



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Subject: Regulatory Guidance Letter 16-01

Date: February 15, 2017

Purpose

The purpose of this public notice is to inform Regulatory Permit applicants of options relative to Jurisdictional Determinations.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

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PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

SUMMARY: On 31 October 2016, the U.S. Army Corps of Engineers issued Regulatory Guidance Letter (RGL) 16-01, Subject: Jurisdictional Determinations. The RGL explains the difference between Preliminary Jurisdictional Determinations (PJD) and Approved Jurisdictional Determinations (AJD) and provides guidance to USACE districts and the regulated public on when it may be appropriate to issue jurisdictional determinations in light of recent Supreme Court decisions. For more information, see

http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_16-01.pdf?ver=2016-11-01-093306-010

The RGL discusses the need for USACE districts to communicate with parties interested in obtaining USACE views on geographic jurisdiction under the Clean Water Act and Rivers and Harbors Act to ensure that all parties have a common understanding of the various options for addressing such jurisdiction. The RGL makes it clear that the USACE will continue its practice of providing an AJD if, after the requestor is fully informed of the options available for addressing geographic jurisdiction, the party continues to request one. The RGL also provides additional guidance regarding documenting JDs. **For “no permit required submissions” and permit applications, there is no requirement to request a JD.** The USACE Fort Worth District will only complete a JD (PJD or AJD) for a submittal when it has received a specific request to do one. A JD can only be completed after all the information is provided. The time to process a permit application may be less if no JD is requested.

The applicant may submit a completed and signed JD request (PJD or AJD) at any time during the permit application process, noting that to do so later in this process may result in permitting delays. The form required request a JD can be found at the following link http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_16-01_appendix1.pdf?ver=2016-11-01-093254-510 **“Appendix 1 - Request for Corps Jurisdictional Determination”**. The requestor may fill out the Appendix 1 sheet or provide the same information in another format. The requestor’s signature is required regardless of the format of the request. Where the JD is being requested as part of a permitting action the USACE Fort Worth recommends the completed and signed JD request accompany the permit application in order to prevent delays in permit processing. When an applicant indicates their preference for a JD but does not submit the Appendix 1 information within 15 working days of submitting their permit application, USACE may issue the permit without issuing a JD. When a PJD is requested, USACE must fill out a PJD form found at the following link http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_16-01_appendix2.pdf?ver=2016-11-01-093303-493 (see “Appendix 2 – Preliminary Jurisdictional Determination (PJD) Form”). If this form is not submitted, the Fort Worth District will direct the

requestor to complete and sign this form. If the requestor does not sign and return the PJD form within 10 working days, USACE may complete the permit process without issuing a JD. The timeframes in this public notice are intended to facilitate timely processing of permit applications

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