance and agreement from the resource agencies at this point on the scope, duration, and details of any studies that may be required for any of the alternatives to allow a decision to be made at Concurrence Point 3.

3. Alternatives to be Carried Forward-At this point, the Iowa DOT will have preliminary quantitative and qualitative information on the resource impacts for the various alternatives and potential borrow sites. Planning level, field-gathered information will be available for potential impacts to sensitive areas which include wetlands and other waters of the U.S. (including wetland types and boundaries), woodlands (by type), threatened and endangered species habitat, prime agricultural land, known Section 106 properties, resources which include regulated substances, and cultural resources for all alternatives. Based on this information, the Iowa DOT

will seek concurrence on alternatives that can be dropped from further consideration. Iowa DOT will identify and provide documentation for those alternatives it feels are not practicable. Following this concurrence point, the Iowa DOT will proceed with more detailed development of the remaining alternatives.

4. Preferred Alternative-This concurrence point will be sought following the Iowa DOT Commission's selection of an alternative. The Iowa DOT will provide materials that support the preferred alternative. This will include results from any new studies, information developed following concurrence point 3, information from public and resource agency input, minutes of the Commission meeting, documentation of minimization efforts, and conceptual mitigation site alternatives.

NOTE: The Iowa DOT Commission has statutory authority for the route selection of highway improvements. The Commission's decision incorporates:

- Preliminary engineering design showing the actual footprint for the alternative and resulting resource impacts.
- Comments received about the environmental documents completed and circulated prior to Commission approval.
- Comments (both verbal and written) received during the public hearing.
- Potential borrow(s) and compensatory mitigation options for the alternative.

This process only applies to projects being completed under the Iowa DOT's *Can-Do* project development process. Projects that were started under the previous process may attempt to utilize the concepts stated above, but each project will be handled individually based on its complexity and sensitivity.

V. Modification/Termination

This SIA may be modified upon approval of all signatories. Modification may be proposed by one or more signatories. Proposals for modification will be circulated to all signatories for a 30-day period of review. Approval of such proposals will be indicated by written acceptance. A signatory may terminate participation in this agreement upon written notice to all other signatories.

STATEWIDE IMPLEMENTATION AGREEMENT

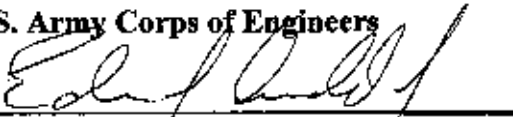
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The Federal agencies and the Iowa Department of Natural Resources in cooperation with the Iowa Department of Transportation (Iowa DOT) agree to implement, to the fullest extent practicable and as funding and staffing level allow, the solutions outlined in the Statewide Implementation Agreement to the extent they are implemented by Iowa DOT.

This agreement becomes effective upon signature of all agencies and may be modified by written approval of each agency. This agreement may be revoked by agreement of all agencies or by any agency upon 30-days written notice to the other agencies.

U.S. Army Corps of Engineers



Edwin J. Arnold, Jr.
Brigadier General, U.S. Army
Division Engineer, Mississippi Valley Division

5 Jul 01
Date



David A. Fastabend
Colonel, Corps of Engineers
Division Engineer, Northwestern Division

24 AUG 2001
Date



Kurt F. Ubbelohde
Lieutenant Colonel (P), U.S. Army
District Engineer, Omaha District

22 August 2001
Date



Torkild P. Brunso
Lieutenant Colonel, U.S. Army
Acting District Engineer, Rock Island District

22 JUN 01
Date

U.S. Fish and Wildlife Service



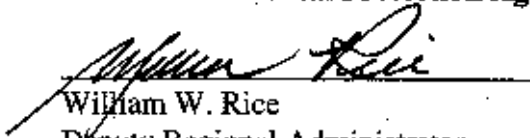
Richard C. Nelson
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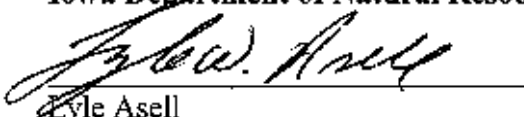
Bobby Blackmon
Division Administrator

U.S. Environmental Protection Agency, Region 7



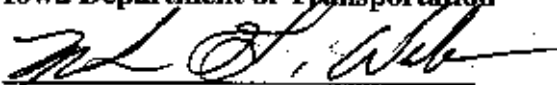
William W. Rice
Deputy Regional Administrator

Iowa Department of Natural Resources



Eyle Asell
Acting Director

Iowa Department of Transportation



Mark Wandro
Director

GLOSSARY

Action - A highway or transit project proposed for the Federal Highway Administration (FHWA) or Federal Transportation Authority (FTA) funding. It also includes activities such as joint and multiple use permits, changes in land use access control, etc., which may or may not involve a commitment of Federal funds (23 CFR 771.107(b)).

Can-Do Process - The Iowa DOT's revised project development process which was adopted in February of 1998. The process is a streamlined and co-development process which minimizes project development time through concurrent activities. The process is designed around a commitment to proactive and continuous public involvement. It incorporates environmental commitments to avoidance in preference to mitigation, to early and continuous consultation with environmental resource agencies and to early investigation and delineation of sensitive resources.

Intermodal Transportation System - A system for the movement of people and goods that is economically efficient and environmentally sound, provides the foundation for the nation to compete in the global economy, and will move people and goods in an energy efficient manner.

Jurisdiction by Law, Agencies with - Agencies with authority to approve, veto, or finance all or part of the proposal (40 CFR 1508.15).

Metropolitan Planning Organization (MPO) - That organization designated as being responsible, together with the Iowa DOT, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision making for the metropolitan planning area (40 CFR 51.392; 23 CFR 450.104).

Metropolitan Transportation Plan - The official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area (23 CFR 450.104).

Mitigation - The CEQ has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts.

Practicable Alternative - Practicable alternatives to a project, as defined in 40 CFR 230.3(q), are those available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. (40 CFR 230 is also known as the Section 404(b)(1) guidelines)

Public Hearing - A public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed transportation project and/or a Department of Army permit action and which affords the public an opportunity to present their views, opinions, and information on such projects and permit actions (33 CFR 327.3(a)).

Section 106 - Section 106 of the National Historic Preservation Act of 1966, as amended, requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such

undertakings. The process for accomplishing these requirements is referred to as the 106 process and is contained in Federal rules at 36 CFR Part 800.

Section 404 Permit - A Department of the Army permit authorizing the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

Special Expertise, Agencies with - Agencies with statutory responsibility, agency mission, or related program experience (40 CFR 1508.26).

Statewide Transportation Improvement Program (STIP) - A staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan plans, Transportation Improvement Programs (TIPs) and processes (23 CFR 450.104).

Transportation Facilities - Examples include highways, transit systems, pedestrian sidewalks, bicycle paths, and similar types of facilities.

Transportation Improvement Program (TIP) - A staged, multiyear, intermodal program of transportation projects which is consistent with the metropolitan transportation plan (23 CFR 450.104).

Waters of the United States - All waters, lakes, rivers, streams (including intermittent streams), wetlands, sloughs, and the territorial seas, unless excluded from regulation. For a complete definition and exclusions, refer to 33 CFR 328.3(a), 33 CFR 323.4 and 40 CFR 230.3(s).

Wetlands - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (33 CFR 328.3(b) and 40 CFR 230.3(t)).

4(f) - Section 4(f) of the Department of Transportation (DOT) Act of 1966. Section 4(f) was originally set forth in Title 49, United States Code, Section 1653(f), and applies only to agencies within the DOT. It provides that the Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

404(q) Elevation Process - Section 404(q) of the CWA requires development of procedures to expedite permit decisions by eliminating duplicative paperwork. The current process allows some Federal agencies to appeal Section 404 permit decisions made by a District Engineer of the USACE. The process is contained in the 404(q) Memorandums of Agreement referenced in Appendix C.