



### Corps of Engineers Regulatory Program

The St. Paul District regulates structures and work in navigable waters of the U.S. under Section 10 of the Rivers and Harbors Act of 1899 and the discharge of dredged or fill material in waters of the U.S. under Section 404 of the Clean Water Act within the states of Minnesota and Wisconsin. The district's Section 404 permit program averages around 6,000 final actions each year (including jurisdictional determinations, permits, and mitigation bank approvals). The staff is committed to the national program goal of no net loss of aquatic resources while, at the same time, allowing reasonable development through fair and balanced permit decisions.

### Enforcement

The St. Paul District's Regulatory Branch actively pursues enforcement of the Clean Water Act and the Rivers and Harbors Act to encourage permittees to comply with the requirements of their permits and to deter and punish, if needed, unauthorized activities. Two of the enforcement options available to the Corps are referring cases to the Environmental Protection Agency, or EPA, which can assess administrative penalties up to \$177,500, or to the U.S. Department of Justice for civil or criminal penalties and injunctive relief, including restoration of the site. Generally, cases referred to the EPA or DOJ are those that are willful, repeat and flagrant or have substantial impact to waters of the United States. If immediate administrative or legal enforcement action is not warranted (e.g., a violation involving a first-time violator with minor environmental impact), the Corps may accept an application for an after-the-fact permit to retain some or all of the illegal fill. After-the-fact permit applications are reviewed using the same procedures and criteria as those used to evaluate any other application and may require mitigation if the permit is issued or require restoration of the site to its pre-violation condition if the permit is denied.

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### Litigation

The St. Paul District, working with the local U.S. Attorney's Offices, recently concluded enforcement actions against persons violating the Clean Water Act in Minnesota. A description of these cases and their outcome is provided below.

*U.S. v. Russ Huseby*

The district was notified in 2005 that Russ Huseby was mechanically clearing and constructing roads in wetlands at a site in Lake County, Minn. Because Huseby had prior knowledge of the permitting requirements of the Clean Water Act and continued doing work in wetlands even after being warned to stop, the district determined that referral of the case for enforcement was appropriate. In 2009, the U.S. Attorney filed a complaint in district court requesting restoration of the site and assessment of a monetary penalty. After a court ruling finding Huseby had violated the Clean Water Act, he agreed to restore wetlands affected by the unauthorized activities at the site and pay a \$20,000 penalty. The district is currently monitoring compliance with the requirements of the settlement agreement.

*U.S. v. DMH Partners North, LLC*

DMH Partners North, LLC, or DMH, was issued a Corps permit in 2008 to fill seven acres of wetlands at a site located in Sauk Rapids, Minn., for the purpose of commercial development. The permit required DMH purchase wetland credits from a Corps' approved wetland bank and construct wetlands at the site to offset the permanent loss of wetlands authorized by the permit. After an inspection of the permitted work in 2009, the district determined DMH had violated the terms and conditions of their permit by failing to purchase the required wetland credits and not adequately constructing the wetlands at the site. The district issued a compliance order in 2010 requiring the purchase of wetland credits and submittal of a plan detailing how the onsite mitigation would be brought into compliance with the requirements of the permit; DMH did not respond or complete the items required by the order. The case was referred to the U.S. Attorney's Office in Minnesota for enforcement in 2011. After a complaint was filed in district court, DMH agreed to pay a \$75,000 penalty and purchase 9.04 wetland credits and 10.94 upland buffer credits from a Corps' approved wetland bank.

Additionally, the district continues to work with EPA to identify and refer enforcement cases where EPA is best positioned to reach a timely resolution. Recent referrals in Minnesota and Wisconsin have included violations associated with cranberry operations, mining and agriculture. The EPA resolution of some of these cases has involved the payment of fines and restoration of wetlands and waters affected by unauthorized activities.