



# In-Lieu Fee (ILF) Program: *Financial Accounting Reforms*

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U.S. Environmental Protection Agency

# Overview

- Background: problems with past practice – need for reforms
- What the regulations say about:
  - ILF program account
  - Administrative fees
  - Setting the fee for ILF program credits



## Federal Register

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Thursday,  
April 10, 2008

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Part II

### Department of Defense

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Department of the Army, Corps of  
Engineers  
33 CFR Parts 325 and 332

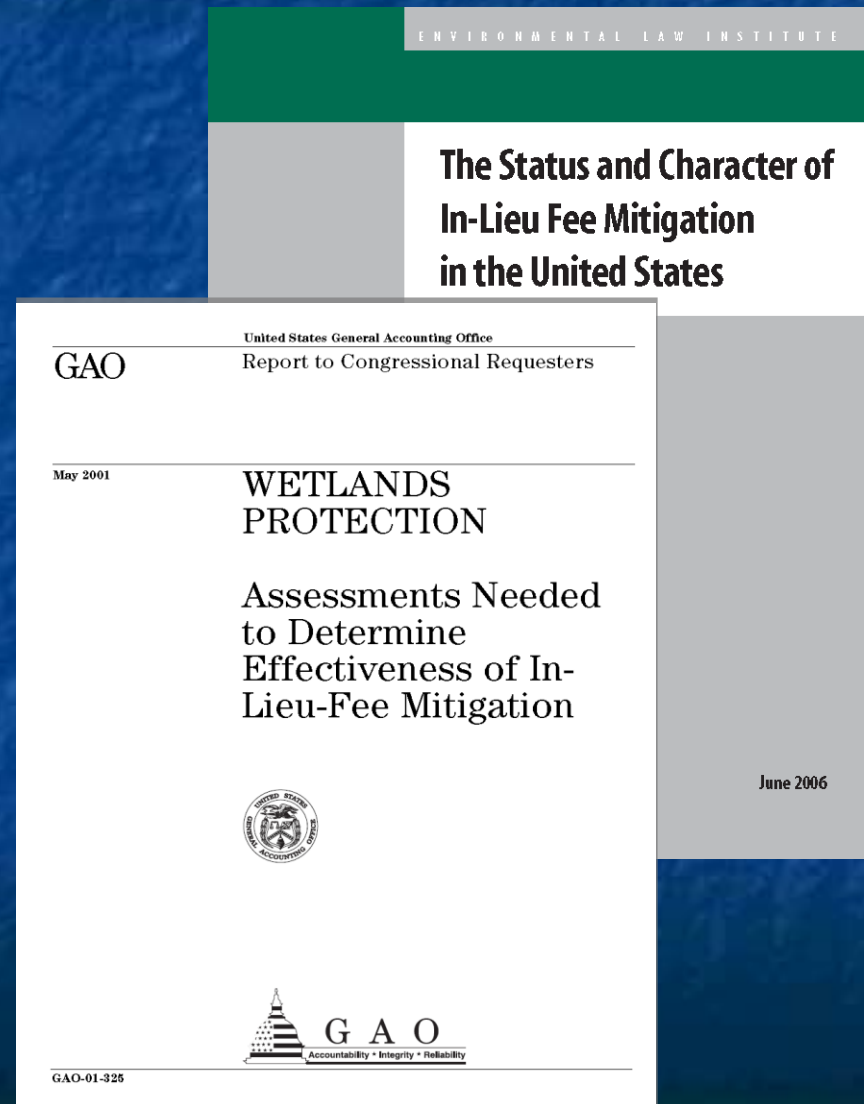
### Environmental Protection Agency

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40 CFR Part 230  
Compensatory Mitigation for Losses of  
Aquatic Resources; Final Rule

# Problems with Past Practice

- Lack of transparency and accountability with ILF funds management
- ILF's not collecting sufficient funds
- ILF funds co-mingled with non-ILF funds
  - Subsidizing mitigation?





# ILF Instrument Requirements

*33 CFR 332.8(d)(6):*

- Service area(s)
- Accounting procedures
- Provision stating legal responsibility
- Default and closure provisions
- Reporting protocols
- Compensation planning framework
- Advance credits and draft fee schedule
- Method for determining fees and credits
- Description of ILF program account
- Any other information required by DE

# ILF Program Account

*33 CFR 332.8(i)*

- ILF sponsor must establish an ILF program account :
  - After instrument approval but before accepting any fees
  - At FDIC member institution
  - Account funds for mitigation projects only
    - Non ILF funds must be kept in separate accounts
  - Interest income remains in account – be used for mitigation
  - Can funds for long-term management be transferred?

# ILF Program Account

33 CFR 332.8(i)

- ILF program account funds may only be used for:
  - “*selection, design, acquisition, implementation and management of ILF compensatory mitigation projects*”
  - Except for a “*small percentage*” that can be used for administrative costs
    - Amount approved by Corps in consultation with IRT
    - Specified in the ILF program instrument
    - Current range of 5% to 20%



# ILF Program Account

*33 CFR 332.8(i)*

- Corps responsible for funding approval
  - Corps may direct funds to provide alternative compensatory mitigation if ILF project not implemented within required time frames
- Annual reports
  - Fees collected, funds expended
  - List of permits using ILF program
  - Credit balances, by service area
  - Account expenditures
- Program audit





# Examples of Program Accounting

- Mitigation funds kept separate from other monies:
  - VA Aquatic Resources Trust Fund
  - AZ Game and Fish Dept
- Administrative expenses:
  - Georgia Wetland Trust Fund (schedule)
  - VT ILF (% of fees)
- Annual Reporting:
  - VA ARTF, AZDGF, NC EEP
- Program audit: Georgia Wetland Trust Fund

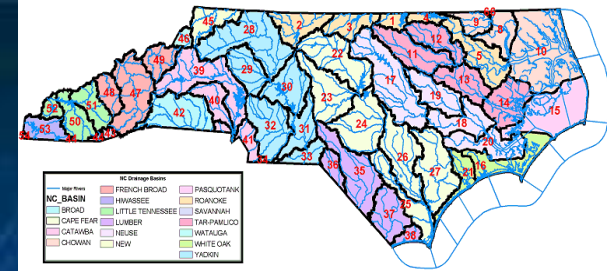
# Setting ILF Credit Fees

## 33 CFR 332.8(o)(5)(ii)

- Cost per unit of credit must include expected cost of aquatic resource restoration, establishment, enhancement and/or preservation in that service area
- Full cost accounting:
  - *Land acquisition, project planning and design, construction, plant materials, labor, legal fees, monitoring, remediation, adaptive management, administrative costs, contingency costs, financial assurances, and long-term management and site protection*



# NC EEP Fee Schedule



Fee Category	Credit Unit	Fee per Unit	Fee per Unit
		<u>(Higher Fee HUs)</u>	<u>(Lower Fee HUs)</u>
Riparian Buffer	square foot	\$1.02	\$1.02
Stream	linear foot	\$365	\$276
Nonriparian Wetland	acre	\$48,311	\$24,844
Riparian Wetland	acre	\$66,961	\$37,859
Coastal Wetland	acre	\$164,721	\$164,721



# Questions

