



# WETLANDS FACT SHEET #11

## Clean Water Act §404(q): Case Specific Elevation

### THE §404 (q) PROCESS

Resolution of interagency disputes related to §404 permit issuance  
Based on the 1992 §404(q) Memorandum of Agreement (MOA)  
signed by EPA and the Department of the Army

#### EPA Objection

Formal determination that issuance of the §404 permit will result in unacceptable adverse effects to Aquatic Resources of National Importance (ARNI).

#### Notice of Intent to Proceed

Corps District Engineer must notify the EPA Regional Administrator if he intends to issue the permit over EPA objections. The Regional Administrator has 15 days to respond to the request.

#### Further Action Unwarranted

#### Case Elevation

The EPA Regional Administrator makes a recommendation to EPA's Assistant Administrator for Water to elevate the case. The Assistant Administrator reviews the recommendation and within 20 days makes a determination.

#### Decline Further Elevation

#### Review of Corps Decision

The Assistant Administrator seeks higher level review of the District permit decision by the Assistant Secretary of the Army (Civil Works).

#### Army Declines Elevation

#### Army Review

EPA Headquarters' case elevation is reviewed by the Assistant Secretary of the Army (Civil Works), who determines whether or not the decision will be made at a higher level than the Corps District Engineer or to issue case specific policy guidance.

Under §404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) has the primary authority for determining whether or not a permit for the discharge of dredged or fill material should be issued. In making a permit decision, the Corps solicits and considers the views of the public as well as State and Federal resource agencies. Where the Corps finds that the particular project in question is likely to receive a §404 permit and EPA opposes issuance of the permit, administrative procedures are available to EPA to address unresolved issues.

The principal mechanism for resolution of interagency disputes related to §404 permit issuance is spelled out in the §404(q) Memorandum of Agreement (MOA) signed by EPA and the Department of the Army in August of 1992. Under the §404(q) MOA, EPA and Army have agreed to a framework under which EPA may formally elevate, for higher level review, interagency disputes on particular permit actions. In order to minimize duplication of effort, needless paperwork and delays in the issuance of §404 permits, a clear timeframe and process for elevated review of a Corps permit decision is established in the §404(q) MOA.

In addition to the case specific elevation authorities contained in the Section 404(q) MOA, issues related to general program policies and procedures may be formally raised by either the Corps or EPA. This type of elevation does not directly relate to permit specific circumstances and therefore does not delay issuance of pending permit applications.

Since the 1992 MOA was signed, one case has been elevated by EPA to the Department of the Army. Prior to that case, from October of 1985 until the August 1992 revisions to the MOA, EPA formally elevated 16 cases to Army Headquarters.

FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828

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