

Attachment 2

General information EPA fact sheet and flow chart

Clean Water Act Section 404(q) Coordination and Resolution Process for Section 404 Permits

The *Clean Water Act* Section 404(a) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for discharges of dredged or fill material into waters of the United States. The Section 404 program is jointly administered by the U.S Army Corps of Engineers and the EPA. The Corps manages day-to-day permit program administration and makes permit decisions, and the EPA reviews and comments on permit applications.¹ In making a permit decision, the Corps evaluates applications for compliance with environmental criteria ([Section 404\(b\)\(1\) Guidelines](#)) and other [permitting requirements](#) at 33 CFR parts 320 through 330 and solicits and considers the views of federal, state and local resource agencies and the public. At times, the EPA may have concerns with a proposed project's compliance with the Section 404(b)(1) Guidelines. This fact sheet describes a process to resolve these concerns.

Section 404(q) MOA Between EPA and Department of the Army

Section 404(q) of the CWA requires the Secretary of the Army to enter into an agreement with the Administrator of the EPA to minimize delays in the issuance of permits under Section 404. In August 1992, Army and the EPA entered into such an agreement. Part IV of the [1992 Section 404\(q\) Memorandum of Agreement](#) outlines the process and time frames for resolving Section 404 individual permit issues to help facilitate timely permit decisions, as shown in the process flow chart below.

Under the MOA, if the EPA determines that issuance of the Section 404 individual permit will result in substantial and unacceptable impacts to aquatic resources of national importance the EPA may request a higher level of review of that permit within the Department of the Army. In applying Part IV of the MOA, the EPA and the Corps are encouraged to regularly communicate and coordinate to help ensure mutual understanding of case-specific agency comments and viewpoints, share information and discuss issues in an effective manner, and identify opportunities for resolution of concerns.



Bottomland hardwood wetlands

In addition to helping resolve Section 404 permit issues, the 404(q) MOA includes other provisions applicable to the development of local coordination procedures for EPA Regions and Corps Districts (MOA Part II) and a process for coordination and resolution of Section 404 policy concerns raised by the EPA or the Corps (MOA Part III).

¹ Section 404(g) authorizes the EPA to approve State or Tribal assumption of the Section 404 permit program for certain waters. When States and Tribes have done so, they manage day-to-day permit program administration instead of the Corps for waters in their jurisdiction.

Aquatic Resources of National Importance

An aquatic resource of national importance, or ARNI, is a resource-based threshold used in applying the Section 404(q) MOA to resolve issues regarding individual permit cases. The EPA uses its discretion



Coastal marsh

in making ARNI determinations on a case-by-case basis based on the circumstances associated with each project. Factors considered in identifying ARNIs include: the economic importance of the aquatic resource, its rarity or uniqueness, or the importance of the aquatic resource to the protection, maintenance or enhancement of the quality of the nation's waters. The EPA has previously identified specific bottomland hardwoods, coastal marshes, mangrove swamps, bogs, rivers and streams as ARNIs.

Section 404(q) Case Statistics

Since 1992, under Part IV of the Section 404(q) MOA, EPA Regional offices have forwarded a total of

[20 case elevation requests](#) to EPA Headquarters for review as of June 2024. The EPA has elevated eleven of these permit cases for higher level review by the Department of the Army. This is a modest number given that the Corps authorizes approximately 60,000 activities under CWA Section 404 in the nation's waters each year.² The nine permit cases not elevated by EPA Headquarters for higher level review were resolved with the Department of the Army before a final elevation package was transmitted.



Mangrove swamp

More Information on CWA Section 404 and the Section 404(q) MOA

- [EPA Clean Water Act Section 404 Website](#)
- [U.S. Army Corps of Engineers Regulatory Program Website](#)
- [EPA Clean Water Act Section 404\(q\) Website](#)
- [1992 Section 404\(q\) MOA: Interagency Questions and Answers Document](#)

² Source: U.S. Army Corps of Engineers Headquarters

Section 404(q) Process for Resolving Individual Permit Issues

EPA 3(a) Comment Letter

(within the comment period for the Public Notice)

EPA Region notifies Corps District Engineer by letter that the project may result in substantial and unacceptable impacts to Aquatic Resources of National Importance. [MOA Part IV 3(a)]

EPA 3(b) Comment Letter

(within 25 calendar days after the end of the Public Notice comment period)

If the issues raised in the 3(a) letter have been resolved, the Section 404(q) process concludes. If the issues remain unresolved, the EPA Region notifies Corps District Engineer by letter that the project will have substantial and unacceptable impacts to ARNI. The 3(b) letter must be signed by the EPA Regional Administrator. [MOA Part IV 3(b)]

Corps Notice of Intent to Proceed

(within 5 calendar days of the District's proposed permit decision)

Corps District Engineer notifies the EPA Region if proposed project modifications or permit conditions would resolve EPA's concerns, or if the Corps intends to issue the permit contrary to EPA's recommendations in the 3(b) letter. The Corps must provide the EPA Region with a copy of the draft permit and decision document. [MOA Part IV 3(c)]

Case Elevation

(within 15 calendar days from receipt of the notice of intent to proceed)

EPA Regional Administrator notifies the Corps District Engineer that the Region will not request higher level review, or that the issue has been forwarded to EPA Headquarters with a recommendation to request Department of the Army level review of the Corps District's permit decision. [MOA Part IV 3(d)] The District Engineer holds the issuance of a permit in abeyance pending the Headquarters level review outlined below. [MOA Part IV 3(e)]

Review of Corps Decision

(within 20 calendar days from the EPA Regional Administrator's request for elevation)

EPA Assistant Administrator for Water notifies the Assistant Secretary of the Army (Civil Works) that the EPA will not request further review, or that the ASA(CW) is requested to review the permit decision document. [MOA Part IV 3(f)]

Army Review

(within 30 calendar days from the EPA Assistant Administrator's request for review)

EPA Headquarters case elevation is reviewed by the ASA (CW) who either informs the District Engineer to proceed with the permit, informs the District Engineer to proceed with the permit in accordance with policy guidance specific to the case, or the ASA (CW) makes the final permit decision. [MOA Part IV 3(g)] The ASA (CW) must immediately notify the EPA Assistant Administrator for Water in writing of the decision. [MOA Part IV 3(h)]

Section 404(c) "Veto" Process

(within 10 calendar days from Assistant Secretary of the Army (Civil Works) decision)

If the ASA (CW) decides to proceed with the issuance of the permit over EPA's objections, the EPA determines whether to initiate the Clean Water Act Section 404(c) "veto" process. [MOA Part IV 3(h)]

EPA Region & Corps District Level

Region
Decision on
Elevation

EPA Headquarters & Department of the Army Level