



Section 404 of the Clean Water Act

An overview of the rules and regulations associated with the Clean Water Act

Section 404 of the Clean Water Act: An Overview

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. Activities in waters of the United States that are regulated under this program include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and conversion of wetlands to uplands for farming and forestry.

What does Section 404 Require?

The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have:

- taken steps to avoid wetland impacts where practicable
- minimized potential impacts to wetlands
- provided compensation for any remaining, unavoidable impacts through activities to restore or create wetlands.

Regulated activities are controlled by a permit review process. An individual permit is usually required for potentially significant impacts. However, for most discharges that will have only minimal adverse effects, the Army Corps of Engineers often grants up-front general permits. These may be issued on a nationwide, regional, or state basis for particular categories of activities (for example, minor road crossings, utility line backfill, and bedding) as a means to expedite the permitting process.

Section 404(f) exempts some activities from regulation under Section 404. These activities include many ongoing farming, ranching, and silviculture practices.

Agencies' Responsibilities

Army Corps of Engineers

- administers the day-to-day program, including individual permit decisions and jurisdictional determinations
- develops policy and guidance
- enforces Section 404 provisions.

Environmental Protection Agency

- develops and interprets environmental criteria used in evaluating permit applications

- determines scope of geographic jurisdiction
- approves and oversees State assumption
- identifies activities that are exempt
- reviews/comments on individual permit applications
- has authority to veto the Corps' permit decisions (Section 404[c])
- can elevate specific cases (Section 404[q])
- enforces Section 404 provisions.

Individual Permit Process Under the Clean Water Act Section 404

Who's Involved in Regulation?

EPA and the Army Corps of Engineers (Corps) jointly administer the program. In addition, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State resource agencies have important advisory roles.

A Federal permit is required to discharge dredged or fill material into wetlands and other waters of the United States. The flow chart tells what the Corps does once it receives an individual permit application.

The 404 Individual Permit Process

Public Notice

(issued by the Corps within 15 days of receiving all permit information)

The public notice describes the permit application, including the proposed activity, its location, and potential environmental impacts. The public notice invites comments within a specified time.

Comment Period

(15 – 30 days, depending on the proposed activity)

The application and comments are reviewed by the Corps and other interested Federal and State agencies, organizations, and individuals. The Corps determines whether an Environmental Impact Statement is necessary.

Public Hearing

Citizens may request that the Corps conduct a public hearing however, public hearings are not normally held.

Permit Evaluation

The Corps evaluates the permit application based on the comments received, as well as its own evaluation.

Environmental Assessment and Statement of Finding

The Statement of Finding, document, which explains how the permit decision was made, is available to the public.

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*Modified from Kathleen Rude, "Conservation: You Can Make a difference," Ducks Unlimited, September/October 1990, 26-28.