



Clean Water Act News

Regulatory explores options to expedite permit process

Savannah District, Regulatory received \$617,600 in stimulus funds, under the American Recovery and Reinvestment Act (ARRA), to develop and implement different initiatives that create jobs and assist in economic recovery.

In addition to advertising two regulatory project manager positions – one in Savannah and another in Morrow – we have proposed the issuance of several Regional General Permits (RGPs) to streamline the permit process as a way to further the basic goals of the ARRA while also ensuring compliance with the Clean Water Act (CWA) and the National Environmental Policy Act (NEPA).

“Only after we confirm that all required information is submitted in the application and the impacts are under the required thresholds will we complete coordination with the Federal and state agencies, and determine if unavoidable impacts to aquatic resources are minimal. If minimal, we will issue the RGP authorization for the proposed project,” said COL Kertis.

The main objective is to establish an avenue for expediting the review of publicly funded projects while preserving the integrity of our nation’s waters. The proposed RGPs are as follows:

- 105 - Widening or improvement of existing transportation projects;
- 106 - Bridge replacement projects;
- 107 - Construction of institutional facilities such as governmental offices, schools, libraries, and museums; and
- 108 - Construction of infrastructure projects such as water treatment facilities and storm water management facilities.

The proposed process for use of the RGPs will be more rigorous as it requires the applicant to hold a public workshop prior to submission of the application, which is not required under the standard permit process. The proposed process will also require the submission of more up-front information than the current procedures for acceptance of a complete standard permit application.

Applicants will be required to submit,

at a minimum, the following information:

- (1) description of the proposed project;
- (2) determination of waters of the U.S., including wetlands, to be filled by the proposed project;
- (3) statement regarding whether the activity would occur in or adjacent to Georgia 303(d) listed waters;
- (4) analysis of both off-site and on-site alternatives, documenting that aquatic impacts have been avoided and/or minimized to the maximum extent practicable;
- (5) confirmation that the work would be performed in compliance with applicable FEMA requirements, if the project involves fill in the 100-year floodplain;
- (6) wetland/stream mitigation plan that meets the requirements provided in our Mitigation SOP and the requirements of the new Mitigation Rule;
- (7) endangered species survey;
- (8) Phase I Cultural Resources Survey; and
- (9) documentation that at least one public workshop has been held in the vicinity of the proposed project and copies of all comments received at that meeting be submitted to Regulatory.

Additionally, these RGPs may apply only where the proposed discharge of dredged and/or fill material occurs in non-tidal waters of the United States. No more than 5 acres of wetlands and/or 1000 feet of intermittent or perennial stream can be filled for non-linear projects. No more than 10 acres of wetlands and/or 2,000 linear feet of stream over multiple crossings can be filled for linear projects, with a limit of 3 acres of wetlands and/or 500 feet of intermittent or perennial stream for any one crossing/site.

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Under our regulations, we must first issue a public notice (PN) advertising the proposed RGPs and solicit comments from the public and other interested parties. The PN was issued on April 29, 2009 and is available at:



<http://www.sas.usace.army.mil/Regulatory%201.htm>. Issuance of this PN initiated a 30-day public comment period, which ended on May 28, 2009. All comments received in response to the PN have been made a part of the permanent record for the proposed RGPs and will be considered in our evaluation. We are also planning to conduct a public workshop in the Macon area at the end of July. Comments received at the workshop will also be included in our evaluation and record.

Following, a case document and environmental assessment (EA) will be prepared. This document will include an evaluation of the potential environmental impacts associated with projects that may be authorized by the proposed RGPs and a public interest determination. Upon completion of the document, we will make a final determination with regard to the anticipated individual and cumulative aquatic impacts that would be expected to result from potential issuance of the RGPs for this region.

“The proposed RGPs are not intended to replace, supersede or increase the scope of any existing Nationwide Permits (NWPs),” said COL Kertis. The proposed RGPs are intended to facilitate the expedited review of certain categories of publicly funded projects for a two-year period, while the ARRA is in effect. The CWA allows us to potentially authorize these activities under an RGP as long as the projects authorized by that RGP have minimal impacts, individually and cumulatively.

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Regulatory Overview

The United States Army Corps of Engineers (USACE) Regulatory Program has been regulating specific activities within our nation's waters since 1899. First, we had the authority to regulate only navigable waters, and in the 1970s our jurisdiction expanded to include all waters of the United States (US). We have authority to regulate:

Transportation of dredged material for the purpose of ocean disposal



Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972

Discharges of dredged or fill material into waters of the US



Section 404 of the CWA of 1972

Structures or work in or affecting navigable waters of the US



Section 10 of the RHA of 1899

In the State of Georgia, there are 59,000 square miles of land, with 25,000 linear miles of waters and 5.5 million acres of wetland. The Savannah District is responsible for overseeing all Federal regulatory actions in Georgia. We have 35 staff members located across the state. Our main office is located in Savannah, and our field offices are in Albany, Buford and Morrow. It is estimated that our program affects more than \$6.2 billion of construction work annually.

What waters are jurisdictional? In accordance with the latest guidance regarding the Supreme Court decision in *Rapanos and Carabell* [2006] and the 11th Circuit Court decision in *McWane* [2007], the following waters are jurisdictional:

- Traditional navigable waters (TNWs) and wetlands adjacent to those waters;
- Tributaries to TNWs and wetlands adjacent to those waters that have a demonstrated significant nexus with that TNW;
- All interstate waters including interstate wetlands;
- All impoundments of waters otherwise defined as waters of the US; and
- All other waters that have a demonstrated nexus to interstate or foreign commerce.

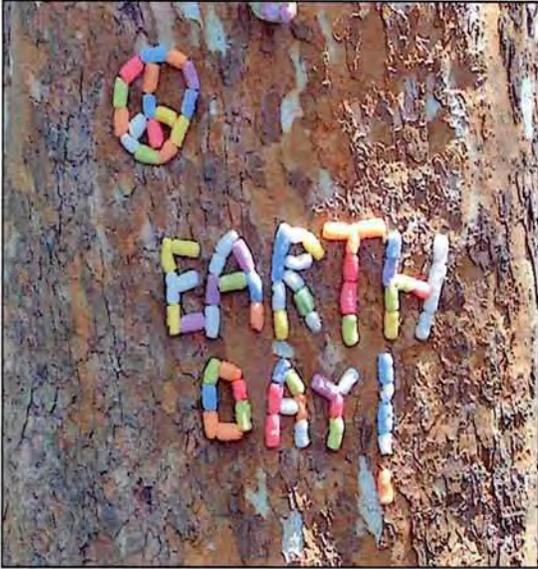
Wetlands are defined as those areas inundated or saturated by surface or groundwater at a frequency sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands can be classified using the 1987 Wetland Delineation Manual or a Regional Supplement to the Manual. The coastal plain is covered in the Atlantic and Gulf Coastal Plain Regional Supplement, which is available at <http://el.erdc.usace.army.mil/elpubs/pdf/trelo8-30.pdf>. The Piedmont and mountains will be addressed in the Eastern Mountains and Piedmont Regional Supplement, which should be available next fall. Additional information is available at http://www.usace.army.mil/CECW/Pages/reg_supp.aspx.

Is an approved jurisdictional determination (JD) required? No, we encourage applicants to use our new expanded preliminary JD form, which indicates that all waters on the site may be jurisdictional. Where the applicant provides a formal survey or GPS exhibit identifying all onsite waters, including wetlands, we will verify the delineation and use that delineation to support the application and permit process. We have specifically developed this JD form to reduce the time associated with the processing of an approved JD while ensuring that we still provide defensibility, certainty and transparency. Furthermore, if a request is submitted without stating what type of JD should be performed, we will process the request as an expanded preliminary JD. Expanded preliminary JDs are not appealable actions. To appeal a JD, you must first request, in writing, that an approved JD be performed for the site. Then, you may appeal the approved JD. Additional guidance is available at: <http://www.sas.usace.army.mil/News.htm>

Permits: what are my options? For minor discharges that result in minimal impacts on aquatic resources, work typically can be covered under a general permit, including nationwide and regional permits. Some work (e.g., dock repairs/enhancements) can be covered under a letter of permission, where impacts are minimal and the project is noncontroversial. Other projects that may be controversial and result in moderate to high impacts on aquatic resources would require a standard individual permit. General permits can be processed usually in 45-60 days, whereas an individual permit could be processed in 120 days.

What type of mitigation can be completed to support a permit action? In accordance with Army/EPA Mitigation Rule (2007), general mitigation preferences for DA permitted projects are as follows: (1) USACE-approved banks, (2) in-lieu fee programs, and (3) site specific mitigation. Mitigation requirements are outlined at: http://www.usace.army.mil/CECW/Pages/final_cmr.aspx. Additional local guidance for establishing and operating banks and establishing in-lieu fee programs will be available soon at: <http://www.sas.usace.army.mil/Banking.htm>

Regulatory Celebrates Earth Day 2009



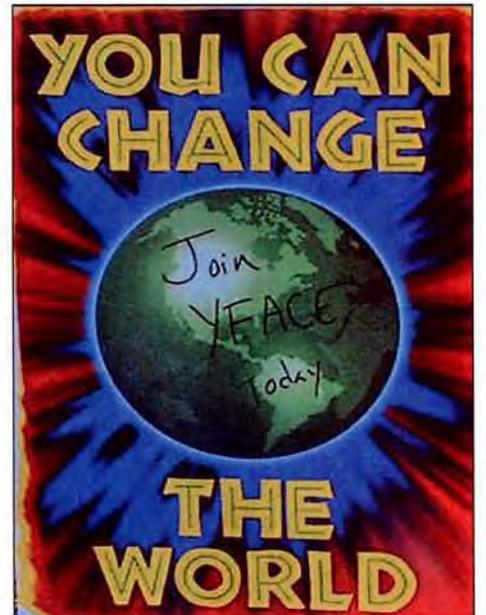
Stan Knight & Iris Wynn represent Regulatory at GSU



Regulatory's own Mark Padgett, Sarah Von Waldner & Katie Knowles



COL Kertis enjoying the day out of the office



District Offices

ALBANY FIELD OFFICE

1104 N. WESTOVER BLVD UNIT 9
ALBANY, GA 31707
1-229-430-8566/67

SAVANNAH DISTRICT OFFICE

COASTAL BRANCH OFFICE

ATTN: CESAS-RD
100 W. OGLETHORPE AVE
P.O. Box 889
SAVANNAH, GA 31402
1-800-448-2402

LANIER FIELD OFFICE

ATTN: CESAS-RD-P
P.O. Box 528
BUFORD, GA 30515
1-770-904-2365

PIEDMONT BRANCH OFFICE

ATTN: CESAS-RD-P
1590 ADAMSON PARKWAY, SUITE 200
MORROW, GA 30260
1-678-422-2731

Piedmont Branch, Lanier Field Office
Buford, Georgia

Piedmont Branch Office
Morrow, Georgia

Legend

Piedmont Branch
Coastal Branch



Do you know your Regulatory Staff?

David Crosby was born in Hampton, SC. He graduated from Clemson University in 1982 with a B.S. in Economic Zoology. David has been working for the Savannah District since 1979.

He began his career in a Cooperative Education position as a Fisheries Biologist Assistant at J. Strom Thurmond Lake. In 1982 David moved to a Biologist position in Regulatory and remained in this position until 1989. From 1989 until 1992 David served as a Biologist in Planning Division working on Federal Civil Works Projects such as Savannah Harbor Deepening. In 1993 David returned to Regulatory as Chief of the Central Section. David served in this capacity until 2001 when he assumed the position of Lead Biologist, where he was involved in most of the more complex projects and policy issues as a technical advisor. In 2004 David received the Don Lawyer Award. He was selected as the Chief of the Multipurpose Management Branch in 2006 where he still serves today. In this position David supervises 6 team members that provide technical and administrative support to the Division, manages the budget, and provides technical advice on policy issues. He also serves as the Deputy Chief of the Regulatory Division.



David Crosby has been married for 28 years and has two sons, one in college and the other is married. David finds the most enjoyable part the job to be the interaction with his coworkers, agencies, and the public. He especially enjoys negotiating resolution of complex issues attempting to reach a win-win compromise that moves the program or project forward in an environmentally sustainable fashion.