

US Army Corps of Engineers  
Permitting  
(USACOE)

# Regulatory Program & Laws

- **Protect Navigation** – Sections 9 & 10 of the Rivers & Harbors Act 1899
- **Restore and Maintain the physical chemical and biological integrity of the Nation's waters:** Section 404 Clean Water Act
- **Protect marine resources associated with ocean disposal of dredged material:** Section 103 of the Marine Protection Research and Sanctuaries Act 1972

# Laws, Regulations, & Guidance

- Section 9 & 10 of the River & Harbors Act
- Section 404 of the Clean Water Act
- Regulations (33 CFR Parts 320-331)
- Guidance – Executive Orders
- Memoranda of Agreement
- Regulatory Guidance Letters
- Standard Operating Procedures
- District policy, guidance, and previous decisions

# Legal Background

- **Clean Water Act** – Provides protection and prevent discharges into waters
- **Rivers and Harbors Act of 1899** – Protects waters for public use and commerce
- **Fish and Wildlife Coordination Act** – Requires consultation with FWS whenever modifying a water body
- **National Historic Preservation Act of 1966** – Preserve historical & archeological sites
- **Endangered Species Act of 1973** – Protects endangered species
- **Bald Eagle Protection Act of 1940** – Protects the Bald Eagle & Golden Eagle
- **Migratory Bird Treaty Act** – Protects Migratory Birds

# Legal Background

- **National Environmental Policy Act** – Requires an assessment of potential environmental impacts of federally funded or approved projects
- **Water Resources Development Act of 1990** – Required no overall net loss of wetlands as defined by acreage and function and made it a goal to increase quality and quantity of wetlands
- **Executive Order 11988: Floodplain Management** – Prevent the taking of flood plain
- **Executive Order 11990: Protection of Wetlands** – Minimize the destruction and taking of wetlands; Preserve and enhance the natural and beneficial use of wetlands

# Rivers & Harbors Act

- Section 9 – Requires approval of Congress or State Legislature, Chief of Engineers, and Secretary of the Army for construction of a dam or dike across a navigable water of the US
- Section 10 – Requires permit from the Corps for structure or work in, or affecting, the course, location, or condition of a navigable water of the US

# Rivers & Harbors Act

## Regulated Activities

- Navigable waters of the US – Past, Present, & Future
  - Water subject to the flow and ebb of the tide shoreward to the mean high water mark and / or have been used or may be used to transport interstate, state, or foreign commerce
- Jurisdiction Limits
  - Rivers & Lakes - Ordinary high water mark
  - Tidal and Ocean Water – High tide shoreward & 3 nautical miles seaward
- Structures in Navigable Waters
  - Incl – piers, docks, ramps, transmission lines, permanently moored vessels, weirs, breakwaters, aids to navigation, other potential obstacle to navigation
- Work in Navigable Waters
  - Incl – dredging, disposal, excavation, filling, other modification of a navigable water





# Clean Water Act

- US Army Corps of Engineers (Section 404 permitting)
  - Administers the regulatory aspects of Sect 404 permitting
- Environmental Protection Agency (EPA)
  - Maintain ultimate responsibility for oversight of USACE's program
- Section 401 - requires water quality certification
- Section 404 – Permitting discharge of dredge & fill material

## Concurring Agencies include:

- US Fish and Wildlife Service
- Bureau of Land Management
- Bureau of Indian Affairs
- General Land Office
- US Forest Service
- Natural Resource Conservation Service
- Many other state Natural Resource/Land Management offices and departments.

# Section 404 of CWA

Authorizes the Issuance of Permits  
for  
Discharge of Dredged or Fill Material  
into  
Waters of the United States

(33 CFR Part 323)

# Waters of the US

## Three Main Categories:

- Territorial Seas (Seaward 3 nautical miles)
- Tidal Waters ([High tide line](#), or limit of adjacent wetland)
- Non-Tidal Waters ([Ordinary high water mark](#), or limit of the adjacent/isolated wetland)

# Waters of the United States (US)

All Waters that are:

- Used in interstate or foreign commerce
- Interstate waters (including wetlands)
- Intrastate waters that affect commerce
- Impoundment of waters of the US
- Tributaries of the above
- Territorial seas
- Wetlands adjacent to the above
- Waters of the US include navigable waters

# Definitions

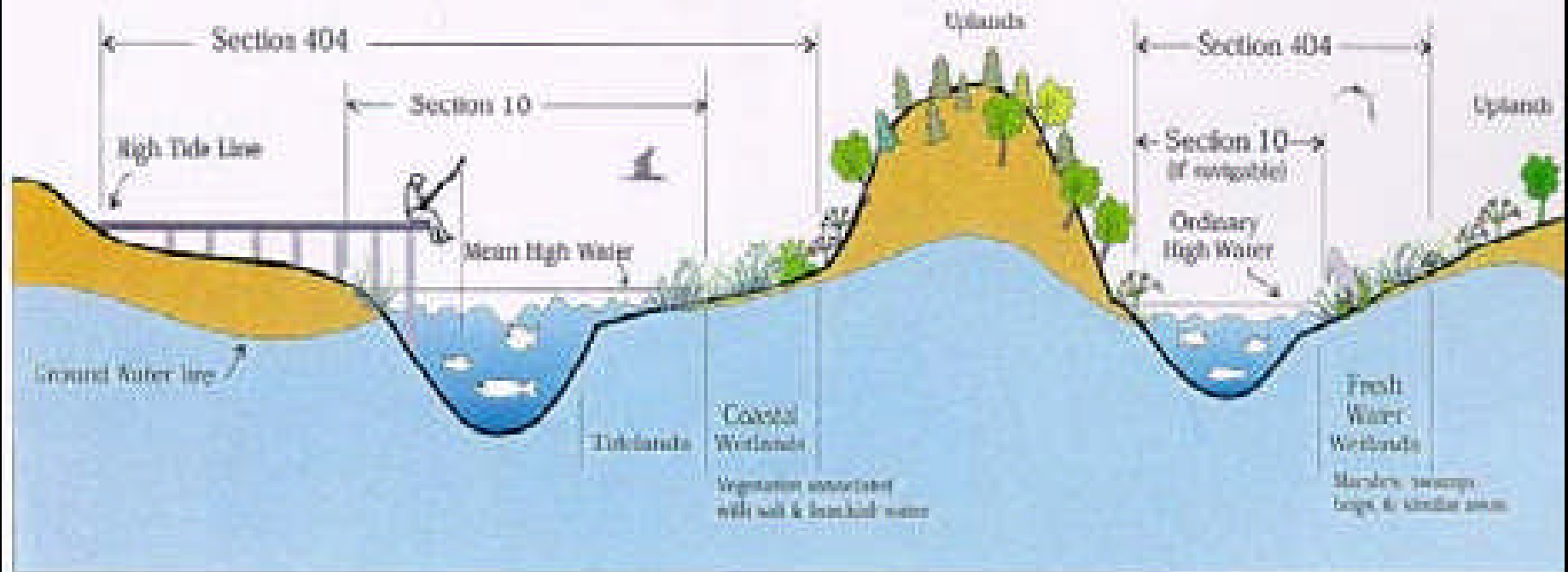
ordinary high water mark: line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

high tide: line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. Does not include storm surges

# CORPS OF ENGINEERS REGULATORY JURISDICTION

## Tidal Waters

## Fresh Waters



### Section 103 Ocean Discharge of Dredged Material

Ocean discharges of  
dredged material

Typical examples  
of regulated activities

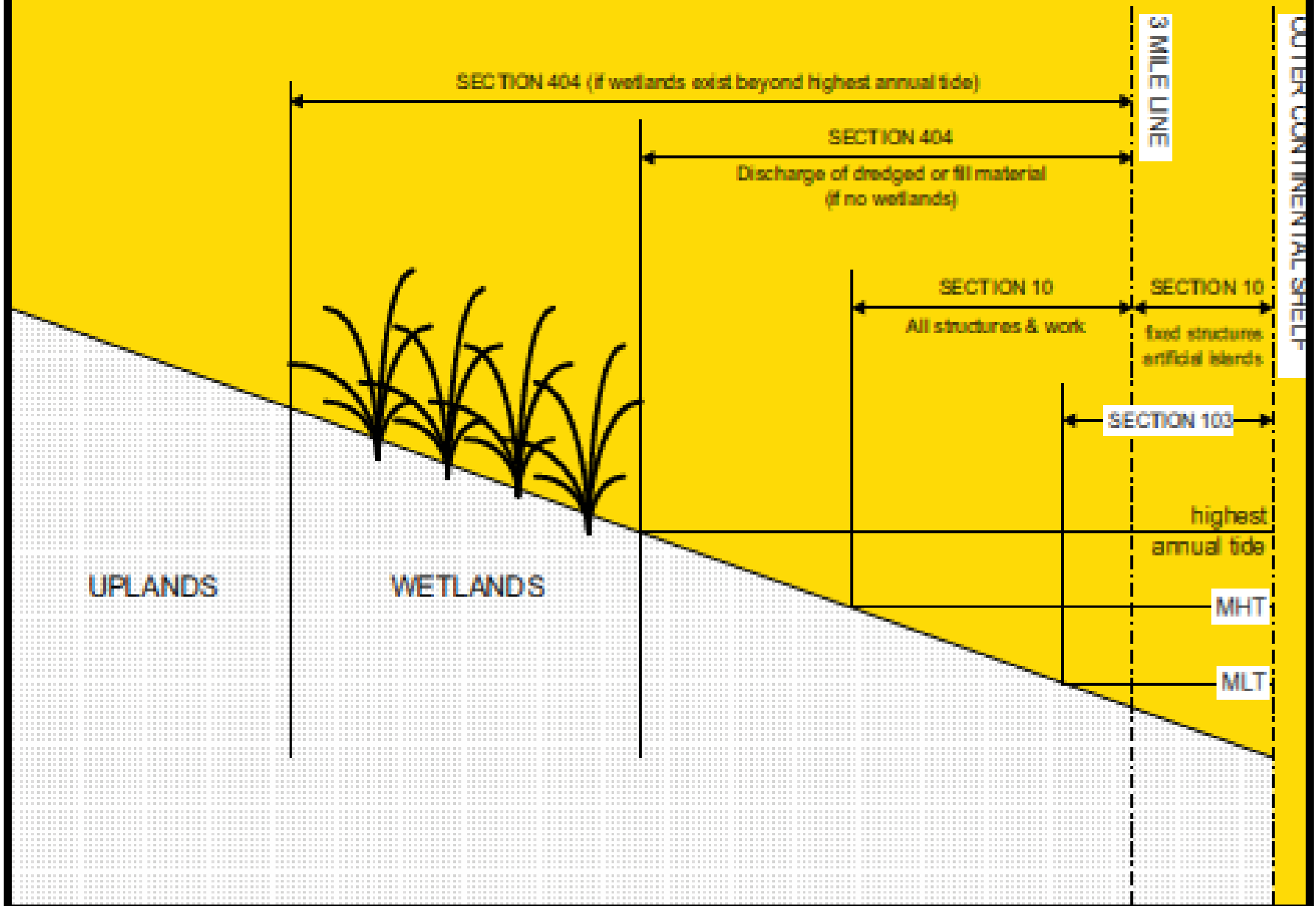
### Section 404 Disposal of Dredged or Fill Material (all waters of the U.S.)

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

### Section 10 All Structures and Work

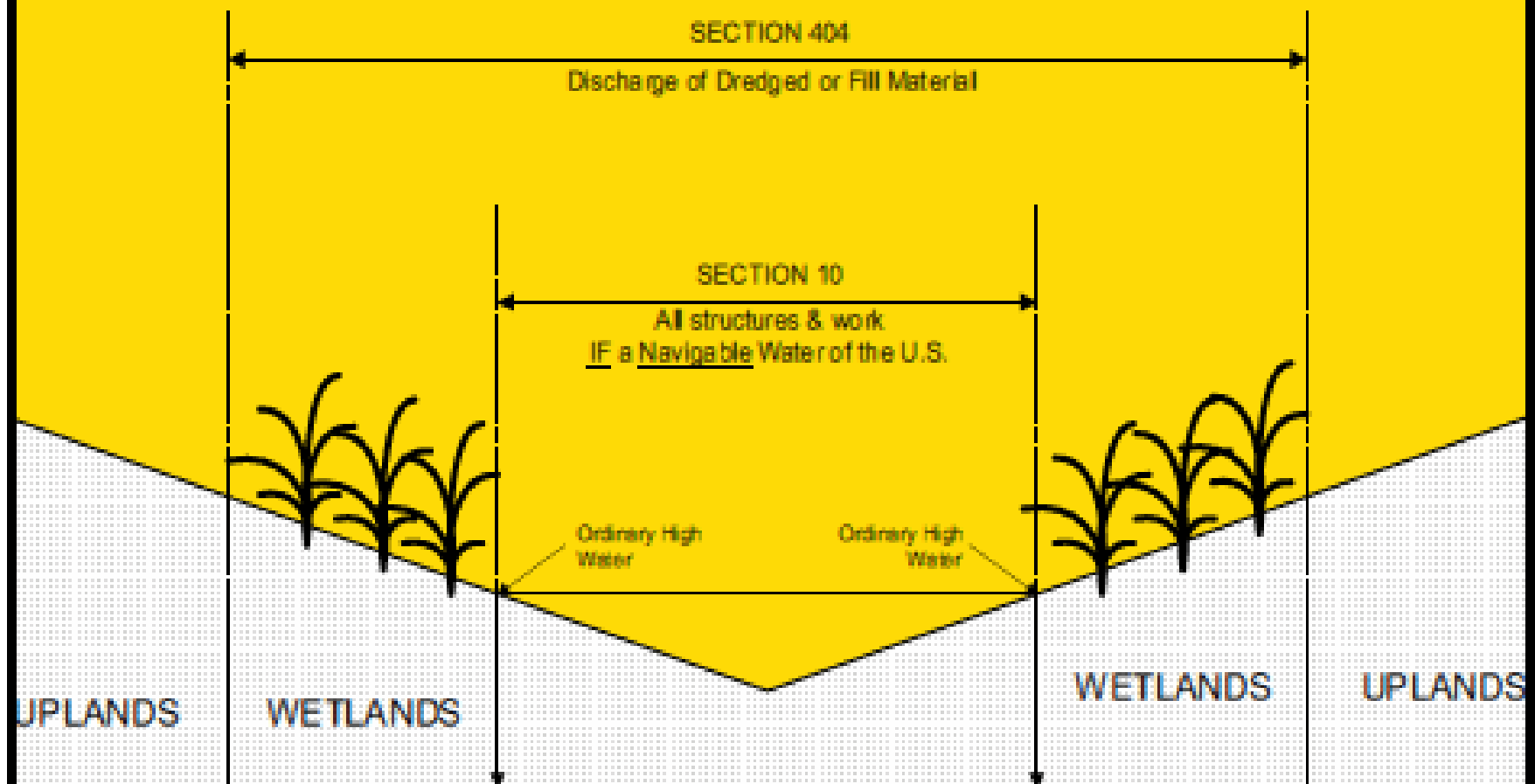
Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pillars, bulkheads, ramps, fills,

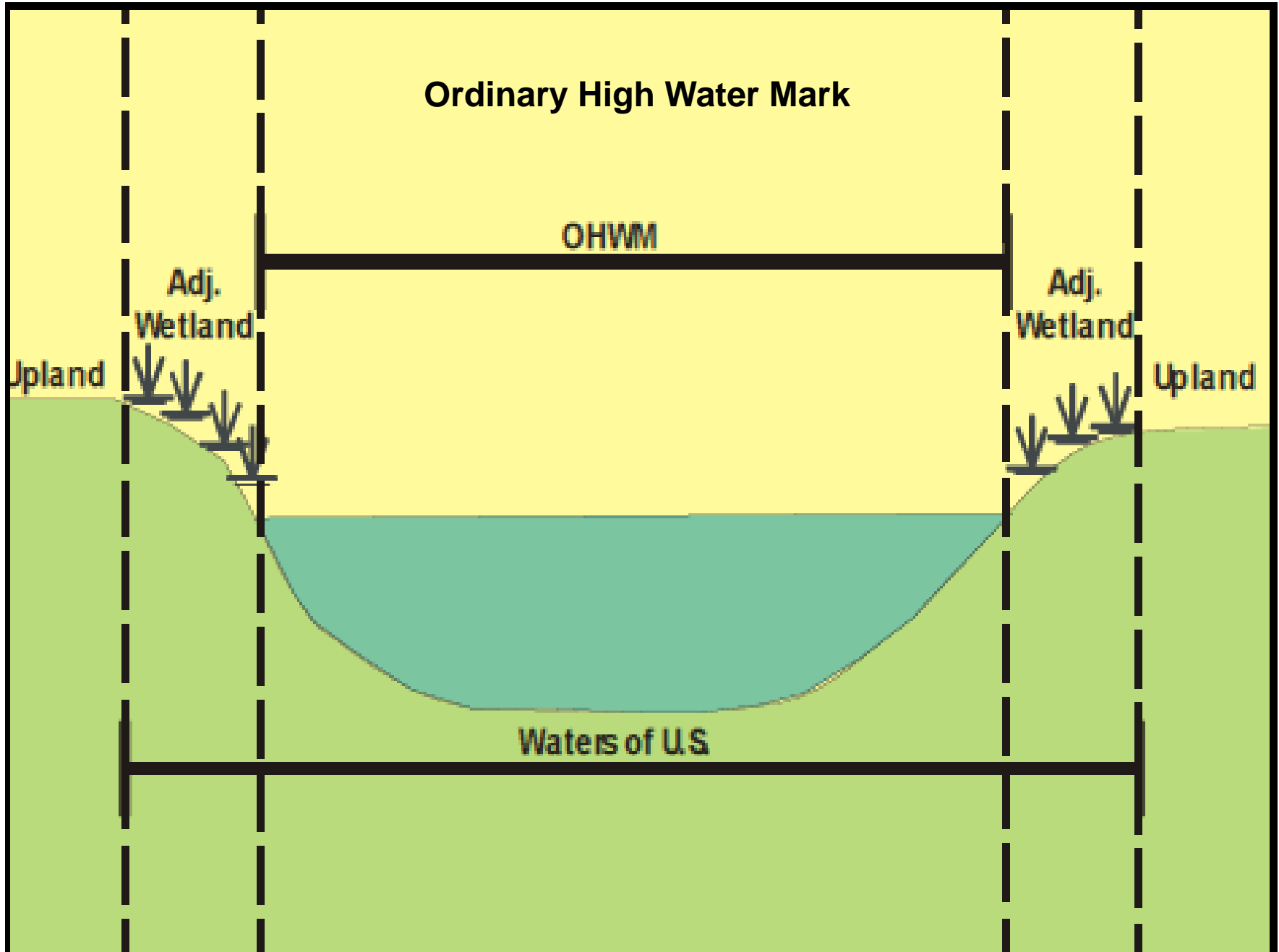
# Corps of Engineers Regulatory Jurisdiction in Tidal Waters





# Corps of Engineers Regulatory Jurisdiction in Fresh Waters





# Waters of the United States (US)

The following are NOT Waters of the US:

- Prior converted cropland
- Impoundments for waste treatment systems

Discharges

# Discharge of Dredge or Fill Material

## Activities resulting in discharge:

- Land Leveling
- Mechanized Land Clearing
- Temporary Stock Piling
- Channel realignment or bank stabilization
- Culverts

## Exempt Activities

- Excavation, **MAYBE**
- Agriculture
- Other

## Definitions - Continued

- Discharge of dredged or fill material
  - Addition of material to U.S. waters
  - “Material” is soil, concrete, rip-rap, etc., anything that has volume
  - return water from dredged material

# Permits

Corps of Engineers

# Section 404 Permits

## US Army Corps of Engineers:

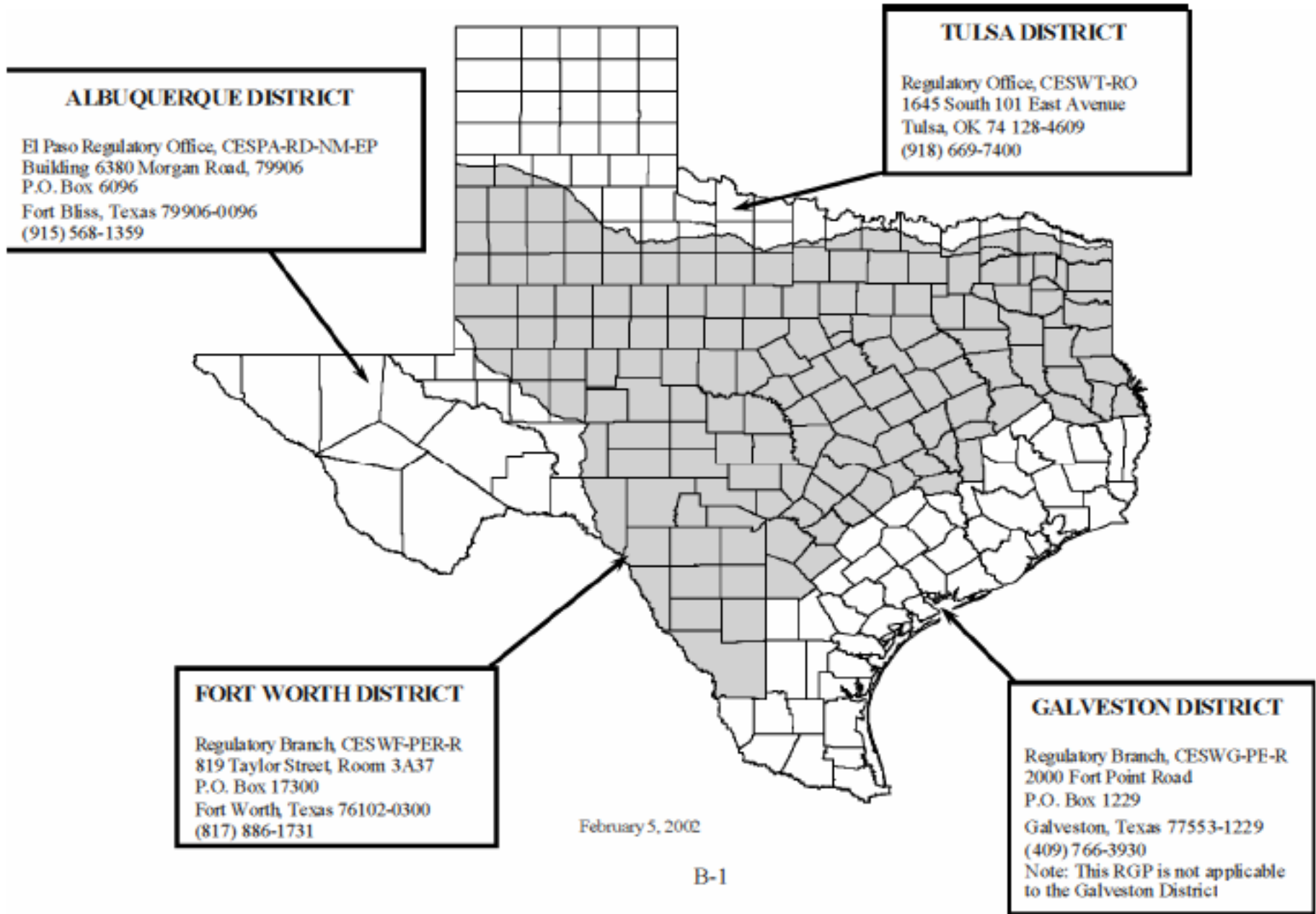
- Individual Permits
  - Standard Permit (S P)
- General Permits
  - Regional (RGP)
  - Nationwide Permit Program (NWP)



# USACE Division Map



# USACE Districts within Texas



# Nationwide Permit Program

- Nationwide Permits
  - 43 NWP's available
  - Applicable across the nation
  - Minimize delays and paperwork
  - Notification sometimes required
  - Other agencies review - sometimes
  - Verification - voluntary
  - Revised & reissued every 5 years

# Example NWP

- **NWP 3 – Maintenance**
  - » To maintain structures currently permitted
- NWP 7 – Outfall Structures and Maintenance
- **NWP 8 – Oil & Gas Structures on the Outer Continental Shelf**
- **NWP 12 – Utility Line Activities**
  - » Pipe or pipeline for transport gas, liquid, slurry
  - » Cable, line or wire to transport electricity, telephone, or telegraph
  - » Pipes or pipelines used to transport over navigable waters are considered bridges and may require permit under Section 9 of River and Harbors Act
- **NWP 14 – Linear Transportation Crossings**
  - » Roads
- **NWP 20 – Oil Spill Cleanup**
- NWP 27 – Stream and Wetland Restoration Activities
- **NWP 33 – Temporary Construction, Access, and Dewatering**
- NWP 40 – Agricultural Activities
- **NWP 38 – Cleanup of Toxic & Hazardous Waste**
- NWP 39 – Commercial and Institutional Developments
  - » Oil and Gas not authorized
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Storm water Management Facilities
- NWP 44 – Mining Activities

# Typical General Conditions of NWP's

- Navigation
- Aquatic Life Movement
- Spawning Areas
- Migratory Bird Breeding Areas
- Fills within 100-year floodplains
- Soil Erosion and Sediment Controls
- Removal of Temporary Fills
- Endangered Species
- Historic Properties
- Mitigation
- Water Quality
- Special Aquatic Areas including wetlands
- Compliance Certification
- Pre-Construction Notification
- Single & Complete Project

# When using NWP

- More than one NWP can be used to authorize a project
  - The acreage restrictions apply to the entire project
- Phased parts of a project may be considered as separate projects if the phases are constructed absent of the other phases
- Linear projects relates to each crossing of a separate water of the US at that location and/or each crossing of a single water body several times at separate and distant locations.
- Individual channels in a braided stream or arms of a large irregular wetland or lake are not separate water bodies.

# Fort Worth District Regional General Permits (RGP)

- General Permit that is issued regionally.
  - Only good in the region issued

Permit Name	Number	Issue Date	Expiration Date
<a href="#"><u>Utility Lines and Intake and Outfall Structures</u></a>	CESWF-05-RGP-2	28 Nov 2005	28 Nov 2010
<a href="#"><u>Boat Ramps and Minor Facilities</u></a>	CESWF-09-RGP-8	26 Aug 2009	26 Aug 2014
<a href="#"><u>Exploration and Production Wells</u></a>	CESWF-08-RGP-11	05 Nov 2008	05 Nov 2013
<a href="#"><u>Modification and Alterations of Corps of Engineers Projects</u></a>	CESWF-09-RGP-12	24 Feb 2010	23 Feb 2015

# Exploration & Production Wells RGP

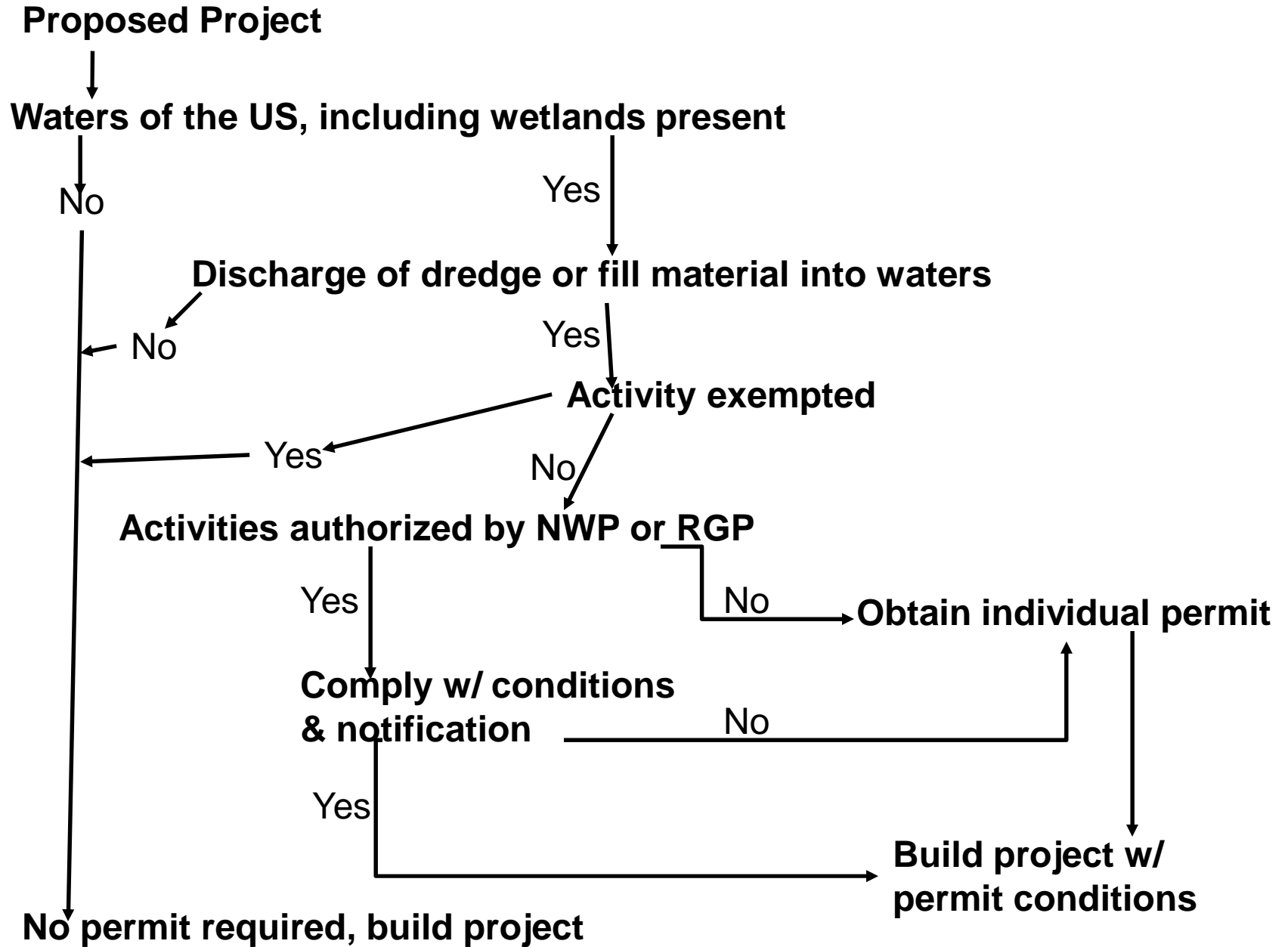
Work authorized by this RGP is limited to the discharge of dredged or fill material into waters of the United States (U.S.), including wetlands, and work in, or affecting navigable waters of the U.S., associated with the construction and operation of exploration and production wells for oil, gas, and water and their supporting fills and structures. Activities that may be authorized by this RGP include, but are not limited to, the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, and production facilities, production and storage facilities, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, and staging areas associated with exploration and production wells. Impacts to waters of the U.S., including wetlands, shall be avoided and minimized through the use of practicable alternatives. Stream channelization is not allowed.



# Standard Individual Permit

- Used when activity cannot be permitted with general permit
- Multi-agency review
  - USACE, EPA, USFWS, TPWD, TCEQ, etc
- Goes through Public Notice for 404 & 401 Sections approval
  - Comment Period
  - Opportunity for public hearing
- 404 permit required by USACE
- 401 permit required by TCEQ
- Process usually 1 to 2 years

Section 404 Initial Review



# Water Quality

- For NWP, the process can take 3-12 months
- For Individual Permits, the process can take 12-36 months
- Costs: \$\$\$\$\$!

So, what if you don't get the  
proper permits?

# Improper Permitting Implications:

- Steep fines have been levied on companies who chose not to get the required permits.
- Criminal sanctions apply for willful pollution and contamination (unauthorized fill) under the Clean Water Act, making these violations third degree felonies.
- Fines up to \$50,000 per offense and imprisonment for up to five years may be imposed.
- Each day of non-compliance may create a separate violation.
- Costly restoration or mitigation will also be required for most violations, often 3 to 5 times the normal mitigation rate.

Avoid wetlands if at all possible.

In doing so you will :

- Avoid permitting delays
- Avoid costs associated with mitigation
- Aid in protecting and filtering our water supply

***TYPICAL  
NATION WIDE PERMITS  
USED BY OIL & GAS***

***(SEE PDF)***

#### References:

- Ms. Becky J. Richards Power Point Slides, Environmental Compliance, Texas Christian University, 2006
- Dr, Douglas Capone, Power Point Slides, Oil & Gas Regulation, Navarro College, 2010
- McKone, Pete, Power Point Slides, Wetland Mitigation, Texas Christian University, 2009
- Environmental Protection Agency Website, 2010, [www.epa.gov](http://www.epa.gov)
- United States Army Corps of Engineers, 2010, <http://www.usace.army.mil>
- United States Army Corps of Engineers, Fort Worth District, Regulatory Branch, accessed 2010, <http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp>
- Environmental Technical Services Co., Executive Order 11990 Protection of Wetlands, accessed 9/11/2010, <http://www.wetlands.com/fed/exo11990.htm>,
- Wikipedia contributors. "Water Resources Development Act of 1986." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 11 May. 2009. Web. 11 Sep. 2010.
- US Fish & Wildlife Service, Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service . **Migratory Bird Treaty Act** of 1918., accessed 9/11/2010, <http://www.fws.gov/laws/lawsdigest/migtrea.html>
- Wikipedia contributors. "National Historic Preservation Act of 1966." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 23 Jul. 2010. Web. 11 Sep. 2010.
- US Fish & Wildlife Service ,Digest of Federal Resource Laws of Interest to the U.S. **Fish and Wildlife Service . Fish and Wildlife Coordination Act Fish and Wildlife Coordination Act, accessed 9/11/2010,** <http://www.fws.gov/laws/lawsdigest/FWCOORD.HTML>

#### Helpful Links:

- 2007 Nation Wide Permits - <http://www.swf.usace.army.mil/pubdata/environ/regulatory/permitting/nwp/2007/index.asp>
- USACE Fort Worth District Permitting site - <http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp>