



Corps of Engineers Regulatory Program

In addition to regulating structures and other work in traditionally navigable waters under Section 10 of the Rivers and Harbors Act of 1899, the Corps of Engineers administers Section 404 of the Clean Water Act (33 U.S.C. § 1344). Under Section 404, the Corps issues permits for the discharge of dredged or fill material into waters of the United States, which includes traditionally navigable waters, their tributaries and many wetlands.

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 the USDOJ are those that are willful, repeat, 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, or ATF, 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

Unauthorized Activities – The district was most recently involved in two enforcement cases litigated by the U.S. Attorney's Office in Minnesota. Gary Bailey illegally constructed a road through a high quality forested wetland along the shore of Lake of the Woods, for the purpose of developing the property. The Corps informed Bailey on multiple occasions to stop the illegal work but continued to complete construction of the road. The District Court ruled in favor of the government and ordered removal of the road and restoration of the site. In July 2009, the Eighth Circuit Court of Appeals affirmed the District Court in a nationally-significant decision on Clean Water Act jurisdiction.

In a separate case in Benton County, Riley Bros., Inc., disposed of more than 100,000 cubic yards of clay material from a Minnesota Department of Transportation project into 6.7 acres of high quality sedge meadow wetlands with the permission of landowner Henkemeyer Landfill, Inc., and Gerome Henkemeyer. All defendants had previous Clean Water Act violations. Henkemeyer Landfill, Henkemeyer and Riley Bros. agreed to pay a total penalty of \$150,000 in addition to fully restoring the site and providing additional mitigation. Permit Violations – The St. Paul District and the USDOJ recently concluded an enforcement case against JLG Enterprises, a developer in northern Minnesota who obtained a Clean Water Act permit but violated it by filling more wetland than the permit allowed and by failing to accomplish much of the required mitigation. The case was consolidated with a separate enforcement action against JLG by the EPA for unlawful wetland fill on an adjoining property. The court ordered settlement requires JLG to pay a civil penalty of \$50,000, restore the unlawfully filled wetlands where possible, mitigate for any unlawfully filled wetlands that can't be restored and provide all the mitigation originally required by the permit (plus additional mitigation to account for years of delay in providing that mitigation).

The St. Paul District is also currently cooperating with the U.S. Attorney's Offices in Minnesota and Wisconsin on new enforcement cases.