



US Army Corps  
of Engineers®  
Seattle District

# CLEAN WATER ACT and RIVERS and HARBORS ACT

## Extracts and Definitions

---



EXTRACTS from the Clean Water Act:

1. SECTION 404

(a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator of the Environmental Protection Agency (Administrator), in conjunction with the Secretary of the Army, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impacts of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

2. SECTION 301

This section prohibits the discharge of any pollutant including fill or dredged material except as in compliance with various sections of the Clean Water Act, including Section 404.

3. SECTION 307

The Administrator shall publish a list of toxic pollutants. Each toxic pollutant shall be subject to effluent standards (which may include a prohibition). Under this section it is unlawful to violate any such effluent standards or prohibition.

4. SECTION 309

This section provides that any person who willfully or negligently violates the provisions of this Act may be punished by a fine of not less than \$2,500 or more than \$37,500 per day of violation or by imprisonment for not more than one year or by both. In addition, any person violating this Act may be subject to a civil penalty of not more than \$37,500 per day of violation.

## DEFINITIONS regarding the Clean Water Act:

The term "**wetlands**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The Corps of Engineers has the responsibility for determining whether a specific wetland area is within Section 404 jurisdiction.

The term "**adjacent**" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by manmade dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."

The term "**discharge of dredged material**" means the addition, including redeposition, of dredged material, runoff from a contained land or water disposal area, and any addition, including redeposition, of excavated material. These activities include mechanized landclearing, grading, filling in low areas, sidecasting of excavated material from new ditching work, and other placement of excavated material into waters of the United States, including wetlands.

The term "**discharge of fill material**" means the addition of fill material used for the primary effect of replacing any portion of a water of the U.S. with dry land or of changing the bottom elevation of a water of the U.S., including wetlands. The placement of pilings constitutes a discharge of fill material when such placement has or would have the effect of a discharge of fill material.

The term "**ordinary high water mark**" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

EXTRACTS from the Rivers and Harbors Act of March 3, 1899:

1. SECTION 10

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same. (30 Stat. 1151; 33 U.S.C. 403)

2. SECTION 12

This section states that every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this Act, or any rule or regulations made by the Secretary of War in pursuance of the provisions of the said section eleven, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any circuit court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. (30 Stat. 1151; 33 U.S.C. 406)

A 1984 amendment to Federal criminal law established a fine increase up to \$100,000 for all criminal misdemeanors.