

**MSC APPEAL REVIEW OFFICER
ENVIRONMENTAL PROTECTION SPECIALIST, GS-028-13**

Serves as the Major Subordinate Command (MSC) technical expert and review officer (RO) on permit applications for activities in waters of the United States and/or navigable waters of the United States within the regulatory authority of the Clean Water Act, the Rivers and Harbors Act of 1899, and the Marine Protection, Research, and Sanctuaries Act. The RO is responsible for administering the U.S. Army USACE of Engineers (USACE) Administrative Appeal Process within the MSC. Exercises delegated authority to act on behalf of the MSC commander in conducting full review and evaluation of an administrative appeal for permit denial actions of district commanders and for issued permits declined by applicants, in resolving administrative and technical differences between federal agencies and the public, and in representing the USACE as an expert on all regulatory procedures and policy regarding development, administration, and implementation of programmatic initiatives and requirements. The regulated activities within this region are varied, and involve factors such as environmental protection, flood control, and maintenance of navigation. The types of individual projects for which permits may be denied or declined are complex and varied, and can include land clearing, logging, construction of industrial plants, large commercial developments, large residential developments, mining, solid waste disposal, levee construction, dredging activities, recreational developments, etc. Incumbent utilizes a specialized knowledge of the principles and methods of administering environmental protection programs and the laws and regulations related to environmental protection activities.

1. The RO exercises delegated authority to act on behalf of the MSC commander to conduct the full review and evaluation of administrative appeal process in cases where a district commander has denied a permit with prejudice, or where the applicant has declined a permit proffered by the district commander. The appeal process involves:

(a) Conducting an independent analysis of the administrative record to ensure that a district commander's decision complies with all legal, regulatory, and policy requirements, that omissions of material facts have not occurred, and that the administrative record is sufficient to support the conclusions of the permit decision;

(b) Representing the MSC commander to chair and conduct an appeal conference at a location that will be convenient to the appellant. This conference will require the review officer to travel to field locations. The review officer must conduct a fair and impartial conference which will often involve senior executives of large private construction and consulting firms, hear and consider all relevant issues and facts, and clarify any issues of the administrative record needed to make a final recommendation on the appeal;

(c) Preparing an accurate and detailed record of the process, and preparing an analysis and recommendation for the MSC commander regarding the appeal of the permit denial or a declined permit.

75%

2. Performs the following duties as they relate to the permit denial/pro-offered permit and appeals

process:

a. Assists in management of the MSC regulatory program. Provides advice to the MSC commander and senior executives of other agencies and public companies on technical, regulatory, and policy aspects of permit application evaluation procedures and documentation. Formulates MSC policy and procedures governing permit denial processes. Develops procedures to implement directives from higher authority. Manages special programmatic initiatives that may result from interagency coordination efforts, special task groups, directives from higher authority, or MSC management. This can involve assignments to prepare briefings, to interpret regulations, Regulatory Guidance Letters, and other national policy guidance, to draft policy memos for MSC-wide use, and to develop procedures to implement programmatic initiatives and/or incorporate policies into the management of the MSC's regulatory program.

b. Serves as an MSC representative on HQUSACE groups and task forces with missions of interest regarding permit denial processes. Represents the MSC or serves as a leader for interagency task forces formed as programmatic initiatives, providing timely input and fully coordinating issues with others, as appropriate. Coordinates activities of subject matter specialists within the MSC to produce a timely and quality product which meets the requirements of the regulatory program and the administrative appeal process.

c. Trains district regulatory staff on current policy issues without addressing specific cases that they may review in the future. 20 %

3. Assists in the management of the overall MSC regulatory program by providing advice on technical aspects of permit application evaluation procedures and documentation. Represents the MSC and USACE or serves as a leader for interagency task forces formed as programmatic initiatives, providing timely input and fully coordinating issues with other Federal and state agencies, executives of large private companies and national and regional trade associations, as appropriate. Coordinates activities of subject matter specialists within the MSC to produce a timely and quality product which meets the requirements of the regulatory program. 5 %

Performs other duties as assigned.

FACTOR 1. KNOWLEDGE REQUIRED BY THE POSITION Level 1-8 1550 pts

Mastery of program principles, concepts, practices, methods, and techniques to apply new developments and theories to major problems not susceptible to treatment by accepted methods, to serve as the division's technical authority on regulatory permits to adjudicate permit appeals, to develop or modify district and/or division policy governing permit denial procedures, and to provide expert advice on the interpretation and implementation of technical policy directives and programs. Expert knowledge of the requirements and procedures for evaluating permit applications submitted to USACE. The record being reviewed is the result of a District Commandeer's final decision. The RO may be called upon to review decisions outside of his/her MSC.

Practical knowledge of environmental sciences and related disciplines, including the effects of

actions and technology on the environment. Practical knowledge of important natural resources (including aquatic, vegetation, fish, wildlife, and endangered species) and the relationship between the preservation and management of these resources and environmental protection. Experience with regional geophysical and climatological conditions is also important. Detailed understanding of all federal regulations, policy, and requirements for a wetland or other water body to be a water of the United States.

Knowledge of and experience with a broad range of environmental principles, regulations, policies, procedures, laws, and techniques sufficient to insure that regulatory work is in compliance with applicable legal standards, regulations, procedures, and other requirements.

Knowledge of management techniques and skills sufficient to ensure an integrative approach toward interpreting and determining significance of relationships, evaluate and recommend alternatives, conduct studies, determine potential impacts, anticipate and resolve problems.

Knowledge of and skill in written and oral communication and mediation techniques sufficient to clearly explain and describe environmental issues, problems, and solutions to diverse audiences. Highly developed leadership, negotiation, conflict resolution, and project/program management skills are required to effectively represent the MSC Commander in meetings with senior executives from other Federal and state agencies as well as the private sector.

FACTOR 2. SUPERVISORY CONTROLS Level 2-4 450 pts

Supervision is provided by the Division Chief. The MSC regulatory program manager provides day-to-day program oversight. The RO will report directly to the MSC commander when working on appeals. The supervisor will establish assignments by discussing overall objectives, priorities, and deadlines within the division. The RO will be responsible for independently understanding, keeping current, interpreting and implementing USACE regulations and policy. On assignments that involve, or may potentially involve, use of controversial methods, or modifications of standard procedures, the RO typically will discuss the issues with the supervisor before carrying out the assignment. All work is reviewed for adequacy, technical soundness and accomplishment of specified objectives.

FACTOR 3. GUIDELINES Level 3-4 450 pts

The primary published guidelines for administration of the USACE Regulatory Program are provided in regulations (33 CFR 320-331, 40 CFR 230 et al.), with statutory authorities also being referenced for guidance. Interpretative guidance in regulatory guidance letters, manuals, memoranda of agreement, precedent cases, court decisions and other correspondence and documents, such as agency policy statements, teleconference notes and technical publications must be completely understood by the incumbent. Guidelines for administration of other Federal programs such as the endangered species act, historic preservation act, etc., are also applicable and are found in a variety of statutes, regulations, executive orders and other miscellaneous documents.

The RO is required to independently interpret agency guidance in analyzing requests for appeals (RFA) and making final recommendations. The RO is required to use resourcefulness, initiative, and judgment based on experience to deviate from or extend traditional practices to problems where precedents are not applicable. This includes responsibility for development of material to supplement and explain HQUSACE guidelines.

FACTOR 4. COMPLEXITY

Level 4-4 225 pts

The RO performs substantive review and analysis of the administrative record for permit denials or declined permits affecting an extensive geographic area, which may include dense population centers, valuable natural resources, rural areas, and rapidly developing areas, all of which may be affected by regulated activities. Assignments include the review of RFAs and development of policy, procedures, guidance, or other products in response to programmatic initiatives and permit denials and declined permits.

The incumbent serves in a leadership/management role for the evaluation of such RFAs. A final recommendation to the MSC commander may include independent interpretation of input from other specialists within the MSC, scientists and engineers from other Federal, State and/or local agencies, the district commander who denied the permit, and the appellant and/or his authorized agents. The facts, circumstances, and information will vary substantially from project to project. The appeal process requires a thorough evaluation to identify factors that are relevant to a particular situation. The RO must make judgments concerning the adequacy, accuracy, and consistency of technical data and all other materials in the administrative record. The RO is responsible for making recommendations to the MSC commander concerning the district commander's decision on a permit denial, or a declined permit. Programmatic work may involve the development of standard operating procedures, review and input on national policy distributed by HQUSACE and miscellaneous task forces to address issues related to the administration of the USACE Regulatory Program. This work involves extensive coordination and integration of different, and sometimes conflicting, requirements and priorities.

The work is analytical, interpretive, evaluative and creative. Differences in judgments, recommendations, interpretations or decisions can have substantial consequences or impact on the work of co-workers and the public. Essentially all district commanders' decisions that will be reviewed involve several thousand to several hundred thousands of dollars of economic impact to the applicant. Many decisions involve several million dollars of impact to the applicant. The incumbent is expected to resolve problems, sometimes under contentious circumstances, and maintain compatibility of interpretation, judgment, logic and policy application. The work is made more complex by constantly changing deadlines as may result from frequent, abrupt, and unexpected changes in work assignments. These changes will require flexibility on the part of the RO to adjust schedules in order to provide timely recommendations to the MSC commander, other Federal and State agencies, and the regulated public. For example, a routine RFA may come to the attention of members of Congress, HQUSACE or the Office of the Assistant Secretary of the Army. Such attention may result in the RO being asked to provide information, respond to inquiries, conduct briefings, attend meetings with high level officials, and/or expedite

an action. Such requests normally require a short response time, and increase the difficulty of planning needed to achieve established work objectives. In addition, work processes and procedures are subject to change, increasing in complexity, and placing great demands on time and expertise. These changes tend to be additive in nature and are due to such factors as the impact of the political climate, court decisions, the public interest, changes in ancillary programs, and developing technologies.

FACTOR 5. SCOPE AND EFFECT

Level 5-5 325 pts

The purpose of the work is to serve as a recognized authority in reviewing and acting on complex permit evaluations. The review of permit denials and declined permits requires the consideration, analysis and evaluation of a wide variety of technical data as well as socioeconomic and political considerations. Compliance with the requirements of the USACE Regulatory Program is also integrated into major Federal programs. Incumbent often must factor into the decisions impacts on State and local public works, resource management and land use planning activities as well as integrate USACE Regulatory Program requirements with adjacent Federal civil works projects.

The incumbent serves as a focal point to all interested parties and pursues permit activities from elevation to completion. Decisions made substantially affect the local economy, public welfare and protection of natural resources and directly impact on USACE, state, local and other federal agency environmental programs and objectives.

Due to its broad scope, complexity and impact, the USACE Regulatory Program is highly visible and receives much public scrutiny as it relates to complex or controversial permit actions. The program has major regional economic effects extending beyond the regulated community. Projects in the region requiring USACE permits may be valued at several billion dollars per year. Inquiries from Federal and State congressional representatives and local, regional and national media may be expected to occur frequently. In addition, USACE district offices are frequently the targets of the efforts of special interest groups to stop or delay unwanted projects by any means available. Administration of the USACE Regulatory Program is actively monitored by environmental groups, such as the National Audubon Society, the Sierra Club, the Izaak Walton League, the National Wildlife Federation and Ducks Unlimited, as well as by industry representatives such as the National Association of Homebuilders, the Farm Bureau, and other national and regional special interest groups and organizations. These groups have and will continue to use individual cases, such as those to be reviewed by the RO, to lobby Congress and the Administration for changes to the USACE Regulatory Program.

FACTOR 6. PERSONAL CONTACTS

Level 6-3 60 pts

The RO meets regularly with a wide variety of groups and individuals concerning the administrative appeal of permit denials and declined permits and other issues. These contacts may include developers and their authorized agents such as consultants, engineers and lawyers; senior staff, including at times the head of the Regional Office, the Environmental Protection Agency, the U. S. Fish and Wildlife Service, the National Marine Fisheries Service and other Federal agencies having a statutory interest in the program, as well as staff from State and local

governments. Contacts can frequently involve influential individuals including staff members of Congress; State elected officials and or heads of State agencies; representatives of public interest and conservation groups having an interest in the outcome of particular appeal cases; and journalists from newspapers, radio stations, and television stations. The RO is also involved in staff meetings and briefings with the division engineer and other division managers such as the Office of Counsel. There are occasional contacts through telephone conferences, task forces and meetings with the regulatory program staff at HQUSACE and the Office of the Assistant Secretary of the Army for Civil Works.

FACTOR 7. PURPOSE OF CONTACTS

Level 7-c 120 pts

The primary purpose of establishing contacts within and outside the Division is to persuade and influence individuals and groups to accept and understand the local, regional, and national goals and objectives of the USACE Regulatory Program. This includes informing and persuading the regulated public of the need for compliance with regulatory program and statutory requirements. In the programmatic work accomplished, such as regional training on guidance developed to implement HQUSACE guidance, incumbent will commit the USACE to certain positions during negotiations on issues. With respect to permit denials and declined permits, the purpose of contacts is to motivate, justify, persuade and/or defend recommendations, actions and decisions to those affected by such. These encounters may be made more complex by the broad socioeconomic impacts of the projects, potential conflicts between Federal and State agencies, and the opposition from various public interest or environmental groups opposed to the general objectives of the USACE Regulatory Program, as well as to the specific case under discussion.

Contacts with other USACE offices and other Federal, State or local agencies are needed for providing information, coordinating program objectives, developing or modifying procedures which lead to the efficient and effective administration of the USACE Regulatory Program. Contacts are also intended to persuade others to accept opinions on jurisdictional issues and/or permit decisions to avoid escalation of the issues. Contacts also are needed for the purpose of coordinating acceptance of methodology that is new or unfamiliar.

FACTOR 8. PHYSICAL DEMANDS

Level 8-1 5 pts

The work is primarily sedentary. During field trips to perform on-site evaluations, there is considerable walking, bending and standing to make necessary observations.

FACTOR 9. WORK ENVIRONMENT

Level 9-1 5 pts

Work is usually performed in an office setting. During infrequent visits to sites and facilities, there is regular and recurring exposure to discomforts and unpleasantness such as adverse weather and terrain, areas inhabited by venomous reptiles, insects, and the possible presence of wild animals.

TOTAL POINTS: 3190