

# WILMINGTON DISTRICT US ARMY CORPS OF ENGINEERS REGULATORY DIVISION



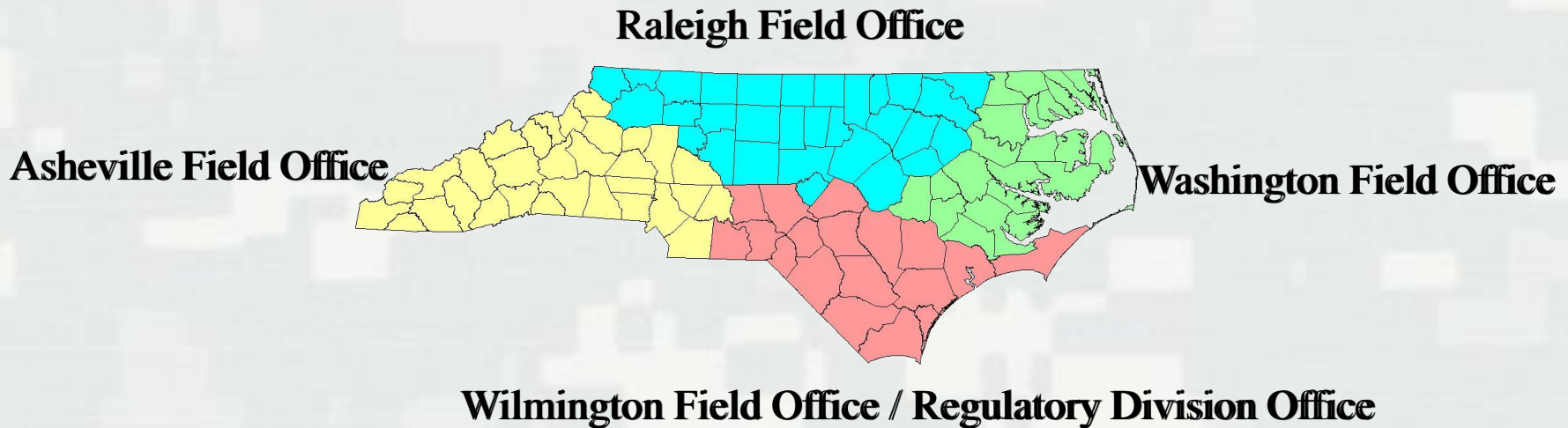
US Army Corps of Engineers  
**BUILDING STRONG®**



Wilmington  
District

# Organization

The Wilmington District Regulatory Division consists of 4 field offices in Wilmington, Washington, Raleigh and Asheville. The Regulatory Division has approximately 54 employees and an annual budget of \$7.03M.



# Authorities

- **Rivers and Harbors Act of 1899**

- Section 10 of the Rivers and Harbors Act of 1899 gives the authority to the Corps to ensure that there are no obstructions to the navigable waters of the United States. Regulated activities include construction of piers, jetties, and weirs; dredging projects; and other such projects

- Clean Water Act (1972)** – Purpose is to restore and maintain the chemical, physical, and biological integrity of the Nations waters.

- Regulated activities include discharges of dredged or fill material into waters, including streams and wetlands, of the United States.



# Individual or Standard Permit

- ▶ Requires 30-day Public Notice and opportunity for public comment
- ▶ Coordination with the review agencies
- ▶ Project specific NEPA document with Public Interest evaluation
- ▶ Typically for impacts greater than 0.5 ac of wetlands or 300lf of stream
- In accordance with the 404 (b) 1 Guidelines can only permit the Least Environmentally Damaging Practicable Alternative (LEDPA)





# Requirements

## ► Sequencing

- Applicants must avoid the impact to the maximum extent practicable\*, minimize remaining impacts, and provide compensatory mitigation for the remaining unavoidable impacts.

\*Practicable refers capable of being done given cost, logistics, and existing technology



# Nationwide Permits

- Re-Issued by Congress every 5 years
- A total of 52 activity specific permits
- Primarily limited to impacts <0.5 ac. of wetlands and <300 lf of stream
- Must comply with all general conditions and any regional conditions imposed by the District Engineer



# Regional General Permits

- ▶ Issued by the District for use in NC only
- ▶ Have been using SPGP 291 since 1980 to coordinate activities in the coastal counties with the NC Division of Coastal Management
  - Facilitates the State and Federal review of activities conducted in the coastal area of NC



# Other Program Requirements

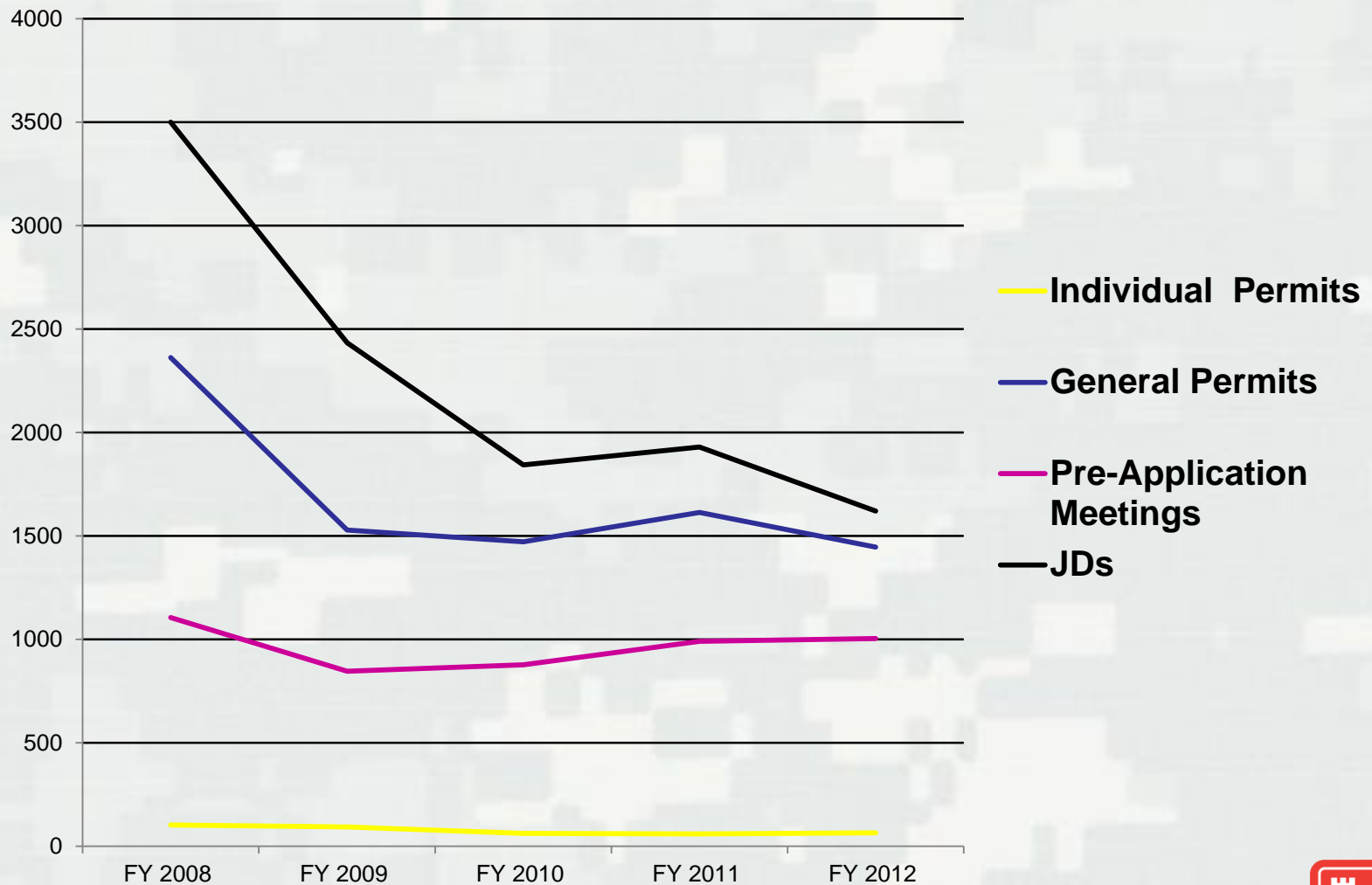
The Regulatory Division, in making permit decisions, must not only follow the procedures of the Rivers and Harbors Act and the Clean Water Act but must also ensure compliance with many other Laws including:

- Section 103 of the MPRSA
- Section 401, Clean Water Act
- Section 7, Endangered Species Act
- Coastal Zone Management Act
- National Environmental Policy Act (NEPA)
- Fish and Wildlife Coordination Act
- Section 106, National Historic Preservation Act





# Workload Trends



# Mitigation

- Three options available to the public
  - ▶ Permittee Responsible, Banks, In-Lieu-Fee program
  - ▶ Corps does not dictate the source – applicants make proposal and Corps determines if it is sufficient
  - ▶ Determined on a permit by permit basis – most impacts require some form of compensatory mitigation



# Mitigation

- Basic Requirements
  - ▶ Performed during or prior to the regulated activity
  - ▶ Must be preserved in perpetuity
  - ▶ Must be In-Kind
  - ▶ Must be performed within the same 8-HUC unless otherwise approved



# Mitigation

- The cost of compensatory mitigation credits is determined by the sponsor of a mitigation bank or in-lieu fee program.
- Section 332.8(o)(5)(ii) [§ 230.98(o)(5)(ii)] requires in-lieu fee programs to use full cost accounting methods, so that the cost per unit credit includes the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources in the service area.
- This provision is intended to ensure that in lieu fee programs develop realistic price schedules, while still leaving determination of credit prices to the program sponsor, rather than the Corps.



# 404 Program Transfer to the States

## (40 CFR Part 233)

- Under Section 404(g) of the Clean Water Act, Congress gave the States/Tribes the authority to administer individual and general permit program for the discharge of dredged or fill material into waters within their jurisdiction under State law or under an interstate compact.
- EPA has final approval authority for program transfer of CWA Section 404 jurisdiction and will coordinate with the Corps, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service during the process.
- While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose.





# 404 Program Transfer to the States

- The State must show that their program would cover all waters they are eligible to assume, that it would regulate at least the same activities, that it would provide for sufficient public participation, that it would ensure compliance with the Section 404(b)(1) guidelines, and that it would have adequate enforcement authority.
- Corps retains 404 authority in navigable waters and wetlands adjacent to those waters.
- There are only two States that currently have assumed the CWA Section 404 authority, Michigan and New Jersey.



# Partnerships

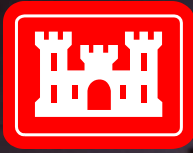
- Merger Process established between USACE, NC DOT, NC DENR, and FHWA
  - ▶ Integrates NEPA and 404 requirements to facilitate transportation planning
- Agreement between USACE, NC DENR, NC DCM to establish the In-Lieu- Fee program
  - ▶ Model for the nation, provides advanced mitigation for most NC DOT impacts and provides compensatory mitigation to the private sector in all 54 8 HUCs



# Conclusions

- The Wilmington District is proud of the relationship it has with NC DOT, NC DENR, and NC EEP
- Regardless of state assumption, the Corps will always retain permit authority in tidal waters, navigable waters, and wetlands adjacent to those waters
- The committee should carefully consider any recommendation that could potentially conflict with the Corps statutory requirements under the Clean Water Act





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