

PERMIT REQUIREMENTS

Revised July 2005

1. General. Many activities occurring within the critical area of flood control projects involve the discharge of dredged or fill material into waters of the U. S. The discharge of dredged or fill material into waters of the U.S. and most categories of work in navigable water bodies require Corps of Engineers authorization under authority of *Section 404 of the Clean Water Act* and *Section 10 of the Rivers and Harbors Act of 1899*, respectively. During our review process, we determine if any of the work we are evaluating will require a permit from the District's Regulatory Branch under either of the above referenced laws. Consideration of the District's regulatory program requirements during our review process provides assurance that activities under evaluation will receive concurrent and timely reviews by all involved programs within the Kansas City District.

2. Corps of Engineers Regulatory Program. The purpose of the Corps' regulatory program is to protect the nation's aquatic resources under Section 404 of the Clean Water Act and to protect navigation under Section 10 of the Rivers and Harbors Act of 1899.

2.1. *Section 404 of the Clean Water Act*. Section 404 requires prior authorization from the Corps for the discharge of dredged or fill material into waters of the U. S., including wetlands. The term "discharge of dredged material" means any addition of dredged material into, including redeposit of dredged material other than incidental fall back within, the waters of the United States. The term "discharge of fill material" means the addition of fill material into waters of the United States.

2.2. *Section 10 of the Rivers and Harbors Act of 1899*. Section 10 requires prior authorization from the Corps for structures and/or work in or affecting navigable waters of the U.S. Generally, any work or structures in, over, or under navigable waters of the U.S. require a permit from the Corps. Navigable waters of the U.S. are those 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. Navigable waters of the U.S. located within the Kansas City District's regulatory boundary are listed in the attached Fact Sheet.

2.3. *Jurisdiction*. The Corps' regulatory authority applies to all waters of the U.S., which includes rivers, streams, lakes, wetlands, and other water bodies. The Corps' jurisdiction under Section 404 of the Clean Water Act, in all waters of the U.S. except wetlands, begins at the ordinary high water mark elevation (OHWM) on the shore and extends riverward/lakeward of that elevation. Section 404 jurisdiction in wetlands extends to the limits of the wetland. The Corps jurisdiction under Section 10 of the Rivers and Harbors Act extends riverward/lakeward of the OHWM. The term "ordinary high water mark" is defined as that 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 area. For jurisdictional purposes, the OHWM elevation

can be visually established or surveyed from known benchmarks if an elevation/contour line is desired. The Kansas City District has established OHWM elevation profiles for the Kansas River in Kansas, and the Missouri River in Missouri and Kansas.

Wetlands are considered waters of the U.S. within the Corps regulatory program. The term “wetland” is defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marches, bogs, and similar areas. The three primary components of wetlands include hydrology (water), hydrophytic vegetation, and hydric soils. Farmed wetlands, wooded wetlands, seasonal depressions, etc are all subject to regulation under the Corps regulatory program.

2.4. Types of Corps Permits. Four types of permits are available within the Corps’ regulatory program to authorize activities regulated under Section 404 and Section 10. The four permits include Individual Permits, Letters of Permission, General Permits, and Nationwide Permits. A decision concerning the type of permit required for a particular activity is made when the District’s Regulatory Branch has received sufficient project specific information.

2.5. State and Local Permits. Section 401 of the Clean Water Act requires that an individual water quality certification be issued, by the appropriate state water quality office, for all work authorized under Section 404. If a Section 404 permit is required for your work the Kansas City District will provide you with information concerning the state’s water quality certification program. Other state and/or local approvals may be required for your work.

2.6. Other Considerations. If a Section 404 or Section 10 permit is required for your work, several related Federal statutes must be considered during the District’s public interest review for the project. Two important statutes that must be considered are the National Historic Preservation Act and the Endangered Species Act. Other Federal statutes may be considered depending upon the type and location of the project.

3. Enforcement. The Rivers and Harbors Act and the Clean Water Act both establish civil and/or criminal penalties for work performed without the required authorization. Therefore, anyone considering any activity that may require authorization under either of these laws is encouraged to consult the Kansas City District’s Regulatory Branch prior to initiation of the work.

4. How to Apply. All persons planning to perform work within the Kansas City District’s jurisdiction must obtain a permit from the District’s Regulatory Branch prior to the initiation of work. An application form and regulatory program information can be obtained by contacting the District’s Regulatory Branch at the phone numbers and addresses listed below.

- Phone: (816) 389-3990
- Fax: (816) 389-2032
- e-mail: <http://www.nwk.usace.army.mil/regulatory/regulatory.htm>

- Send written requests to: U.S. Army Corps of Engineers, Regulatory Branch, Room 706, 601 East 12th Street, Kansas City, Missouri 64106

5. Standard Operating Procedure. This section describes the District's Standard Operating Procedure for the review of requests for activities within the critical area of flood control projects. When a sponsor and/or consultant contacts the District with a request that a particular project be approved, the initial contact may be with someone other than a project manager in the Regulatory Branch. The non-regulatory point of contact may not be familiar with the District's regulatory program requirements. Generally, most of the activities occurring within the critical area do not involve regulatory issues. However, for those activities that do involve regulatory issues, it is essential that the project proponent be apprized of any permit requirements. Work areas within a floodplain or sites containing depressions, drainages, moist soils, or vegetated corridors along streams are areas with a high probability that waters of the U.S. may be involved. When projects are proposed in these areas the work should be coordinated with the District's Regulatory Branch.

If the project primarily or only involves regulatory issues, the Regulatory Branch will be responsible for coordinating a joint District response to the project proponent. If the project primarily or only involves nonregulatory technical issues, the Local Protection Section will be responsible for providing a joint District response to the project proponent.

6. Flood Coordination. In cases where flood protection projects are damaged due to flooding and where emergency repairs are necessary, the activity should be coordinated with the Regulatory Branch prior to initiation of the work.

**NAVIGABLE WATERS OF THE UNITED STATES
WITHIN THE
KANSAS CITY DISTRICT'S REGULATORY BOUNDARY**

NAVIGABLE WATER	RIVER MILES
Big Blue River	From river mile 0.0 (mouth at Missouri River) upstream to mile 4.38 (within the city limits of Kansas City, Missouri).
Gasconade River	From river mile 0.0 to mile 107.0 (confluence with the Missouri River upstream to the vicinity of Arlington, in Phelps County, Missouri).
Grand River	From river mile 0.0 to mile 3.0 (confluence with the Missouri River upstream to the vicinity of Brunswick, in Chariton County, Missouri).
Kansas River	From river mile 0.0 to mile 170.4 (confluence with the Missouri River upstream to its confluence with the Republican and Smoky Hill Rivers in the vicinity of Junction City, in Geary County, Kansas)
Lamine River	From river mile 0.0 to mile 14.0 (confluence with the Missouri River upstream to the vicinity of Roberts Bluff Bridge in Cooper County, Missouri)
Missouri River	From river mile 49.8 to mile 552.7 (St. Charles County upstream to the Missouri/Iowa state line in Atchison county, Missouri)
Osage River	From river mile 0.0 to mile 81.7 (confluence with the Missouri River upstream to Bagnell Dam in Miller County, Missouri)
Lake of the Ozarks	From lake mile 0.0 to mile 89.3 (Bagnell Dam to the vicinity of Warsaw, in Benton County, Missouri)