



WETLANDS FACT SHEET #13

Wetlands Enforcement

In addition to jointly implementing the Clean Water Act Section 404 program, EPA and the U.S. Army Corps of Engineers (Corps) share Section 404 enforcement authority. There are two broad categories of Section 404 violations:

- failure to comply with the terms or conditions of a Section 404 permit
- discharging dredged or fill material to waters of the U.S. without first obtaining a permit

In 1989, EPA and the Corps entered into a Memorandum of Agreement (MOA) on enforcement to ensure efficient and effective implementation of this shared authority. Under the MOA, the Corps, as the Federal permitting agency, has the lead on Corps-issued permit violation cases. For unpermitted discharge cases, EPA and the Corps determine the appropriate lead agency based on criteria in the MOA.

ENFORCEMENT GOALS & TOOLS

The goals of EPA's Section 404 enforcement are three-fold: environmental protection; deterrence; and fair and equitable treatment of the regulated community. In addition to voluntary compliance, which plays an important role in the Section 404 enforcement program, Sections 309 and 404 of the Clean Water Act provide the agencies with several formal enforcement mechanisms to use in achieving these goals.

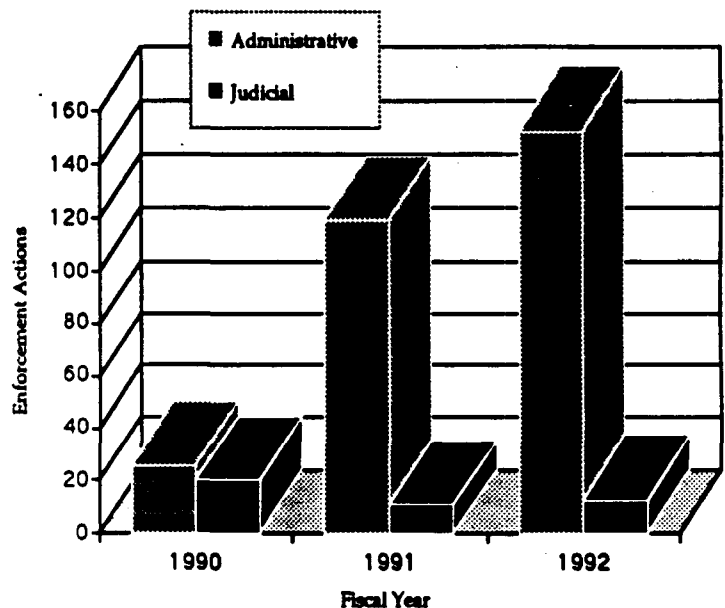
In the administrative arena, under Section 309(a), EPA can issue administrative compliance orders requiring a violator to stop any ongoing illegal discharge activity and, where appropriate, to remove the illegal discharge and otherwise restore the site. Section 309(g) authorizes EPA and the Corps to assess administrative civil penalties of no more than \$125,000 per violation.

Turning to judicial enforcement, Sections 309(b) and (d) and 404(s) give EPA and the Corps the authority to pursue civil judicial enforcement actions seeking restoration and other types of injunctive relief, as well as civil penalties. The agencies also have authority under Section 309(c) to bring criminal judicial enforcement actions for knowing or negligent violations of Section 404.

CASE SELECTION

EPA and the Corps consider a wide variety of factors when deciding whether to exercise our enforcement discretion and, if so, what type of enforcement action to initiate. These factors include: the amount of fill; the size of the waterbody, including acres of wetlands filled and their environmental significance; the discharger's previous experience with Section 404 requirements and the discharger's compliance history.

In general, EPA and the Corps prefer to resolve Section 404 violations through voluntary compliance or administrative enforcement.



EPA Section 404 enforcement actions (initiated)

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

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Wetlands Criminal Enforcement

Since enactment of the Clean Water Act, EPA and the Corps have taken fewer than 20 criminal enforcement actions in response to Section 404 violations. Moreover, of those found guilty of criminal Section 404 violations, fewer than 10 of these violators have actually been sentenced to jail time. As demonstrated by the following examples, EPA and the Corps reserve their criminal enforcement authority for only the most flagrant and egregious Section 404 violations.

United States v. Pozsgai

In December 1989, a Philadelphia jury convicted John Pozsgai on 40 counts of knowingly filling wetlands in Bucks County, Pennsylvania, without a Section 404 permit. Mr. Pozsgai was sentenced to three years in jail, ordered to restore the site upon his release, and assessed a fine. His conviction and sentence have been affirmed by the U.S. Supreme Court.

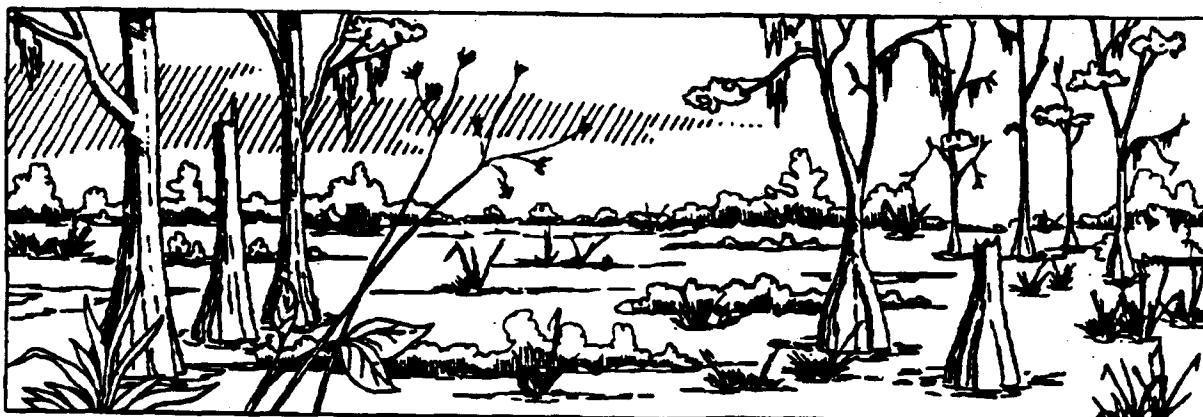
Even prior to purchasing the 14-acre tract in 1987, Mr. Pozsgai was told by private consultants that the site contained wetlands subject to the permitting requirements of Section 404. He purchased the property at a reduced price due to the presence of wetlands, and then proceeded to ignore no less than 10 warnings from EPA and Corps field staff to stop filling the wetlands without first getting a Section 404 permit. He also defied a temporary restraining order (TRO) issued by a Federal court judge. In fact, the

government documented violations of the TRO on videotape, thanks to the cooperation of neighbors whose homes were being flooded as a result of Mr. Pozsgai's filling in his wetlands.

United States v. Ellen

In January 1991, William Ellen was found guilty by a Maryland jury of knowingly filling 86 acres of wetlands without a Section 404 permit. He was sentenced to six months in jail and one year supervised release. The U.S. Supreme Court denied review of the conviction and sentence.

Mr. Ellen is a consultant who was hired by Paul Tudor Jones to assist in the location and creation of a private hunting club and wildlife preserve on Maryland's Eastern Shore. With Mr. Ellen's assistance, Jones selected a 3,000-acre site in Dorchester County that bordered Chesapeake Bay tributaries and consisted largely of forested wetlands and tidal marshes. As project manager, Mr. Ellen was responsible for acquiring environmental permits and complying with all applicable environmental rules and regulations. His own consulting engineers repeatedly told him that a Section 404 permit would be required. Nevertheless, he supervised extensive excavation and construction work destroying wetlands at the site without first obtaining a Section 404 permit. Despite repeated warnings to Mr. Ellen from the Corps, this unpermitted activity did not stop until the Corps contacted the subcontractors directly.



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