

# Presentation

## 404 Permitting

Stephen Penaluna, Regulatory Project Manager/Team Leader Kansas, State Regulatory Office, El Dorado. Kansas Dam Safety Conference, 15 February, 2011, Topeka, KS

Before planning construction activities in a Kansas stream, river, lake or wetland, contact the Kansas City District, U.S. Army Corps of Engineers, to see whether a federal permit is required. The U.S. Corps of Engineers protects the public interest in national waters through the Department of the Army permit program.

The Corps regulates U.S. waters because of the Rivers and Harbors Act of 1899 pertaining to navigable waters — those used for, or have been used for interstate transport — which includes the Kansas River and the Missouri River in Kansas.

Another law under the regulation of the Corps is the Clean Water Act – 1972 (Section 404) charged with restoring and maintaining the physical, chemical, and biological integrity of the nation’s waters including oversight of excavation and fill.

Waters belonging to the United States are those waters in use or used as interstate or foreign commerce, including all waters subject to tidal ebb and flow. In addition, some wetlands, sloughs, mudflats, and wet meadows are considered special aquatic sites and subject to regulation.

For a stream channel to be considered a water of the United States, it must demonstrate an Ordinary High Water Mark—a line on the shore established by water fluctuations [see *photograph*] and indicated by physical characteristics such as a natural line impressed on the bank, shelving, and destruction of terrestrial vegetation.



The Environmental Protection Agency and the Corps make the final jurisdictional determination regarding definition and work with consultants for concurrence. For more information, contact the [Corps](#).

Regulatory Office Boundary Map



*With almost three decades working for the Department of the Army in active duty and civil service, Stephen Penaluna has been working in Corps of Engineering permitting particularly with transportation projects, dams, river/stream projects, and watershed districts.*