

U.S. Army Corps of Engineers Regulatory Role in Activities Associated with Oil and Natural Gas Production and Distribution

U.S. ARMY CORPS OF ENGINEERS

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U.S. Army Corps of Engineers Regulatory Role:

The U.S. Army Corps of Engineers (USACE), Buffalo District, Regulatory Branch, geographical boundaries include western and central New York and the northern portion of Ohio (see map below). The purpose of this Fact Sheet is to provide information to the public on the USACE Regulatory role in activities associated with oil and natural gas production and distribution.

Since its early history, the USACE has played an important role in the development of the nation's water resources. An important part of our mission today is the protection of the nation's waterways and wetlands through the administration of the USACE Regulatory Program.

Under Section 404 of the Clean Water Act (33 USC 1344) (CWA), the USACE regulates the discharge of dredged or fill material into Waters of the United States (WOUS), including lakes, rivers, streams and their adjacent wetlands. Under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) (RHA), the USACE has regulatory authority over construction, excavation, or deposition of materials in, over, or under navigable WOUS.



Activities Associated with Oil and Natural Gas Production and Distribution:

Many of the activities associated with oil and natural gas production and distribution could include impacts to aquatic resources that would require authorization from the USACE prior to initiating work. Regulated impacts to aquatic resources from these activities would include the placement of dredged or fill material within WOUS associated with, but not limited to, construction of utility line crossings, roadways including upgrades, distribution pipelines, well pads, water impoundments, and intake and outfall structures. Work in, over, or under navigable WOUS requires authorization regardless of whether it involves the placement of dredge or fill material.

The USACE does not regulate subsurface drilling or hydraulic fracturing operations, unless the operation is beneath navigable waters or involves a discharge of fill such as drilling mud in a WOUS. Likewise USACE has no jurisdiction over the treatment and discharge of effluents associated with the operation such as wastewater.

Section 10 of the Rivers and Harbors Act:

The USACE is directed by Congress under the RHA to regulate all work or structures in, over or under navigable WOUS, that affect the course, condition or capacity of those waters. The intent of this law is to protect the navigable capacity of WOUS important to interstate commerce.

Navigable WOUS are defined in 33 CFR 329 as 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. The Buffalo District maintains a list of navigable WOUS within their regulatory boundaries and is available on our website: <http://www.lrb.usace.army.mil/regulatory/>, under District Information.

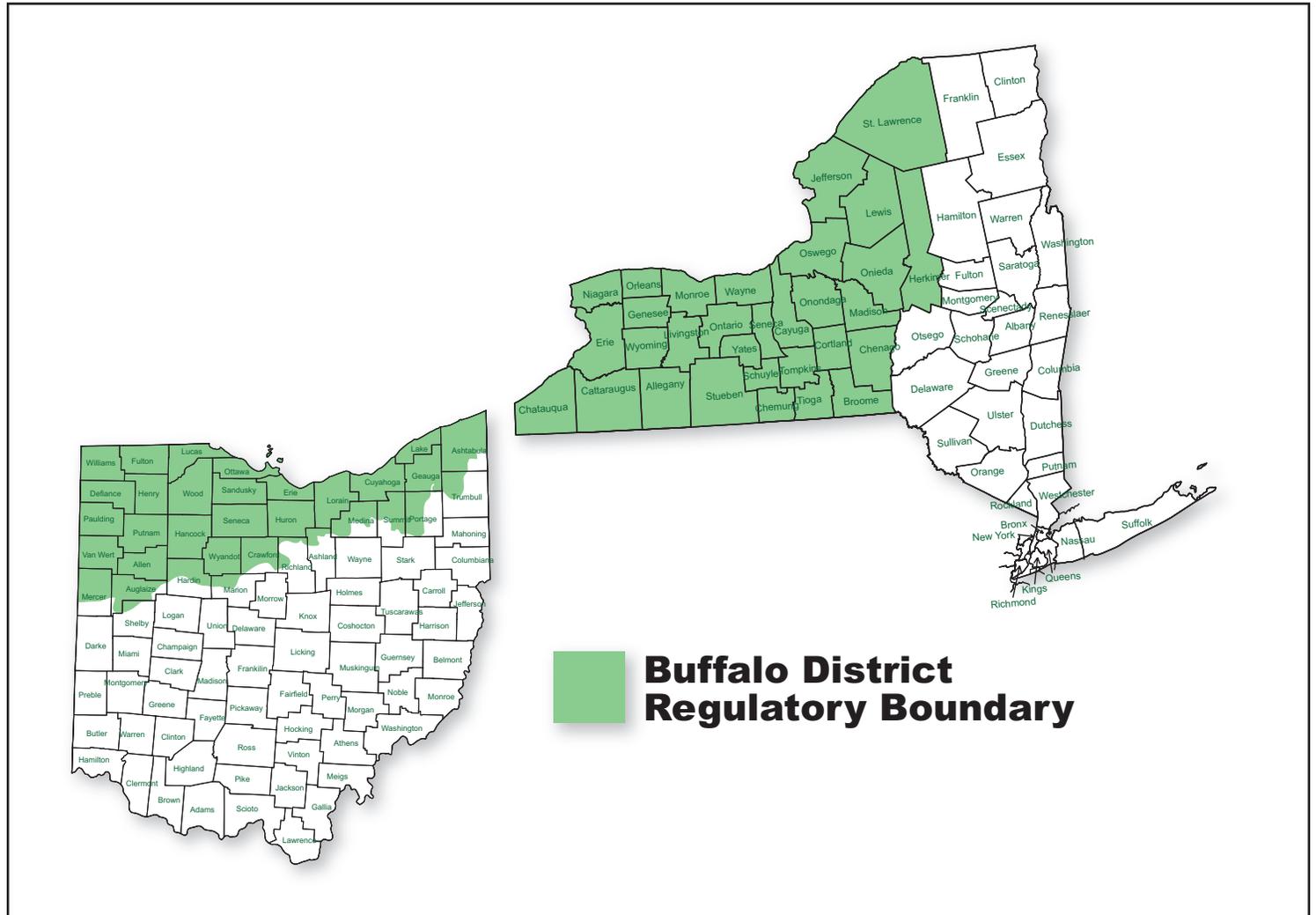
Section 404 of the Clean Water Act:

The USACE is directed by Congress under the CWA to regulate the discharge of dredged or fill material into all WOUS, including wetlands. The intent of the law is to restore and maintain the chemical, physical and biological integrity of the nation's waters through control of the discharge of dredged or fill material.

WOUS are defined in 33 CFR 328 and may include lakes, rivers, streams (ephemeral, intermittent, perennial), mudflats, vegetated shallows, ditches, ponds, and wetlands. While some rivers, streams, lakes and wetlands are clearly jurisdictional WOUS, in many instances, the determination of whether an aquatic resource is a WOUS can only be made after a site-specific analysis.

Wetlands are identified using the criteria described in the USACE 1987 Wetland Delineation Manual and any applicable Regional Supplement to the 1987 Wetland Delineation Manual. There are three regional supplements in use within the Buffalo District regulatory boundary in New York and Ohio. A copy of the 1987 Wetland Delineation Manual and a list of Regional Supplements can be accessed from the following website: http://www.usace.army.mil/CECW/Pages/reg_supp.aspx

The Buffalo District strongly advises that any prospective party associated with oil and natural gas production or distribution within the Buffalo District contact the appropriate staff as early as possible in the planning process to discuss the proposal and potential permit requirements (see staff list below). Requesting a pre-application meeting with the appropriate staff is the ideal means of obtaining preliminary feedback on proposed projects.



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