What Is Considered A Violation Of Section 404?

Violations fall in to two broad categories:

1. **Failure to comply with the terms and conditions of a Section 404 permit.** The Corps is typically the lead agency for resolving these types of violations; or
2. **Discharging dredged or fill material to waters of the United States without a permit when one is required.** Either the Corps or EPA may be the lead enforcement agency for unauthorized activities.

What Are The Penalties For An Unauthorized Activity?

It is EPA's general policy to seek complete restoration of impacted waters where an unauthorized discharge would not qualify for an after-the-fact authorization under Section 404.

Restoration often includes monitoring period which can extend up to 10 years to ensure the site restoration goals have been met.

In addition to restoration, EPA may also seek penalties up to $37,500 per day for violation of Section 404 requirements. EPA can also seek criminal penalties for Section 404 violations. EPA generally reserves its criminal enforcement authority for flagrant and egregious Section 404 violations.

Where Can I Learn More?

- U.S. Environmental Protection Agency Region 10 404 Program Webpage: http://yosemite.epa.gov/R10/ecocomm.nsf/Wetlands/Wetlands
- U.S. Army Corps of Engineers Wetlands and Waterways Regulation and Permitting Webpage: http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx
- Section 404 of the Clean Water Act: a copy can be found on EPA's website at: http://www.epa.gov/OWOW/wetlands/regs/sec404.html
- Regulatory text for the Section 404 program can be found in the federal Code of Federal Regulations at 40 CFR Parts 230-233 http://ecfr.gpoaccess.gov
- The Construction Industry Compliance Assistance Center (CICA): CICA is a source for plain language explanations of environmental rules for the construction industry. CICA website: http://www.cicacenter.org/wetlands.html

Contacts For Section 404

U.S. Environmental Protection Agency
Region 10 Office: http://www.epa.gov/r10earth/
(206) 553-1200

Seattle District of the U.S. Army Corps of Engineers:
(206) 764-3495

Washington's Joint Aquatic Resource Permit Application http://www.epermitting.wa.gov/
(800) 917-0043

Washington State Department of Ecology
http://www.ecy.wa.gov/reportenviroproblem.html

Geographical Leads for Shoreline Management Act: http://www.ecy.wa.gov/programs/sea/sma/contacts/index.html

Local Government: Many local governments have setback ordinances and floodplain development ordinances. Please contact your local government before construction.

EPA 910-R-09-010

EPA
United States Environmental Protection Agency

Clean Water Act § 404

Regulatory Overview for Washington

Seattle Office
US EPA Region 10

What Are The "Waters Of The United States"

The "waters of the United States" protected under the CWA include all tidal and interstate waters, and certain lakes, ponds, rivers, streams (whether perennial, intermittent or ephemeral), impoundments, and wetlands. Determining whether a particular waterbody is a "water of the United States" can be complex. Information on making this determination can be found at http://www.epa.gov/wetlands/guidance/CWAwaters.html

Why Protect "Waters Of The U.S.?"

Clean water, including streams, shorelines, estuaries and wetlands, all contribute to the social, economic and environmental health of our nation. We can't live without it. Protecting the waters of the U.S. is an investment in our quality of life.

Waters, including wetlands, provide essential habitat for fish and wildlife. Wetlands are some of the most productive ecosystems in the world, comparable to tropical rain forests and coral reefs. Salmon, ducks and moose are examples of animals that depend on aquatic habitats. Wetlands that are part of stream and river systems provide critical rearing and overwintering habitat for juvenile salmon.

Healthy aquatic habitats support economically important industries such as recreational and commercial fishing. For example, a 2006 report by the Kenai River Sportfishing Association found that sport and personal use salmon fishing in Upper Cook Inlet generated direct spending of $415 million (2003 dollars) and total sales of $532 million. This spending supported approximately 6,100 full time jobs that produced $171 million in income.

Wetlands are extremely important for water storage and protecting water quality. By retaining snowmelt and runoff, they help to recharge the groundwater that supplies our wells and they stabilize stream flows and lake levels. This also helps to reduce flood events and flood damage. The State of Washington estimated the flood protection value to be up to $51,000 per acre of wetlands.

Wetlands filter sediment, nutrients, and toxic pollutants out of surface water. This helps to keep pollutants out of our wells and out of the lakes where we fish and swim. The construction of water treatment plants to do the same thing would cost millions of dollars for every community.

What Is The Clean Water Act Section 404 Permitting Program And How Does It Work?

Section 404 of the Clean Water Act establishes a permitting program for the discharge of dredged or fill materials into waters of the Unite States. The discharge of dredged material can include re-deposition of fill materials, such as soils, into waters at the site. Examples of activities which may require a Section 404 permit are: using equipment to re-channelize a stream; using heavy equipment to land clear wetlands; and ditching.

The U.S. Army Corps of Engineers (Corps) and the U.S. EPA co-administer the Section 404 program. The Corps issues Section 404 permits that meet the environmental standards. EPA provides oversight of the Section 404 program. EPA review proposed permit activities, evaluates compliance with the program's regulations (the 404(b)(1) Guidelines) and prohibits the issuance of permits in some instances. Both agencies have enforcement authorities.

What Are The Permitting Requirements?

Permits can be issued for the placement of dredged or fill material if there are no practicable alternatives to the proposed activity, and if impacts to the aquatic environment have been avoided and minimized to the maximum extent practicable. The 404 (b)(1) Guidelines require that only the least environmentally damaging practicable alternative for any project be authorized.

Nearly half of the wetlands in the Continental United States had been lost by the time the CWA was enacted by Congress. To better protect the remaining wetlands, "no net loss" of wetlands has been a national goal since 1989. In order to meet this goal, compensatory mitigation must generally be provided for project impacts through the creation, restoration, enhancement, or preservation of other wetlands or waters.

In 2008, the Corps and EPA issued new regulations on the standards for mitigation projects. All permit applications must now include a discussion of mitigation for the proposed project.