

## **§ 325.8 Authority to issue or deny permits.**

(a) **General.** Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for dams or dikes in intrastate waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899; for construction or other work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899; for the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act; or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits in interstate navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) **District engineer's authority.** District engineers are authorized to issue or deny permits in accordance with these regulations pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, state, or other federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with §325.4 of this part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of §325.7 of this part. District engineers will refer the following applications to the division engineer for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When the recommended decision is contrary to the written position of the Governor of the state in which the work would be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When higher authority requests the application be forwarded for decision; or

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g. section 9 of the Rivers and Harbors Act of 1899, or territorial sea baseline changes).

(c) ***Division engineer's authority.*** Division engineers will review and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to section 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with §325.4 of this part in all cases not required to be referred to the Chief of Engineers. Division engineers will refer the following applications to the Chief of Engineers for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When higher authority requests the application be forwarded for decision; or

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.