

**US Army Corps of Engineers
Regulatory Program Sacramento
District:
Section 10 and Section 404
DWR Regulatory Workshop Series**

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



Overview

- Corps Authority under these two laws
- History of the Rivers and Harbors Act of 1899
- History of the Clean Water Act and Amendments 1972
- Section 10 and Section 404 Waters defined
- Questions



Authorities

- Section 404 of the Clean Water Act

“Discharge of dredged or fill material into waters of the United States, including wetlands”

- Section 10 of the Rivers and Harbors Act of 1899

“Work or structures in or affecting navigable waters”

- Regulations: 33 CFR 320-332



Section 10 of the Rivers and Harbors Act

Section 10 of the Rivers and Harbors Appropriation Act of 1899

33 U.S.C. 403. Construction of bridges, causeways, dams or dikes generally;
exemptions

That 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 or 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 enclosure 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.



Rivers and Harbors Act

The Rivers and Harbors Act is the oldest environmental law in the United States

- Enacted March 3, 1899
- The act made it a misdemeanor to discharge refuse material into navigable waters



Section 10 Authority

- Under Section 10 the Corps regulates structures and work in, over and under navigable waters of the United States.
- Structures such as:
 - ▶ Piers
 - ▶ Boat docks
 - ▶ Bridges (the Coast Guard takes jurisdiction over some structures under Section 9 of the Act and under the Bridge Act of 1946)



Section 10 Authority

- Under Section 10 the Corps regulates work in navigable waters such as:
 - ▶ Dredging
 - ▶ Pile driving
 - ▶ Dewater and falsework construction



Structures in Section 10 Waters



Activities such as pile driving



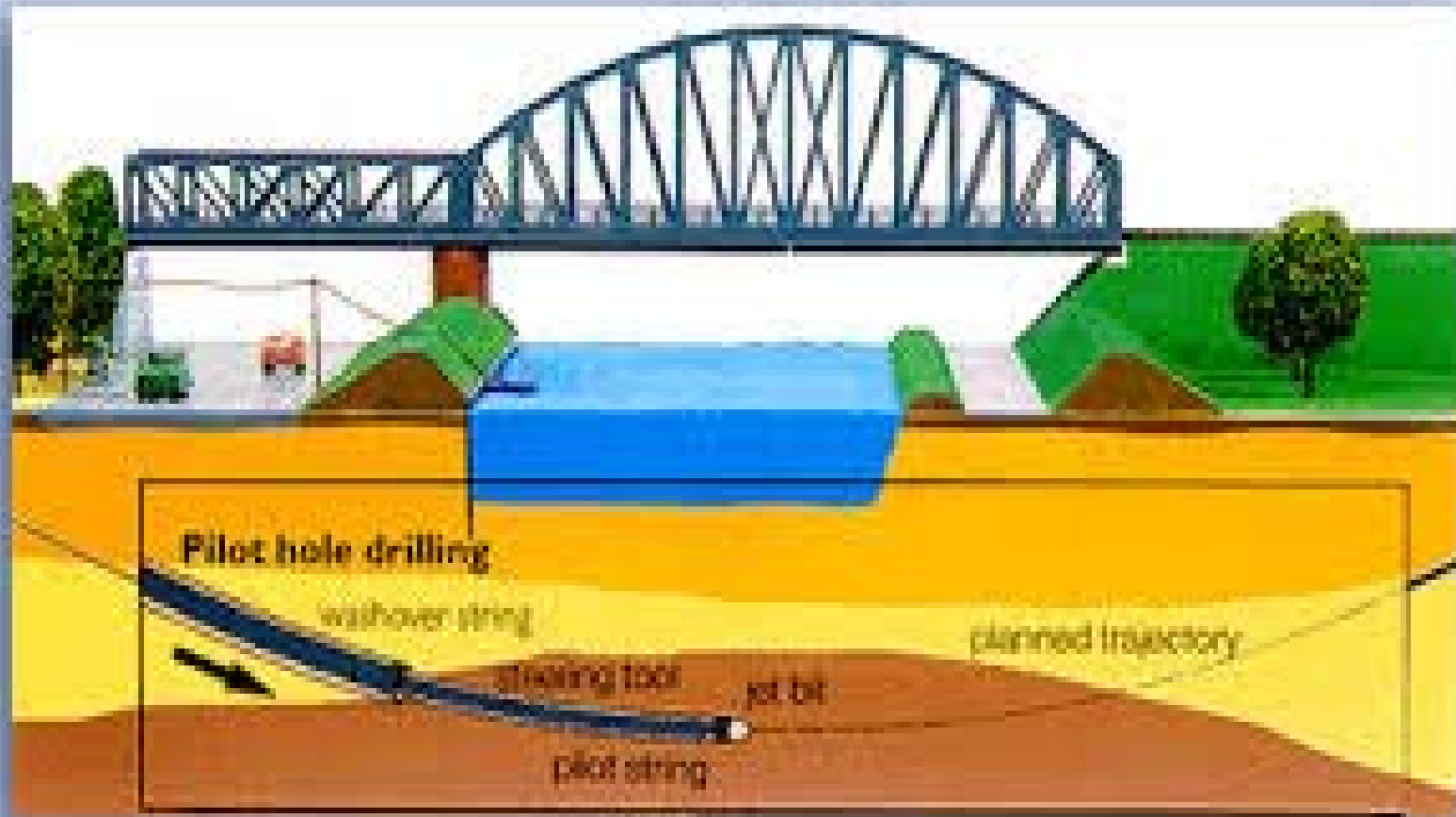
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Section 10 Authority

- Utility Crossings of Section 10 waterways also require permitting by the Corps.
- Examples:
 - ▶ Water and gas lines including those which are directional bored under streambeds
 - ▶ Overwater electrical power lines



Directional Boring



1933- U.S. ex rel. Greathouse et al v.Dern

- Corps denies Section 10 permit based on reason other than navigation
- Plaintiff applied to the Army Corps to construct a wharf in the Potomac River. The site was situated in the path of the proposed George Washington Parkway.
- The Corps denied the permit on the grounds of additional cost to the government to construct the GW Parkway



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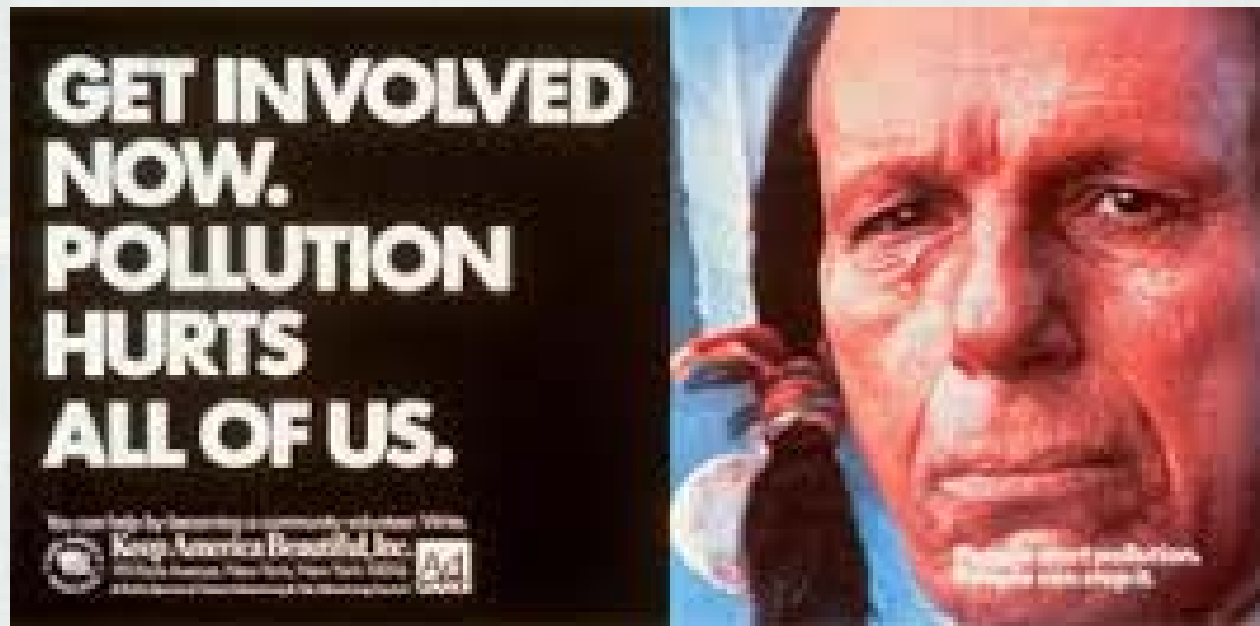
Other Environmental/Preservation Laws/Lawsuits/Social Events

- 1955 Fish and Wildlife Coordination Act
- 1968 Zabel vs. Tabb-Public Interest Review is born
- 1969 National Environmental Policy Act
- 1970 Clean Air Act
- 1970 First Earth Day
- 1972 Clean Water Act
- 1973 Endangered Species Act



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Environmental Activism of the 1960s and 70s resulted in new legislation



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Federal Water Pollution Control Act of 1972 (AKA Clean Water Act)

- Timeline (PBS Troubled Waters A Brief History of the Clean Water Act)
- 1968 Chesapeake Bay fisheries losing \$ 3 million annually
- DDT levels in some fish nine times FDA limit



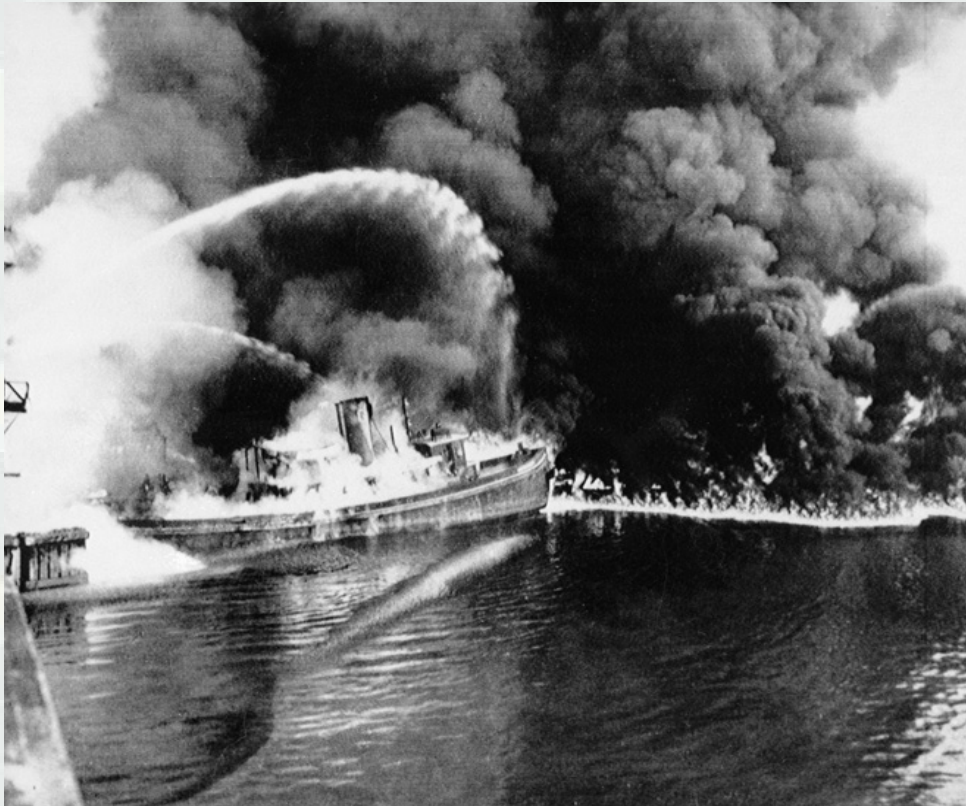
Timeline

- 1969 bacterial levels in Hudson River
- Record number of Fish Kills (over 41 million)
- Cuyahoga River catches fire (not for the first time)
- 1970 Bureau of Water Hygiene reports 30% of drinking water samples had chemical levels exceeding Public Health Service limits



Cuyahoga River

Near Cleveland, Ohio (1969)



- Unrestricted dumping of oil & other industrial pollution
- “Oozes rather than flows” (Time Magazine)
- Helped spur passage of Clean Water Act (1972) & formation of USEPA



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Cuyahoga River a fire hazard

- The 1969 fire was not the first time the Cuyahoga had burned.
- The river also caught fire in 1868, 1912, 1936 and 1952.
- The picture in the previous slide was actually from the 1952 fire.



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Factors contributing to the Cuyahoga River Fire

- This reach of the river was home to various industrial facilities.
- Many of these industries discharged their untreated or minimally treated waste directly into the river.
- The reach which caught fire is close to the point where the river meets Lake Erie.



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Carl Stokes Mayor of Cleveland and his brother Congressman Louis Stokes



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Stokes Brothers

- Carl Stokes was the first elected African American Mayor of a major American City.
- Louis Stokes was the first African American Congressman elected in the State of Ohio (served 15 terms in Congress).
- These two gentlemen were instrumental in the development of the Clean Water Act.
- Carl enlisted the media to draw attention to the pollution in the Cuyahoga River.
- His brother Louis helped in bringing the national problem of water pollution to the attention of Congress.



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Timeline

- 1971 FDA reported 87% of Swordfish sampled had mercury at levels that were unfit for human consumption
- 1972 Congress passes the Clean Water Act. At the time nearly 2/3 of country's lakes, rivers and coastal waters were unfit for swimming or fishing



Clean Water Act signed by President Nixon



Well Actually...No

- The president vetoed the Act late in the night of October 17, 1972 - this became known as the midnight veto.

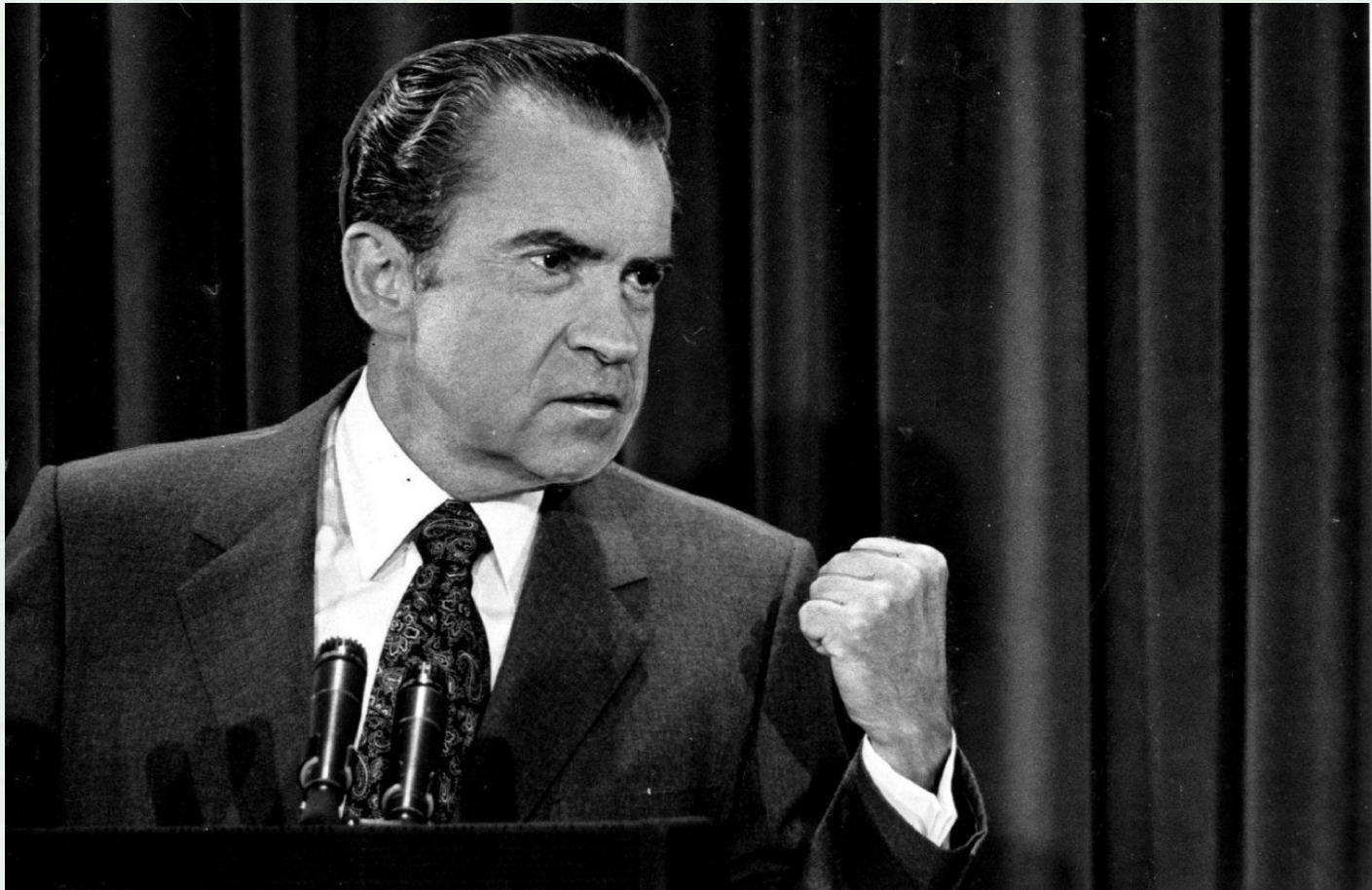


Congress worked across the aisle to override the Presidential Veto



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I'll get you for this Congress!



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The bill became law on October 18, 1972

- The Corps' authority is under Section 404 of the Clean Water Act
- Section 404 regulates the discharge of dredged or fill material into waters of the United States
- What is a water of the United States?
- Good Question!



Cuyahoga River – at the time of the fire



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Cuyahoga River – at the time of the fire



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Cuyahoga River – at the time of the fire



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Cuyahoga River - Today



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Are there any



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Questions?



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