Department of the Army permits for reservoir sediment management activities

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Discussion Topics

• Permitting authorities of the U.S. Army Corps of Engineers
• Reservoir sediment management activities that require Corps permits
• Permit evaluation procedures
• Water quality certification for Corps permits
The Corps’ permitting authorities

Section 10 Rivers and Harbors Act of 1899:
Construction and dredging in navigable waters

Section 404 Clean Water Act: Discharge of
dredged and fill material into waters and wetlands

Section 103 of the Marine Protection,
Research, and Sanctuaries Act:
Transport of dredged material to the ocean
for disposal
Who needs permits from the Corps for Reservoir Sediment Management Activities?

• Non-federal entities
  • State governments
  • Local governments
  • Private entities
  • Other federal agencies

• The Corps does not issue permits to itself
  • Activities conducted by the Corps for its federal water resource development projects (i.e., Civil Works projects) do not require Regulatory permits
  • For its projects, the Corps follows the same laws and some of the same regulations
  • Congressional authorizations for Civil Works projects may include operations and maintenance activities
Section 10 of the Rivers and Harbors Act of 1899

- Corps permits required for activities that may alter or modify the course, condition, location, or capacity of a navigable water of the United States

- Navigable waters:
  - 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
  - "Highways of commerce" on the water
Section 404 of the Clean Water Act

- Permits required for discharges of dredged or fill material into waters of the United States

- Discharge of dredged material:
  - Any addition of dredged material into, including redeposit of dredged material other than incidental fallback, within the waters of the United States

- Discharge of fill material:
  - The addition of fill material into waters of the United States that has the effect of:
    - Replacing any portion of a water of the United States with dry land; or
    - Changing the bottom elevation of any portion of a water of the United States
Regulatory Guidance Letter 05-04

• Discharges regulated under section 404
  • Sluicing of sediments through a dam in a manner consistent with hydraulic dredging
    • Discharge of dredged material
  • Discharges of sediment from dam that raise the bottom elevation of downstream waters to discernable, substantial degree
    • Discharge of fill material

• Discharges not regulated under section 404
  • De minimis discharges incidental to normal dam operations
  • Corps section 404 permits not required for routine high water flow dam operations passing sediment-laden water from or through the dam

• Activities requiring section 10 permits
  • Sediment releases that alter the course, condition, location, or capacity of navigable waters
Permit requirements for various reservoir sediment management approaches

- Sediment flushing (sluicing)
  - May require section 404 and/or section 10 permits (see previous slide)
- Sediment bypassing
  - Bypass structure may require section 10 and/or section 404 permits
- Remove accumulated sediments from reservoir via mechanical or hydraulic dredging
  - May require section 10 and/or section 404 permits
  - Where will sediment be deposited?
- Reduce sediment inputs to reservoir through watershed best management practices
  - Check dams, bank stabilization activities may require section 404 permits
Types of Corps permits

• Individual permits
  • Authorizes specific activity
  • Public notice (usually 30 days)
  • Preparation of combined permit decision document
    • Public interest review
    • Environmental assessment or environmental impact statement for purposes of National Environmental Policy Act
    • 404(b)(1) Guidelines analysis (if section 404 permit)

• General permits
  • Authorize categories of activities that are similar in nature and result in only minimal individual and cumulative adverse environmental effects
  • Nationwide permits, regional general permits
Permit evaluation procedures

- National Environmental Policy Act
  - Environmental assessment or environmental impact statement
  - Will the proposed activity have a significant impact on the quality of the human environment?
- Public interest review
  - 20 public interest review factors
  - Evaluate probable impacts, including reasonably foreseeable benefits and detriments
- Clean Water Act Section 404(B)(1) Guidelines
  - EPA’s substantive criteria for assessing effects of discharge of dredged or fill material on aquatic ecosystems
  - Proposed discharge cannot cause significant degradation of aquatic ecosystem
Public interest review factors

- Conservation
- Economics
- Aesthetics
- General Environmental Concerns
- Wetlands
- Historic Properties
- Fish and Wildlife Values
- Flood Hazards
- Floodplain Values
- Land Use
- Navigation
- Shore Erosion and Accretion
- Recreation
- Water Supply and Conservation
- Water Quality
- Energy Needs
- Safety
- Food and Fiber Production
- Mineral Needs
- Property Ownership
Water Quality Certification

• Required for federal permits authorizing point source discharges into waters of the United States

• Certifying authorities:
  • States, authorized tribes, U.S. EPA

• Does proposed discharge comply with water quality requirements?
  • Corps cannot issue permit until certification issued or waived

• Water quality certification may be issued (with or without conditions), waived, or denied

• New regulations issued by U.S. EPA on July 13, 2020 (effective September 11, 2020)
  • Information requirements for water quality certification requests
  • Timing for decision-making
Future actions

• Develop and issue Regulatory Guidance Letter on permitting reservoir sediment management activities
  • Supplement to Regulatory Guidance Letter 05-04
  • Recommendation of Chief of Engineer’s Environmental Advisory Board

• Develop training materials for regulatory program staff
Point-of-contact information

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