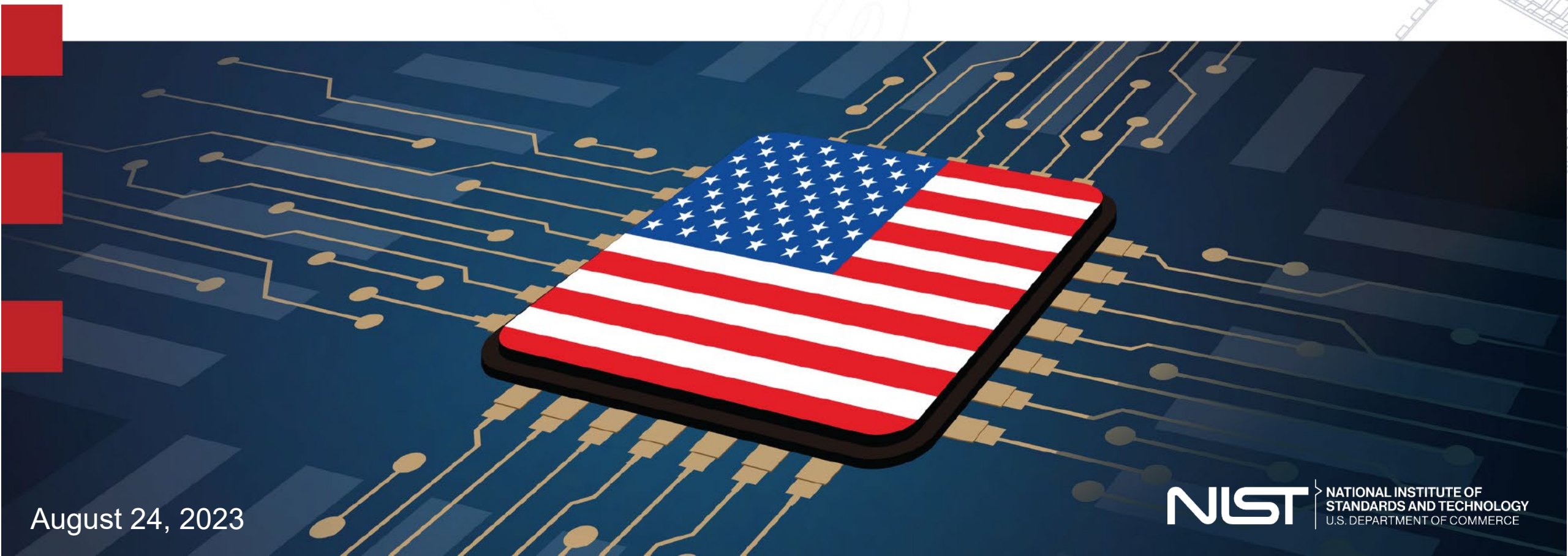


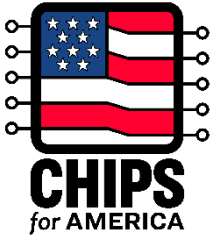
# CHIPS for America

## Overview of Clean Water Act Section 404 Permitting



August 24, 2023

# Today's Speakers



**Komal "Komie" Jain**  
Director, Environmental  
Division



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Lead Project Manager  
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# USACE REGULATORY

Overview of Section 404 and Section 10 Permitting

Presented to CHIPS for America, Department of Commerce

August 24, 2023



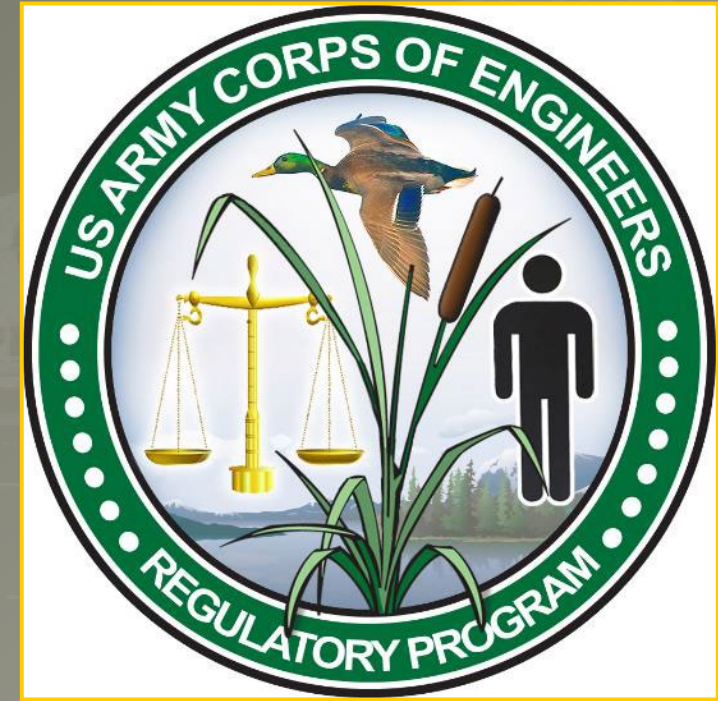
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# REGULATORY PROGRAM MISSION

Mission: To protect the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced permit decisions

Mission End State: Balanced, timely, predictable, consistent, and transparent regulatory decisions, rooted in sound science and compliant with applicable laws



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# REGULATORY PROGRAM ORGANIZATION

**Decentralized Organization:** USACE Regulatory Program execution is focused at the District level, with policy oversight at higher levels (Division, Headquarters). Permit decision-making occurs in Districts.

- Military Leadership & mostly civilian staff
- 38 USACE Districts within 8 USACE Divisions
- Corps Regulatory and Civil Works district boundaries may be different in some districts
- USACE District Regulatory Office Locator Map: <https://regulatory.ops.usace.army.mil/offices/>



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# RELEVANT STATUTORY AUTHORITIES

**Section 10 of the Rivers and Harbors Act of 1899:** Structures or work in or affecting navigable waters of the United States.

**Navigable waters of the United States** are waters subject to the ebb and flow of the tide and/or are presently used, have been used, or may be used to transport interstate or foreign commerce.

**Section 404 of the Clean Water Act:** Discharges of dredged or fill material into waters of the United States.

**Waters of the United States** may include:

- Tidal waters, the territorial seas, and navigable waters of the United States
- Interstate waters, including interstate wetlands - cross national or state lines
- Intrastate lakes and ponds under certain circumstances
- Impoundments of waters of the United States
- Tributaries
- Wetlands

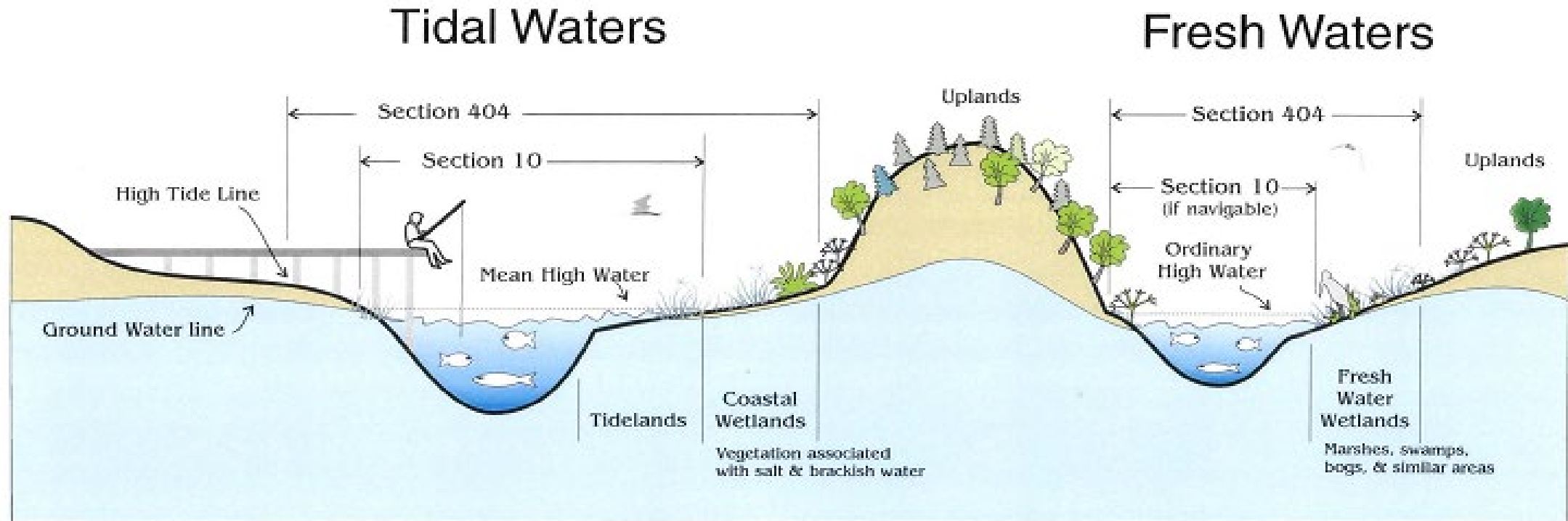


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# GEOGRAPHIC SCOPE OF WATERS OF THE U.S.

Jurisdictional Determinations: Used to determine the geographic areas that are subject to regulation under Section 10 and/or Section 404.



## Section 10

All Structures and Work  
(navigable waters)

Dredging, marinas, piers, wharves,  
floats, intake / outtake pipes,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.

## Section 404

Disposal of Dredged or Fill Material  
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

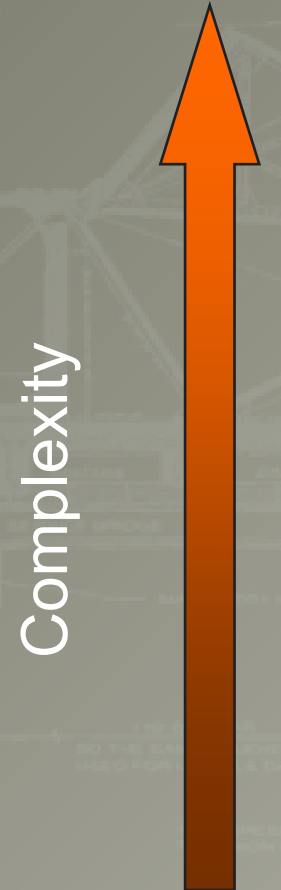
# TYPES OF USACE PERMITS

## Individual Permits

- Standard Permits:  
Most lengthy process; for reviews with more than minimal impacts to the environment
- Letters of Permission (LOP):  
Can authorize projects with minor impacts; LOPs are categorically excluded from NEPA (404 CWA LOPs are district-specific)

## General Permits

- Streamlined authorization process for categories of activities that are similar in nature with no more than minimal adverse environmental effects
- Issued for no more than 5 years
- Nationwide Permits, Regional General Permits, & Programmatic General Permits



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# LEVEL OF COMPLEXITY

## Individual Permits

- Standard Permits:
  - Public Notice, NEPA, 404(b)(1) Guidelines analysis (if 404 CWA authorization is required), Public Interest Review, Alternatives Analysis, Cumulative Effects analysis required for each permit review
- Letters of Permission (LOP):
  - Coordination with state/Federal fish & wildlife agencies; Public Interest Review, 404(b)(1) Guidelines analysis (if a 404 CWA LOP) required for each permit review

## General Permits

Public notice, NEPA, 404(b)(1) Guidelines analysis, Public Interest Review, Alternatives Analysis, Cumulative Effects analysis completed up front when the general permit is developed by Corps HQ or a Corps District, allowing for a streamlined review process

- Nationwide Permits:
  - Issued nationally by Corps HQ with general conditions; may have regional conditions
- Regional General Permits & Programmatic General Permits:
  - Issued by districts with conditions that vary by district

Complexity



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# NATIONWIDE PERMITS (NWP)

NWPs authorize categories of activities that are similar in nature with no more than minimal adverse environmental effects. When reporting is required by terms & conditions of the NWP, there is a streamlined review process for NWP applications (called “preconstruction notifications” or PCNs).

Currently 57 different activity-specific NWPs.

Built-in, consistent processes for protection of water resources, endangered species, Tribal interests, and historic properties.

## Multiple layers of Conditions

1. National General Conditions
2. NWP specific Conditions
3. Regional Conditions (varies by District)
4. Special Conditions on case-by-case review of “PCN”



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# OTHER FEDERAL REQUIREMENTS THAT MAY APPLY

Section 106, National Historic Preservation Act

Section 7, Endangered Species Act

Magnuson-Stevens Fishery Conservation Management Act (EFH)

Tribal Trust responsibilities

Section 401 Clean Water Act

Coastal Zone Management Act

2008 Federal Mitigation Rule

National Environmental Policy Act

Wild and Scenic Rivers Act

33 U.S.C 408



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# OTHER USACE REQUIREMENTS THAT MAY APPLY

**Real Estate:** SF-299 for Easements on Federal Lands and Property

**Civil Works:** Section 14 of the Rivers and Harbors Act (33 U.S.C. Section 408), for alterations or use of Corps Civil Works Projects (e.g., levees, navigation channel, flood control projects, etc.); when both a Section 408 permission and a Corps Regulatory permit are required, the Section 408 review must be completed before the Corps Regulatory Program can issue a permit.



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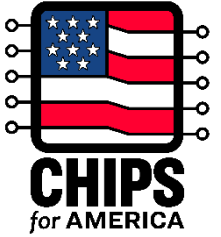
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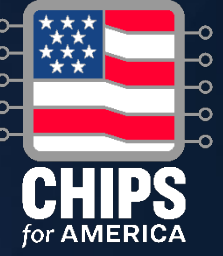
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# Next Steps

- Visit [CHIPS.gov](https://chips.gov) for resources, including:
  - Applicant guides and templates
  - FAQs and fact sheets
- Register for future webinars
  - **August 28:** National Pollution Discharge Elimination System Permitting with EPA
- Join our mailing list
- Contact us
  - [askchips@chips.gov](mailto:askchips@chips.gov) – General inquiries
  - [apply@chips.gov](mailto:apply@chips.gov) – Application-related inquiries



Questions



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**Thank you**