

U.S. Army Corps of Engineers Regulatory Program

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Legal Authorities

- Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA).
- Section 404 of the Clean Water Act (CWA).



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Section 10 - Rivers and Harbors Act of 1899

- Intended to prevent unauthorized obstruction or alteration of any navigable water of the united states.



Section 10 Jurisdiction

- Navigable waters are defined as waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation.



Activities Requiring Section 10

Permits

- Structures and/or work in or affecting (over or under) navigable waters.
- Most work waterward of OHWL (ordinary high water line) for Lake Erie (573.4 IGLD) and OHWL of other Navigable waters.
- Structures (e.g., Piers, breakwaters, bulkheads, jetties, power lines, etc.).
- Dredging, disposal of dredged material, excavation, filling, or other modifications to the navigable waters of the United States.



Section 404 - Clean Water Act

- Maintain and restore the chemical, physical and biological integrity of “waters of the United States” .



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Section 404 Jurisdiction

- “Waters of the United States” - Includes all navigable and interstate waters and their perennial and “relatively permanent” tributaries, and all wetlands directly abutting such waters, and all impoundments of these waters. Also included are non-relatively permanent tributaries and nearby wetlands which have a “significant nexus” with a traditional navigable water



Activities Requiring Section 404 Permits

- Discharge of dredged or fill material into “waters of the United States”, including wetlands.



401 Water Quality Certification

- Section 404 permits must receive Section 401 Water Quality Certification by the Ohio Environmental Protection Agency (OEPA).
- Most but not all NWP's received 401 WQC, with conditions.



Types of Permits

- Standard Permits
 - Individual Permits
 - Letters of Permission
- General
 - Regional General Permits
 - Nationwide Permits



Individual Permits

- Projects involving substantial impacts.
- Requires public notice
- Can take considerable amount of time
- If Section 404, requires Individual 401 Certification from OEPA
- Requires CZM (Coastal Zone Management) Consistency Concurrence if in coastal zone



General Permits

- Authorize a group of similar activities with minimal impacts.
- Issued regionally or nationwide.
- Nationwide Permit (NWP).
- Regional Permit (RP) - none in Ohio.
- Streamlined process, less time consuming, sometimes no pre-construction notification (PCN) required.



Nationwide Permit 3

Maintenance

- The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill
- Minor deviations allowed
- Must meet 401 conditions
- On Lake Erie, need individual CZM consistency concurrence



Nationwide Permit 13

Bank Stabilization

- (a) No material is placed in excess of the minimum needed for erosion protection.
- (b) The activity is no more than 500 feet in length along the bank, possible waiver.
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark, possible waiver.
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites (e.g. wetland, vegetated shallows), possible waiver.
- (e) Cannot impair surface water flow into or out of any water of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows
- (g) The activity is not a stream channelization activity

Discharges not meeting (b), (c) or (d) or including vertical bulkheads require PCN



Nationwide Permit 14

Linear Transportation Projects

- Construction of new or widening of existing roads
- Construction, repair or replacement of bridges
- Impacts cannot exceed 1/2 acre
- PCN required for any wetland impacts or for total impacts over 0.1 acre



Nationwide Permit 27

Aquatic Habitat Restoration

Nationwide Permit 29

Residential Development

Nationwide Permit 39

Commercial and Institutional Development

Nationwide Permit 42

Recreational Facilities



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Other Related Laws Which Affect the Regulatory Program

- Section 401 Clean Water Act (401 Water Quality Certification)
- Coastal Zone Management Act
- Endangered Species Act
- Fish and Wildlife Coordination Act
- Federal Power Act
- National Environmental Policy Act
- National Historic Preservation Act



Pre-Application Consultation

- You are encouraged to contact the Corps to discuss work under consideration early in the planning process.
- Application requirements and evaluation considerations will be reviewed. By discussing all information prior to application submittal, your application will be processed more efficiently.



Mitigation

- End point of a 3-step process to reduce the adverse effects on the aquatic environment.
- **AVOIDANCE** - design the project to avoid as much of the sensitive area as possible.
- **MINIMIZATION** - use construction techniques, materials and equipment and project modifications to reduce impacts to the environment.
- **MITIGATION** - provide replacement for the unavoidably impacted resource.



Questions?

- Contact us anytime at:
 - ▶ U.S. Army Corps of Engineers - Oak Harbor Field Office - 240 Lake Street - Unit D - Oak Harbor, Ohio 43449 - (419) 898-3491
 - ▶ U.S. Army Corps of Engineers - Orwell Field Office - 33 Grand Valley Avenue - Orwell, Ohio 44076 - (440) 437-5847
 - ▶ U.S. Army Corps of Engineers - Buffalo District - 1776 Niagara Street - Buffalo, New York 14207 - (716) 879-4330



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