

CORPS REGULATORY PROGRAM

Emily Hughes

Special Projects Manager/Outreach
Specialist

Wilmington Regulatory Field Office

USACE, Wilmington District



US Army Corps of Engineers
BUILDING STRONG®



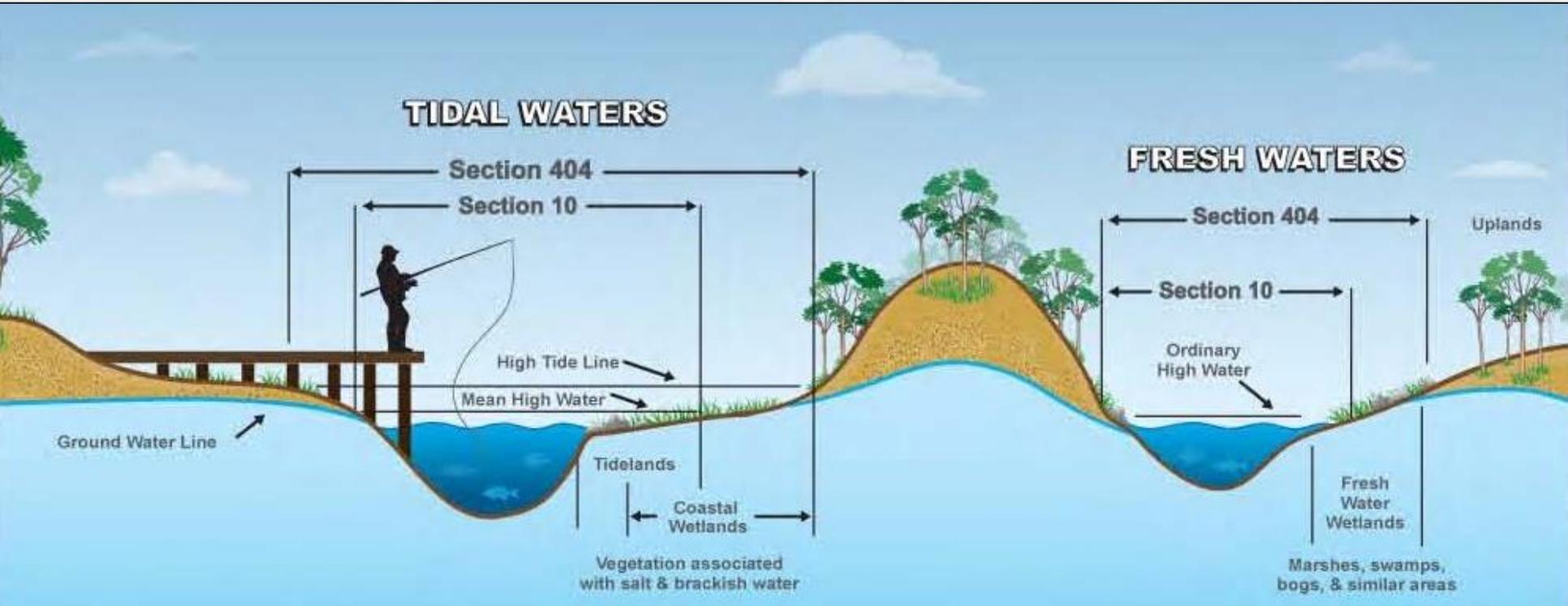
Corps Regulatory Program

- The Wilmington District's Regulatory Program manages and protects North Carolina's aquatic resources through fair, flexible, and balanced permit decisions.
- Aquatic resources that we regulate include inland and coastal wetlands, rivers, stream channels, tributaries, lakes, and ponds.
- There are two main federal laws that task the Corps of Engineers with the authority to regulate our nation's waterways: Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.



Corps Regulatory Program

Section 10 and Section 404

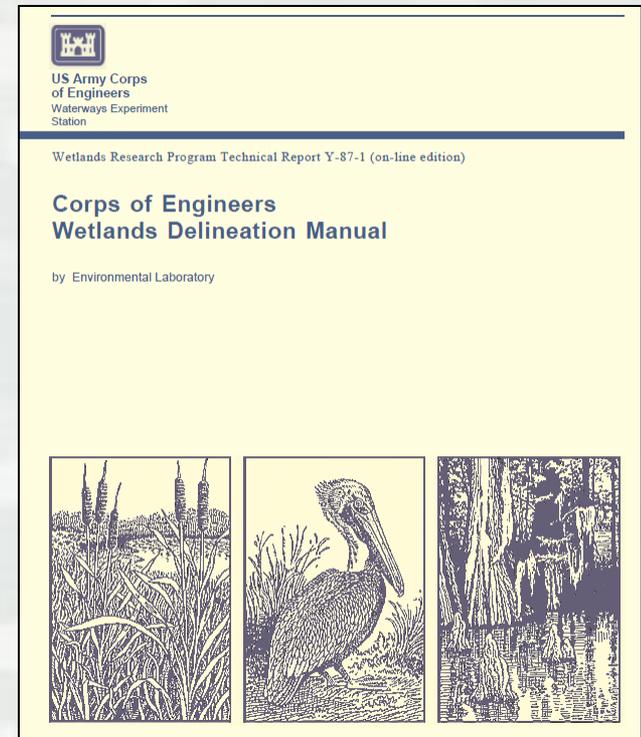


BUILDING STRONG_®

Identifying Wetlands

1987 COE Wetland Delineation Manual outlines three factors for identifying wetlands

1. **Wetland Hydrology** - Areas where the presence of water has an overriding influence on the vegetation and soils due to anaerobic and reducing conditions.
2. **Hydrophytic Vegetation** - vegetation typically adapted for life in saturated soil conditions.
3. **Hydric Soils** - Formed under conditions of saturation or inundation long enough to develop anaerobic conditions in the upper part.



<http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf>



BUILDING STRONG®

Identifying Wetlands; Tips for the Untrained Eye

- **Hydrology** – Have you seen standing water (other than directly after a rain event)? Signs of high water marks/drainage patterns? Is water affected by tidal influences?
- **Vegetation** – Marsh plant species; ID of specific plants tolerant to wet areas and their frequency/abundance.
- **Soils** – Check a County Soils Map or check on GIS soils layer for soil types that are poorly drained. Most in this area have a black/dark gray/dark brown surface layer.

*All 3 parameters should be present and field verified!!



Waters of the United States



Streams/Tributaries



BUILDING STRONG_®

Do I Have Wetlands On My Property??

The procedure of identifying and locating jurisdictional waters of the US regulated by the Corps is commonly referred to as the Jurisdictional Determination / “JD process” or a “wetland determination”.

This procedure establishes a line that identifies and separates the Corps regulated areas (wetlands/waters of the U.S.) from non-regulated areas (uplands).

The JD process is essential when investigating, planning, designing, or submitting an application for a permit from the Corps to determine if the proposed work will result in an impact to these resources.



Delineation Process

- Request directly from the Corps (8-12 week wait)
- Request through an environmental consultant (4-8 week wait)
- Required Paperwork (property and owner information, authorization, maps, data forms, Rapanos forms, agency review)
- Issuance of Jurisdictional Determination/signed survey depicting approved wetland areas



Clearing a Lot for Development:

Hand clearing of vegetation does not require a Department of the Army permit.

This includes hand cutting, trimming, mowing, or bush hogging.

Should not involve heavy equipment. If used in wetlands, must avoid or utilize logging mats.

Vegetation clearing is ok to have done before the Corps performs a site visit to verify the presence of wetlands.



Do I Need A Permit??

Activities in wetlands and waters of the U.S. which may require a permit, include, but are not limited to:

- Placement of fill (fill dirt, gravel, rip rap, sod, etc.)
- Dam construction
- Alteration of streams/tributaries
- Soil disturbing activities such as mechanized land clearing, land leveling, uprooting vegetation etc.
- Placement of culverts in streams and tribs
- Pond/dam construction
- Ditching or installing drainage systems
- Bulkheads/Piers/Docks/Boathouses



Clean Water Act

Activity Jurisdiction

Dredge Material

- Material that is excavated or dredged from waters of the United States.
- Discharges include any addition, including redeposition, into waters of the U.S. This includes addition into a specified site, runoff from a contained disposal area, additions incidental to other activities including mechanized land clearing, ditching , channelization or other excavation.



Clean Water Act Activity Jurisdiction

Discharge of dredged material



BUILDING STRONG®

Clean Water Act

Activity Jurisdiction

Fill Material

- Material that is placed in waters of the US and has the effect of replacing waters of the US with dry land or changing the bottom elevation of a water of the US.
- Discharges include the placement of fill for the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills, etc.



Clean Water Act Activity Jurisdiction



Discharge of fill material



BUILDING STRONG®

Corps Permitting Process

- 1st Step: JD issued OR Corps visit to determine that No Permit is Required.
- 2nd Step: Demonstrate Purpose and Need
- 3rd Step: Demonstrate Avoidance and Minimization
- 4th Step: Request authorization for Unavoidable Impacts
- 5th Step: Provide a Mitigation Plan for Impacted Wetlands/Waters of the U.S. (if required)

- * ALL of this to be completed and provided in our permit application (Pre-Application Notification, or PCN)



Different Types of Permits/Triggers

Regional General Permits – Includes work in/access to tidal waters/wetlands and Navigable waters; construction of bulkheads, docks, piers, boathouses, boat ramps, placement of riprap.

- Includes GP 291 which captures any work authorized under a CAMA Major.
- 45-day processing period



Different Types of Permits/Triggers

- **Nationwide Permits** – 52 different permits available for purpose-specific activities; >0.10 acre wetland disturbance, work in floodplain, fill in tributaries/streams below the OHWM, temporary impacts.
- May or may not require notification (PCN permit application)
- May or may not require mitigation
- 45-day processing period once complete application is received.



Different Types of Permits/Triggers

- **Individual Permits** - >0.50 acre wetland disturbance or >300 lf of stream. Must include cumulative impacts from other related phases of development
- Requires 30-day Public Notice period
- Requires coordination with resource agencies, interested parties, and the general public
- Corps written Environmental Assessment and FONSI, to include an alternatives analysis and full public interest review
- 120-day processing period



Permitting

The Regulatory Division, in making permit decisions, must not only follow the procedures of the Rivers and Harbors Act and the Clean Water Act, but must also ensure compliance with other Laws including:

- Section 401, Clean Water Act
- Endangered Species Act
- Coastal Zone Management Act
- National Environmental Policy Act (NEPA)
- Fish and Wildlife Coordination Act
- Magnuson-Stevens Act
- National Historic Preservation Act



Permitting

The Corps, in making permit decisions, must consider a range of factors including environmental impacts, socio-economic impacts and property ownership rights, and balance public benefits against public detriments.



BUILDING STRONG®

Wetland Mitigation

- 2008 Mitigation Rule – Banks vs. EEP, on-site restoration/enhancement, off-site restoration/enhancement, creation, preservation
- NWPs – Impacts > 0.10 acre
- Required at our discretion based on quality/type/rarity of wetlands impacted
- NC Wetland Assessment Method – Determines Ratios (i.e. 1:1, 2:1 or 3:1) based on low/med/high quality
- Carefully documented in the record!

***If we're not being consistent, please let us know!**



Wetland Violation, Restoration and Fines

- Reported to our office; we fill out report, attempt to contact property owner, and schedule a visit
- Unauthorized – wetlands have been identified and impacts have been confirmed (in the field)
- Corps will issue a Letter of Notification – 1. Remove and restore, 2. Request ATF authorization, or 3. Both
- Permit Non-compliance – You received Dept. of Army authorization; work not done accordingly. Need to 1. restore or 2. modify existing permit and mitigate.
- No fines unless REPEAT, BLATANT or FLAGRANT actions.



Enforcement

Unauthorized Discharge of Dredged or Fill Material (or Unauthorized Structure) in a water of the U.S. (33 CFR 326.3)

Discharge of Dredged Material



Discharge of Fill Material



BUILDING STRONG®

Enforcement

Permit Noncompliance (33 CFR 326.4)

Fill exceeding permitted limits



Work beyond permitted limits



BUILDING STRONG®

Enforcement

Permit Noncompliance (33 CFR 326.4)

Also:

- Structural size limitations
- Alignment and Configuration
- Monitoring Reports
- Mitigation Failures





INVOICE #5
January 16, 2008

RECEIVED
FEB 04 2008
REGULATORY
WILM.FLD.OFC.

10-208

Wilmington, NC 28403

Project: [REDACTED]
County: Brunswick
DWO#: 20061129
COE#: 2006-40297-010
FEP #: ILF-2006-4666

You have elected to satisfy the compensatory mitigation requirements of the Section 401/404/CAMA permit(s) issued for the above referenced project through payment of a fee to the North Carolina Ecosystem Enhancement Program (NCEEP). Your invoice dated August 15, 2007 has now expired. In accordance with 15A NCAC 2H.0500, the amount you owe is based upon the 2007-08 Fee Schedule and has been calculated as follows (Please note: payment for wetlands is calculated in increments of 0.25 acres). If you have any questions concerning this payment, please call Kelly Williams at (919) 716-1921.

| Habitat Type | Invoiced Amount | x | Fee Schedule | = | Cost |
|--|-----------------|---|--------------|---|--------------------|
| Riparian Wetlands | 0.5 acres | x | \$ 29,351.00 | = | \$14,675.50 |
| Stream | 172 linear feet | x | \$ 245.00 | = | \$42,140.00 |
| TOTAL AMOUNT DUE if paid within 60 days | | | | | \$56,815.50 |

If payment is not received within 60 days of the date of this invoice, it will expire. Note that your permit(s) may require payment before this date. Subsequent invoices will be based on the fee schedule in effect on the date they are issued. Please send a check payable to NCEEP for the Total Amount Due to the appropriate address below and enclose a copy of this invoice.

US Mail: NCDENR Ecosystem Enhancement Program
1653 Mail Service Center
Raleigh, NC 27699-1652

Physical Address (for other delivery services):
NCDENR Ecosystem Enhancement Program
2728 Capital Boulevard, Suite 1H 103
Raleigh, NC 27604

Please note that a payment made to NCEEP is not reimbursable unless a request for reimbursement is received within 12 months of the date of the receipt. Any such request must be accompanied by letters from the permitting agencies stating that the permit and/or authorization have been rescinded. If the account name on the check is not the same as the permit holder's name, please include a signed statement by the permit holder that the check is being written on behalf of, and with full knowledge and authorization of, the permit holder.

YOU MUST BE IN POSSESSION OF THE PAYMENT RECEIPT FROM NCEEP PRIOR TO COMMENCING THE ACTIVITIES AUTHORIZED BY THE DEPARTMENT OF ARMY 401 PERMIT AND/OR THE 401 WATER QUALITY CERTIFICATION.

cc: Cyndi Karoly, NCDWQ Wetlands/401 Unit
Thelma Hemmingway- Wilmington
Kim Williams, agent
File

Restoring... Enhancing... Protecting Our State



North Carolina Ecosystem Enhancement Program, 1652 Mail Service Center, Raleigh, NC 27699-1652 / 919-715-0476 / www.nceep.net



BUILDING STRONG

Contact an Environmental Consultant!

- Ask if they are trained to delineate wetlands
- Let them know you need a Jurisdictional Determination from the Corps of Engineers and/or Request for Authorization to impact waters/wetlands.
- Ask availability/cost/what all is expected and included
- Compare and chose
- Let them do the work for you!
- If done appropriately, no additional costs necessary! May even save you \$\$ in the end...



Questions?



Please visit our website at:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>



BUILDING STRONG[®]