

# U.S. Army Corps of Engineers

## Regulatory Program

### *Our History, Authority, Jurisdiction, Permitting, and Staff*

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Working Near Waterways SWAC Workshop

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US Army Corps of Engineers  
**BUILDING STRONG**®



Presentation given at Working  
Near Waterways Workshop  
hosted by the Stormwater  
Advisory Committee (SWAC)  
on 3/12/20.

# Regulatory Program History

## 1215 Magna Carta

- ▶ English Common Law
- ▶ Navigable waters held in trust for public's use in navigation and fisheries

## 1787 U.S. Constitution

- ▶ Commerce Clause
- ▶ Congress has the power to regulate commerce with Foreign nations, states, and Indian Tribes

## Rivers and Harbors Act of 1899

- ▶ Federal government asserts police power to protect navigable waters from physical injury



# Regulatory Program History

## **National Environmental Policy Act (1969)**

- ▶ “Encourage productive and enjoyable harmony between man and his environment”

## **Federal Water Pollution Control Act (1972)**

- ▶ §404(a) – Corps issues permits for discharges of dredged or fill material
- ▶ §404(b) – EPA develops environmental guidelines for 404 permit

## **Natural Resource Defense Council (NRDC) v. Calloway (1975)**

- ▶ §404 program expanded to regulate all “waters of United States”, not just navigable waters

## **Supreme Court Decisions and Corps/EPA MOA’s**



# USACE Regulatory Authority

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

**Section 404 of the Clean Water Act of 1972-**  
Restore and maintain the physical, chemical, and biological integrity of the Nation's aquatic resources



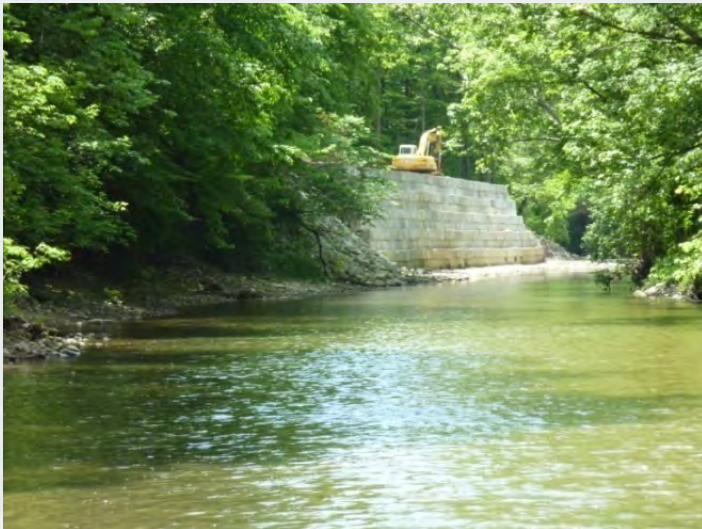
# Section 10 of the Rivers and Harbors Act of 1899

Requires authorization for any structure or work in, over, under, or affecting the course, location, or condition of any navigable water of the United States.



# Section 404 of the Clean Water Act

Requires authorization for the discharge of dredged or fill material into any “waters of the U.S.” (WOUS), including wetlands.



# Section 404 of the Clean Water Act

Fill material includes, but not limited to: rock, sand, soil, clay, rip rap, culverts, sewer and utility lines, plastics, construction debris, wood chips, mining or excavation overburden, and materials used to create any structure in “waters of the U.S.”



# Jurisdiction

**Section 10 RHA** - Navigable waters of the United States - 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 (33 CFR Part 329).

**Section 404 CWA** - Navigable and non-navigable waters of the United States such as rivers, streams, creeks, tributaries, as well as many lakes, ponds, impoundments, adjacent wetlands, and the territorial seas. (33 CFR Part 328).





# Limits of Jurisdiction



**Streams** – Locate the Ordinary High Water Mark (OHWM) and/or bed and bank



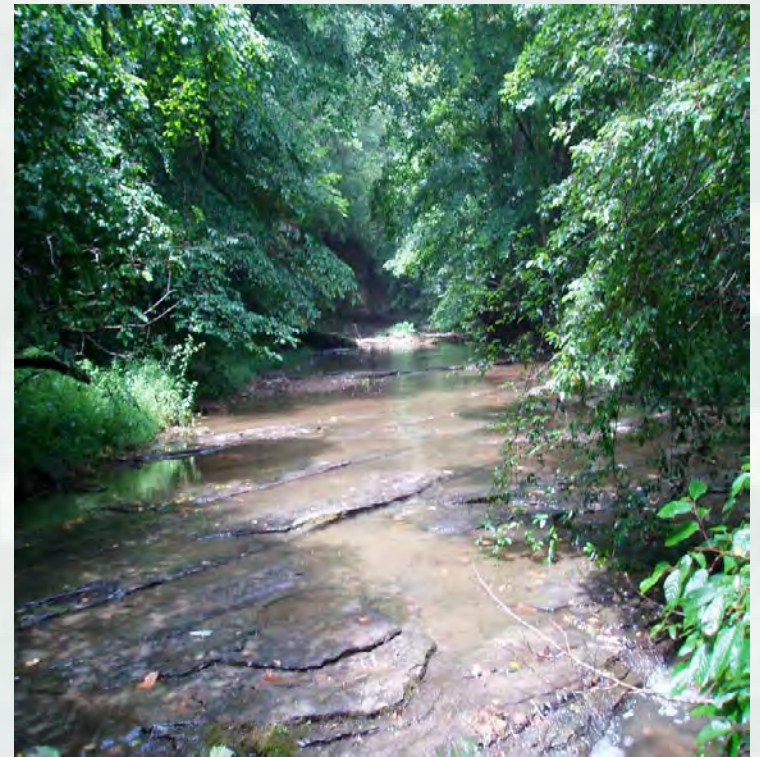
# Limits of Jurisdiction

**Wetlands** – Determine jurisdiction and boundary using the Corps 1987 Wetland Delineation Manual, and appropriate Regional

- Hydric soils
- Hydrology
- Hydrophytic vegetation



# Perennial Streams



# Intermittent Streams



# Ephemeral Streams



# Wetlands



# Navigable Waters Protection Rule

May 2020- <https://www.epa.gov/nwpr>



# Project Design

- Determine location of Waters on site
- Assess Potential Impacts
  - ▶ Avoid Impacts if possible
  - ▶ Minimize Impacts as much as possible
  - ▶ Mitigate Impacts that cannot be avoided
- Apply for Authorization Early





# Types of Permits

## Individual Permits (IPs)

- ▶ Public Notice, Environmental Assessment, Alternatives Analysis, 404(b)(1) Guidelines, LEDPA

## Letters of Permission (LOPs)

- ▶ Non-Controversial, agency coordination

## General Permits (RGPs and NWPs)

- ▶ 55 NWPs (expires 2022)
- ▶ IN RPG (expires 2024)



# Common Activities in Waters (IN RGP)

- **Residential Development**-notification req for all
- **Industrial Development**-notification req for all
- **Commercial Development**-notification req for all
- **Bank Stabilization**-notification req if wetland, >300lft, or >1cyd/ft



# Common Activities in Waters (IN RGP) Con't

## IN RGP Qualifications:

- < 1 acre of waters, except open waters
- < 2 acres of open waters
- < 1,500 linear feet of streams
- < 10,000 cubic yards of spoil dredged from Navigable Waters

## Mitigation Required for IN RGP if:

- > 300 linear feet of stream impact
- > 0.10 acre
- Case by case basis



# Common Activities in Water (Nationwide Permits)

**NWP 3 Maintenance**-notification req for all

**NWP 7 Outfall and Intake Structures**-  
notification req for all

**NWP 12 Utility Lines**-notification for

- Mechanized land clearing
- Section 10 waters
- >500 linear feet
- Line run parallel to stream
- >0.10 acre
- Permanent access roads that impact >500 linear feet
- Permanent access roads are impervious



# Other Laws

## **Section 7**

Endangered Species Act

- Coordination with USFWS
- Bats, Buffalo Clover, Mussels

## **Section 106**

National Historic Preservation Act

- Coordination with State Historic Preservation Officer (SHPO)
- Archaeological Site, Historic District, Burial

## **Section 408**

Section 14 of the Rivers and Harbors Act of 1899

- Coordination with Corps' 408 Coordinator
- Lock & Dam, Levee, Flood Control Project

## **Section 401**

Clean Water Act

- IDEM Water Quality Certification



# Permit Decision

**Issue**-Authorize as proposed

**Issue with Special Conditions**-To ensure the project is in the Public's Interest

**Deny**-If found not in the Public's Interest



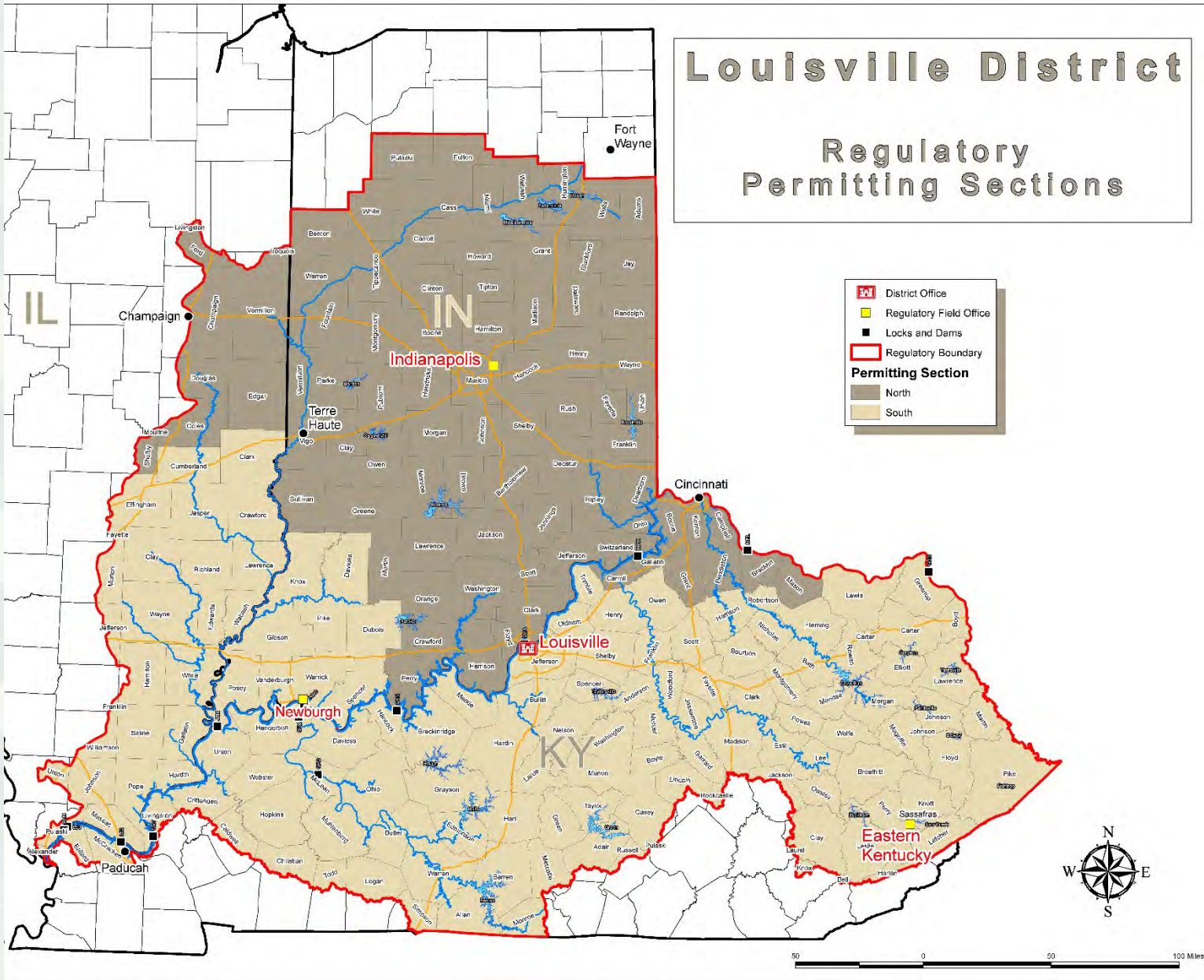
# Special Condition Examples

- Mitigation to offset adverse impacts to the aquatic environment
- Seasonal Tree Clearing Restriction-ESA
- Restriction on Hours of Operation-Noise/Light
- Compliance with MOA-SHPO



# Louisville District

## Regulatory Permitting Sections





# Locations and Staff

## Four Offices:

Louisville District Office

Indianapolis Field Office

Newburg Field Office

Carr Creek Field Office



## Three Branches:

North Branch-Greg McKay (502) 315-6685

South Branch-David Baldrige (502) 315-6675

Mitigation/Compliance/Enforcement Branch-Eric

Reusch (502) 315-6692



# Questions?

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Louisville District Webpage: <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>

USACE Headquarters Webpage: [http://www.usace.army.mil/CECW/Pages/cecwo\\_reg.aspx](http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx)

