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DEPARTMENT OF THE ARMY

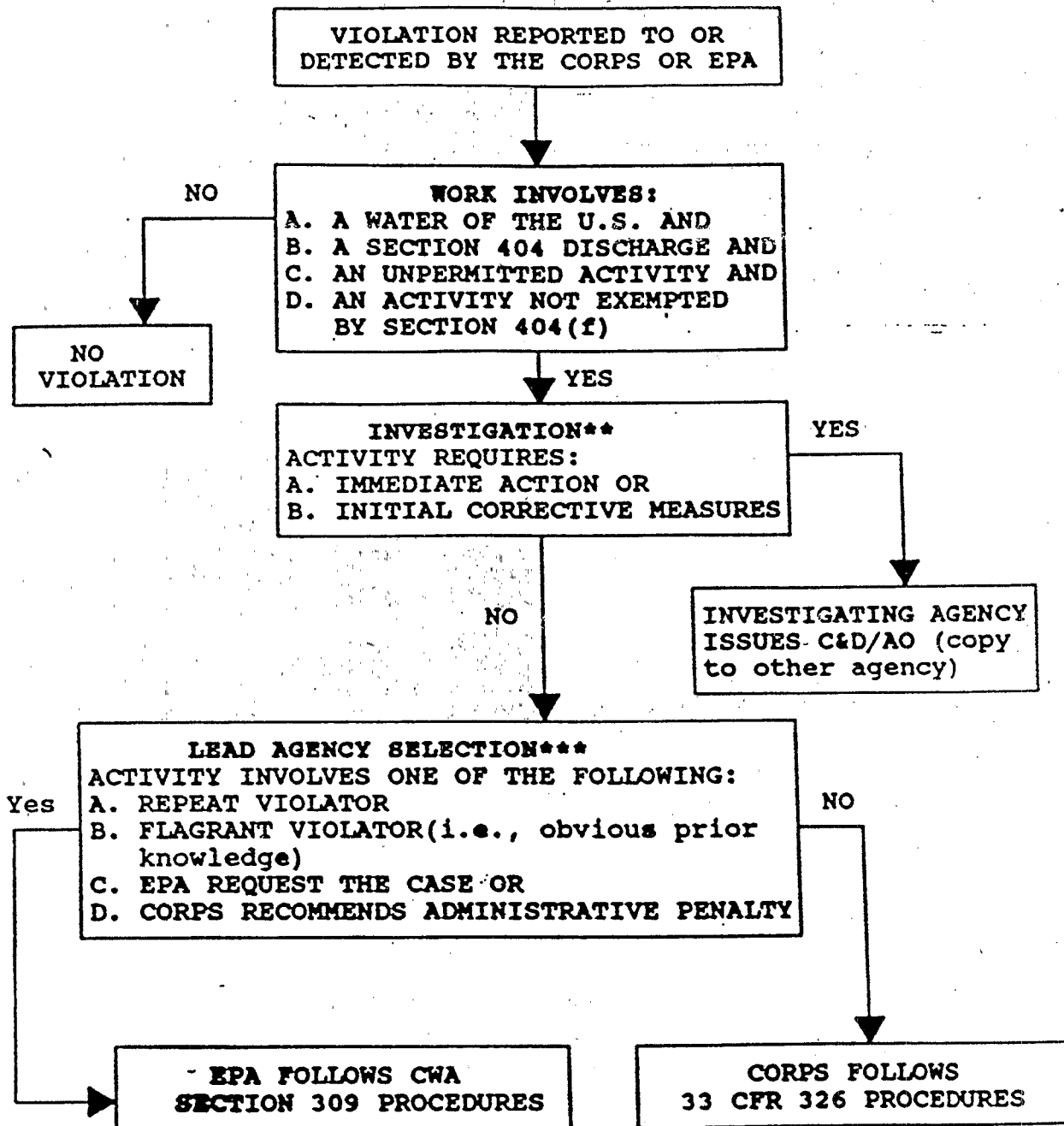


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Section 404 Enforcement Memorandum of Agreement (MOA)
Procedures Regarding the Applicability of Previously-Issued
Corps Permits

1. The MOA Between the Department of the Army and the Environmental Protection Agency (EPA) Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act (Section 404 Enforcement MOA) establishes policy and procedures pursuant to which EPA and Army will undertake federal enforcement of the dredged and fill material permit requirements of the Clean Water Act.
2. For purposes of effective administration of the statutory enforcement authorities of both EPA and the U.S. Army Corps of Engineers (Corps), the MOA sets forth an appropriate allocation of enforcement responsibilities between EPA and the Corps. Given that the Corps is the federal permit-issuing authority, for purposes of implementation of the provisions of the Section 404 Enforcement MOA the Corps will be responsible for determining whether an alleged illegal discharge of dredged or fill material is authorized under an individual or general permit.
3. When EPA becomes aware of an alleged illegal discharge, it will contact the appropriate Corps district and request a determination as to whether the discharge is authorized by an individual or general permit.
4. A Corps determination that the discharge is authorized by an individual or general permit represents a final enforcement decision for that particular case. Likewise, a Corps determination that the discharge is not authorized by an individual or general permit (i.e., it is an unpermitted discharge) is final for that particular case.
5. In order to promote effective and expeditious action against possible illegal discharges, the Corps district upon request from EPA is responsible for providing a determination within two working days in those cases where EPA provides the Corps with sufficient information to make this determination in the office. However, if sufficient information is not available to the Corps so that additional investigation by the Corps is needed before it is able to respond to the EPA request, the Corps will provide a determination to EPA within 10 working days. If the Corps does not provide a determination to EPA within the applicable time frame, EPA may continue to investigate the case and determine whether the activity constitutes an unauthorized discharge, and the EPA determination will be final for that particular case.

**CORPS/EPA ENFORCEMENT PROCEDURES
FOR SECTION 404 UNPERMITTED VIOLATIONS***



- * Enforcement procedures for permit condition violation cases are set forth at Part III.D.3. and III.D.4.
- ** Procedures for investigating unpermitted activity cases are set forth at Part III.B.
- *** Examples of situations in which "C" & "D" might arise include cases which are important due to deterrent value, due to the violation occurring in a critical priority resource or in an advanced identification area, involving an uncooperative individual, etc.

6. Notwithstanding the above provisions, in situations where an alleged illegal discharge is ongoing and EPA reasonably believes that such discharge is not authorized, EPA may take immediate enforcement action against the discharger when necessary to minimize impacts to the environment. However, EPA will also contact the appropriate Corps district and request a determination as to whether the discharge is authorized by an individual or general permit. A subsequent determination by the Corps, pursuant to paragraph five above, that the discharge is authorized represents a final enforcement decision for that particular case.

7. This guidance shall remain in effect for as long as the Section 404 Enforcement MOA is in effect, unless revisions to or revocation of this guidance is mutually agreed to by the two signatory agencies.

John S. Doyle Jr. *DEPT* *JAN. 19, 1989*
for Robert W. Page (Date)
Assistant Secretary of
the Army (Civil Works)

Rebecca W. Hammer *JAN 19, 1989*
Rebecca W. Hammer (Date)
Acting Assistant Administrator
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