So you want to BUILD? Good luck with that…

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

START HERE

Identify property | Zoning/Public Hearings | Determine NEPA Applicability | Preliminary / Conceptual Design | Identify Permits | Environmental Site Assessments | Prior Use: Greenfield? Former Ag Use? Reuse/Infill? Brownfield? Superfund Site?

FEDERAL FUNDS? FEDERAL LANDS? FEDERAL PERMITS?

Executive Orders, Guidance, Case Law, Etc.

Various Agency Guidance Documents | Mitigation | Alternatives | Floodplain Management | Greenhouse Gas Emissions | Environmental Justice (EO 12898) | Etc

NEPA PHASE

Oversight – CEQ, OMB & EPA
Lead Agency
Cooperating Agencies
States
Tribes

NEPA

SCOPING
EIS OR EA?
PURPOSE AND NEED
STUDIES/DRAFT
AGENCY REVIEW
ISSUE DRAFT
PUBLIC COMMENT
INCORPORATE FEEDBACK
FINALIZE EIS
PUBLIC COMMENT
Record of Decision

1679 DAYS
Average Time to Complete an EIS

DESIGN CHANGES?

PROCEED WITH CAUTION

LITIGATION

Governmental Agencies

- Advisory Council on Historic Preservation
- Army Corps of Engineers (USACE)
- Bureau of Land Management (BLM)
- Environmental Protection Agency (EPA)
- Fish and Wildlife Service (FWS)
- National Marine Fisheries Service (NMFS)
- National Oceanic and Atmospheric Administration (NOAA)
- National Park Service (NPS)
- Natural Resources Conservation Service
- Also, depending on the project… Department of Energy (DOE), Department of Defense (DOD), Coast Guard, Department of Transportation (DOT), etc.

Applicable Federal Rules and Regulations

FWCA | §4f DOT Act | MMPA | MSBAA | Title VI CRA | PPA | FPPA | AHPA | WA | TSCA | RCRA | EPCRA | CERCLA

A NEPA review involves many meetings with many government agencies to analyze the project impacts; evaluate alternatives; and prepare detailed plans on how to comply with applicable environmental law and avoid, minimize, and mitigate environmental damage. On-site investigations, field studies, surveys, research of best available scientific information (including reports and monitoring) is all part of this comprehensive, costly, and time-consuming process.

CWA | SDWA | CAA | ESA | NHPA | CZMA | WSRA | MBTA | Bald and Golden Eagle Protection Act

What's That Acronym?

AHPA – Archaeological and Historical Preservation Act
CAA – Clean Air Act
CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act
CFR – Code of Federal Regulations
CRA – Civil Rights Act
CWA – Clean Water Act
CZMA – Coastal Zone Management Act
EA – Environmental Assessment
EIS – Environmental Impact Statement
EPCRA – Emergency Planning and Community Right-to-Know Act
ESA – Endangered Species Act
FPPA – Farmland Protection Policy Act
FWCA – Fish and Wildlife Coordination Act
HSBAA – Historical Sites, Buildings and Antiquities Act
MBTA – Migratory Bird Treaty
MMPA – Marine Mammal Protection Act
MS4 – Municipal Separate Storm Sewer System
MSDS – Material Safety Data Sheet
NHPA – National Historic Preservation Act
PCBs – Polychlorinated Biphenyls
PPA – Pollution Prevention Act
RCRA – Resource Conservation and Recovery Act
SDWA – Safe Drinking Water Act
SPCC - Spill Prevention, Control and Countermeasures
TSCA – Toxic Substances Control Act
UST – Underground Storage Tank
WA – Wilderness Act
WOTUS – Waters of the United States
WSRA – Wild and Scenic Rivers Act

PRE-CONSTRUCTION

BEGIN OBTAINING NECESSARY PERMITS, AUTHORIZATIONS, COORDINATE/PLAN/SCHEDULE NECESSARY PRE-CONSTRUCTION REMEDIATION WORK, CONDUCT CONSTRUCTABILITY REVIEWS, ETC.

CWA

CWA Section 401
- Submit Application
- EPA Regional Office Checks Potential Impacts
- EPA Notifies Affected States/Tribes
- State/Tribal Review
- Interagency Coordination
- Analyze Impacts
- Hearing
- Conditions to Meet Water Quality
- Compliance and Enforcement

CWA Section 408
- Pre-coordination
- Written Request
- Required Documentation
- District Led Agency Technical Review
- Summary of Findings
- Division Review (if required)
- Headquarters Review (if required)
- Notification of Decision
- Post-permission Oversight

Some states address project impacts on river flow, dissolved oxygen levels, and fish/wildlife (including habitat). Legal questions re: scope of state's Section 401 permit authority, particularly whether states can address flow requirements in water quality standards.

408 Related Reviews and Permits: NEPA, ESA, NHPA — DUPLICATION

§4f DOT Act

Applies to federal-aid highway projects. Begins in the NEPA process.

Impacts to parklands must be avoided (unless *de minimis*) or minimize and compensate for impacts to resources.

SDWA

Will the Project Discharge to Groundwater?
Is the Discharge Regulated by State?
Contact State to File for Permit Coverage

CAA New Source Review/PSD Permits

See Call Out Box for Detail

CAA New Source Review/PSD Permits

Per the CAA and related state laws, your projects will need an air quality permit prior to the construction or modification of buildings, structures, and installations that emit or may emit pollutants into the air.

May need a permit if:
- Constructing a stationary source that will emit regulated amounts of air pollutants
- Modifying a stationary source that is already regulated or will meet/exceed air emissions limits after construction
- The project will involve air toxics

ESA

ESA Section 7 Consultation
- Early Consult/Send Certificate to Agency
- Request Species List

Affect Proposed Species or Critical Habitat? If no: Done
- Conduct Informal Conference; Report
- Jeopardy? Adverse Modification? If no: Done
- Conduct Formal Conference; Opinion
- Is the Species Subsequently Listed? If no: Done
- Final Opinion; End Consult

Affect Listed Species or Critical Habitat?
- Prepare Biological Evaluation or Biological Assessment
- Review Documents
- Adverse Impacts? If no: Written Concurrence
- Initiate Formal Consultation
- Does Assessment Provide Sufficient Information?
- Notify Agency of Missing 50 CFR 402.14(c) Data
- Formal Consultation
- Prepare Biological Opinion and Incidental Take Statement
- Review Documents
- Final Biological Opinion and Incidental Take Statement

ESA Section 10 Incidental Take Permit

See Call Out Box for Detail

ESA Section 10 Incidental Take Permit
- Coordinate with Appropriate Endangered Species Office
- Initiate Development of Habitat Conservation Plan (HCP)
- Consult/Negotiate with USFWS to Determine Scope and Complexity of HCP
- Application Form; Copies of Approvals or Status of Applications and Final HCP; Draft NEPA Analysis
- Review Application Materials for Completeness
- Is the HCP Statutorily Complete?
- Complete Internal Section 7 ESA Consultation (See ESA Section on this Chart)
- Based on the HCP, is an EA or EIS Necessary under NEPA?
- Publish Notice of Application in the Federal Register; Open for Public Comment
- Incidental Take Permit Decision
- Reconsideration/Permit Appeals Process

NHPA

- Initiate State Cultural Considerations
- Initiate Cultural Resource Survey
- Initiate Tribal Consultation
- Management Plan

CZMA

- Will the Project Impact Coastal Shorelines?
- Apply for Consistency Certification
- Application Review
- Provide Public Notice; Comment and Hearing (if applicable)
- Are Alternative Measures Needed?
- Final Decision
- Notify Agency and Developer/Contractor
- Appeal Decision (if applicable)

WSRA

- Review for Applicability
- Adverse Effect on Wild and Scenic Rivers?
- Mitigation Procedures
- Submit Revised Plans
- Grant License, Permit or Other Authorization

MBTA

- Consult with FWS and Appropriate State Agencies
- Analyze Project-Related Impacts to Migratory Birds
- Comply or Face Strict Liability

CERCLA

Depending on the results of the preliminary environmental site assessment (Phase I), see grey boxes above NEPA, you will need to engage in Phase II testing to confirm the presence or absence of a condition that would require remediation and "continuing obligations" and "reasonable steps" for the land owner.

*****IMPORTANT NOTE*****

ANY PUBLIC OR PRIVATE CONSTRUCTION PROJECT…

1) That requires a federal license or permit to conduct an activity that may discharge to a Waters of the United States (WOTUS) must provide the federal agency with a CWA Section 401 State Water Quality Certification

AND

2) That requires a federal license, or permit, or approval, or that utilizes federal financial assistance, must comply with
   - NEPA
   - ESA Section 7 Consultation
   - NHPA
   - CZMA

OBTAIN PERMITS

CHOKE POINTS

LITIGATION

CWA Section 404 INDIVIDUAL Permit Process

Jurisdictional Determination
Application Adds/Corrections
Public/Agency input Process
Related Reviews/Permits
Negotiate Mitigation

- Work in WOTUS?
- Project Description & Drawings
- Project Purpose & Need
- Jurisdictional Determination
- Other Applicable Reviews/Certifications
- Project Mitigation Plan
- Submit Permit Application Form
- Notice & Comment
- Review
- Decision

0788 DAYS
Average Time to Complete a 404 Permit

LITIGATION

EPA VETO 404(c) or 404(q) Evaluation

APPROVED — Compliance & Enforcement

DENIED — Appeals Process

DESIGN CHANGES?

404 Related Reviews and Permits

NEPA | CWA Section 401 Certification | CWA Section 408 | ESA Section 7 | NHPA | CZMA | WSRA | MBTA | Bald and Golden Eagle Protection Act

DUPLICATION

Develop Conservation Plan (ECP)
Review ECP for Sufficiency to Avoid or Minimize Take
Modify Project Proposal?
Application for Nonpurposeful Eagle Take Permit
Review Application
Nonpurposeful Eagle Take Permit
Monitor Eagle Population for Agreed Upon Period

Remediation

Remediation activities to address known or discovered contaminates should be completed before engaging in construction activities that would disturb the contaminated area. For example, EPA's Brownfields Program would cover remediation of petroleum brownfields, where a site was contaminated by a leaking Underground Storage Tank (UST), before reuse of the property.

BREAK GROUND AND COMPLY

DESIGN CHANGES?

OTHER CWA PERMITS & PROGRAMS

OTHER NPDES WATER DISCHARGE PERMITS
- Industrial Stormwater Permit: Discharges associated with an industrial facility (e.g., a concrete or asphalt plant)
- Wastewater Permit: Discharges of wastewater (process, sanitary, cooling, etc.) into surface water, MS4 or subsurface system
- Obtain Permit Coverage
- Compliance & Enforcement

SPCC
- Determine Applicability
- Develop Written Spill Prevention, Controls & Countermeasures Plan
- Check for Add'l State/Local Requirements
- Provide Plan to Inspectors
- Compliance & Enforcement

CWA Section 402 NDPES STORMWATER CONSTRUCTION PERMIT
- Disturb One Acre or More?
- Identify Boundaries & Phases
- Are Add'l Permits/Permissions Need?
- Impacts to Protected Resources?
- Special/Impaired Waters?
- Prepare SWPPP
- Online Application Form
- Notice & Comment
- Permit Review/Decision

DUPLICATION

Meet Local Municipality's Stormwater Laws/Ordinances – Active Sites & Post Construction Requirements

APPROVED — Install Stormwater Controls — Compliance & Enforcement

DENIED — Permit Appeals Process

OTHER PERMITS & REQUIREMENTS

NOISE | OPERATING PERMITS FOR PLANTS AND EQUIPMENT | DUST | ANTI-IDLING | MORE ZONING | BUILDING CODES | PARKING RQMTS

402 Related Reviews and Permits

NEPA | CWA Section 401 Certification | ESA | NHPA | CZMA

DUPLICATION

WASTE AND REMEDIATION

TSCA
- PCBs
- ASBESTOS
- LEAD BASED PAINT

RCRA
- Universal Waste Management: Mercury, Batteries, Fluorescent Bulbs
- Hazardous Waste Management
  - Will project create or store (or discover) hazardous waste and/or materials?
  - Examine use of underground and above-ground storage tanks.
  - Examine generation of hazardous waste
  - Permits and/or environmental reviews may be required

EPCRA
- Recordkeeping Requirements
  - MSDS Submission/Hazardous Chemical Inventory for compounds exceeding threshold planning quantity
  - Tier I and II Hazardous Chemical Inventory Forms
  - Toxic Chemical Release Inventory Forms
  - Emergency Planning and Release Reporting Requirements

CERCLA

LONG TERM LIABILITY

AGC of America
Discussion Draft: April 11, 2017

OCCUPANCY PERMIT / Ribbon Cutting

Begin - Operations & Maintenance

Underground Storage Tanks | EPCRA Reporting | GHG Reporting | CAA Title V | NPDES MULTI-SECTOR PERMIT (INDUSTRIAL) | MS4 | SDWA