

United States Army Corps of Engineers Regulatory Program

Identifying Waters of the United States

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Outline of Topics

- USACE Regulatory Authorities
- Stream Identification/Jurisdiction
- Regulatory Actions
- Types of Permits
- Enforcement / Non-compliance
- Information for the State of WV



USACE Regulatory Authorities



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Statutory Authorities

- **Section 10 of the Rivers and Harbors Act of 1899**
 - ▶ Requires approval prior to any work in, on, over or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters
- **Section 404 of the Clean Water Act**
 - ▶ Requires approval prior to discharging dredged or fill material into the waters of the United States



Section 10 Waters

- Navigable waters of the United States are 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
 - ▶ **Examples:** Ohio River, Tug Fork, Elk River, Gauley River, Greenbrier River, Kanawha River, New River, Monongahela River, Tygart River, Potomac River, Shenandoah River
 - ▶ Complete list on District's webpage



Section 10 Activities

- Barge fleetings
- Power lines
- Piers
- Mooring structures
- Utility line crossings
- Boat docks
- Permanent water intake



Section 404 Waters

- Navigable waters of the United States
 - All Section 10 Waters
- Interstate waters & interstate wetlands
- Other waters such as intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.....
 - the use, degradation or destruction of which could affect interstate or foreign commerce



Section 404 Waters



Rivers, streams,
canals, and some
ditches

Impounded waters,
natural lakes, and
wetlands



Identifying Streams

- Relatively Permanent Waters (RPW's)
 - ▶ Perennial has surface flow year round
 - ▶ Intermittent has flow for several months in a year
- Non-relatively Permanent Waters (nRPW's)
 - ▶ Ephemeral has flow only during rain events



Ohio River



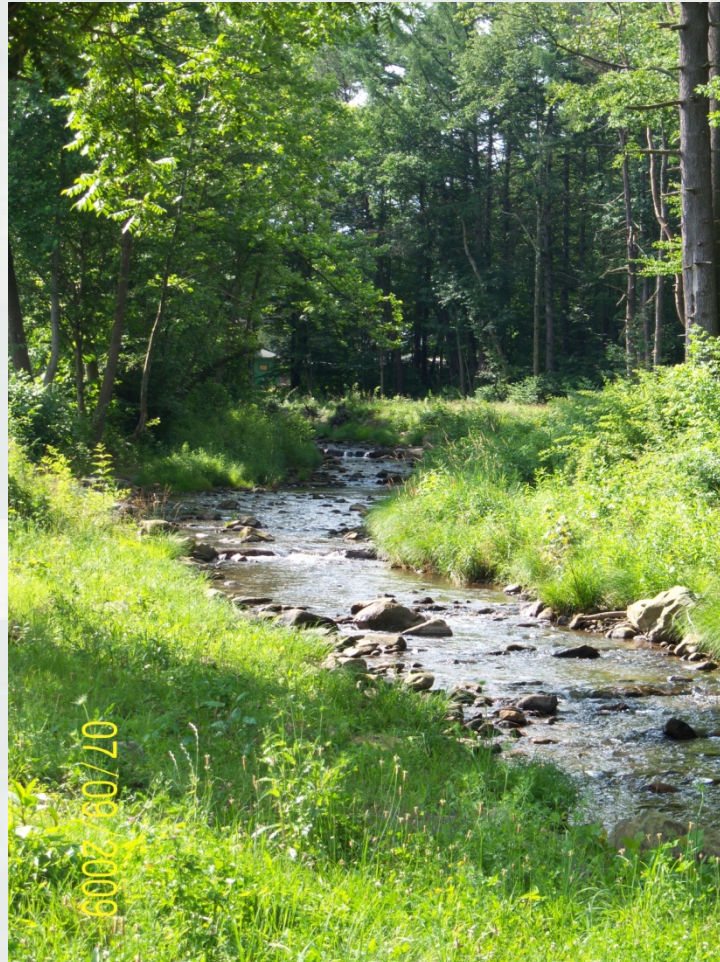
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Aarons Creek



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Mill Run



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UNT to Stonycreek River



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UNT to Stonycreek



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UNT to Brush Creek



UNT to Brush Creek



UNT to Brush Creek downstream of last slide



Tributary to the Conemaugh River



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Upland Drainage Feature



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Identifying Wetlands



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Identifying Wetlands

- 3 Types of wetlands: Emergent, Shrub Scrub, Forested
- Directly abutting an RPW or nRPW
 - ▶ Wetlands that are connected to a stream
- Adjacent to an RPW or nRPW
 - ▶ Wetlands that are situated in close proximity to an RPW or nRPW but are separated by upland
- Isolated Wetlands
 - ▶ Wetlands that are situated distantly from an RPW or nRPW and have no hydrologic connection to an RPW or nRPW



Wetland



Wetland



Hydric Wetland Soil



Redox Features in Wetland Soil



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Beaver Dam



Jurisdiction



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Jurisdiction

- Navigable Waters (Section 10)
 - ▶ Each District has a list with limits
- Waters of the US (Section 404)
 - ▶ Jurisdiction extends to ordinary high water mark for:
 - Section 10 waters
 - Relatively Permanent Waters
 - ▷ Lakes
 - ▷ Streams (Perennial, Seasonally Intermittent)
 - ▶ Adjacent Wetlands
 - ▶ Others require a case-specific determination
 - Streams (Intermittent, Ephemeral)

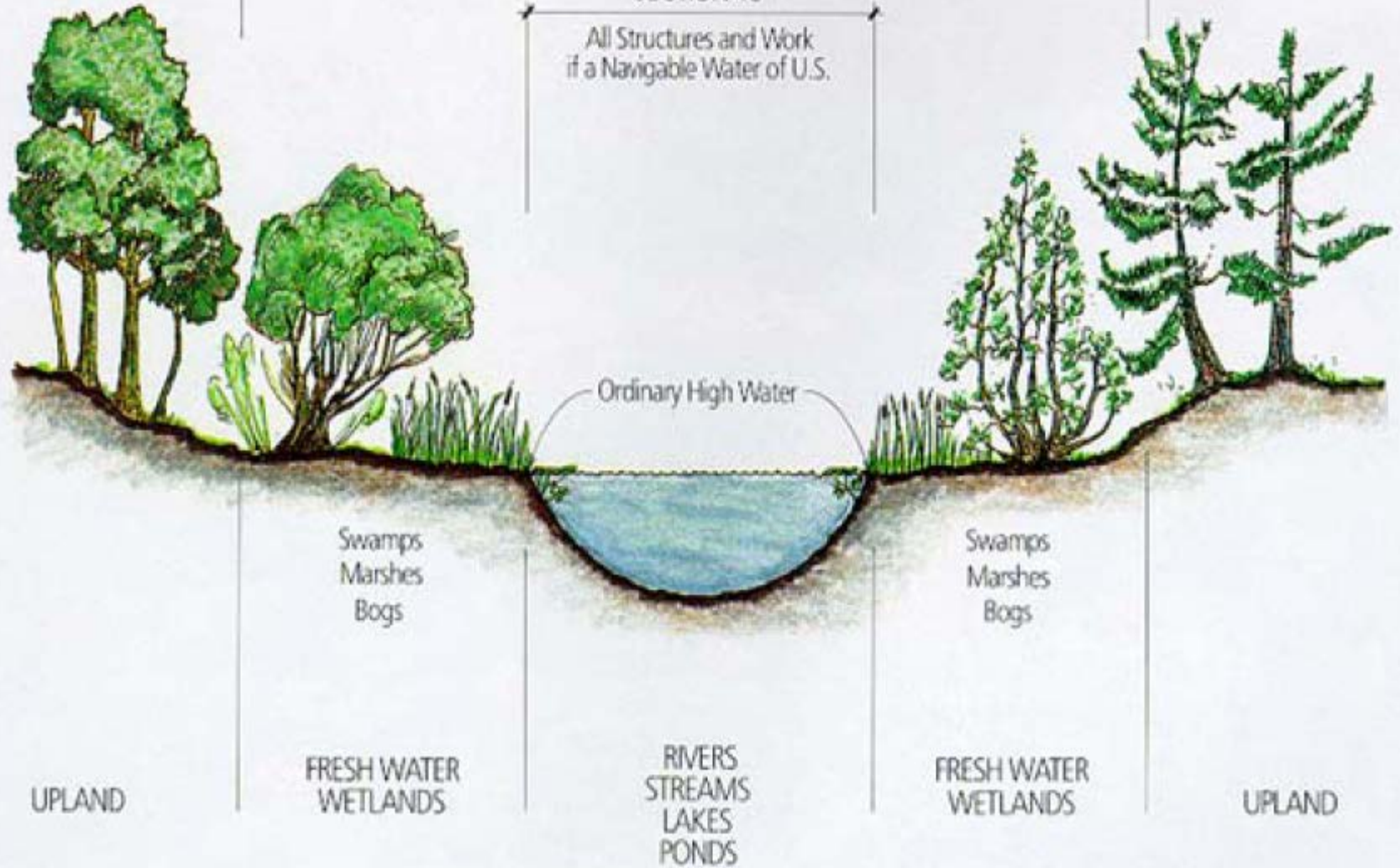


SECTION 404

Discharge of Dredged or Fill Material

SECTION 10

All Structures and Work
if a Navigable Water of U.S.



Corps of Engineers Regulatory Jurisdiction in **FRESH WATERS**

Jurisdictional Determinations



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Jurisdictional Determinations

- Identification of Potentially Jurisdictional Waters
 - ▶ Wetland Delineation
 - ▶ Identification of Streams and other waters
- USACE/USEPA have ultimate authority for Section 404 determinations
 - ▶ USACE will determine if waters are or are not jurisdictional (i.e. isolated)



Isolated Waters

- Waters determined by the USACE
- Potentially Regulated by WVDEP



Enforcement and Non-Compliance



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Goal = Prevention of Violations

- Presentations/training Sessions
 - ▶ Municipal Governments
 - ▶ Contractors, Engineers, Surveyors, Land Use Planners
 - ▶ Loggers, Farmers
 - ▶ Special Interest Groups
- Mailings to Municipal Governments
 - ▶ Program Overview/updates
 - ▶ Field Assistance/training
 - ▶ Target Issues
- Meetings
 - ▶ Issue/project Specific
 - ▶ Programmatic Concerns



Enforcement



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Enforcement

- Three federal agencies involved:
 - ▶ U.S. Army Corps of Engineers
 - MOA between USACE and USEPA
 - ▷ Corps still major player
 - ▷ Corps does all compliance
 - ▶ United States Environmental Protection Agency
 - Is lead when:
 - ▷ Flagrant violator
 - ▷ Repeat violator
 - ▷ EPA requests lead agency status
 - ▶ Department of Justice
 - Consent agreements
 - Referral for court ordered restoration



Enforcement Outcomes

- Referral to USEPA
- Voluntary Restoration
- After the Fact (ATF) Permit
- Civil Litigation (DOJ)
- No action



Compliance



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Compliance

- USACE performs compliance for all types of permits, including Nationwide Permits
- Compliance Review
 - ▶ Office Review
 - ▶ Field Review
- Outcomes
 - ▶ Permittee is in compliance
 - ▶ Permittee is in non-compliance



Non-compliance

- Permit Suspension
- Permit Modification
- Permit Revocation
- Administrative penalty
- DOJ
- No action



Regulatory Boundaries



USACE Contact Information WV

- Pittsburgh District, Regulatory Branch
 - ▶ Jon Coleman, Chief, Southern Section
Regulatory Branch, Phone 412-395-7188

- Huntington District, Regulatory Division
 - ▶ Mark Taylor, Chief, Energy Resources
Branch, Phone: 304-399-5610

