



**National Association of Flood & Stormwater Management Agencies**

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## **NAFSMA Levee Subcommittee Paper**

*(Approved by NAFSMA Membership at Annual Business Meeting – 6/29/2017)*

### Background

Many members of the National Association of Flood and Stormwater Management Agencies (NAFSMA) are owner/operators of flood risk reduction structures, including levees, either federally – or locally – constructed. These owner/operators are responsible for maintaining and operating local flood protection projects that protect lives, property and the environment from floods. NAFSMA has been a strong voice in levee issues for almost 40 years, some examples of our involvement include:

- National Committee on Levee Safety (NCLS) from 2008-2009. NAFSMA's Executive Director as well as some of the members of the association's board of directors, served on the NCLS. The NCLS, which was authorized under the Water Resources Development Act of 2007, delivered a set of recommendations for a National Levee Safety Program (NLSP) to Congress on January 15, 2009.
- Consistent with those recommendations, NAFSMA supports an NLSP that "is voluntary and incentive based and includes qualified states, local and regional flood control districts" and a levee rehabilitation and repair fund and incentives for sound flood risk management at all levels of government.
- Legislation to enact a NLSP was authorized in the Water Resources Reform and Development (WRRDA) Act of 2014. NAFSMA was instrumental in including language in WRDA 2016 to formally recognize the role of regional flood control districts in the National Levee Safety Program.

Levee issues continue to be a critical concern for NAFSMA and as a result established a Levee Subcommittee to focus on the issues specifically related to these important flood risk reduction structures. NAFSMA's Levee Subcommittee has identified the following areas of focus for attention:

### Section 408 Permission Issues

Although the Section 408 provisions have been in existence for many years – established under Section 14 of the Rivers and Harbors Act (RHA) of 1899 (codified at 33 USC 408), over the past decade the evolving process is increasingly cumbersome and problematic for owner/operators of flood damage reduction systems with the level of frustration now reaching a new height. What used to be a routine process to ensure protection of the purpose and function of a federally-constructed project has become arduous, time consuming and costly, and is negatively impacting other U.S. Army Corps of Engineers (USACE) activities, such as the Inspection of Completed Works.

These delays and problems with securing 408 permissions result in increasing risk for those living and working behind levee systems when needed repairs and routine operations cannot be completed in a timely manner. Although USACE has taken steps to move more 408 permissions to the District level, more needs be done to improve the process and more funding needs to be directed to this issue. Stopping or delaying processing 408 requests due to lack of funding only serves to increase risk.

NAFSMA understands that USACE is currently working on new guidance and would like to work with the Corps to provide input on this important document. If appropriate clarification of this issue cannot be achieved through guidance, NAFSMA supports legislative language to clarify Section 408 implementation and direct USACE to ensure timely and appropriate implementation of Section 408 to allow for needed repairs and operations and maintenance of flood damage reduction systems.

#### Inclusion of Regional Flood Control Districts in USACE Levee Safety Initiatives

Levee systems across the nation vary widely because of weather, topography, geology and hydrology. Therefore, it follows that it is unrealistic to think that policy governing levee function, design and maintenance can be any less diverse.

Reducing flood risk requires an all levels of government approach. The NCLS recommended that development and implementation of national levee policy must include not only states and tribes, but also local expertise such as levee districts and regional flood control districts. To ensure realistic and implementable policies, these approaches must be conceived with input from local experts, otherwise we will have a national policy that is unworkable at the local and regional levels.

#### Communications Between USACE and Levee Owner/Operators

Effective communication and engagement between USACE and levee owner/operators is improving. While this is encouraging, a number of areas that still need attention include:

- **Sitting--and staying--at the table.** USACE needs to be at the table with the levee owner/operators during the development of work plans, review of capital plans, communicating flood risk (including Levee Safety Action Classification results) and participating in public meetings.
- **Communicating changes in protocol.** As USACE modernizes its approach to working with local sponsors, it should clearly and proactively communicate these changes. NAFSMA encourages USACE to utilize newsletters, email communication and social media.
- **Opening up the Black Box.** Often USACE policies seem as though they are developed with little or no input from non-federal interests. NAFSMA encourages USACE to seek the perspectives from key partners, such as NAFSMA, early in the process for policies and guidance related to levees.
- **Helping levee owner/ operators prioritize the most critical deficiencies.** There is value in USACE providing technical expertise and information that helps levee owner/operators prioritize their efforts to further reduce flood risk. As USACE pursues updating the Rehabilitation and Inspection Program, under PL 84-99, NAFSMA seeks opportunities to inform that process and program.

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