

The background is a light blue gradient with several realistic water droplets of various sizes scattered across the surface. The droplets have highlights and shadows, giving them a three-dimensional appearance.

# 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



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# 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



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# 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



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- Sediment flushing (sluicing)
  - May require section 404 and/or section 10 permits (see previous slide8)
- 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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