

**US ARMY  
CORPS OF ENGINEERS  
LITTLE ROCK DISTRICT  
REGULATORY DIVISION**

Sarah Chitwood, PE  
Regulatory Division Chief  
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## Regulatory Program Overview

Permit Types

Mitigation



# REGULATORY PROGRAM OVERVIEW



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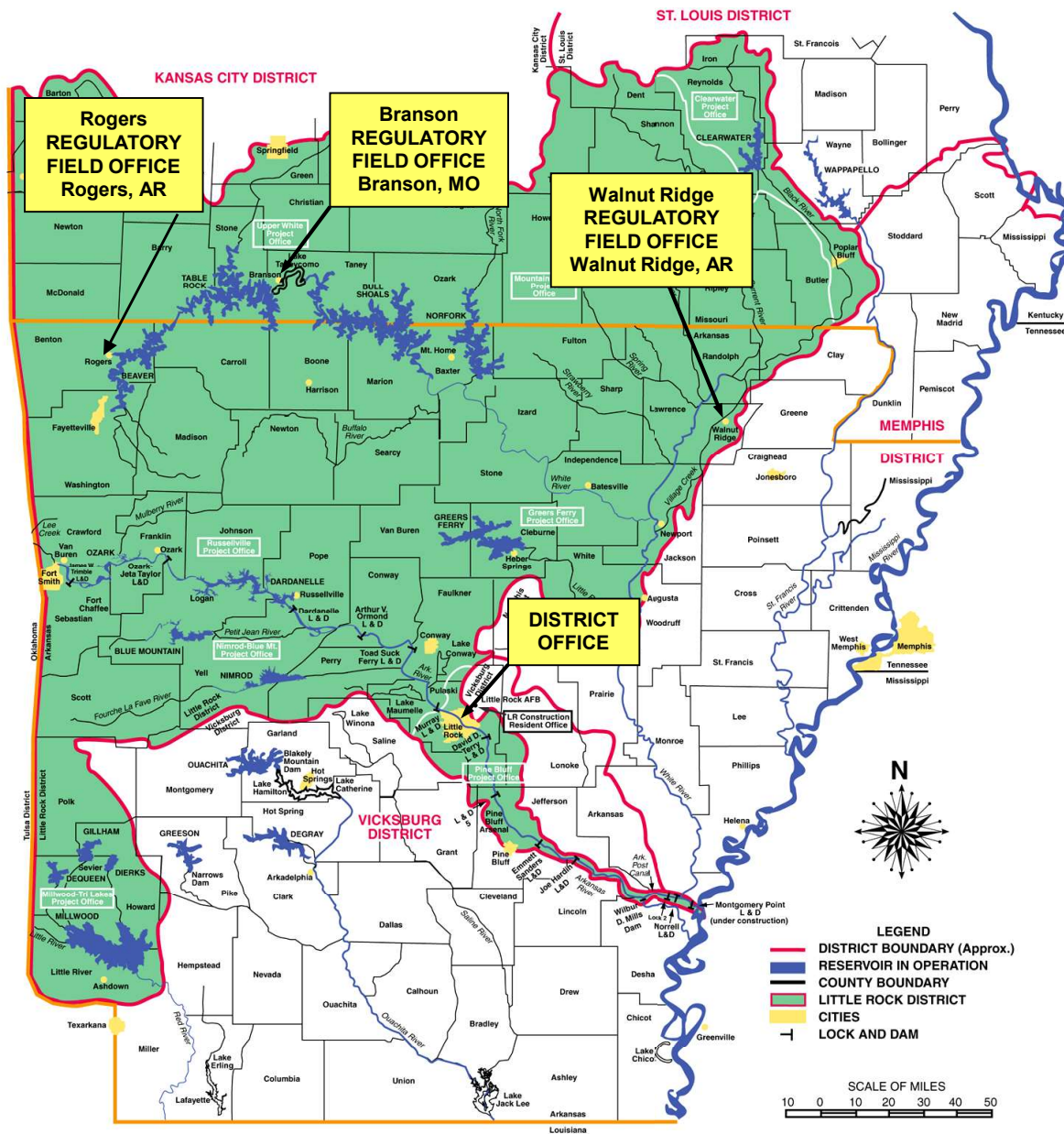


# WHERE WE ARE — U.S. ARMY CORPS OF ENGINEERS



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# Little Rock District Boundary

# REGULATORY PROGRAM MISSION

The Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions.

The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.



# LITTLE ROCK DISTRICT REGULATORY DIVISION

Regulators composed of various disciplines:

- Engineers
- Biologists
- Archeologists
- Foresters
- Environmental scientists
- Regulatory scientists
- Natural resource management
- Wildlife management

Two Branches:

- Evaluation Branch
- Enforcement Branch

Statewide Transportation Program Manager for Arkansas Department of  
Transportation



# REGULATORY PROGRAM AUTHORITIES

## Section 10

of the Rivers and Harbors Act of 1899

## Section 404

of the Clean Water Act





# SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899

Corps regulates the obstruction or alteration of navigable waters

- Constructing structures in, over, under navigable waters
- Excavating / dredging
- Depositing material
- Any other work that affects the course, location, condition, or capacity of navigable waters



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# EXAMPLES OF SOME ACTIVITIES SUBJECT TO SECTION 10

- Loading/Unloading Facilities on the Arkansas River
- Mooring Dolphins
- Floating Boat Docks
- Piers
- Intake Structures
- Dredging



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# SECTION 404 OF THE CLEAN WATER ACT

- Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands.
- Many more waters than those regulated under Section 10 of the RHA.
- Not all aquatic resources are jurisdictional waters of the United States.



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# EXAMPLE SECTION 404 ACTIVITIES

- Filling (building sites, parking lots, etc.)
- Stream Stabilization (riprap, bendway weirs, etc.)
- Utility line crossings
- Mechanical landclearing
- Leveling
- Roads
- Dams



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# RELATED LAWS IMPACTING CORPS REGULATORY PROGRAM

*Section 408 - Section 14 of Rivers and Harbors Act of 1899*

*National Environmental Policy Act*

*Section 7 - Endangered Species Act*

*Section 106 - National Historic Preservation Act*

*Government to Government Consultation with Federally Recognized Tribes*

*Section 401 - Water Quality Certification*



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# PERMIT TYPES



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# TYPES OF PERMITS

- **General Permits**
  - Programmatic
  - Nationwide
  - Regional
- **Standard Permits**
  - Letter of Permission
  - Individual



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# LINEAR TRANSPORTATION PROJECT



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# UTILITY LINE ACTIVITIES (OPEN TRENCHING)



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# RESIDENTIAL AND COMMERCIAL DEVELOPMENT



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# APPLICATION

Standard USACE forms:

ENG Form 4345 – Individual Permits

ENG Form 6042 – Nationwide Permit Preconstruction  
Notification

Basic information needed to begin evaluating application; more  
detail almost always needed for final decision

Electronic submittals (preferred) via a general email box that is  
monitored daily or hardcopy submittals.

<https://www.swl.usace.army.mil/Missions/Regulatory/Applying-for-a-Permit/>



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# MAKING THE PERMIT DECISION

- Issue
- Issue with modifications/special conditions
- Deny – with or without prejudice

\*The applicant can request an administrative appeal for most decisions and/or permit conditions



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# MITIGATION



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# COMPENSATORY MITIGATION

Compensatory mitigation means the restoration, establishment, enhancement, or preservation of aquatic resources to offset unavoidable adverse impacts. (33 C.F.R. 332.2)

Compensatory mitigation is required to replace the loss of wetland and aquatic resource functions and services in the watershed.

- After all avoidance and minimization has been achieved
- Mitigation directly related to the impacts of the proposal, appropriate to the scope and degree of impacts, and reasonably enforceable (33 C.F.R. 320.4(r)(2))



# COMPENSATORY MITIGATION

## Mitigation Sequence

- **Avoid** – Adverse impacts are to be avoided if there is a practicable alternative with less impact.
- **Minimize** – If cannot avoid, minimization of adverse impacts must be taken.
- **Compensate** – Compensatory mitigation is required for unavoidable impacts which remain.
  - Significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment (33 C.F.R. 320.4(r)(2))



# COMPENSATORY MITIGATION

## Compensatory Mitigation Methods (33 C.F.R. 332)

- Restoration – Re-establishment or rehabilitation of an aquatic resource.
  - Re-establishment: creating an aquatic resource where one previously existed
  - Rehabilitation: repairing natural/historic functions to a degraded aquatic resource
  
- Establishment – Creation of an aquatic resource where one did not previously exist.
  
- Enhancement – Heighten, intensify, or improve aquatic resource functions
  
- Preservation – Permanent protection of aquatic resources through legal and physical mechanisms.



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# COMPENSATORY MITIGATION

## Mitigation Rule

- Issued in 2008 by USACE and EPA. (33 C.F.R. 332)
- Intended to promote greater consistency, predictability, and ecological success of mitigation projects.
- Established preference hierarchy: 1) Mitigation bank credits, 2) In-lieu fee (ILF) program credits, 3) Permittee-responsible mitigation
- Established performance standards, timeframes for decision making, and encouraged a watershed approach.
- Establish procedures for mitigation bank and ILF program reviews.



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# COMPENSATORY MITIGATION

## Compensatory Mitigation Options:

- Mitigation Bank – Compensatory mitigation conducted up-front by bank sponsor and, in general, permittees purchase credits from the sponsor
- In-Lieu Fee – Program involving compensatory mitigation through funds paid to a government or non-profit natural resources management entity to satisfy compensatory mitigation requirements.
- Permittee Responsible – Compensatory mitigation undertaken by the permittee
  - Under a watershed approach
  - On-site and in-kind
  - Off-site and/or out-of kind



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# MITIGATION BANKS

- Interagency Review Team
- Regulatory In-lieu Fee and Bank Information System  
RIBITS <https://ribits.ops.usace.army.mil>





***Questions?***

***Little Rock District Corps of Engineers  
Regulatory Division***

***501-324-5295***

***CESWL-Regulatory@usace.army.mil***



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# WANT TO KNOW MORE?

Corps of Engineers Headquarters Home Page:

<https://www.usace.army.mil/>

Little Rock District Corps of Engineers Regulatory Division:

<https://www.swl.usace.army.mil/Missions/Regulatory/>



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