

Building and Preserving Alaska's Future

Regulatory Program Update

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U.S. Army Corps of Engineers

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US Army Corps of Engineers
BUILDING STRONG®



REGULATORY PROGRAM

Mission – Protect the Nation’s aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.

4 Goals:

- Protect the aquatic environment
- Enhance regulatory program efficiency
- Make fair, reasonable, and timely decisions
- Achieve no net loss of aquatic resources

Authorities

- Section 10 Rivers and Harbors Act of 1899
- Section 404 Clean Water Act (1972)
- Section 103 Marine, Protection, Research and Sanctuaries Act (1972)



The Corps Regulatory Program is neither a proponent or an opponent of the projects we review for permits.



REGULATORY PROGRAM

Corps of Engineers in Alaska

- Largest district in nation (geographically)
 - 43% of state is wetlands
 - 3 million lakes
 - 15 million miles of potentially navigable waterways
- 2nd largest regulatory division in nation
 - \$7.9 million annual budget
 - 54 employees
 - 1,536 actions per year (average for past nine years)
- Alaska District Headquarters is on JBER – Elmendorf
 - Fairbanks and Juneau Field Office (since 1991)
 - Kenai Field Office (since 2001)
 - Anchorage Field Office and staff in Sitka (since 2008)
 - Our Regulatory Division website is

<http://www.poa.usace.army.mil/Missions/Regulatory.aspx>



RIVERS AND HARBORS ACT OF 1899

Section 10 authorizes the Department of the Army (DA) is to issue permits for work in or affecting the navigable waters of the United States

- For RHA purposes, navigable waters are:
 - Waters subject to ebb and flow of the tide *and/or*,
 - Those waters that are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce
- Activities that require a DA permit in Section 10 waters
 - Structures and/or work in or affecting navigable waters of the United States
 - Structures and/or work outside the limits of navigable waters, IF these structures or work could affect the course, location, or condition of the water body so as to impact its navigable capacity
 - Artificial islands, installations, or other devices on the outer continental shelf



CLEAN WATER ACT (1972)

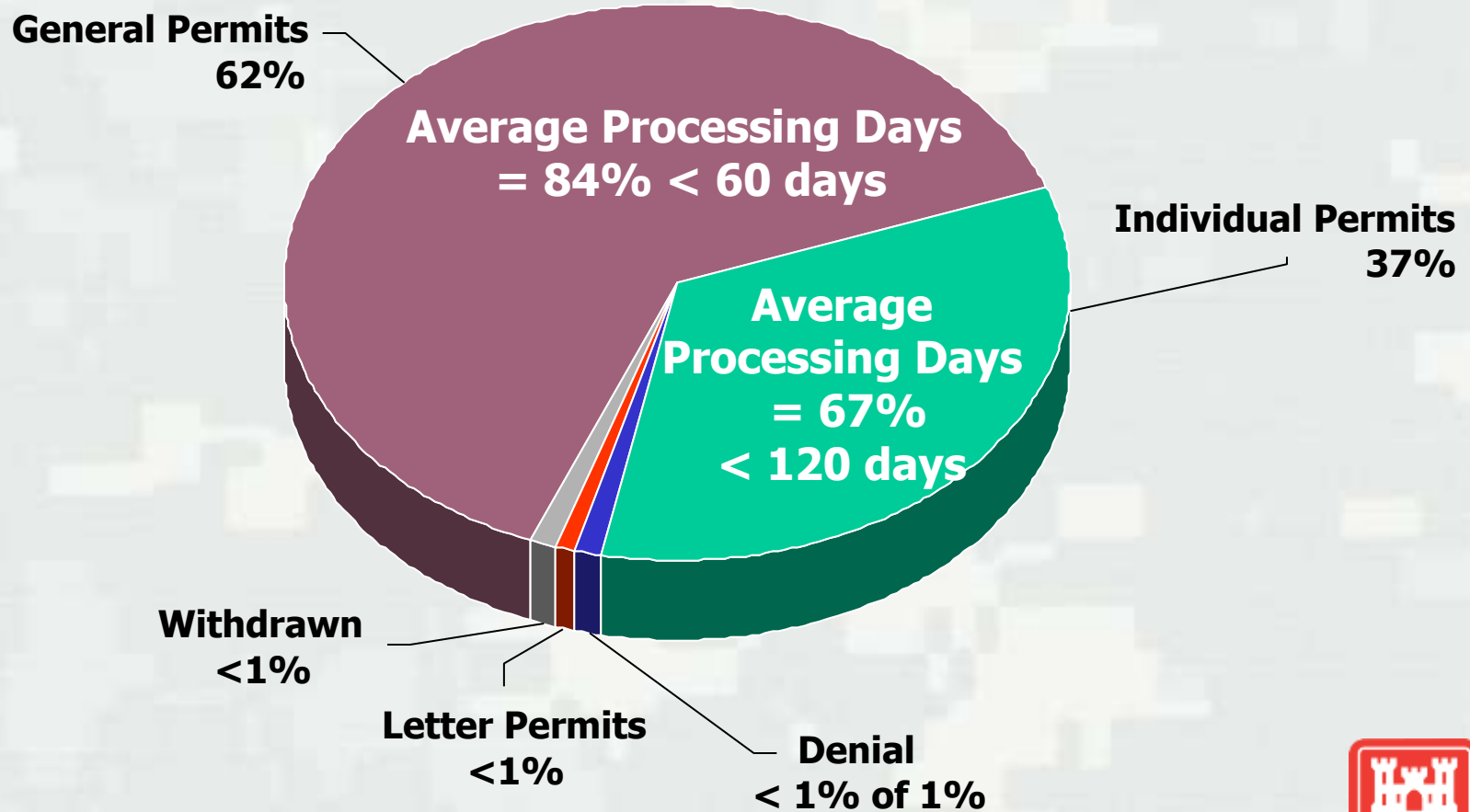
Section 404 authorizes the DA to issue permits for the discharge of dredge and/or fill material into waters of the U.S.

- For CWA purposes, waters of the U.S. include
 - All navigable waters (Section 10)
 - Rivers, most tributaries and lakes
 - Wetlands (like bogs, marshes, fens, swamps) adjacent to the above waters
- Activities that require a DA permit in Section 404 waters
 - Discharge of dredge and/or fill material
 - Activities that have the “affect fill”
- “*Adjacent*” means “Boarding, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands’.”



PERMIT ACTIONS FY12

1,100 Decisions



SECTION 404(g) OF CLEAN WATER ACT

Assumption of Program by States or Tribes

- **EPA has the authority to delegate to a State or tribe the administration of the Section 404 Program for certain non-navigable waters. (40 CFR parts 232 and 233)**
- **Corps would retain jurisdiction for:**
 - Tidal waters and adjacent wetlands
 - Navigable and adjacent wetlands
 - Navigable waters under Section 10. These include:
 - Waters subject to ebb and flow of the tide and/or;
 - Those waters that are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.



SECTION 404(g) OF CLEAN WATER ACT

Assumption of Program by States or Tribes

- **EPA's process for a State or tribe to assume Section 404 Program**
 - State or tribe submits complete assumption application
 - EPA reviews application
 - Distribution of application for public comment
 - Public hearing
 - EPA is decision maker, but Corps provides information and data



CORPS AND STATE RELATIONSHIPS

- **Regulatory Roles**

- **AK Department of Environmental Conservation (DEC)**

- **Water Quality Certifications (WQC) - Section 401 of the CWA**

- **Determines if the discharge of dredged and/or fill material satisfies the State's water quality standards**

- **State may issue, deny or waive WQC**

- **If WQC is issued any conditions become are incorporated as special condition on a DA permit, if issued.**

- **If the DEC denies the WQC, a DA section 404 permit is invalid**

- **Section 404 Individual permit applications**

- **Corps sends the applicant's complete application to DEC**

- **Corps prepares and publishes a joint Corps/DEC public notice activity**

- **AK Department of Fish and Game (ADF&G)**

- **Fish bearing freshwater rivers/streams/lakes**

- **State's legislatively designated special areas**



CORPS AND STATE RELATIONSHIPS

- **Consultation Relationships**
 - **Fish and Wildlife Coordination Act (FWCA)**
 - Requires Federal agencies to consult with the State agency exercising administration over the wildlife resources of the affected state
 - Corps gives full consideration to State comments received under FWCA.
 - **National Historic Preservation Act**
 - Requires Federal agency actions to consult with the AK DNR's State Historic Preservation Office (SHPO) when proposed activities affect historic properties that are eligible for or listed on the National Register of Historic Places
 - SHPO allows Corps to access SHPO's statewide database of cultural resource sites to increase the efficiency of the consultation
 - Corps does not make a permit decision until the consultation had ended



REGULATORY PARTNERSHIP EFFORTS

HOW YOU CAN HELP US

- **Submit application as early as possible**
- **Become familiar with requirements**
 - Allocate time and resources for permitting
 - Visit us online at:
<http://www.poa.usace.army.mil/Missions/Regulatory.aspx>
 - Use project checklist – drawings, adjacent property owners, etc.
 - Schedule pre-application meeting
 - Coordinate with appropriate agency on project issues and include findings with application
 - Endangered Species Act
 - Essential Fish Habitat
 - National Historical Preservation Act
 - Marine Mammal Protection Act

- Provide timely responses to requests for additional information *

HOW WE CAN HELP YOU

- **Make timely decisions**
- **Issue decisions that are defensible if challenged in court**
 - If we lose, the project is at-risk
- **Be accessible to the public**
- **Conduct outreach with the regulated community**

** A complete application does not mean we have enough information to make a permit decision, but rather enough to issue a public notice and receive meaningful comments*



CONCLUSION

- **We are continuing to improve our Regulatory Program through outreach and partnering efforts**
- **We value our long-term relationships with the State and continually seek new opportunities to increase the efficiency of our decision making process**



QUESTIONS?



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