



U.S. Army Corps  
of Engineers  
Buffalo District  
CELRB-TD-R

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# Public Notice

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Applicant: NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORSD) Published: May 08, 2019 Expires: May 22, 2019

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Subject: Initial Proposal To Accept And Expend Funds From NEORSD – Section 214 Water Resources Development Act (WRDA) 2000 Funding Agreement  
Section: OH

All written comments should reference the above Application No. and be addressed to:  
**US Army Corps of Engineers, Buffalo District  
Regulatory Branch (Attn:) Keith C. Sendziak  
1776 Niagara Street  
Buffalo, NY 14207**

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**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT TO ACCEPT FUNDS FROM THE NEORSD AT THIS TIME.**

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers Buffalo District (Corps) to accept and expend funds from the Northeast Ohio Regional Sewer District (NEORSD) to expedite processing of their Department of the Army (DA) permit applications in accordance with Section 214 of the Water Resources Development Act of 2000, as amended (33 U.S.C. § 2352) (“Section 214”). This Public Notice also solicits comments from the public on the subject of acceptance and expenditure of funds contributed by the NEORSD to expedite the evaluation of DA permit applications.

(a) FUNDING TO PROCESS PERMITS

Under Section 214, the Secretary of the Army (Secretary), after public notice, may accept and expend funds contributed by a non-Federal public entity or a public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity, company, or

carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

The Secretary has delegated the Section 214 authority to accept and expend funds contributed by non-Federal public entities to the Chief of Engineers and his authorized representatives, including the Commander of the Buffalo District, U.S. Army Corps of Engineers. NEORSD is a non-Federal public entity and believes it is in its best interest to provide funds to the Corps under Section 214 to streamline and expedite review of permit applications pursuant to Section 404 of the Clean Water Act of 1972, as amended, and Section 10 of the Rivers and Harbors Act of 1899, as amended.

(b) EFFECT ON PERMITTING

The use of funds accepted from NEORSD under Section 214 authority will not impact impartial decision making with respect to permits, either substantively or procedurally.

How the Corps Would Expend Funds: The Corps Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget. Additional funds received from the NEORSD would be used to augment the budget of the Corps in accordance with the provisions of Section 214. Specifically, the funding would be used to partially support the labor and overhead of Regulatory District staff processing NEORSD permit applications. Section 214 is designed to expedite the processing of permit applications. To the degree the Corps considers it appropriate, NEORSD would be able to establish priorities among their own permit applications. The Corps would establish a separate account to track the receipt and expenditure of the funds under the Section 214 funding agreement.

Activities for Which Funds Would be Expended: Funds would be expended primarily on the labor and overhead of Regulatory District staff processing permit applications. Such permit processing activities could include, but not be limited to the following: application completeness review, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings, consultation with other agencies, public interest review, distribution of public notices, analysis of alternatives, compensatory mitigation proposal review, preparation of environmental assessments, preparation of permit decision documents and permit compliance. Funds may also be expended by other Corps divisions (e.g., Planning, Technical Services Division), or to hire contractors to perform select duties such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, preparing regional general permits and other technical documents, including draft environmental documents, at the direction of the Regulatory Branch.

Funds would not be expended for review of project managers' work by supervisors or other persons in the decision making chain of command. Funds would not be expended by Regulatory Branch staff to complete enforcement actions, nor would the funds be used for public hearings (e.g., venue fees) or distribution of public notices (e.g., postage).

In the event that NEORSD funds are expended and not renewed, the NEORSD's remaining permit applications would be processed like any other non-participant, as determined by the assigned Regulatory Branch project manager and his or her supervisor.

Procedures to Ensure Impartial Decision Making: The funding agreement would not impact impartial decision making, and the following procedures would be applied to ensure impartial decision making:

- (a) All final permit decisions for cases where NEORSD Section 214 funds are used must be reviewed by a responsible official at least one level above the normal decision maker, unless the decision maker is the District Commander;
- (b) All final permit decisions for applications where NEORSD Section 214 funds are expended will be made available on the Corps Headquarters' web page;
- (c) The Corps will utilize the same procedures for decisions that would otherwise be required for evaluation of permits for the type of project and permit application under consideration; and
- (d) Preliminary jurisdictional determinations and approved jurisdictional determinations funded by the Section 214 funding agreement must have documentation that a non-funded regulator conducted a review of the determination.

Impacts to the Buffalo District Regulatory Program: The Corps does not expect priority review of NEORSD permit applications to negatively impact the Buffalo District's Regulatory Program or to increase the time to evaluate the permit applications of the general public. This priority review is anticipated to occupy half the time of one full time project manager. The other half of the time will be spent evaluating projects not subject to this Section 214 funding agreement. In addition, workload may be shifted among existing staff.

Reference documents and programmatic tools developed through the funding will also be available to the general public, as applicable. The Corps expects the benefits of implementing this program to translate into an enhanced evaluation capability for all Regulatory Program participants.

Submission of Comments: Interested parties may submit comments concerning this proposal in writing. Comments shall be submitted by the due date of May 22, 2019. Comments should be mailed to:

U.S. Army Corps of Engineers, Buffalo District Regulatory  
ATTN: Keith C. Sendziak  
1776 Niagara Street  
Buffalo, NY 142107

Alternatively, comments can be sent electronically to [keith.c.sendziak@usace.army.mil](mailto:keith.c.sendziak@usace.army.mil)

Public notice 15-day comment period. Following the review of comments received in response to this public notice, the Buffalo District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is appropriate and in compliance with Section 214, that the District will be able to preserve

impartial decision making, and that the acceptance and expenditure of funds will not adversely affect review timeframes for the general public, the Buffalo District will proceed to execute a funding memorandum of agreement with NEORS. The District will issue a second informational public notice announcing the District Commander's decision. If the decision is to execute an agreement with NEORS, funds would not be accepted or expended until after the issuance of the informational public notice. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit application processing, or other appropriate justification. Once established, issuance of a new public notice is not required for renewal or modification of a funding agreement if the purpose of the agreement remains the same.

Comments on implementing the proposed acceptance and use of NEORS funds in accordance with Section 214 will be accepted and made part of the administrative record, and will be considered in determining whether to proceed with this action. Comments should reach this office no later than the expiration date of this public notice (see address on page 1 of this public notice).

You can also visit our website at <https://www.lrb.usace.army.mil/Missions/Regulatory/> for more information on our program.

**SIGNED**

Diane C. Kozlowski  
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 15 days from the date of issuance.