



**US Army Corps
of Engineers**

Memphis District

Guide To The Corps Regulatory Program



Brief History of the Corps Regulatory Mission

SECTION 10 AND 404

The U. S. Army Corps of Engineers has been regulating certain activities in the Nation's waters since 1890. The Corps' primary focus prior to 1968 was the protection of navigation. As a result of new laws and court decisions, the regulatory program has expanded to include the regulation of dredge and fill activities and the consideration of public interest factors.

The regulatory authority of the Corps of Engineers is based primarily on Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Section 10 of the Rivers and Harbors Act of 1899 authorizes the Corps of Engineers to regulate all activities and structures in navigable waters of the United States, including construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition, or capacity of those waters.

Section 404 of the Clean Water Act was established in 1972 by amendments to the Federal Water Pollution Control Act. These amendments added what is commonly referred to as Section 404 permit authority which authorizes the Corps of Engineers to regulate the discharge of dredged or fill material into waters of the United States, including adjacent wetlands.



Navigable Waters and Interstate Commerce.

Definitions

1. Navigable Waters (Section 10) - include waters presently used, historically used, or susceptible to use for the transport of interstate or foreign commerce.

2. Waters of the United States (Section 404) - include navigable waters, interstate waters, tributaries to navigable and interstate waters, adjacent wetlands, impoundments, and territorial seas.

3. Wetlands - areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

4. **Discharge** - the purposeful or incidental placement or movement of any solid material. Excavation of material from waters is also considered a discharge.

5. **Fill Material** - sand, dirt, soil, rocks, trees, sod, cement, old cars, trash or any other material placed or moved to elevate the surface.

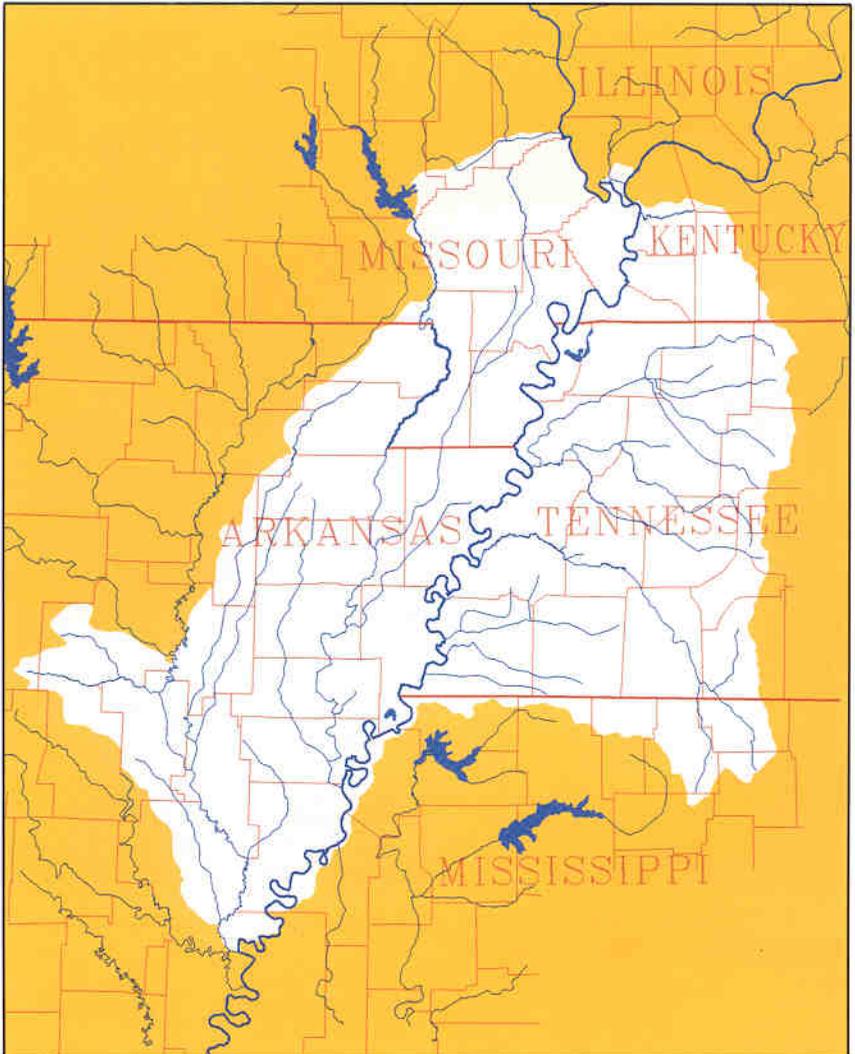
6. **Dredged Material** - sand, dirt, soil, rocks, etc. , redistributed or removed from an existing wetland, lake, river, ditch or other water body.



Discharge of Fill Material.

Scope of Jurisdiction

Federal jurisdiction over a navigable waterway (under Section 10) extends up to the ordinary high water mark of that stream. There are several navigable waters within the Memphis District, including: Bayou LaGrue, Blackfish Bayou, Forked Deer River, Forked Deer River (North Fork), Forked Deer River (South Fork), Hatchie River, L'Anguille River, Little River, Obion River, St. Francis River, Tyronza River, White River, Wolf River, and Mississippi River.



Major Waters and Boundary of the Memphis District.

Federal jurisdiction , under Section 404, extends to all activities involving the use of either dredged or fill material, or the excavation of material to change the physical nature of a wetland, river, stream, ditch, or other waters of the United States. These are considered “discharges of dredged and/or fill material” and require a Section 404 permit. Wetlands are involved in most permit applications and may consist of bottomland hardwoods, wet meadows, or currently farmed areas.

The major difference in jurisdiction between the two laws is the regulation under Section 10 of **all activities** affecting the course, location, condition, or capacity of navigable waters as opposed to the regulation under Section 404 of the **deposition of dredged and fill material** into all waters of the United States, not just navigable waters.



Farmed Wetland -- Regulated Under Section 404

Examples of Activities Requiring Permits

SECTION 10

- * Construction of Mooring Facilities.
- * Commercial Sand and Gravel Dredging
- * Maintenance Dredging of Channel and Dock Facilities
- * Construction of Docks or Loading Facilities
- * Construction of Boat Ramps
- * Installation of Utility Line Crossings



Loading Facility

SECTION 404

Farming Activities

- * Construction or Maintenance of Drainage Channels
- * Clearing of Wetlands with Heavy Equipment for Conversion
- * Levee Construction or Enlargement
- * Filling of Wet Farmland



Levee Construction

Construction Activities

- * Clearing of Wetlands with Heavy Equipment for Conversion
- * Land Leveling or Filling of Wetlands
- * Filling for Construction of Buildings
- * Bridge Replacement
- * Permanent or Temporary Road, Driveway, and Field Approach Construction, Maintenance, Improvements or Reconstruction



Mechanized Land Clearing

Other Activities

- * Levee Construction Associated with Flood Protection
- * Stream Bank Stabilization
- * Boat Ramp and Dock Construction
- * Wetland & Wildlife Enhancement Activities
- * Waterway Construction
- * Dredging/Excavation Activities
- * Plugging Drainage Ditches
- * Backfilling
- * Utility Line Activities (including burying cables, and pipe lines)

Permit Process

When a project is proposed that could involve waters of the United States, the Regulatory Branch of the Corps of Engineers should be contacted. If you are currently a USDA Farm Program Participant, or the project is located in agricultural land, the Natural Resources Conservation Service should be contacted.

Agency representatives will conduct a site visit or otherwise determine the extent of Federal jurisdiction. There are three potential outcomes: 1) a permit will not be necessary if no waters of the U. S. are involved, 2) the work may be exempted from the need for a permit, or 3) a permit may be required for all or part of the work.



Site Test to Determine Extent of Jurisdiction

The Clean Water Act exempts certain activities from the need to obtain a permit. Exempted activities include, but are not limited to, normal farming and silviculture activities, including plowing, cultivating and harvesting for the production of food and fiber, construction of irrigation ditches, and the maintenance of drainage ditches that do not support extensive ecosystems.

These activities are subject to the "recapture provisions" of the Clean Water Act, and must not be associated with the conversion of an area to a use to which it was not previously subjected (i. e. , conversion of wetlands to agriculture). Landowners are advised to inquire concerning the applicability of the permit program to their specific work.

Activities requiring a permit may be authorized by nationwide or regional general permits. These general permits have been issued on a nationwide or regional basis for specific categories of work, or within specific areas. There are 36 nationwide permits which authorize minor activities within waters of the United States. Authorization of individual activities by these permits requires limited review by the Corps, and is subject to conditions.

Activities not exempt or authorized by a general permit may require an individual permit. Applicants may initiate the individual permit process by providing to the Corps a completed application form and appropriate drawings. This process usually requires a minimum of two months, is the most labor intensive and time consuming of all the Corps permits, and involves the issuance of a public notice, a detailed evaluation of a project, and the preparation of decision documents.

For Section 404 activities, the public notice contains a request for water quality certification from the state in which the project is located. Water quality certification must be waived or issued by the State before the Corps can issue an individual permit.



Road Crossing Authorized by Nationwide Permit 14

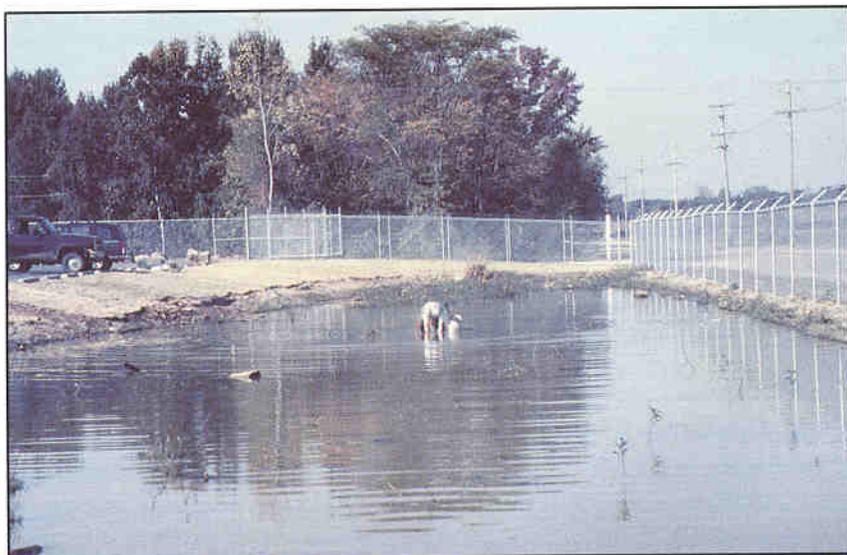
The procedures the Corps of Engineers follows in processing requests are determined by laws, regulations, Executive Orders, guidance letters, and memorandums of agreement with other Federal agencies.

Mitigation Procedures

One memorandum of agreement dealing with mitigation specifies that the Corps and EPA will keep adverse impacts to wetlands to a minimum by sequentially attempting to: avoid impacts by using the least damaging practicable alternative, followed by minimizing impacts of the project, followed by compensating (mitigating) for unavoidable impacts.

Mitigation is required to offset the adverse impacts of a project in most cases. Wetland functions and values such as, sediment retention, flood storage, recreation and education, and wildlife habitat, which are lost due to a project must be replaced. This usually requires at least one to one replacement of wetland areas impacted.

Mitigation may involve the creation of wetland from an upland site or the restoration of previously disturbed sites. Wetland creation is commonly done by first excavating the site and then establishing wetland vegetation and hydrology (presence of water). Restoration generally involves reestablishing wetland vegetation and sufficient hydrology. Establishment of wetland hydrology on an upland site is much more difficult than reestablishment of wetland hydrology on a disturbed site. Restoration of disturbed sites is generally more successful and preferable to the Corps due to an increased likelihood of success in the shortest period of time.



Wetland Creation

ENFORCEMENT ACTIVITIES

For unauthorized activities, the Corps has several enforcement options:

- ① Requiring initial remedial actions to reduce the impacts of the work on the environment while other measures are considered:
- ② Require restoration and/or administrative penalties ranging from \$5,000 to \$25,000 per day.
- ③ Accept and process an after-the-fact permit application and;
 - Decide to issue the permit for the activity as constructed.
 - Condition the permit to require mitigation of impacts.
 - Deny the permit request and proceed with restoration and/or penalties.

Enforcement action through the Environmental Protection Agency may be necessary in resolving flagrant violations.

Contacts

If you desire more information, or would like an application form, contact:

U.S. Army Corps of Engineers, Regulatory Functions Branch
167 North Main Street, Room B202
Memphis, Tennessee 38103-1894
(901) 544-3471

Due to the dynamic nature of the Regulatory program, it is imperative that potential applicant's keep abreast of changes in the program which could affect their project.

Memphis District Background

Established in 1876, the original missions of the district were to protect the banks of the river from erosion, improve navigation, prevent destructive floods, and facilitate commerce. With the recent national focus on protecting and enhancing the environment, the Corps newest mission is dedicated to "sustainable development," where the economic development of a region does not compromise the area's environment.

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NOTES

Appendix
NATIONWIDE PERMITS

1. AIDS TO NAVIGATION
2. STRUCTURES IN ARTIFICIAL CANALS
3. **MAINTENANCE**
4. FISH AND WILDLIFE HARVESTING, ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES
5. SCIENTIFIC MEASUREMENT DEVICES
6. SURVEY ACTIVITIES
7. *OUTFALL STRUCTURES AND MAINTENANCE*
8. OIL AND GAS STRUCTURES
9. STRUCTURES IN FLEETING AND ANCHORAGE AREAS
10. MOORING BUOYS
11. TEMPORARY RECREATIONAL STRUCTURES
12. **UTILITY LINE ACTIVITIES**
13. BANK STABILIZATION
14. **LINEAR TRANSPORTATION CROSSINGS**
15. U.S. COAST GUARD APPROVED BRIDGES
16. RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREAS
17. HYDROPOWER PROJECTS
18. MINOR DISCHARGES
19. MINOR DREDGING
20. OIL SPILL CLEANUP
21. SURFACE COAL MINING ACTIVITIES
22. REMOVAL OF VESSELS
23. APPROVED CATEGORICAL EXCLUSIONS
24. STATE ADMINISTERED SECTION 404 PROGRAMS
25. STRUCTURAL DISCHARGES
26. NO LONGER AVAILABLE
27. **STREAM AND WETLAND RESTORATION ACTIVITIES**
28. MODIFICATIONS OF EXISTING MARINAS
29. SINGLE-FAMILY HOUSING
30. MOIST SOIL MANAGEMENT FOR WILDLIFE
31. MAINTENANCE OF EXISTING FLOOD CONTROL PROJECTS
32. COMPLETED ENFORCEMENT ACTIONS
33. TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING
34. CRANBERRY PRODUCTION ACTIVITIES
35. MAINTENANCE DREDGING OF EXISTING BASINS
36. BOAT RAMPS
37. EMERGENCY WATERSHED PROTECTION AND REHABILITATION
38. CLEANUP OF HAZARDOUS AND TOXIC WASTE
39. **RESIDENTIAL, COMMERCIAL, AND INSTITUTIONAL DEVELOPMENTS**
40. **AGRICULTURAL ACTIVITIES**
41. **RESHAPING EXISTING DRAINAGE DITCHES**
42. **RECREATIONAL FACILITIES**
43. **STORMWATER MANAGEMENT FACILITIES**
44. **MINING ACTIVITIES**

NEW OR ALTERED FROM 1996 NWP LIST

**NOTE: THESE NATIONWIDE PERMITS REQUIRE
NOTIFICATION PRIOR TO DISCHARGE**



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