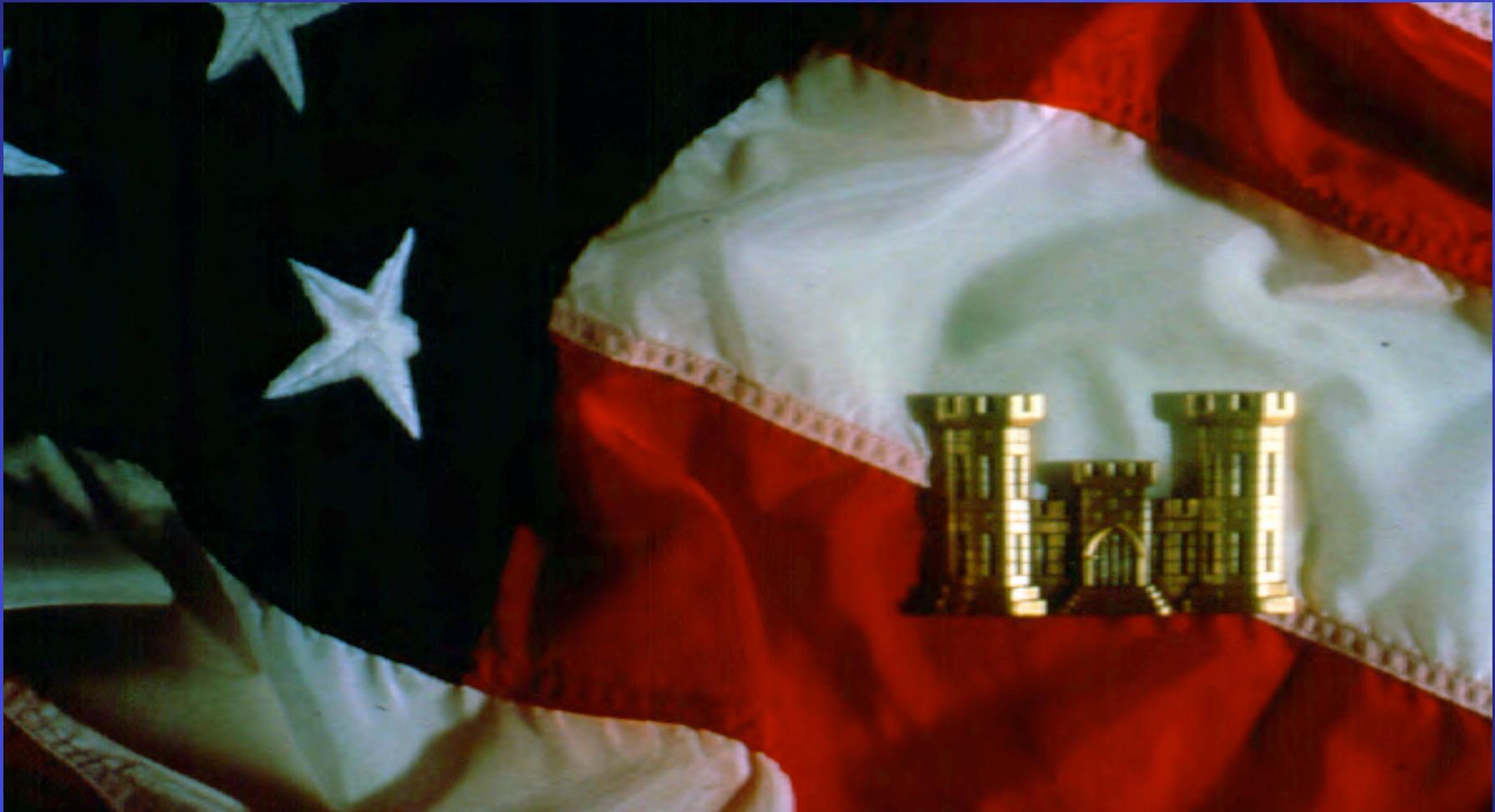




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# ***Galveston District Regulatory Program***



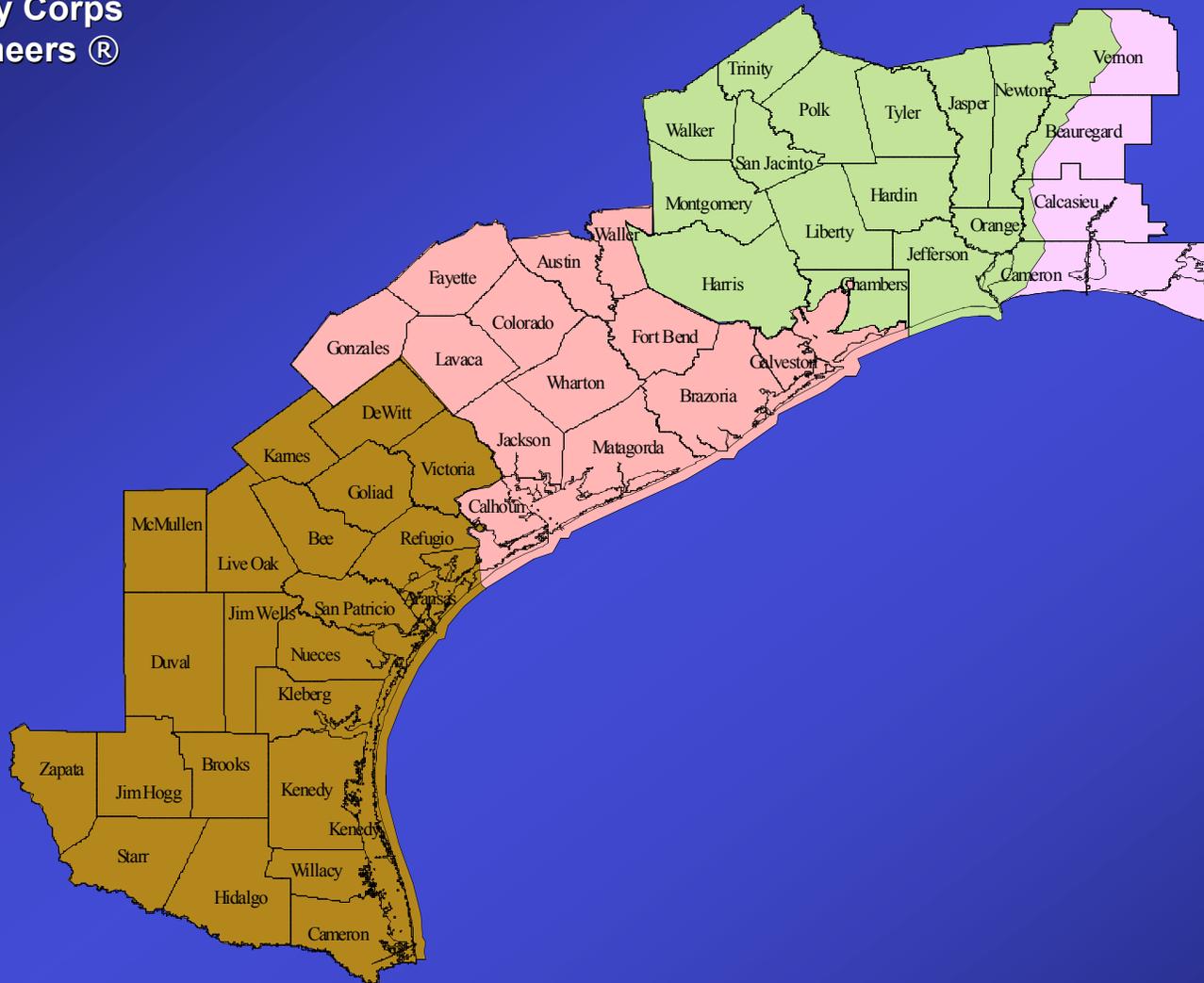
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# Galveston District



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# Regulatory Program Goals



- Protect the Nation's overall aquatic environment
- Make fair and reasonable decisions for the regulated public
- Continually enhance the efficiency of the program



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# *Regulatory Program Purposes*



- Protect Navigation
- Maintain the physical, chemical and biological integrity of the Nation's waters (Clean Water Act)



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# ***Laws that the Corps of Engineers Administers***



- Rivers and Harbors Act (1899) – Section 10

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# ***Laws that the Corps of Engineers Administers***



- Rivers and Harbors Act (1899) – Section 10
  - Regulates all work and/or structures placed in/or affecting navigable waters of the United States

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# ***What is Regulated ? Section 10 Rivers and Harbors Act***



- Structures in Navigable Waters
  - Such as piers, docks, boathouses, pilings, oil rigs, pipelines, jetties, power transmission line, permanently moored vessel
- Work in Navigable Waters
  - Dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water



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# ***Laws that the Corps of Engineers Administers***



- Rivers and Harbors Act (1899) – Section 10
  - Regulates all work and/or structures placed in/or affecting navigable waters of the United States
  
- Clean Water Act (1974) – Section 404

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# ***Laws that the Corps of Engineers Administers***



- Rivers and Harbors Act (1899) – Section 10
  - Regulates all work and/or structures placed in/or affecting navigable waters of the United States
- Clean Water Act (1974) – Section 404
  - Regulates the discharge of dredged or fill material into waters of the United States, including adjacent wetlands.



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# ***What is Regulated? Section 404 Clean Water Act***



- Discharge of Dredged or Fill Material into waters of the U.S.
  - Such as road fills, poured concrete, backfill, beach nourishment, levees, breakwaters, rip-rap, dams, dikes, artificial islands, certain piling-supported structures, bulkheads, and boat ramps.



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# ***What is Regulated? Section 404 Clean Water Act***



- Definition of Fill Material (May 9, 2002)
  - The term fill material means material placed in waters of the United States where the material has the **effect** of:
    - {i} Replacing any portion of a water of the United States with dry land; or
    - {ii} Changing the bottom elevation of any portion of a water of the United States





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# ***Geographic Jurisdiction*** ***Section 10 Rivers and*** ***Harbors Act***



- all navigable waters of the U.S.
  - subject to ebb and flow of the daily tide
  - presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce
- extends seaward to include all ocean waters within a zone three nautical miles from the coast line (the "territorial seas")



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# ***Geographic Jurisdiction Section 404 Clean Water Act***



- “Navigable waters of the United States, including the territorial seas” plus...
- Their tributaries and adjacent wetlands and isolated waters where the use, degradation or destruction of such waters could affect interstate or foreign commerce.

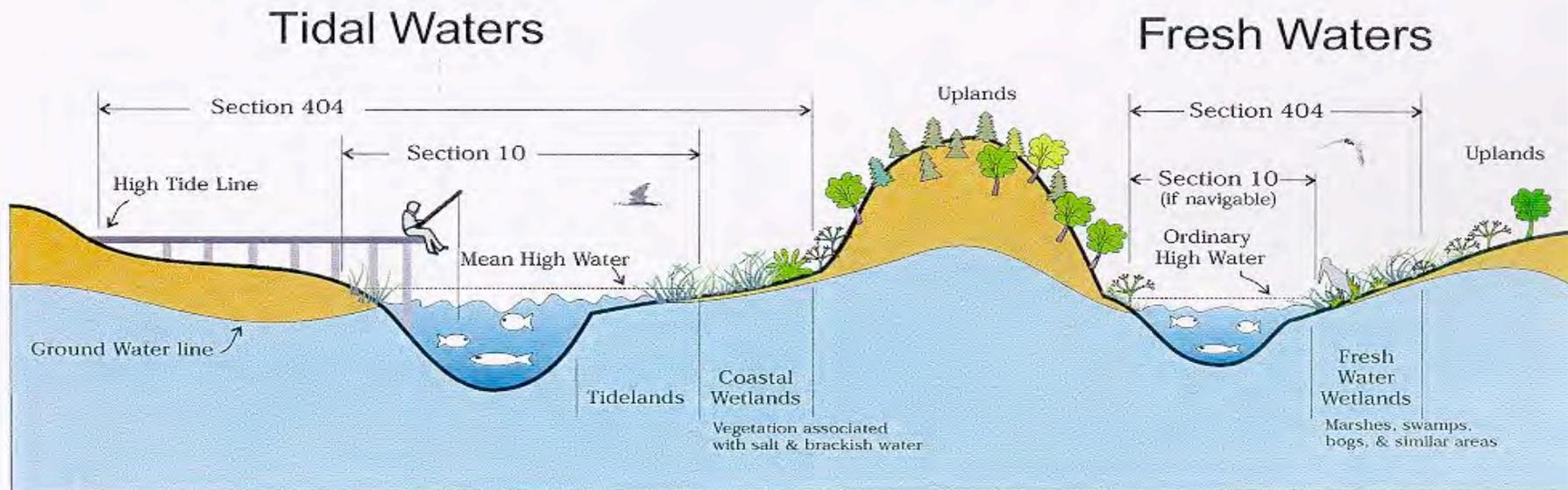


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# Physical Extent of Jurisdiction



## CORPS OF ENGINEERS REGULATORY JURISDICTION



**Section 103**  
Ocean Discharge  
of Dredged Material

Typical examples  
of regulated activities

Ocean discharges of  
dredged material

**Section 404**  
Disposal of Dredged or Fill Material  
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

**Section 10**  
All Structures and Work

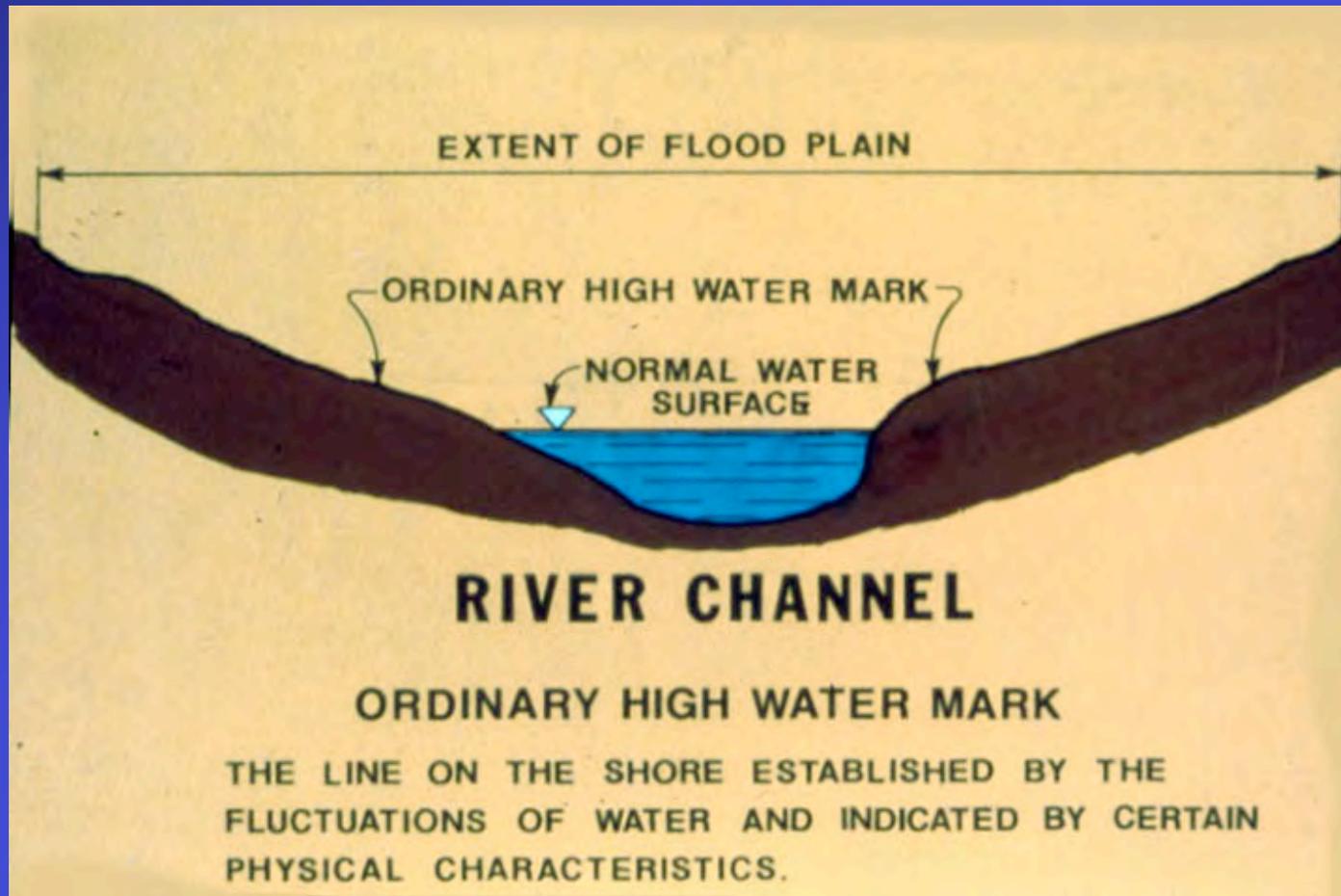
Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.

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# *Physical Extent of Jurisdiction*



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# ***Definition of "Wetlands"***



Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

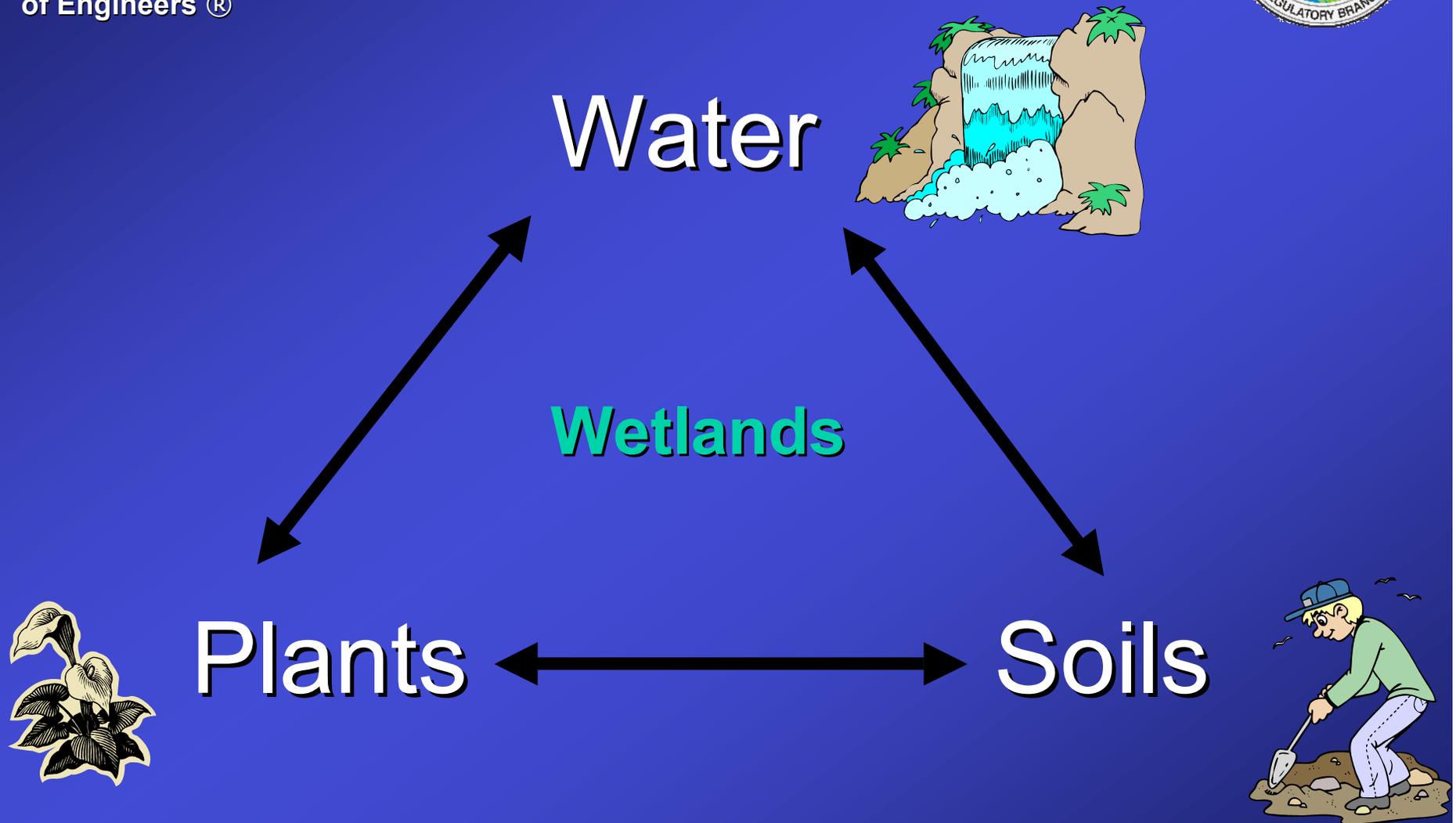
- Jointly defined by USACE (Federal Register 1982) and EPA (Federal Register 1980)



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# What Makes A Wetland?



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# *Adjacent Vs. Isolated Wetlands*



- Not all wetlands are subject to Corps jurisdiction. The U.S. Supreme Court ruled in 2001 in the S.W.A.N.C.C. case that the Corps could not take jurisdiction solely on the migratory bird rule.
- Wetlands must be Neighboring, Bordering, or Contiguous with a water of the United States.
- Rapanos v. United States



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# *How Do I know if I Have Jurisdictional Waters?*



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# ***How Do I Know If I Have Jurisdictional Waters?***



Its simple, Just **Ask!!!!**

- Request in writing a Jurisdictional Determination from the Corps of Engineers.
- Usually take between 90 and 120 days
- Valid for 5 Years
- They are free



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# ***How Do I Know If I Have Jurisdictional Waters?***



Send the request to:

U.S. Army Corps of Engineers  
Attn: John Davidson  
CESWG-PE-RC  
P.O. Box 1229  
Galveston, Texas 77553-1229

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# ***Jurisdictional Determinations and Waters of the U.S. Delineations***



## Delineations vs. Determinations

- A **determination** is qualitative in that it only provides an answer to the question of is there a jurisdictional area within the project area.



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# ***Jurisdictional Determinations and Waters of the U.S. Delineations***



## Delineations vs. Determinations

- A **determination** is qualitative in that it only provides an answer if there is a jurisdictional area within the project area.
- A **delineation** is quantitative in that it provides boundaries and acreage measurements for each individual type of water of the United States present in the project area.



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# ***Jurisdictional Determinations***

What is the minimum necessary information required for the Corps to make a jurisdictional determination?



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# ***Jurisdictional Determinations***

What is the minimum necessary information required for the Corps to make a jurisdictional determination?

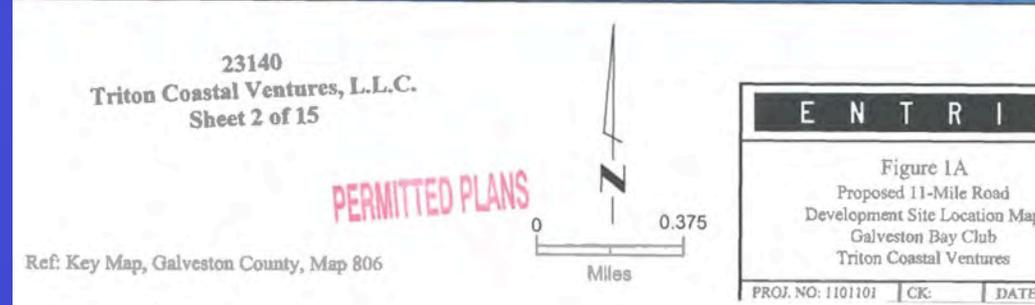
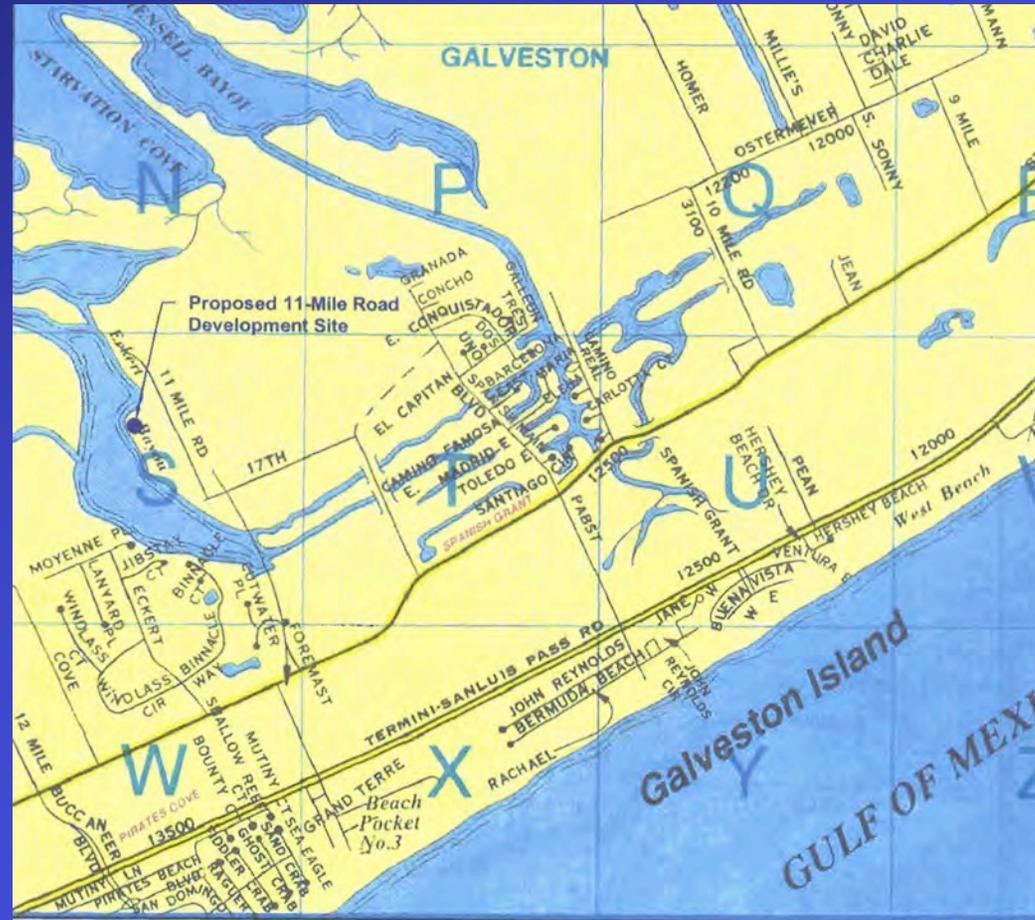
- Letter requesting the Corps make a jurisdictional determination.
- A general area map showing location of the project area.
- Site specific map showing project boundaries.
- Property owners permission if the person requesting the JD is not the property owner



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# General Location Map-- Example



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# ***If you have wetland on your property what can you do with them?***



- You can always leave them alone. Apply to the county to have your taxes adjusted.
- You can mow them, as long as you don't disturb the surface of the soil.
- You can apply for a Department of the Army permit to fill them in.





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# ***Permit Evaluation***

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# ***A Brief Review***



## Types of Corps Regulatory Permits

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# *Types of Permits*



- Nationwide Permits (10, 404)
- Regional General Permits (10, 404)
- Letters of Permission (10 only)
- Individual Permits (10, 404)



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# *Types of Permits*

## Nationwide Permits (NWP)

- general permits issued on a nationwide basis to authorize minor activities
- used throughout the United States; established to reduce the regulatory reporting burden for specific activities that have no more than minimal impacts
- thresholds for the impacts and the types of activities established as national policy.
- Some activities authorized by NWPs require pre-construction notification (PCN); necessitated to ensure that activities authorized by these NWPs have minimal individual and cumulative adverse impacts.



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# *Types of Permits*

## Regional General Permits (GPs)

- type of general permit specific to the District; associated conditions are established by the District.
- Regional permits are issued by the District Engineer for a general category of activities when
  1. the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and
  2. the regional permit reduces duplication of regulatory control by State and Federal agencies.



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# *Types of Permits*



## Individual permits (IPs)

- generally reserved for projects with potential for substantial environmental impacts.
- requires a full public interest review, including public notices and coordination with involved agencies, interested parties and the general public.
- Another type of individual permit used for very minor impacts and in special circumstances is the **Letter of Permission (LOP)**.



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# ***Additional Information that must be submitted to make a decision***



Not required for application to be considered complete, but necessary to make final decision

- Wetland Delineation (in most cases)
- Alternatives (Alternative Analysis)
- Mitigation Plan



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# ***Tips That Will Help Smooth the Permit Process***



## Important Points

- Pre-Application Meetings (JEM)
- Delineations conducted and verified prior to permit submittal
- Good plan view and cross section drawings
- Alternatives—discussion of alternatives provided with the application
- Mitigation—avoidance, minimization and then compensatory mitigation—Provide with the application



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# ***Compliance & Enforcement***



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# ***Compliance & Enforcement***



Compliance and Enforcement Activities  
Fall Into Two Main Groups

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# ***Compliance & Enforcement***



## Compliance and Enforcement Activities Fall Into Two Main Groups

- Unauthorized Activities

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# ***Compliance & Enforcement***



## Compliance and Enforcement Activities Fall Into Two Main Groups

- Unauthorized Activities
- Permit Compliance

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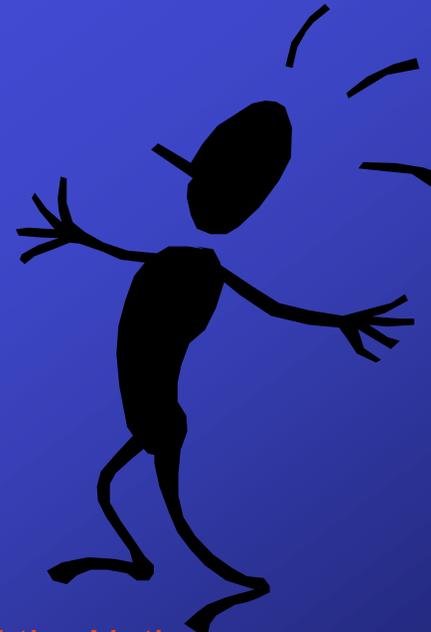
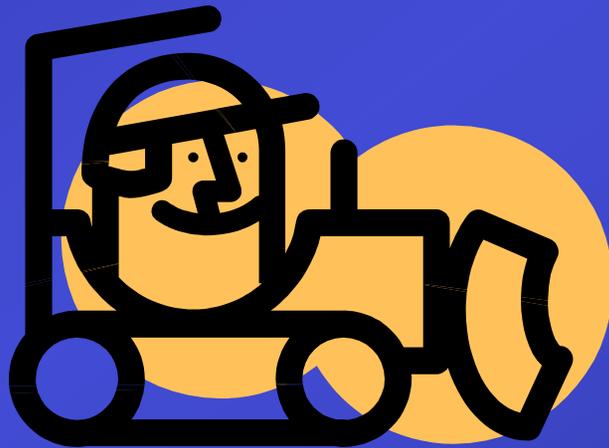


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# ***Unauthorized Activities***



These are activities that are undertaken that impact a water of the United States without a valid Department of the Army Permit.



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# ***Unauthorized Activities***



These are activities that are undertaken that impact a water of the United States without a valid Department of the Army Permit.

- No Corps involvement at all
- Could have had a JD done, but never obtained a permit.
- Working with an expired permit
- Additional work on a project that is not part of the permit

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# *Unauthorized Activities*



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# ***Unauthorized Activities***



Who is held responsible?

- The property owner
- The person or contractor doing the work

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# ***Permit Compliance***



Your Department of the Army permit is a contract between you and the Federal government. Basically it states that you are allowed to impact the aquatic environment in a specific way and in return you agree to perform specific activities as compensation for those impacts.

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# ***Compliance & Enforcement***



- For permitted activities the Corps has the sole responsibility for permit compliance.
- On all other unauthorized activities the Corps and the Environmental Protection Agency (EPA) share responsibility. The Corps can elevate the case to the EPA or the EPA can request a specific case.

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# ***Permit Compliance***



## Major types of Permit Non-compliance

- Going beyond the scope of the permit
  - You can always do less
- Altering the plans without a permit modification
- Failure to do the agreed upon mitigation
- Failure to monitor the mitigation
- Altering the mitigation plan without a permit modification







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# ***Compliance & Enforcement***



Tools available to achieve compliance for  
violations concerning unauthorized  
activities

- Cease & Desist Orders



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning unauthorized activities

- Cease & Desist Orders
- Voluntary Restoration



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning unauthorized activities

- Cease & Desist Orders
- Voluntary Restoration
- Voluntary Settlement Agreement



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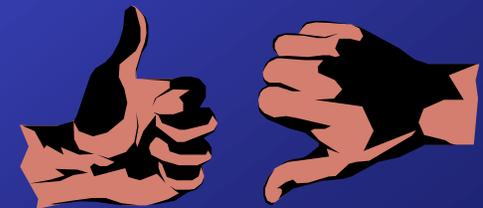
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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning unauthorized activities

- Cease & Desist Orders
- Voluntary Restoration
- Voluntary Settlement Agreement
- Upon review, allowing violator to apply for an "After-the-fact" permit (permit decision may or may not be favorable)



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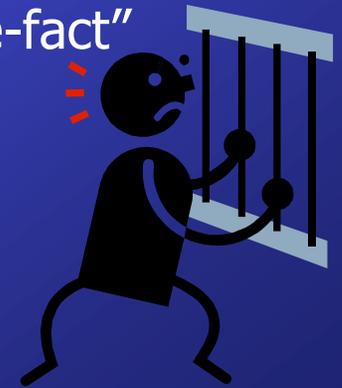
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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning unauthorized activities

- Cease & Desist Orders
- Voluntary Restoration
- Voluntary Settlement Agreement
- Upon review, allowing violator to apply for an “After-the-fact” permit (permit decision may or may not be favorable)
- Cases referred to Department of Justice



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning unauthorized activities

- Cease & Desist Orders
- Voluntary Restoration
- Voluntary Settlement Agreement
- Upon review, allowing violator to apply for an "After-the-fact" permit (permit decision may or may not be favorable)
- Cases referred to Department of Justice
- Cases referred to Environmental Protection Agency (usually a fine involved)



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning Department of the Army permits

- Everything under violations concerning unauthorized activities (except for referring it to the EPA) and...



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning Department of the Army permits

- Everything under violations concerning unauthorized activities (except for referring it to the EPA) and...
- Revocation of your permit



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning Department of the Army permits

- Everything under violations concerning unauthorized activities (except for referring it to the EPA) and...
- Revocation of your permit
- Increased mitigation



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# ***Compliance & Enforcement***



## Tools available to achieve compliance for violations concerning Department of the Army permits

- Everything under violations concerning unauthorized activities (except for referring it to the EPA) and...
- Revocation of your permit
- Increased mitigation
- Administrative Penalty \$27,500.00 dollars a day for Section 404 violations and \$11,000.00 dollars a day for Section 10.



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# ***Compliance & Enforcement***



## Indirect Costs Associated with a Violation

- Lost time on a project
- Contractor costs while they are not working
- Interest on loans
- Bad publicity & Public Opinion

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# ***Compliance & Enforcement***



## Other Points to Ponder

- Under the 2000 EPA penalty matrix an entity that has had as much as a single Jurisdictional Determination is considered to have knowledge of the 404 Program and therefore to be a flagrant violator
- Criminal prosecution is also possible for flagrant violators
- In the absence of governmental enforcement the Clean Water Act allows citizens or citizens groups to pursue enforcement through litigation

