THE CORPS REGULATORY AUTHORITY

THE REGULATORY AUTHORITY OF THE U.S. ARMY CORPS OF ENGINEERS IS BASED 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 SECRETARY OF THE ARMY THROUGH THE CHIEF 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.
Navigable Waters of the United States are defined as:

those waters that are subject to the ebb and flow of the tide* and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

* the shoreward limit of jurisdiction extends to the mean high water mark
SECTION 404 OF THE CLEAN WATER ACT

AUTHORIZES THE SECRETARY OF THE ARMY, ACTING THROUGH THE CHIEF OF ENGINEERS, TO ISSUE PERMITS, AFTER NOTICE AND OPPORTUNITY FOR PUBLIC HEARING, FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO WETLANDS AND OTHER WATERS OF THE UNITED STATES AT SPECIFIC DISPOSAL SITES.
TYPES OF PERMITS

NATIONWIDE
REGIONAL/STATE PROGRAM  GENERAL PERMITS
LETTER OF PERMISSION
EMERGENCY
INDIVIDUAL
NATIONWIDE PERMITS DEFINED

• Nationwide Permits are a type of general permit issued by the Chief of Engineers, and are designed to regulate with little, if any, delay or paperwork certain activities with minimal impacts
Regional General Permits

• General permits are issued by the Corps District for certain similar activities that have minor impacts
• The New Orleans District has 27 regional general permits
Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication of that program.
Activities which do not comply with any of the abbreviated procedures must be evaluated under individual permitting procedures.
PERMIT PROCESSING FLOWCHART
INDIVIDUAL PERMITS

- JURISDICTIONAL DETERMINATION COMPLETED.
- PRE-APPLICATION CONSULTATION (IF NECESSARY).
- APPLICATION SUBMITTED WITH COMPLETE PLANS.
- PUBLIC NOTICE (PN) ISSUED.
- INTERAGENCY FIELD TRIP (IF NECESSARY).
- COMMENTS FROM PN SUBMITTED TO APPLICANT.
- EVALUATION OF COMMENTS AND OTHER INFORMATION BY REGULATORY PERSONNEL.
- ISSUANCE OR DENIAL OF PERMITS FROM THE LOUISIANA DEPARTMENTS OF ENVIRONMENTAL QUALITY AND COASTAL MANAGEMENT (WHERE APPLICABLE).
PERMIT APPLICATION

• Department of the Army Permit Application - ENG Form 4345

• A vicinity map, a plan view and a cross section of the proposed work.

• Joint Corps/Coastal Zone Application – Modified ENG Form 4345
PUBLIC NOTICE

• A public notice will be issued for 30 days to allow the public, Federal and state agencies and other concerned parties an opportunity to comment on the proposed project.

• All public notices are now on the Internet
PERMIT EVALUATION

• Review the project with regard to public interest factors listed in 33 CFR 320.4. These factors are:
  
• Conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people
EVALUATION Cont.

• We will also consider:
• a) Relative extent of public and private need of the project
• b) the practicability of using alternative sites and methods
• c) the extent and permanence of the beneficial and/or detrimental effects which the proposed work is likely to have
SEQUENCING

• AVOIDANCE
• MINIMIZATION
• COMPENSATION
COMPENSATORY MITIGATION

- RESTORATION
- ENHANCEMENT
- CREATION
- PRESERVATION
COMPENSATORY MITIGATION APPROACHES

• PROJECT-SPECIFIC
  – DESIGNED TO MITIGATE A SPECIFIC, USUALLY SINGLE, IMPACT

• CONSOLIDATED
  – MITIGATION BANKS
  – MITIGATION AREAS
  – IN-LIEU FEE
OTHER LAWS INVOLVED IN THE 404 PERMITTING PROCESS INCLUDE:

• FOR PROJECTS LOCATED WITHIN THE BOUNDARIES OF THE LOUISIANA COASTAL ZONE, IT IS LIKELY THAT A PERMIT FROM THE LOUISIANA DEPARTMENT OF NATURAL RESOURCES, COASTAL MANAGEMENT DIVISION WILL BE REQUIRED. APPLICANTS MUST APPLY FOR A COASTAL USE PERMIT AS DESIGNATED BY SECTION 307 OF THE COASTAL ZONE MANAGEMENT ACT.

• AN APPLICANT APPLYING FOR A SECTION 404 PERMIT MUST ALSO APPLY FOR A SECTION 401 PERMIT (WATER QUALITY CERTIFICATION) FROM THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY.
THE ENDANGERED SPECIES ACT

- PROJECTS AFFECTING FEDERALLY PROTECTED SPECIES WILL REQUIRE COORDINATION WITH EITHER THE U.S. FISH AND WILDLIFE SERVICE OR THE NATIONAL MARINE FISHERIES SERVICE UNDER THE ENDANGERED SPECIES ACT.
THE FISH AND WILDLIFE COORDINATION ACT

• THE FISH AND WILDLIFE COORDINATION ACT REQUIRES CONSULTATION WITH FEDERAL AND STATE RESOURCE AGENCIES ON SECTION 404 PERMIT REQUESTS.
ESSENTIAL FISH HABITAT

Magnuson-Stevens Act-1996

“One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats.”
THE NATIONAL HISTORIC PRESERVATION ACT

• SECTION 404 PERMIT REQUESTS THAT AFFECT ARCHEOLOGICAL, CULTURAL OR HISTORICAL SITES MAY REQUIRE THAT CERTAIN PROCEDURES BE FOLLOWED UNDER THE NATIONAL HISTORIC PRESERVATION ACT THROUGH COORDINATION WITH THE LOUISIANA DEPT. OF CULTURE, RECREATION AND TOURISM.
AGENCIES INVOLVED IN THIS PROCESS IN THE NEW ORLEANS DISTRICT INCLUDE:

• U.S. ENVIRONMENTAL PROTECTION AGENCY
• U.S. FISH AND WILDLIFE SERVICE
• NATIONAL MARINE FISHERIES SERVICE
• U.S. NATURAL RESOURCES CONSERVATION SERVICE
• LOUISIANA DEPT. OF WILDLIFE AND FISHERIES
• LOUISIANA DEPT. OF ENVIRONMENTAL QUALITY
• LOUISIANA COASTAL MANAGEMENT DIVISION
• LOUISIANA DEPT. OF CULTURE, RECREATION & TOURISM
APPEALS PROCESS FOR PROFFERED INDIVIDUAL PERMITS/LOP’S

OBJECT TO THE INITIAL PROFFERED PERMIT OR LOP:

2 AVENUES:

1. Request appropriate modifications to the proffered permit and return to the District Engineer within 60 days of notice.

2. Decline proffered permit and appeal the decision by completing the appeals form and returning to the Division Engineer within 60 days of notice.
APPEALS PROCESS FOR PERMIT DENIALS

Complete appeals form and send to the Division Engineer within 60 days of notice
ENFORCEMENT
ENFORCEMENT GOALS

- to protect the environment, and human health and safety
- to deter violations
- to treat the regulated public fairly and equitably
THE SURVEILLANCE AND ENFORCEMENT SECTION IS RESPONSIBLE FOR RESOLVING LEGAL ISSUES ASSOCIATED WITH UNAUTHORIZED ACTIVITIES.
ENFORCEMENT AUTHORITY

Rivers and Harbors Act of 1899: Section 10

- prohibits the unauthorized obstruction of any navigable water of the U.S.
- regulated activities include placing structures, filling, dredging, or other work that affects the course, location, condition or capacity of a navigable water
ENFORCEMENT AUTHORITY

Clean Water Act:
- prohibits the unauthorized deposition of material into waters of the United States.
- Corps has concurrent authority with EPA. 1989 Memorandum of Agreement used to determine lead enforcement agency.
CLEAN WATER ACT VIOLATIONS

- Sec 404 – Compliance-Failure to comply with the specified terms and conditions of a Section 404 permit.

- Sec 301 - The discharge of dredge or fill material into a water of the United States without a Section 404 permit.
ENFORCEMENT ACTIONS

- STEP 1: INITIAL INVESTIGATION
- STEP 2: VIOLATION DETERMINATION
- STEP 3: FORMAL NOTIFICATION
- STEP 4: RESOLUTION
INITIAL INVESTIGATION

- **Complaint received**
  - Location and description of activity
  - Information about alleged violator

- **Initial Jurisdiction Determination**
  - Does activity require a permit?
  - Was activity previously permitted?
VIOLATION DETERMINATION

- Contact alleged violator.

- For ongoing activities - issue verbal Cease and Desist order (C&D).

- Conduct field investigation:
  - Confirm jurisdiction.
  - Document type and extent of violation.
  - Collect investigative data.
FORMAL NOTIFICATION

Written C&D issued:

- identifies statutory authority
- lists possible consequences of enforcement action
- requests comments

Initial Corrective Measures:

- Interim restoration may be ordered if additional damage is anticipated during the resolution phase.
RESOLUTION

Comments from violator received.

Method of resolution determined:

- RESTORATION
- AFTER-THE-FACT PERMIT (ATF)
- ADMINISTRATIVE CLOSURE
- REFERRAL TO EPA
- OTHER LEGAL ACTIONS
Voluntary restoration

Restoration ordered:

- when maintenance of the violation would cause adverse affects to existing resources
- if an after-the-fact permit is denied
- as part of a legal judgement
An After-The-Fact permit application may be accepted after the legal issues are resolved.

NOTE: Enforcement cases are not closed until a permit decision is reached.
Pursuant to CFR 326.5(e), enforcement files may be administratively closed in cases where:

- EPA, Department of Justice (DOJ), and/or Office of Counsel (OC) declines to take action.
- EPA, DOJ and/or OC have not pursued this type of case in the past.
EPA will act as the lead agency when an unauthorized activity:

- involves repeat violators
- involves flagrant violations
- they requests a particular case or class of cases
- the Corps recommends an EPA administrative penalty action
Cases may be referred to local U.S. Attorney or to the Office, Chief of Engineers (OCE).

When a legal action is warranted, a litigation report is prepared:

- includes recommended legal action
  - criminal or civil
- provides information on required restoration or mitigation
MORE INFO AVAILABLE AT OUR WEB SITE:

www.mvn.usace.army.mil/ops/regulated
/index.asp
Questions?