

## Regulatory Program

The U.S. Army Corps of Engineers Regulatory Program began in 1890 with the responsibility of protecting and maintaining the nation's navigable waterways. As a result of changing public needs and evolving policy via new laws and court decisions, protection has been extended to all waters of the United States including many wetlands.

The U.S. Army Corps of Engineers, through the Regulatory Program, administers and enforces Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Under Section 10, a permit is required for work or structures in, over or under navigable waters of the United States. Under Section 404, a permit is required for the discharge of dredged or fill material into waters of the United States. Many water bodies and wetlands in the nation are waters of the United States and are subject to the Corps' regulatory authority.

The U.S. Army Corps of Engineers Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions. The Portland District Regulatory Branch has jurisdiction over the state of Oregon, southern Washington ports and restoration projects in the Columbia River estuary funded by the Bonneville Power Administration.

## Frequently Asked Questions

### CATEGORY: DO I NEED A PERMIT?

#### How do I reach my contact at USACE?

The complete list of phone numbers and emails for USACE Regulatory staff can be found at: <https://www.nwp.usace.army.mil/Missions/Regulatory/Contact.aspx>. Project Managers are assigned by county. Additional contacts are also listed to help answer your questions.

If work is to be conducted on or near a federally authorized project, which may include a dam, levee, flood wall, federal navigation channel, or reservoir including work in uplands, please contact [section408nwp@usace.army.mil](mailto:section408nwp@usace.army.mil). Your project may require a 408 permission by USACE (see <https://www.nwp.usace.army.mil/408/>).

#### How do I know if I will need a USACE Regulatory permit?

We regulate activities in, over, or under navigable waters of the United States (under Section 10 of the Rivers and Harbors Act of 1899), and the discharge (dump, placement, deposit) of dredged or fill material into waters of the United States to include wetlands (under Section 404 of the Clean Water Act of 1972). Section 404 jurisdiction encompasses more waters than Section 10 jurisdiction. All Section 10 waters are also Section 404 waters, but not all Section 404 waters are Section 10 waters. Contact your [local USACE Regulatory office](#) if you are uncertain if your site/property has navigable waters and/or waters of the United States.

Some examples of regulated activities include the following:

- Section 10-regulated activities include but are not limited to:
  - o New or maintenance dredging.
  - o Constructing, replacing, or repairing structures such as piers, docks, boat ramps, wharves,

dolphins, weir booms, breakwaters, bulkheads, revetments, riprap, jetties, artificial islands, artificial reefs, permanent mooring structures, power transmission lines, permanently moored floating vessels, pilings, and/or navigation aids.

- Section 404-regulated activities include but are not limited to:
  - o Building a structure, infrastructure, or impoundment.
  - o Developing a site for recreational, industrial, commercial, residential, or other uses.
  - o Constructing or maintaining causeways, roads, dams, levees, dikes.
  - o Leveling land (i.e., alter topography).
  - o Constructing a ditch (even temporary) and side-casting material.
  - o Constructing artificial islands.
  - o Protecting and/or reclaiming your site/property (such as after a flood) with riprap, groins, seawalls, breakwaters, or revetments.
    - o Conducting beach nourishment.
    - o Clearing vegetation from your site/property using heavy machinery (known as mechanized land clearing). If you are pulling up roots, you likely need authorization from us. If you are cutting the vegetation above ground level, you likely do not need authorization from us.
  - o Discharging fill material for structures such as sewage treatment facilities, intake and outfall pipes, and utility lines.
  - o Discharging fill material for construction or maintenance of any liner, berm or other infrastructure associated with solid waste landfills.
  - o Discharging overburden, slurry or tailings or similar mining related materials.
  - o Constructing artificial reefs.

While not all activities in waterways need a permit, it is best to contact your [county Project Manager](#) to determine if USACE Regulatory authorization is needed.

### **Who should apply for a permit?**

Any person, firm, tribe or agency (including Federal, state, and local government agencies) planning to work in navigable waters of the United States, or discharge dredged or fill material in waters of the United States, including wetlands, must first obtain a permit from USACE Regulatory. Permits, licenses, variances, or similar authorization may also be required by other Federal, state and local statutes.

### **How can I design my project to eliminate the need for a USACE Regulatory permit?**

If your activity is located in an area of tidal waters the best way to avoid the need for a permit is to select a site that is above the high tide line and avoid adjacent wetlands and other waters (i.e., coastal lakes and tributaries). Some activities in Section 10 waters may not need authorization from USACE Regulatory. Constructing a new structure or rebuilding a structure that deviates from the previous design would require USACE Regulatory authorization. Blocking navigation in the water is not permissible. For more information on this topic, you can go to: <https://www.nwp.usace.army.mil/Missions/Regulatory/Jurisdiction/>.

When working near non-tidal waters stay landward of the ordinary high water mark and avoid wetlands adjacent to streams, rivers, or lakes. Before you work in or near water or wetlands, [contact us](#) for specific information about permitting requirements. You can find more information below about the high

tide line, ordinary high water mark, and wetlands. Also, it is possible that your activity in Section 404 waters is exempt and does not need a USACE Regulatory permit.

Contact your [county Project Manager](#) if you have questions about work that may require authorization from USACE Regulatory.

### **What if there's an emergency and I must protect my site/property?**

The USACE Regulatory definition of “emergency:”

- an unacceptable hazard to life;
- a significant loss of site/property; or
- an immediate, unforeseen, and significant economic hardship.

USACE Regulatory has the responsibility to determine if the proposed work is consistent with our definition of an emergency, whether authorization is needed, and if so, which type of authorization is required. These determinations are made on a case-by-case basis. Emergency declarations by the state or a county government may not mean all projects within the area qualify for emergency permitting procedures.

You are encouraged to notify us of the need to perform emergency work before taking any action. Call your [county Project Manager](#) as soon as possible to discuss the situation. Alternatively, you can contact the Portland or Eugene Section chiefs for assistance. If you need to reach USACE Regulatory after work hours or on weekends, please contact the Regulatory Branch Chief Mr. Bill Abadie at 503-708-7653. Be prepared to discuss the project location and what in-water work you propose.

All permit reviews, including emergency reviews, require coordination with tribes and state and federal agencies. In an emergency, reasonable effort will be made to take into consideration comments received from interest groups and others who may be affected by the action. You may need to conduct a wetland delineation, cultural resource investigations, sediment evaluation, or other preparatory work when applying for authorization from USACE Regulatory. Your [county Project Manager](#) can help you understand these requirements.

Unauthorized work may be subject to enforcement action. USACE Regulatory may not view an action as an emergency if the applicant has known of the deficient condition of the failing structure and has not made reasonable attempts to secure appropriate permits and conduct timely repairs.

For more information on this topic, you can find USACE Regulatory’s Portland District emergency process public notice at: <https://www.nwp.usace.army.mil/Missions/Regulatory/Projects.aspx>.

### **I already have state and local permits, why do I need to get one from USACE Regulatory, too?**

Local and state governments issue permits to ensure compliance with local and state laws and regulations. USACE Regulatory’s permit program is in place to ensure that you comply with certain Federal laws and regulations.

It is important to note that in addition to state programs, multiple state agencies have a role in implementing federal laws. The agencies’ review of your project with regards to these laws is required for the USACE Regulatory permit program. The following state agencies that have a role in implementing Federal laws include:

- Oregon Department of Environmental Quality (DEQ): Section 401 of the Clean Water Act (submit your Water Quality Certification application to this agency)
- Oregon Department of Land Conservation and Development (DLCD): Coastal Zone Management Act of 1972 (only in the coastal zone of the state)
- Oregon State Historic Preservation Office (SHPO): Section 106 of the National Historic Preservation Act

### **What will happen if I do work without getting a permit from USACE Regulatory?**

Performing unauthorized work in waters of the United States or failure to comply with the terms of a valid permit may result in serious consequences. This may be a violation of Federal law and the parties involved could face significant penalties. This may include administrative penalties, legal action which could result in civil penalties, imprisonment, and/or requirements to restore the area and mitigate for the impacts (for more information regarding compensatory mitigation, please see our [mitigation page](#) ). When in doubt as to whether a planned activity requires a permit or whether your proposed work complies with a previously issued permit, please [contact us](#) . This will save a lot of unnecessary complications (and cost) later.

Nationwide, less than one percent of all requests for permits are denied. Applicants who have been denied permits usually have refused to change the design, timing, or location of the proposed activity, or were not able to meet the requirements of other federal laws (for example, the Endangered Species Act or Section 401 of the Clean Water Act, among others). When a permit is denied an applicant may redesign the project and submit a new application. To avoid unnecessary delays, pre-application conferences, particularly for applications for major activities, are recommended. USACE Regulatory will endeavor to provide helpful information. This includes factors which will be considered during the public interest review and may include alternatives to consider when designing a project.

### **How do I know if there are wetlands on my site/property?**

Wetlands are areas that are periodically or permanently inundated by surface or ground water and support vegetation adapted for life in saturated soil. Wetlands include swamps, marshes, bogs and similar areas. Caution: Most wetlands lack both standing water and waterlogged soils during at least part of the growing season.

To know if there are wetlands on your site/property, you should have a wetland delineation conducted. Completing a wetland delineation requires expertise and is typically done by a professional wetland scientist. You may hire a professional wetland scientist to delineate wetlands on your site/property. After the delineation is completed submit the report to USACE Regulatory and we will verify the accuracy of the wetland delineation.

In some cases, USACE Regulatory may delineate wetlands belonging to non-commercial entities. If you have further questions about wetland delineation, [contact your local Regulatory office](#) to discuss your project with a regulatory Project Manager.

There are some general situations in which an area has a strong probability of being a wetland. If any of the following situations occur, you should [contact your local Regulatory office](#) to determine whether the area is a wetland:

- Your site/property is located in a floodplain, or otherwise has low spots in which water stands at or

above the soil surface during the growing season.

- Your site/site/property has plant communities that commonly occur in areas having standing water for part of the growing season (e.g., cordgrass marshes, cattail marshes, bulrush and tule marshes, skunk cabbage, and sphagnum bogs).
- Your site/site/property has soils that are called peats or mucks.
- Your site/site/property is periodically flooded by tides, even if only by strong, wind-driven, or spring tides.

### **What types of permits does USACE Regulatory issue?**

The USACE Regulatory program permit evaluation process results in permit decisions that balance the need for proposed development with protection of the nation's aquatic environment. The level of USACE Regulatory's evaluation is commensurate with the level of the environmental impacts and the aquatic functions and values involved in the particular area being impacted.

Authorization can range from general permits for minor impacts (such as Nationwide and Regional general permits), Letters of Permission, and higher impact permits such as Standard Individual Permits. Impacts to higher ecological value areas will be subject to a much more detailed evaluation and a strong focus on avoidance of impacts to the aquatic environment.

Standard Individual Permits require a more rigorous review, with additional review components, and often a longer processing time. The need for an individual permit will depend on the type or location of work, and/or the level of proposed impacts in waters of the U.S. Our general permits authorize minor activities without the need for individual processing. Check with your [county Project Manager](#) for information on general permits. When a general permit does not apply, you may be required to obtain an individual permit.

### **How are "waters of the United States" defined?**

"Waters of the United States" is legally defined in [section 40 CFR 230.3\(s\) of the Clean Water Act](#) , as well as at [33 CFR Part 328](#) . However, this term is also used more generally to refer to all wetlands and surface waters considered to be jurisdictional under the USACE Regulatory program. If you are not sure if waters on your site/property are jurisdictional contact your [county Project Manager](#) to discuss our jurisdictional determination review process.

### **How is "fill" defined?**

The term "fill" refers to material placed in waters of the U.S. in which the material has the effect of:

- Replacing any portion of a water of the U.S. with dry land; or
- Changing the bottom elevation of any portion of a water of the U.S.

Examples of such fill material can include, but are not limited to rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

### **Do I need to talk to USACE Regulatory Branch to conduct debris removal?**

Debris removal generally does not require USACE Regulatory involvement when conducted using these guidelines:

- Does not occur in a Navigable waterway.
- Do not use machinery in waters in a way that moves soil or other native material from one location to another along the substrate (for example, bulldozing or pushing/dragging material with an excavator bucket prior to scooping it out).
- Only conduct surface level vegetation or debris removal. Do not remove roots.
- Do not dig into the soil/sediment of a water's bed or banks.
- Removed material must be placed/stored in uplands without return of material or drained water back into the waterbody.

### **How do you determine the location of a water's boundary?**

Uplands are generally landward of the vegetation line (where the vegetation starts outside of the water). In open waters uplands are above the ordinary high-water mark (OHWM) or high tide line. The boundary of a wetland requires a delineation. If you have questions about a particular water, contact your [county Project Manager](#) .

### **What are the ordinary / high tide / mean high water lines?**

The term ordinary high water mark (OHWM) refers to the line on the shore or bank established by the fluctuations of water, which are indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

For coastal areas with tidal waters, the high tide line is the intersection line of the land with the water's surface at the maximum height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency. This does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. Contact your [county Project Manager](#) for information regarding how to determine the high tide line.

For purposes of Section 404 of the Clean Water Act, the lateral limits of jurisdiction extend to the OHWM in non-tidal waterbodies and the high tide line in tidal waterbodies, in the absence of adjacent wetlands. When adjacent wetlands are present, Clean Water Act jurisdiction extends beyond the OHWM or high tide line to the limits of the adjacent wetlands.

For purposes of Section 10 of the Rivers and Harbors Act of 1899, the lateral extent of Federal jurisdiction, which is limited to the navigable waters of the United States, extends to the OHWM in non-tidal water bodies and mean high water line in tidal water bodies.

### **Does bank stabilization require a permit from USACE Regulatory?**

Bank stabilization (retaining walls, riprap, gabion baskets, etc.) activities below the ordinary high water mark or high tide line of waters of the U.S. require authorization prior to construction. Bank stabilization activities that may require a permit include but are not limited to:

- Restoration of streambanks and wetlands.
- Discharge of native or aggregate fill materials into a water.

- Temporary (typically up to six months) bank stabilization measures in waters.
- Work area(s) isolation (i.e., coffer dams, silt fencing etc.) in waters.

### **Can I place or remove any material, for example trees, into the water or from the streambank without an USACE Regulatory authorization?**

Whether authorization is required from our office for the placement of materials into waters of the U.S. depends on the specific stream, river, lake or wetland, and the work involved. Materials placed into rivers may cause navigation and stabilization issues with nearby properties, which may require USACE Regulatory review. In some cases, placing or removing downed trees would require a permit, including but not limited to, removal of a tree and root wad (i.e., below OHWM) resulting in a bank hole or punch out location creating bank destabilization and displacement of bank material below the OHWM. Your [county Project Manager](#) can work with you to determine if authorization is needed.

### **CATEGORY: FILLING OUT MY APPLICATION**

#### **How do I submit a permit application?**

We accept electronic applications at: [PortlandPermits@usace.army.mil](mailto:PortlandPermits@usace.army.mil). If your documents are over 20MB, or you need to mail in a paper copy of your application, reach out to your county Project Manager . You can find additional details on how to submit your application and what to submit here: <https://www.nwp.usace.army.mil/Missions/Regulatory/Apply/> or call your [Project Manager](#).

#### **What application form do I need to use?**

You can use the USACE Regulatory's [Federal Permit Application Form \(ENG 4345\)](#) or you can use the [Joint Permit Application \(JPA\)](#). You can submit the JPA to USACE Regulatory, the Oregon Department of State Lands (see: <https://www.oregon.gov/dsl/WW/Pages/Permits.aspx>), and the Oregon Department of Environmental Quality (see <https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Certification.aspx>). Each agency will review the application form and make its own permit decision.

#### **What should I include with my application?**

In general, submit a project description (think: who, what, where, when, and why), a description of what waters (including open water and wetlands) are on-site, the size and type of impacts to those waters, and drawings of your project. Drawings do not need to be created by an engineer. They can be hand-drawn provided they meet the requirements of our [drawing checklist](#) .

You can find additional details on how to submit your application and what to submit here: <https://www.nwp.usace.army.mil/Missions/Regulatory/Apply/> or call your [Project Manager](#) .

Contact the [Oregon Department of State Lands](#) (DSL) for projects that may require state permits.

#### **Where can I find mailing addresses for owners of adjoining properties?**

Information regarding adjacent landowners is usually available online through your local property appraiser website. It can also be obtained through the office of the tax assessor in the county or counties where the project is to be developed.

#### **Where can I find my section, township and range?**

The section, township and range can usually be found in the legal description of your parcel. You may be able to obtain it online from your county site/property appraiser. Alternatively, some free online applications can provide this data.

### **Who should sign the application? Who should sign the permit?**

The applicant applying for authorization should sign the application and the permit, if applicable. If the applicant elects to have another entity or individual (e.g., a consultant) obtain the permits on their behalf the applicant and the other entity or individual will both need to sign the application.

### **What do I do if my information does not fit in the space provided?**

If you need more space to provide information, please attach an extra sheet(s) of paper. For each section of the application form you are using include the number of that section on your extra sheet(s). For example, if you need to add an attachment for your project description make a notation in JPA section 4 (on page 2) explaining that you are continuing the description in an attachment. Then reference section 4 on your attachment.

## **CATEGORY: PROJECT REVIEW PROCESS**

### **How much does a USACE Regulatory permit cost?**

Most permits issued by USACE Regulatory, such as Letters of Permission, Nationwide Permits, and General Permits, do not have a permit fee. Standard Individual Permits have fees of \$10 for non-commercial activities and \$100 for commercial or industrial projects. This is submitted once the initial proffered permit has been issued and accepted by the applicant but prior to USACE signature finalizing the permit (after applicant review and signature). USACE Regulatory does not charge fees to other governmental agencies. Some state agencies whose authorizations may be required for a Corps permit (e.g., a Section 401 Water Quality Certification from the Oregon Department of Environmental Quality) have fees independent of USACE Regulatory.

### **How long does it take to get a permit?**

USACE Regulatory's goal is to reach a determination on all applications within 60 days after receipt of a complete application for general permits and 120 days for individual permits, unless:

- Precluded as a matter of law or procedures required by law.
- The case must be referred to higher authority.
- The comment period of a public notice is extended.
- A timely submittal of information or comments is not received from the applicant.
- The processing is suspended at the request of the applicant.
- Information the district engineer needs for a decision on the application cannot reasonably be obtained within the allotted time period.

Workload and resource levels may also affect these timelines.

### **When should I apply for a permit?**

You should apply at the earliest date possible to better ensure that all required approvals are in place before your proposed starting date. For a large or complex activity that may require a longer review process it is often helpful to have a "pre-application consultation" or informal meeting with USACE



Regulatory during the early planning phase of your project. You may receive helpful information which could prevent delays to your proposed project schedule. When in doubt as to whether a permit may be required, or what you need to do, call your [county Project Manager](#) .

### **Alternative site analysis: What is it?**

In accordance with the 404(b)(1) guidelines outlined in the Clean Water Act, this type of analysis reviews alternative project site locations (generally off-site) and designs (generally on-site) which would result in less impacts to the aquatic ecosystem after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

The [alternatives analysis framework](#) provides details on how this process works. In general, though, your project and the potential location and design alternatives would be evaluated against the project purpose and a set of criteria pertaining to your project. Examples of criteria may include site size (what is the minimum site size you need for your project and why), site availability (is an alternative site available right now and/or was it available when you were looking for project sites), and/or accessibility (do you have road and/or access requirements for, say, industrial vehicles). Each project will likely have its own set of unique criteria. USACE will work with you to develop this list.

### **Compensatory mitigation: What is it and why am I being asked to provide it?**

Mitigating the environmental impacts of necessary development actions in the Nation's wetlands and other aquatic resources is a central premise of Federal wetlands programs. When there is a proposed discharge, all appropriate and practicable steps must first be taken to avoid and minimize impacts to aquatic resources. The Clean Water Act Section 404 permit program relies on the use of compensatory mitigation to offset the remaining unavoidable impacts to wetlands and other aquatic resources. Mitigation for wetland impacts may take place on-site, offsite, in mitigation banks, or through in-lieu fee programs. Mitigation may include creation, enhancement or restoration of wetlands and their functions. In some cases, this may include preservation of wetlands and associated upland buffers. For more information on compensatory mitigation, visit our website at: <https://www.nwp.usace.army.mil/Missions/Regulatory/Mitigation/>.

Also, the "Swampbuster" provisions of the Food Security Act "remove[s] certain incentives to produce agricultural commodities on converted wetlands or highly erodible land, unless the highly erodible land is protected from excessive soil erosion." (NRCS) You can find more information here: <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/wetlands/?cid=stelprdb1043554>.

### **Are extensions available for Nationwide or Regional General permits?**

General permits are not specific to your project but are overarching permits under which multiple projects can be authorized. As a result, individual extensions of the general permit expiration cannot be granted. However, USACE Regulatory can typically re-verify your authorization. This can usually be accomplished unless the general permit has not been renewed or the general permit has changed to such a degree that the project no longer meets the requirements. Also, some general permits include expiration grace periods for projects for which construction has started, or for projects that are under contract. Review your verification letter carefully to see if the grace period may apply to your project.

Contact your [county Project Manager](#) for more information concerning requirements for a re-verification.

### **How is a "multi-phase project" defined?**

Multi-phase projects are those in which more than one construction period is needed to complete an overall design. Examples of a multi-phase project include residential subdivisions, commercial developments, marinas, or mines. Multiple-year maintenance dredging is not considered a multi-phase project.

USACE Regulatory review includes the total plan of development required for the entire project area even if the project would be conducted in multiple phases. This allows USACE to complete the evaluation of the cumulative impact review and alternatives analysis. Multi-phase projects should include all development activities that the applicant plans to undertake within 5-10 years related to the same project.

### **Is there a streamlined Section 401 process for projects with minimal impacts?**

In Oregon, almost all projects with a discharge of dredged or fill material require issuance of an individual Section 401 water quality certificate. In Washington State, many Nationwide permits have a blanket or general water quality certificate that is incorporated into the USACE Regulatory permit.

### **Why are state or local agency permits needed to get a USACE Regulatory permit?**

Section 401 of the Clean Water Act requires a federal license/permit applicant to obtain a Water Quality Certification from the certifying authority (i.e., state or Tribe) for an activity resulting in a discharge into waters of the United States. In Oregon, the request for certification is most often reviewed by the [Oregon Department of Environmental Quality](#). In Washington the request for certification is most often reviewed by the [Washington Department of Ecology](#). The request is reviewed by the applicable Tribe or the US Environmental Protection Agency if on Tribal lands.

Section 307(c) of the Coastal Zone Management Act of 1972 (as amended) applies in states with coastal zones, which includes Oregon and Washington. This act requires federal agency activities directly affecting a state's coastal zone to comply to the maximum extent practicable with an approved state coastal zone management program. For non-federal applicants, you need to provide a certification stating that your proposed activity will comply with the state's coastal zone management program. When working with the USACE Regulatory and/or the Oregon Department of State Lands, you can find a certification page in the [joint permit application](#).