The Federal Standard

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U.S. Army Corps of Engineers
National Dredging Meeting

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US Army Corps of Engineers
BUILDING STRONG®

USACE Navigation Mission

Provide safe, reliable, economically efficient and environmentally sustainable waterborne transportation systems for national security, commerce, and recreation.

Federal Standard-History

- Two Pieces of Landmark Legislation passed, October 1972.
  - The Federal Water Pollution Control Act, (amended in 1977) – Renamed the Clean Water Act (CWA)
  - Coastal Zone Management Act (CZMA)
- Together the CWA and CZMA provided a partial waiver of Federal Supremacy. States began using the partial waiver to extract additional, unrelated requirements initially under water certification programs. Result was dramatically increased O&M budgets. State CZMA programs were in their infancy and were not great attributors to excessive requirements until the mid-80's.

CWA/CZMA

- CWA required that projects involving the discharge of dredged material be certified as complying with "applicable" State Water Quality Standards.

- Section 307(c) requires that federal activities in state-approved coastal zones be consistent to the maximum extent practicable with enforceable policies

Initial Federal Standard Policy

- July 1978, DCW General McGinnis issued compliance memorandum outlining dredging activities' compliance with state requirements
- Allows deferring maintenance when problems occurred
  - Recommends sponsors or state fund the requirements that the Corps deems excessive
- April 1988, 33 CFR 335-338
  - Term "Federal Standard" codified
  - Corps can determine if dredged material plan meets environmental compliance obligations and is within the budgeted and appropriated funding for project

Federal Standard Clarification Memo

- Issued 21 October 2015 by Director of Civil Works
- Describes the application of USACE regulations to federal maintenance dredging for federal navigation channels and explains the policy implementation
- Provides guidance to maintenance of USACE federal dredging projects
- Provides remedies to differences between federal dredging regulations and interactions with state and non-federal agencies.
- Compliance is mandatory

Federal Standard Key Points

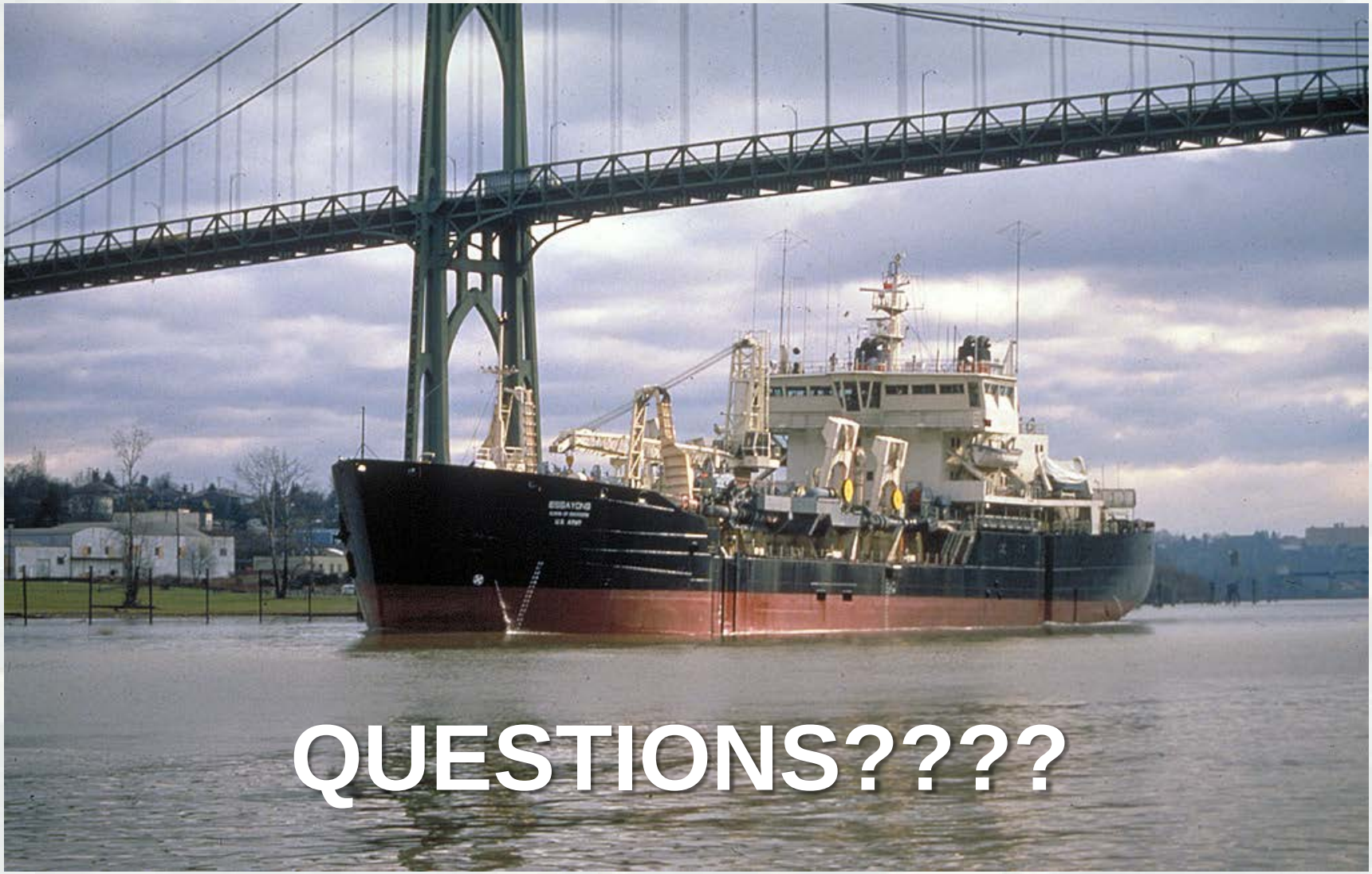
- Federal funds for maintenance of federal channels are limited and must be spent responsibly and carefully.
- While budgets essentially flat for last 40 years, any increases in appropriations cover some of the costs of inflation and maintenance deferred due to budgetary constraints. Few channels are maintained to authorized depth and width.
- State's desired dredging methods, placement locations or other requirements exceeding the Federal Standard can be accommodated to "the maximum extent practicable" as long as the non-federal agency:
  - Agrees to pay any difference between the Federal Standard and the non-federal entity requirements.

Remedies to Non-agreement

- If USACE and the non-federal or State agency cannot reach agreement, there are remedies provided:
  - Secretary of the Army could assert Army's statutory authority to override state's interference with navigation (CWA 511(a)(2) and or 404(t). Likely only in the case of navigation essential for National Defense or interstate/international commerce.
  - Defer dredging until state changes their position or agrees to fund the difference between Federal Standard and state wishes.
  - USACE could consider seeking Congressional appropriations to address the Federal Standard/State cost delta.

Best Practices

- Each authorized project should document the Federal Standard analysis in a memorandum for record
- Receive non-federal agency/state requests in excess of the Federal Standard in writing.
- Engage with Counsel early.
- Do not agree verbally to any actions above the Federal Standard.
- Deferring dredging is a routine action by USACE-Do not say “no dredging”….say “deferring dredging”.
- Keep MSC and if necessary, HQUSACE informed.


QUESTIONS????

Backup Slides

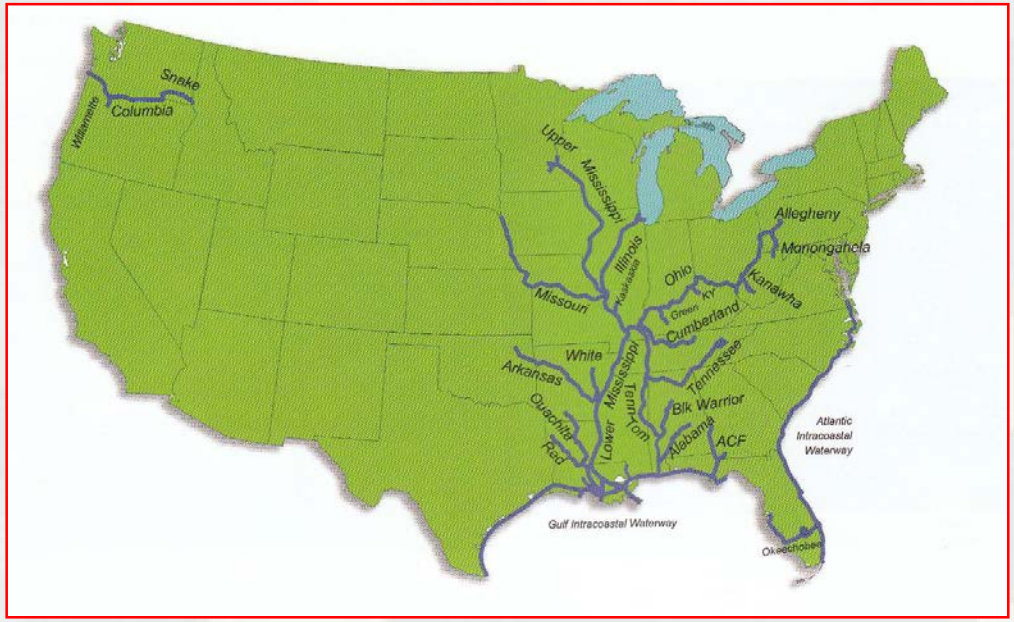
USACE Navigation Responsibilities

INLAND NAVIGATION

27 Inland River Systems

12,000 miles of inland river channels

228 lock chambers @ 186 lock sites



COASTAL NAVIGATION

1,067 Navigation Projects

13 lock chambers

929 navigation structures

844 bridges