

Best Practices Across the Civil Works and Regulatory Business Lines

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US Army Corps of Engineers
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Civil Works General Investigation



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Civil Works – General Investigations

- Most common way for the USACE to assist in addressing large-scale, complex water resource problems.
- Conducted in partnership with a non-federal sponsor (cost-shared 50/50).



Civil Works – General Investigations

- ▶ Navigation
- ▶ Flood Risk Management
- ▶ Ecosystem Restoration
- ▶ Hurricane and Storm Damage Reduction



Civil Works – General Investigations

| PHASE | RESULTS IN |
|--------------------------------------|---|
| Feasibility | Report Recommending a Project for Construction |
| Preconstruction Engineering & Design | Completion Of Plans And Specifications for Construction |



GI – Feasibility Phase

- Identify water resources problems in the study area.
- Collect data on the problems identified.
- Develop alternatives to solve the problems.
- Evaluate the effects of the alternatives.
 - ▶ Economics
 - ▶ Engineering
 - ▶ Environmental (NEPA)
- Compare alternatives.



GI – Planning Process

- Select a plan for recommendation or decide to take no action.

*The alternative plan with the **greatest net economic benefits consistent with protecting the nation's environment** is normally selected.*



Regulatory Program



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Regulatory Program Authorities

- Rivers and Harbors Act of 1899 (RHA)

Section 7 - Danger Zones/Restricted Areas (1917 RHA)

Section 9 - Dams and Dikes

(Bridges, & Causeways were transferred to the USCG in 1966)

Section 10 - Work or Structures

- Section 404 of the Clean Water Act (CWA)

(formerly the Federal Water Pollution Control Act of 1972)

- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA)



Regulatory Program

- National Environmental Policy Act (NEPA) hard look in context of:
 - ▶ Public Interest Review.
 - ▶ 404(b)(1) Analysis for “water dependency”.
 - ▶ Least Environmentally Damaging Practicable Alternative Analysis.



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
- Consideration Of Property Ownership
- Needs And Welfare Of The People



Non-Water Dependent Projects

- Does not require access or proximity to or sighting within the special aquatic site (i.e. wetlands) in question to fulfill its basic purpose.
- When an activity is proposed to occur in a special aquatic site*, the 404(b)(1) regulations presume that:
 1. practicable alternatives that do not involve special aquatic sites are available;
 2. these alternatives will have less adverse impact on the aquatic ecosystem.



Alternatives Analysis Rebuttal Presumptions

- The first presumption states that alternatives that do not affect special aquatic sites are presumed to be available.
- The second presumption states that practicable* alternatives located in non-special aquatic sites (e.g., other waters, uplands, etc.) have less adverse impact on the aquatic ecosystem.
- **It is the applicant's responsibility to clearly demonstrate in writing to the Corps that both of these presumptions have been rebutted in order to pass the alternatives portion of the Guidelines.**
- Unless the applicant clearly demonstrates to the Corps that the proposed project is the least damaging practicable alternative, the permit will be denied.

***Section 230.3(q) of the Guidelines reads as follows: " The term practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."**



Regulatory vs Investigations

■ Regulatory

- ▶ May only authorize LEDPA, economic not a factor.
- ▶ Alternatives identified with less environmental impacts.
- ▶ Public Interest Review
- ▶ NEPA as implemented through 33 CFR 325 Appendix B.

■ General Investigations

- ▶ Alternatives address water resources problems and opportunities
- ▶ Plan with the greatest net economic benefits is normally recommended, though others may be selected
- ▶ Selected plan is consistent with protecting the nation's environment
- ▶ NEPA as implemented through 40 CFR 1500 and ER 200-2-2



Ocean Disposal Third Party



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Ocean Disposal of Dredged Material

- ▶ Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) Section 103.
 - Requires any proposed disposal of dredged material in the ocean waters of the US must be evaluated according to the criteria published by EPA – 40 CFR, Parts 220-228.
 - USACE is the permitting agency.
 - Permits are subject to EPA review and concurrence.



Ocean Disposal of Dredged Material

- Section 103 Permits vs Authorization for Federal Projects
 - ▶ MPRSA Section 103 Permits must comply with permitting regulations at 33 CFR Parts 320-330.
 - ▶ Self authorization for Federal civil works project must comply with 33 CFR 335-338.
 - Requires application of the same criteria,
 - Other factors to be evaluated,
 - The same procedures, and
 - The same requirements that apply to issuance of Section 103 permits.



Ocean Disposal of Dredged Material

▪ Prior to Initiation of Work

- ▶ Sediment Evaluation Testing –
 - Tiered testing approach-Green Book 1991
 - ▷ Biological testing every 5 years per the RIA
 - Sampling & Analysis Plan (SAP) approval
 - Sediment Testing Report approval
- ▶ Coordination letter 6 months prior to advertisement
 - Project description {Plans & Specs (Draft)}
 - Characterization of dredged material from sediment testing results
 - NRC spill reports produced and analyzed
 - Evaluation of Criteria (40 CFR Part 227 & Part 228) for ocean disposal suitability
- ▶ Coordination with Dredge Quality Management (DQM)



Ocean Disposal of Dredged Material

- **During Work**
 - ▶ Daily monitoring of DQM
 - Discuss any anomalies with area office personnel and inform EPA
 - ▶ Receive weekly data from Mobile. Review and analyze data
 - ▶ Send DQM data to EPA weekly for review

- **After Completion of Work**
 - ▶ Notify DQM and EPA that project is complete
 - ▶ After final surveys of ODMDS, send bathymetry data to EPA
 - ▶ Include project quantities and info in District's yearly Ocean Dumping report to ERDC per the London Convention



Alteration of Civil Works Projects (Section 408)



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Section 408

- Section 14 of the Rivers and Harbors Act of 1899.
- Codified in 33 USC 408 (Section 408).
- Review of proposed alteration, occupation, or use of a USACE Civil Works project to determine that the activity will not be injurious to the public interest or affect the project's ability to meet its authorized purpose.



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Section 408 by Business Line

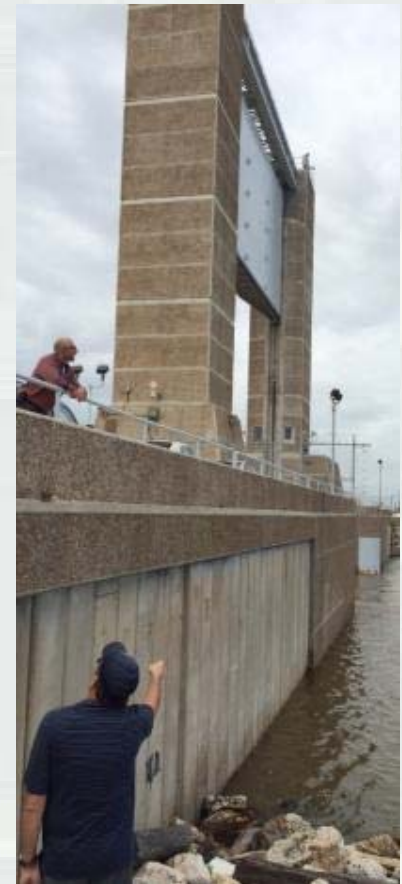
- Flood Risk Management - Proposed alterations to flood control channels and hurricane flood protection levee systems (Examples: pipeline crossings, utility crossings, drilling plans, hike and bike trails, outfalls).
- Navigation – Proposed alterations to navigation channels or dredge material placement areas (Examples: pipeline crossings).
- Assumption of Maintenance – Proposed assumption of maintenance associated with a navigation channel widening and/or deepening.



Section 408 Decision Level

District Commander unless “yes” to any of the following; then Director of Civil Works at UQUSACE.

1. Require a Type II IEPR (for public safety)?
2. Require an EIS in which USACE is the lead?
3. Change in how the USACE project will meet its authorized purpose?
4. Preclude or negatively impact alternatives for a current study?
5. Non-Fed sponsor proposing to undertake as in-kind contribution?
6. Installation for hydropower facilities?
7. Assumption of O&M of navigation alternation (204(f))?



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Section 408 Funding Mechanism

- Funding to process Section 408 requests under the authority of Section 214 of WRDA 2000.
- Memorandum of Agreement with Local Sponsors (or other non-Federal public entities) to accept funding for 408 reviews.



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Assumption of Maintenance (Section 204)



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Assumption of Maintenance (Section 204)

- Section 204(f) of WRDA 1986, as amended.
- Non-Federal project must be approved by the Secretary of the Army prior to the assumption of maintenance.

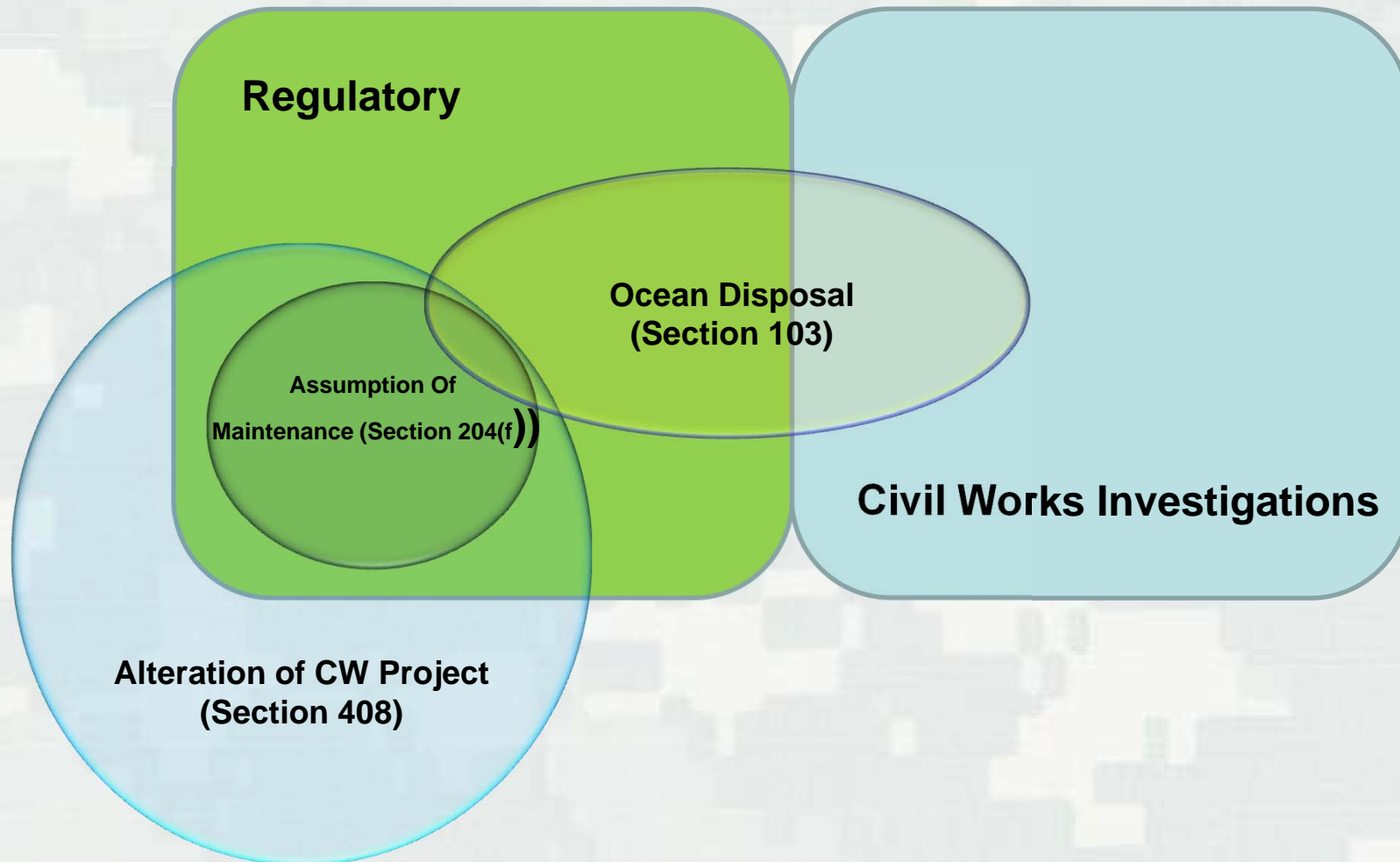


Assumption of Maintenance (Section 204)

- Most closely correlates to the Federal Feasibility Study.
- USACE team acts in an advisory role through QA/QC as well as management of coordination through vertical chain.



Regulatory/Civil Works Relationship



Questions?



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