U. S. Army Corps of Engineers
Charleston District
Regulatory Division Overview

Colt Bowles
Charleston District
Watershed Manager
Northwest Regulatory Branch,
Columbia, SC
District Mission

In order to support and serve the federal interests in our nation’s resources, Charleston District, US Army Corps of Engineers develops and facilitates innovative and effective solutions to meet the engineering, environmental and emergency management needs for the state of South Carolina, the US Army and the Nation.
U.S. Army Corps of Engineers

History
General George Washington established the U.S. Army Corps of Engineers on June 16, 1775.
Congress recognized the need for national engineering capability, and in 1802, established the US Military Academy at West Point where Corps officers lead the school.
Corps Responsibilities

1824
General Survey & Navigation Act

1916

1899

1928

1972
Charleston District- 1800s

- **1821**: USACE works out of New York after Congress puts $4M for coastal fortifications.
- **1826-1829**: Forts Moultrie, Jackson and Sumter constructed.
- **1871**: First permanent USACE office in Charleston w/ COL Quincy A. Gillmore.
- **1879-1895**: Charleston Jetties constructed.
Charleston District - 1900s

• 1912 Constructed Camps Jackson, Sevier and Wadsworth

• 1932 Authorized to dig AIWW

• 1940s/50s Constructed/Expanded 8 Airfields to include Charleston, Columbia, and Georgetown

• 1969 Environmental Policy Act – greatly increases the scope and jurisdiction of the Regulatory Program
Corps Projects in South Carolina

- Ft. Sumter as it appeared c.1861
- Old Railroad Station in Aiken, SC
- Charleston Harbor c.1835
- Camp Jackson as it appeared c.1918
Charleston District Today

- Civil Works and MILCON District
- 200 workforce
- FY07 $54M program
- FY08 $60M program to include
  - $29M Myrtle Beach Renourishment
  - $20M Charleston/Georgetown Harbor/Cooper River and Inland Waterway
- FY09 $245M program to include
  - $16M Charleston/Georgetown Harbor/Cooper River and Inland Waterway
  - $85M BTC2 Project – Ft. Jackson
U.S. Army Corps of Engineers
Charleston District Projects
Charleston District
Folly Beach Renourishment
Charleston District
Myrtle Beach Renourishment
Charleston District
Study for Proposed Marine Terminal
Charleston District
Lake Marion Regional Water System

5-County Project Area in South Carolina

Sumter Co.
Clarendon Co.
Calhoun Co.
Orangeburg Co.
Dorchester Co.
Columbia
Lake Marion
US Army Corps of Engineers

FY 08 Military Program
$27 Billion/year
- 10,000 personnel
- Military Construction
- Contingency Ops
- Installation Support
- International/Interagency Support

FY 08 Civil Works Program
$9 Billion/year
- 22,000 personnel
- Navigation
- Hydropower
- Flood Damage Reduction
- Shore Protection
- Water Supply
- Regulatory
- Recreation

Engineer Research and Development Center
Seven diverse research laboratories - $1 Billion
Private Sector Leverage

Construction Contractors
Unlimited Capability
Perform 100% of Civil Works/Military Construction ~ 300K daily

35,000 Federal Employees

Sponsors, Federal Agencies, Associations

Architect-Engineer Firms (5,000 employees)
Perform 80% of Military, 40% CW Planning & Design

BUILDING STRONG®
US Army Corps of Engineers

Global Engagement
- Engagement - 100+ Countries
- Physical Presence - 33 Countries
USACE Value to the Nation

- 627 Shallow Draft Harbors
- ¾ of Nation’s Hydropower Production
- 383 Major Lakes & Reservoirs 376 M Visitors/yr
- 11,000 miles Inland Waterways
- 4340 Recreation Areas
- 8500 Miles of Levees
- 276 Locks
- 299 Deep Draft Harbors
- $500M Annual Dredging Costs
- 400 miles Coastal Structures
- 11.7 Million Acres Public Lands
- ¼ of Nation’s Hydropower Production
- 276 Locks
- Emergency Operations
- Environmental Stewardship

- US Ports & Waterways convey > 2B Tons Commerce
- Foreign Trade alone Creates > $160B Tax Revenues
- Cumulative Flood Damage Prevention >$419B
Civil Works Program Missions

- Navigation
- Hydropower
- Flood Risk Management
- Ecosystem Restoration
- Water Supply
- Regulatory (Wetlands / US Waters)
- Recreation
- Disaster Preparedness & Response
Military Program Missions

- Military Construction
- Global War on Terror
- Real Estate
- Formerly Used Defense Sites (FUDS)
- Base Realignment and Closure (BRAC)
- Interagency and International Services
- Installation Support
Disaster Preparedness & Response

- Support FEMA
  *Emergency Support Function (ESF) #3
  Public Works & Engineering
- Support the Department of Defense
- Accomplish USACE missions
Savannah District Administers all Civil Works Projects in the Savannah River Watershed
U.S. Army Corps of Engineers
Regulatory Program
The mission of the Corps Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.
Corps Regulatory Program

One of the most visible and controversial Corps programs

Charged with balancing environmental protection with sustainable development
Corps Regulatory Program

Columbia Office
U.S. Army Corps of Engineers
Columbia Regulatory Office
Strom Thurmond Federal Bldg.
1835 Assembly Street, Rm. 865 B-1
Columbia, SC 29201
(803) 253-3444 (Phone)
(803) 253-3446 (Fax)

Charleston District
Regulatory Service Areas
- Columbia Office
- Conway Office
- Charleston Office

Charleston Office
U.S. Army Corps of Engineers
Charleston Regulatory Office
69 A Hagood Ave,
Charleston, SC 29403
(843) 329-8044 (Phone)
(843) 329-2332 (Fax)

Conway Office
U.S. Army Corps of Engineers
Conway Regulatory Office
Conway Agricultural Center
1949 Industrial Park Road, Rm. 110
Conway, SC 29526
(843) 365-4239 (Phone)
(843) 365-4318 (Fax)

US Army Corps of Engineers
Charleston District
Corps Regulatory Program
Watershed Approach

Salkahatchie-Lower Savannah
Santee-Cooper
Waccamaw
Pee Dee
Broad-Catawba
Saluda-Upper Savannah
The Corps issues permits pursuant to:

• Section 10 of the Rivers and Harbors Act of 1899
• Section 404 of the Clean Water Act
• Section 103 of the Marine Protection Research and Sanctuaries Act of 1972
Section 10 of the Rivers & Harbors Act of 1899
Regulates structures, or work in or affecting, navigable waters of the United States
Section 10 of the Rivers & Harbors Act of 1899

Prohibits the **unauthorized** obstruction or alteration of any **navigable water of the United States** unless you have a permit from the Corps of Engineers.

Examples of obstructions or alterations are:

- construction of any structure in or over any navigable water of the United States,
- the excavating from or depositing of material or
- the accomplishment of any other work affecting the course, location, condition, or capacity of such waters
"Navigable Waters of the United States"

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.
Section 10
Waters in South Carolina
Section 10

Atlantic Ocean
Section 10

Charleston Harbor
Section 10

Tidal Creek
Section 10

Atlantic Intracoastal Waterway
Section 10
Congaree River
Section 10
Lake Murray (Court Determined)
Section 10 of the Rivers and Harbors Act

Regulated Activities
Section 10

Dredging
Section 10
Beach Nourishment
Section 10

Structures
Section 10

Overhead Powerlines
Section 10

Docks
Section 10
Marinas
Section 404 of the Clean Water Act of 1972

Regulates discharges of dredged or fill material into wetlands and other waters of the United States
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 the waters of the United States at specified disposal sites. (See 33 CFR Part 323.)
Waters of the United States

- All Navigable Waters of the U.S.;

- All interstate waters including interstate wetlands;

- All other waters such as intrastate lakes, rivers, streams (including intermittent 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 including any such waters:

  ✓ Which are or could be used by interstate or foreign travelers for recreational or other purposes; or from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

  ✓ Which are used or could be used for industrial purpose by industries in interstate commerce
Section 404
Bottomland Hardwoods
Section 404

Riffle Pool Complex
Section 404
Stream and Adjacent Flood Plain
Section 404 Stream
Section 404
Seasonal Streams
Section 404

Wetlands Defined (33 CFR Part 328.3 (b))

Those areas inundated or saturated by surface or groundwater at a frequency sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
Section 404
Wetlands Delineation


Use by Corps is required
Section 404

Wetlands Delineation

All 3 Must be Present

- Hydrophytic vegetation
- Hydric soil
- Hydrology (2 primary indicators)
Section 404

Wetlands Delineation
Section 404

Wetlands Delineation

Water Marks
Section 404
Wetlands Delineation
Section 404

Wetlands Delineation
Section 404
Wetlands Delineation
Section 404

Wetlands Delineation
Section 404

Wetlands Delineation

Fe Masses & Fe Depletions
Section 404

Wetland Example
Section 404

Wetland Example
Section 404
Wetland Example
Waters of the United States
Not Regulated by Corps

• Isolated Wetlands
• Non-tidal drainage ditches excavated in upland
• Artificial lakes/ponds excavated in upland
• Active sand/gravel pits excavated in upland
• Water filled depressions on upland construction sites
Isolated Wetlands

As stipulated in the January 9, 2001, United States Supreme Court decision on *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, the US Army Corps of Engineers cannot assert Clean Water Act jurisdiction over isolated, non-navigable, intrastate waters based solely on their use as habitat for migratory birds.

- Not connected to waters of the United States
- Not adjacent to waters of the United States
Corps Regulatory Authority
Rapanos/Caravalle

- Supreme Court Decisions
- Decisions affirmed jurisdiction
- Guidance issued June 5, 2007
TRADITIONAL NAVIGABLE WATERS (TNW)

all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

“A traditional navigable water” includes all of the “navigable waters of the United States,” defined in 33 C.F.R. § 329, and by numerous decisions of the Federal courts, plus all other waters that are navigable-in-fact.
SIGNIFICANT NEXUS DETERMINATION (SND)

A significant nexus analysis will assess the flow characteristics and functions of the relevant reach of the tributary, in combination with functions collectively performed by all wetlands adjacent to the tributary, to determine if they have more than an insubstantial or speculative effect on the chemical, physical, or biological integrity of TNWs.

1987 Manual - Is it a wetland?

Significant Nexus - Will impacts to a particular wetland impact waters downstream?

Next - Regional Indicators
Corps Regulatory Authority

Exemptions

33CFR Part 323.4(A)(1)

- Farming
- Forestry
- Ranching

Certain plowing, seeding, cultivating, minor drainage, harvesting and related activities do not require a Section 404 permit from the Corps.
Corps Regulatory Authority
Non-Regulated Activities

- Excavation in a wetland or Non Section 10 Water (Tulloch)
  - Excavated and deposited directly to high ground.
  - No side-casting, double handling, or temp. storage in a wetland.
Corps Regulatory Program
Department of Army Permits

- General Permits
- Individual Permits
Corps Regulatory Program

General Permits

Nationwide Permits
Issued by Chief of Engineers for certain activities that are determined to have minimal impacts.

Regional Permits
Issued by District Commander for certain repetitive minor activities within a specific area.
Corps Regulatory Program

Nationwide Permits

- 50 Nationwide permits (38 used in SC)
- Wetland fills of less than ½ acre and/or stream impacts of less than 300’
- Regionally conditions (Corps and SCDHEC)
  - 12 Utility lines
  - 13 Bank stabilization
  - 14 Linear transportation crossing
  - 27 Stream/Wetland Restoration
  - 29 Residential or Private residence
  - 39 Commercial or Industrial Activity
Corps Regulatory Program
NWP 29 Residential Developments

• Authorizes both single unit residences and multiple unit residential developments

• Requires PCN for all activities

• ½ acre non tidal, 300 LF stream bed loss limits (Cumulative Loss)

• Does not authorize discharges adjacent to tidal
Corps Regulatory Program
Individual Permits

Processing Steps

1. Application submitted (Corps & DHEC)
2. Public Notice issued
3. 30-day comment period
4. Agency coordination (SHPO, USFW, SCDNR)
5. Evaluation
6. Permit decision
Corps Regulatory Program
Related Laws

- Coastal Zone Management Act
- Section 401 of the Clean Water Act
- National Historic Preservation Act of 1966
- Endangered Species Act of 1973
- Fish & Wildlife Act of 1956
- Migratory Marine Game-Fish Act
- Fish & Wildlife Coordination Act
- Clean Air Act
- Resource Conservation & Recovery Act of 1976
- Comprehensive Environmental Response Compensation and Liability Act of 1980
- Essential Fish Habitat
Corps Regulatory Program
Other Factors

- Public Interest Review Factors
- 404 (b)(1) Guidelines
- National Environmental Policy Act
  - Environmental Assessments
  - Environmental Impact Statements
Corps Regulatory Program
Public Interest Review Factors

conservation  recreation
economics    water supply & conservation
aesthetics   water quality
general environmental energy needs
  concerns   safety
wetlands     food and fiber production
historic properties mineral needs
fish and wildlife values considerations of
flood hazards  property ownership
floodplain values in general, the needs and
land use       welfare of the people
navigation
shore erosion and accretion
Corps Regulatory Program
404 (b) (1) Guidelines

- Determine water dependency
- Consider off-site alternatives
- Avoid unnecessary impacts
- Minimize unavoidable impact
- Compensatory mitigation
230.10(b)…No discharge of dredged or fill material shall be permitted if it:

1. Causes or contributes to violations of any applicable State water quality standard;

2. Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

3. Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of critical habitat;

4. Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary.
District Commander’s Permit Decision Options:

1. Deny permit if project is contrary to public interest or fails to comply with Section 404(b)(1) Guidelines

2. Issue Permit (with conditions)

3. Require preparation of EIS if project is determined to be a major Federal action that would significantly affect the quality of the human environment
“The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of functions and values.” (1990 EPA/Army MOA)
Mitigation Sequencing

► Avoiding Impacts
► Minimizing Impacts
► Rectifying Impacts – Repairing, Rehabilitating, or Restoring
► Reducing Impacts over time – Preservation and Maintenance
► Compensation for Impacts by Replacing or Providing a Substitute Resource
Compensatory Mitigation

Actions taken to offset impacts to wetlands, streams, and other aquatic resources authorized by 404 and other Department of Army permits

Goal of no overall net loss of functions and values.
Methods/Mechanisms

Methods
- Restoration
- Enhancement
- Establishment
- Preservation

Mechanisms
- Mitigation Banks
- In Lieu Fee (ILFs)
- Permittee Responsible Mitigation (PRM)
Mechanisms

- Mitigation Bank
  - Public or private sponsors
  - Mitigation initiated in advance of credit sales

- In Lieu Fee
  - Government or non-profit entity
  - Credit sales prior to implementing mitigation
Mitigation vs. Impacts

- **2005**
  - Permitted Impacts
    - 20,754 Acres
  - Required Mitigation
    - 56,693 Acres

- **2001-2005 Averages**
  - Permitted Impact
    - 23,000 Acres
  - Required Mitigation
    - 50,000 Acres
History


- Conclusion 1: The goal of no net loss of wetlands is not being met for wetland functions by the mitigation program, despite progress in the last 20 years.
- Conclusion 2: A watershed approach would improve permit decision making.
- Conclusion 3: Performance expectations in Section 404 permits have often been unclear, and compliance has often not been assured nor attained.
- Conclusion 4: Support for regulatory decision making is inadequate.
- Conclusion 5: Third-party compensation approaches (mitigation banks, in-lieu fee programs) offer some advantages over permittee-responsible mitigation.
The New Mitigation Rule

Significant Elements

- Does not alter existing regulations
- Sequence: Avoid, Minimize, Mitigate
- Promote greater consistency, predictability and ecological success of mitigation projects under the Clean Water Act
- Requires similar standards for all types of Mitigation
- New Standards for ILFs
- Mitigation statement required for all Individual Permits
- Focus on Where and How Mitigation is Implemented
New Mitigation Hierarchy

- Mitigation Banks
- In Lieu Fee Programs
- Permittee Responsible under a Watershed Approach
- On-site and/or In Kind PRM Mitigation
- Off-site and/or Out of Kind PRM Mitigation

► Soft Preference/Document Decision
Mitigation
Watershed Approach

- Existing Watershed Plans
- No plan-use available information site conditions and needs
- Consider landscape position and sustainability
- Provide for a suite of functions
- Level of information required and analysis commensurate with impacts
Mitigation
Components of a Mitigation Plan

- Objectives
- Site Protection Instrument
- Baseline Information
- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Financial Assurances
- Site Selection Factors
- Credit Determination
- Long-term Management Plan
- Adaptive Management Plan
Mitigation Banks and ILFs

- Standardizes the Banking Process
- Prospectus
- Draft Mitigation Banking Instrument
- Mitigation Banking Instrument
Mitigation Banks
Groove Creek
Mitigation Banks

Groove Creek
Mitigation Banks
Groove Creek
Regulatory Program Enforcement

- Unpermitted activity
  - Penalties up to $32,500/day
  - Site restoration/After the Fact Permit
  - Referral to EPA or US Justice Department
  - Discretionary
Thank you for your interest in the Corps Regulatory Program
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