U.S. Army Corps of Engineers
Regulatory Program Overview

Development Impact Minimization Workshop

NCTCOG Office Arlington, TX
September 6, 2017

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Regulatory Project Manager
Regulatory Division
Fort Worth District
Corps Regulatory Program District Boundaries in Texas

- Tulsa District
- Albuquerque District
- Fort Worth District
- Galveston District
Regulatory Program Authorities

Section 10 Rivers and Harbors Act of 1899 - Construction and dredging

Section 404 Clean Water Act – 1977
Discharge of dredged and fill material

Section 103 Marine Protection, Research and Sanctuaries Act – 1972
(Ocean Dumping Act) Transport and discharge of Dredged material
Regulatory Program Purposes

- **Sections 10** of the Rivers and Harbors Act of **1899** - Protect Navigation

- **Section 404** of the Clean Water Act of **1977**
  Restore and maintain the physical, chemical and biological integrity of the Nation's waters

- **Section 103** of the Marine Protection, Research and Sanctuaries Act of **1972** - Protect marine resources associated with ocean disposal of dredged material
Regulatory Program Goals

- Protect the Aquatic Environment
- Render Fair and Reasonable Decisions
- Provide for Efficient Decision Making
Rivers and Harbors Act of 1899

- Section 10 (work in or affecting)
  - Regulate the obstruction or alteration of navigable waters
    - Constructing structures in, over, under navigable waters
    - Excavation/dredging
    - Depositing material
    - Any other work that affects the course, location, condition, or capacity of navigable waters
  - Also applies to the construction of artificial islands or installations on the outer continental shelf
Clean Water Act

- **Section 404** - The Corps regulates the discharge of dredged or fill material into navigable waters at specified disposal sites.

- **Fill material** – replaces water with dry land or raises the bottom elevation of a waterbody.

- **Dredged material** – any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, waters of the United States.
CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

- High Tide Line
- Mean High Water
- Tidelands
- Coastal Wetlands
  - Vegetation associated with salt & brackish water

Fresh Waters

- Ordinary High Water
- Section 404
- Section 10
- Uplands
- Fresh Water Wetlands
  - Marshes, swamps, bogs, & similar areas

Section 103
Ocean Discharge of Dredged Material

- Typical examples of regulated activities
- Ocean discharges of dredged material

Section 404
Disposal of Dredged or Fill Material (all waters of the U.S.)

- All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.

Section 10
All Structures and Work (navigable waters)

- Dredging, marinas, piers, wharves, floats, intake/outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.
Waters of the United States
Two Primary Elements

• Exhibits specific physical features
  
  Presence of **ordinary high water mark** in open non-tidal waters
  
  Line on shore or bank established by water fluctuations
  
  Examples: shelving, soil changes, destruction of terrestrial vegetation, presence of litter and debris, other appropriate means considering surrounding area
  – High tide line in open tidal waters
  – Presence of **wetlands** determined by **hydrology, soils, and vegetation**

• Meets definition of “waters of the United States” in 33 CFR 328.3(a)
Not so obvious
Wetlands

Those areas that are inundated or saturated by surface or ground water 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 (33 CFR 328.3 (b)). Defined by hydrology, soils, and vegetation – may need consultant to ID.
Regulated Activities - Section 404

- The **discharge of dredged or fill material** into waters of US is “**trigger**” that requires some form of authorization under Section 404 from USACE.
Discharge of Dredged Material

- Material excavated or dredged from waters of U.S. and redeposited into waters of the U.S.- 33 CFR 323.2(d) (includes sediment releases from dams)
- Runoff or overflow from a contained land or water disposal area
- Redeposit of dredged material other than incidental fallback. Examples: mechanized landclearing, channelization, sidecasting, temporary stockpiling, redistribution of channel/lake sediments.
- The method may determine if a permit is required.
Discharge of **Dredged Material**

- Discharge of dredged material does **not** include:
  - Discharges associated with onshore (upland) **processing** of dredged material extracted for commercial use
  - Activities involving only **cutting or removing vegetation** so that root systems are not disturbed
  - **Incidental fallback** of dredged material

- Section 404 authorization is not required for **incidental addition** of dredged material that **would not** have the effect of destroying or degrading an area of waters of the US
Discharge of Fill Material

- Detailed definition at 33 CFR 323.2(e)
- Material placed into waters of U.S. where material has **effect** of:
  - replacing water with dry land; or
  - changing bottom elevation of any portion of a water
- Examples: rock, sand, soil, road construction debris, wood chips, overburden from mining or other excavation activities, materials used to create any structure or infrastructure in waters of the U. S.
Stuck big yellow machines are not a discharge of fill material...however
Exemptions

- Certain discharges for specific activities are exempt from Section 404 permitting
  - Routine maintenance activities
  - Does not include any modification to character, scope, or size of the original fill design
  - Includes emergency reconstruction of recently damaged parts, of currently serviceable structures
    - Must occur within a reasonable period of time after damage occurs in order to qualify for the exemption (typically 2 years)
Exemptions

- Normal farming, silvicultural & ranching activities
  - Farm, ranch, or forestry roads
  - Includes construction or maintenance of on-channel farm or stock ponds
    - Farm ponds must be appropriately sized for number of cattle.
    - “Frac” ponds are not exempt
Big Tip: Careful Project Planning...

- By **avoiding** impacts to waters such as boring, no Section 404 permit is required (may need a Section 10)
- By **minimizing** the impacts to waters, the work may be authorized by a nationwide permit and may not require a pre-construction notification (pcn)
- **Pre-application consultations encouraged**
Types of Permits

**General Permits**
- Nationwide Permits (NWPs)
- Regional Permits (RGPs)
- Programmatic (PGPs)

**Individual Permits**
- Letters of Permission (LOPs)
- Standard Individual Permits (SIPs)
Nationwide Permits

- **52 Nationwide Permits** - Activity Specific
  - Focus on improving environmental protection while providing timely (usually < 45-days) simplified authorizations for work in aquatic environments and maximum user-friendliness
  - Gave more protection to ephemeral streams, modified general conditions and clarified definitions NWPs
  - Are valid for 5 years from date of issuance (expire 3-18-2022)
  - There is a **300-linear-foot limit** for loss of stream beds (includes ephemeral streams) some NWPs
    - 300-foot-limit **can be waived** if the loss of stream bed would have minimal individual and cumulative adverse effect on the aquatic environment

- **Corps preconstruction notification (PCN) required in many cases**
  - Potential to impact **cultural resources**
  - Potential to impact **threatened or endangered species**
  - Presence of **wetlands**

- **Resource agency coordination required in some cases**
Nationwide Permits

- **52 NWPs**, each with a scope of work of certain activities along with general conditions (ESA, cultural and historic resources, etc.)

- If your project meets the scope and conditions and does not exceed the **pre-construction (pcn)** threshold, you may complete the project without a written Corps authorization.
Regularly Used Nationwide Permits

NWP 3: Maintenance
NWP 12: Utility Line Activities (pipelines, power lines)
NWP 13: Bank Stabilization (bulkheads, riprap)
NWP 14: Linear Transportation Projects (culverts, some road crossings)
NWP 18: Minor Discharges (fill material, 25 CY max)
NWP 29: Residential Developments
NWP 31: Maintenance of Existing Flood Control Facilities
NWP 33: Temporary Construction, Access, and Dewatering
NWP 39: Commercial and Institutional Developments
NWP 42: Recreational Facilities
NWP 43: Stormwater Management Facilities

• Each project is unique, not all qualify for a NWP/RGP. When in doubt, ASK.
NWP 13 - Examples
NWP 14 - Examples
NWP 29/39 - Examples
NWP Templates to Expedite Permitting

U.S. Army Corps of Engineers (USACE)
Fort Worth District

Nationwide Permit (NWP) Pre-Construction Notification (PCN) Form

This form integrates requirements of the Nationwide Permit Program within the Fort Worth District, including General and Regional Conditions. Please consult instructions included at the end prior to completing this form.

Contents
- Description of NWP 12
- Part I: NWP Conditions and Requirements Checklist
  - General Conditions Checklist
  - NWP 12 Specific Requirements Checklist
  - Regional Conditions Checklist
- Part II: Project Information Form
- Part III: Project Impacts and Mitigation Form
- Part IV: Attachments Form
- Instructions

DESCRIPTION OF NWP 12 - UTILITY LINE ACTIVITIES

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States (U.S.), provided the activity does not result in the loss of greater than 1/2 acre of waters of the U.S.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefied, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the U.S., such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the U.S., provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the U.S. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the U.S. to construct, maintain, or expand substation facilities.

http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/GeneralPermits.aspx
12. **Soil Erosion and Sediment Controls:**
   a. Will the project use appropriate soil erosion and sediment controls and maintain them in effective operating condition throughout construction? □ Yes □ No
   b. Will all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, be permanently stabilized at the earliest practicable date? □ Yes □ No
   c. Be aware that if work will be conducted within waters of the U.S., Applicants are encouraged to perform that work during periods of low-flow or no-flow.

   If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

13. **Removal of Temporary Fills:**
   a. Will temporary fills be removed in their entirety and the affected areas returned to pre-construction elevations? □ Yes □ No □ N/A
   b. Will the affected areas be revegetated, as appropriate? □ Yes □ No □ N/A

   If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

14. **Proper Maintenance:**
   a. Will any authorized structure or fill be properly maintained, including maintenance to ensure public safety? □ Yes □ No

   If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

15. **Wild and Scenic River:**
   There are no Wild and Scenic Rivers within the geographic boundaries of the Fort Worth District. Therefore, this GC does not apply.

16. **Tribal Rights:**
   a. Will the project or its operation impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights? □ Yes □ No □ N/A

   If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

17. **Endangered Species (see also Box 8 in Part III):**
   a. Is the project likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or will the project destroy or adversely modify the critical habitat of such species? □ Yes □ No
   b. Might the project affect any listed species or designated critical habitat? □ Yes □ No
# Part II: Project Information

<table>
<thead>
<tr>
<th>Box 1</th>
<th>Project Name:</th>
<th>Applicant Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant Title</td>
<td>Applicant Company, Agency, etc.</td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td>Applicant's internal tracking number (if any)</td>
<td></td>
</tr>
<tr>
<td>Work Phone with area code</td>
<td>Home Phone with area code</td>
<td>Fax #</td>
</tr>
</tbody>
</table>

**Relationship of applicant to property:**
- [ ] Owner
- [ ] Purchaser
- [ ] Lessee
- [ ] Other

Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a USACE Nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress, or completed work. I agree to start work only after all necessary permits have been received.

**Signature of applicant**

Date (mm/dd/yyyy)

---

<table>
<thead>
<tr>
<th>Box 2</th>
<th>Authorized Agent/Operator Name and Signature: <em>(If an agent is acting for the applicant during the permit process)</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent/Operator Title</td>
<td>Agent/Operator Company, Agency, etc.</td>
</tr>
<tr>
<td>Mailing Address</td>
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<tr>
<td>E-mail Address</td>
<td></td>
</tr>
<tr>
<td>Work Phone with area code</td>
<td>Home Phone with area code</td>
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</tbody>
</table>

I hereby authorize the above-named agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent, and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.

**Signature of applicant**

Date (mm/dd/yyyy)

I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.

**Signature of authorized agent**

Date (mm/dd/yyyy)

---

<table>
<thead>
<tr>
<th>Box 3</th>
<th>Name of property owner, if other than applicant:</th>
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</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>Multiple Current Owners <em>(If multiple current property owners, check here and include a list as an attachment)</em></td>
</tr>
<tr>
<td>Owner Title</td>
<td>Owner Company, Agency, etc.</td>
</tr>
<tr>
<td>Mailing Address</td>
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</tbody>
</table>

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**Page 15 of 21**

SWF Recommended Application Form - NWP 12
### Attachment D: Summary Table of Single and Complete Crossings

<table>
<thead>
<tr>
<th>Waterbody ID¹</th>
<th>Latitude and Longitude (Decimal Degrees)</th>
<th>Resource Type²</th>
<th>Linear Feet in Project Area</th>
<th>Acres in Project Area</th>
<th>Impact Type³</th>
<th>Linear Feet of Impact</th>
<th>Acres of Impact</th>
<th>Cubic Yards of Material to be Discharged</th>
<th>PCN Required</th>
<th>Reason¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>e.g., W-1</td>
<td>32.755°N, 97.755°W</td>
<td>NFW</td>
<td>-</td>
<td>0.25</td>
<td>D/P</td>
<td>-</td>
<td>0.15</td>
<td>1210</td>
<td>Yes</td>
<td>A, B</td>
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</table>

¹ Waterbody ID may be the name of a feature or an assigned label such as "W-1" for a wetland.


³ Impact Types: D/P – Direct* and Permanent, D/T – Direct and Temporary, I/P – Indirect** and Permanent, I/T – Indirect and Temporary

* Direct impacts are here defined as those adverse affects caused by the proposed activity, such as discharge or excavation.
** Indirect impacts are here defined as those adverse affects caused subsequent to the proposed activity, such as flooding or effects of drainage on adjacent waters of the U.S.

⁴ Reasons for PCN requirement:

A – Mechanized land clearing in a forested wetland
B – Require a Section 10 permit
C – Utility line exceeds 500 feet in waters of the U.S., excluding overhead lines
D – Utility line is within a jurisdictional area (i.e., water of the U.S.), and the utility line runs parallel to a stream bed that is within that jurisdictional area
E – The loss of waters of the U.S. exceeds 1/10 acre
F – Permanent access roads are constructed above grade in waters of the U.S. for a distance of more than 500 feet
G – Permanent access roads are constructed in waters of the U.S. with impervious materials
H – Potential endangered species
I – Potential historic properties
J – Discharge into pitcher plant bog or bald cypress-tupelo swamp
K – Discharge into the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention
L – Required by Louisiana Regional Conditions
M – Other
Jurisdictional Delineation

- Regulatory Guidance Letter - RGL16-01

- Request for jurisdictional Determination (JD)
  - **No JD** – Permitting based on project submittal jurisdictional delineation and review
  - **Preliminary JD** – All aquatic resources are presumed jurisdictional; a PJD in not appealable
  - **Approved JD** – May require coordination with EPA and Headquarters; can be appealed; valid for 5 years
Regional General Permits

- **RGP-8 Boat Ramps and Minor Facilities** - scope includes boat ramp construction and minor activities including boat docks, boathouses, boat stalls, piers, fish attractors.

- **RGP-11 Exploration and Production Wells** - construction of drilling and production pads, reserve and mud pits, access roads, coffer dams and staging areas.

- **RGP-12 Modification and/or Alteration of Corps of Engineers Projects and Associated Regulated Activities** – Modification to federally authorized projects, for example federally authorized levees and Corps managed lakes, that require Section 408 of the Rivers and Harbors Act of 1899 permission.
Letters of Permission

- For minor work that has no significant individual or cumulative environmental impact and no appreciable opposition
- Abbreviated evaluation procedure
  - Coordination with federal and state fish and wildlife agencies
  - Public interest evaluation, but **no public notice**
- LOP procedures may not have expiration dates
- Two Section 404 LOP procedures currently in place in Texas (both statewide):

  LOP-1: Activities at Certain Reservoirs & Federal & State Sponsored Projects

  LOP-2: Excavation Activities
Standard Individual Permits

- When an activity cannot be authorized by general permit or LOP, a standard individual permit is required.

- Must submit application form (Eng Form 4345) or IP template form with information about the proposed activity.
Corps receives application, conducts an initial review and assigns it to a Project Manager (PM)

OMBIL Regulatory Management (ORM) data entered into database

PM reviews application for completeness, as defined by Regulations 325.1(d)(10)

Is the application complete?

YES

Does the project require coordination?

YES

Compile coordination document (such as a Public Notice or Letter of Permission Coordination within 15 days of receipt of complete application) also compile Endangered Species Consultation, and/or Essential Fisheries Habitat Coordination, Historic Resource Coordination

NO

Any objections, adverse comments or issues?

YES

PM receives a reply to the RAI

PM writes a Request for Additional Information (RAI) within 15 days of receipt of application

PM considers the application withdrawn

PM receives a reply to the RAI

YES

PM writes a Request for Additional Information (RAI) within 15 days of receipt of application

NO

Compile coordination document (such as a Public Notice or Letter of Permission Coordination within 15 days of receipt of complete application) also compile Endangered Species Consultation, and/or Essential Fisheries Habitat Coordination, Historic Resource Coordination

Public Hearing?

YES

PM compiles the decision recommendation document (such as the Environmental Assessment - Statement of Finding document or the Nationwide Permit Memorandum For Record) for permit decision

NO

Have the concerns/issues been resolved?

YES

Resolve the concerns/issues

YES

Recommendation and draft permit is presented to management

NO

Rewrite

NO

Permit denial

YES

*Denial could be determined appropriate without coordination

Does management accept the recommendation?

YES

Permit issuance

NO

Rewrite

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Permit denial

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Resolve the concerns/issues

NO

Can concerns/issues be resolved through additional coordination or project revisions?

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YES

Recommendation and draft permit is presented to management

NO

Rewrite

Does management accept the recommendation?

YES

Permit issuance

NO

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Resolve the concerns/issues

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Principles in 2008 Mitigation Final Rule
33 CFR Part 332

- Mitigation sequencing
  - avoid, minimize, compensate
- Preference hierarchy for compensatory mitigation and three types
  - Mitigation bank credits
  - In-lieu fee (ILF) program credits
  - Permittee-responsible mitigation under a watershed approach
    - On-site and/or in-kind
    - Off-site and/or out-of-kind
Tips for Streamlining Permitting Process

- **More = Better?** Not necessarily
- Provide detail commensurate with the complexity of the case and generally show your work
- Use straightforward, clearly-reproducible drawings with complete legends
- Check submittals for accuracy
  - Consistency among sections, including figures and math
- Seek advice of a good environmental consultant, when appropriate
Corps Regulatory Program Information


- Fort Worth District Regulatory Number (817) 886-1731

- If this presentation assisted you, please help us improve our services by completing the survey on the following website: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey
Questions?