

TWG: PERMIT PROCESS

Meeting: #4 **Date:** Oct. 18, 2018 **Time:** 9 a.m.-12 p.m.

Attendees (Conference call participants):

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| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Sandy Bahr, Sierra Club - Grand Canyon Chapter <input checked="" type="checkbox"/> Tricia Balluff, City of Phoenix <input type="checkbox"/> Rion Bowers, Bowers Environmental Consulting <input checked="" type="checkbox"/> Mike Cabrera, Pima County Flood Control <input type="checkbox"/> Tom Klimas, WestLand Resources, Inc. <input checked="" type="checkbox"/> Theresa Knoblock, Tierra Right of Way Services <input checked="" type="checkbox"/> Emily Lester, ADOT <input checked="" type="checkbox"/> Sheila Logan, HILGARTWILSON, LLC <input type="checkbox"/> Amanda McGennis, Arizona Chapter Associated General Contractors <input checked="" type="checkbox"/> David McIntyre, McIntyre Environmental LLC <input checked="" type="checkbox"/> Susan Montgomery, Inter-Tribal Assoc. of Arizona | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Marinela Papa-Konomi, MCDOT <input checked="" type="checkbox"/> Betsi Phoebus, Jacobs <input checked="" type="checkbox"/> Karla Reeve-Wise, PDEQ <input type="checkbox"/> Suzanne Shields, Pima County Regional Flood Control District <input checked="" type="checkbox"/> Jennifer Simpkins, Kimley-Horn <input type="checkbox"/> James Stewart, ASARCO <input checked="" type="checkbox"/> Laura Stewart, ACS (Archaeological Consulting Services, Ltd.) <input checked="" type="checkbox"/> Scott Thomas, Fennemore Craig <input type="checkbox"/> Marc Wicke, SRP <input checked="" type="checkbox"/> Duane Yantorno, ASARCO |
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Staff Support:

- Andy Koester, ADEQ Heidi Welborn, ADEQ Kelly Cairo, GCI

Discussion Items:

Schedule

- Tricia reported that the TWG new white paper deadline is March 21. This extension applies only to the Permit Process TWG.
 - Action item: Tricia to post an updated schedule with writing and review deadlines.

Current State

- Marinela recommended discussing which nationwide permits are used in Arizona and should be carried forward. This information will be included in the permit transition section.
- Decision: The group agreed to include a table of benefits and drawbacks of current state.
 - A table may be useful for the gap discussion as well. Some cons may be part of the gap analysis. Jennifer noted that the JD group is listing: current state/pros; cons; closure options.
 - Action item: Tricia will draft a table and template.

Document Review

- The group agreed to language and content updates as noted in the live document. LTF and Permit Type subgroups will implement changes noted in the live document. Highlights of additional discussion are included below.

LTF/Current State

- Action item: Emily will provide timeframes for ADOT individual permits (numbers and average processing time). Should note that this includes extensive up-front coordination with the ADOT program liaison at the Corps.
- The group discussed use of Pima County WRDA Corps staff person and ADOT Corps liaison.

- Tricia explained the use of outlier terminology, which is used to represent data significantly outside the average.
 - Action item: Sheila will propose additional outlier language to adequately represent the significant effort involved in these permits.
- Karla noted that in attempting to obtain an RGP63 (emergency permit) the Corps typically recommends obtaining an existing nationwide permit.
 - Action item: Tricia will investigate this further with the Corps.
- Which nationwide permits do not require notification? Could insert the link to the table for permit types. Conditions should also be listed under permit types.
- Action item: Scott will provide public notice for a CA Letter of Permit to Tricia.

LTF/Vision

- Duane suggested a pre-application check-list.
 - Action item: Tricia will forward this suggestion to the Fees TWG to ensure they're aware that this TWG is recommending pre-application meetings.
 - Andy explained that pre-application meetings are highly encouraged and ADEQ's current fee structure for AZPDES permitting includes one hour of free consultation with applicants.
- Tricia asked if TWG members have submitted wetland delineations simultaneously with permit application? The group noted that by its nature, concurrent submittal does not make sense, but should not be prohibited.
- The white paper should note that ESA and Cultural consultation occurs. Timeframes can be substantial. This process will be addressed outside of this TWG, but should be acknowledged.
 - Action item: Tricia will check in with ESA, Cultural and SigDeg on timeframes, proper language for "consultation" regarding cultural. (This was completed on October 19, 2018. Tricia confirmed ESA, Cultural and Compensatory Mitigation TWGs are all working through timelines, checklists or other guidance recommendations for their assigned subject matter. Permit Process TWG should reference those white papers. SigDeg is not developing a separate timeline for 404(b)(1). Compliance with 404(b)(1) guidelines is an important component of individual permit timeframes.)
- Checklists should be included under the Forms and Online Tools section.
- Need to acknowledge AJDs and PJDs.
- The group discussed that the penalty for missing the timeframe is refund of the fee. However, which portion of the fee will be refunded? Will the applicant pay a conglomeration of smaller fees? How does it work to have four separate timeframes within the permit process?
 - There should be a hold pattern option, with the clock stopping until information is received.

Individual Permits/Current State

- Tricia envisions a terminology explanation in the introduction and intends to write this section. A draft was completed and posted in the Google Docs draft white paper on October 19, 2018.
- The group discussed including public interest in the current state (3b) and will add a bullet point.

- Regional conditions address wetland issues, special aquatic and restricted uses. Special aquatic issues also relate to individual permits. LTF/Permit Types group to add in wetland-specific information to this section.
- Action item: Tricia to ask Corps about forms regarding public notice in Letters of Permission and how the abbreviated process works.

Regional General Permits/Current State

Action item: Emily will provide additional information on ADOT RGP.

Nationwide Permits/Current State

- Fold the list of nationwide permits to be carried forward (reference) into this section.

ADEQ Programs

- The TWG verified ADEQ 401 certification exceptions to conditional certification.
- Noted “near” or “in” differences for individual 401 certification requirements.

Other

- Duane noted that some current state language begins to address a future state.
- Action item: Tricia will research: If ADEQ adopts some 404 NWP, do those become state permits at that point, or are they still considered federal?

General Permits/Future State

- The group discussed a tiered approach to impacts. Michigan lists 53 minor and 25 major permits. Clarity to the permit-seeker will be vital. Project-applicable permitting information will need to be easy to sort.

Potential Future Discussion:

- (9/5) White paper topics are to include methods for addressing NEPA considerations. Should also maintain the federal trust responsibility to engage tribes regarding activities occurring off tribal lands (which may ultimately affect the tribal land).
- (9/5) Coordination of 404 and 33 U.S.C. 408 permits (408 permits require NEPA).
- (9/5) Coordination for those who need a 404 from both the state and federal governments.
- (9/5) How will ADEQ and a federal authority work together? Could investigate how the 401 process works.
- (10/4) Need to cover enforcement and citizen suits. Enforcement of existing permits, and enforcement related to violations. Believe this should be included in permit types.
- (10/4) Mechanics of permit applications currently include staggered data submission. Will need to figure out how this will work with timeframes. Likely put this in the permit process or forms area.
- (10/18) Discussion of regional conditions as part of nationwide permits.
- (10/18) Discussion of list of NWPs to be included for an Arizona program.
- (10/18) How does the state assumption of NWPs work? Does it become a state permit at that point? What happens with general conditions requiring federal consultation or conditional 401 certification conditions?

Action Items:

- (9/20) Suzanne to upload with a note in the Excel document about where to find public notice form for permits. Done 10/22/2018, example public notice uploaded to References/Permit Types
- (9/20) Scott and permit transition team: Michigan and New Jersey permit processes should be restructured to track each other, then put into an appendix.
- (9/20) Kelly to contact ADEQ for the NJ and Michigan/Corps MOUs, including any updates. (contacted Andy 9/23) (DONE, forwarded to TWG members 10/21)
- (10/18) Tricia to post an updated schedule with writing and review deadlines. (Done 10/22/2018 on Permit Process Google Docs main page.)
- (10/18) Tricia to draft a table of benefits and drawbacks of current state and a template for current state/pros (Done 10/19/2018; inserted in white paper); cons; closure options.
- (10/18) Emily to provide timeframes for ADOT individual permits (numbers and average processing time), noting extensive up-front coordination and ADOT WRDA program liaison. Also, information on the current state of regional general permits.
- (10/18) Sheila to propose additional outlier language to represent the significant effort involved in these permits.
- (10/18) Tricia to contact Corps regarding emergency permit/typical recommendation of obtaining an existing NWP. Also, expand on this information in the white paper.
- (10/18) Scott to provide public notice regarding Letter of Permission to Tricia. (DONE 10/19/2018, uploaded to References/Permit Types.)
- (10/18) Tricia to notify Fees TWG regarding the need for pre-application meetings. (DONE 10/19/2018.)
- (10/18) Tricia to check with ESA, Cultural, Compensatory Mitigation, and SigDeg on timeframes, checklists and other guidance recommendations. (Done 10/19/2018, see p.2 of these notes.)
- (10/18) Tricia to ask Corps about forms and guidance for Letters of Permission and how the abbreviated process works.
- (10/18) Tricia to research: If the state assumes some 404 NWPs, do they become a state permit?
- (10/18) Andy to check with David on how many outlier permits remain pending. (Done: Andy reported that there are not any current outliers in progress.)
- (10/18) Tricia to check whether ADEQ can enforce on 401 permits. May be an issue of certification vs. permit.
- (10/18) LTF and Permit types subgroups will revise current state as noted in live document

Decisions:

- Next meeting primary topic: continue discussion Permit Types future state
- Homework: All to comment on revised Permit Transition current/future state; all to comment on Forms and Public Process current and future state.
- Use "Permit TWG" in the subject line for all emails
- Kelly will delete Google calendar entries, all invites will be sent from Tricia's Outlook calendar
- All meetings will be in Page Conference Room, with two exceptions noted in invitations.