



**US Army Corps
of Engineers**
Headquarters

Corps Facts

Date: Mar. 1, 2000

SUBJECT: Regulatory Program, Enforcement

Procedures for enforcing Corps permitting authorities are found at 33 CFR Part 326. The following paragraphs briefly summarize those procedures.

When violations are found

Inspection and surveillance activities are carried out by all means at the district engineer's disposal. Corps of Engineers employees are instructed on the observation and reporting of suspected unauthorized activities in waters of the United States and of violations of issued permits. The assistance of members of the public and other interested Federal, State and local agencies is encouraged.

When the district engineer becomes aware of any unauthorized activity still in progress, he must first issue a cease and desist order and then begin an investigation of the activity to ascertain facts concerning alleged violations. If the unauthorized activity has been completed he will advise the responsible party of his discovery and begin an investigation. Following his evaluation, the district engineer may formulate recommendations on the appropriate administrative course or legal action.

Initial Corrective Measures

The district engineer's evaluation contains an initial determination of whether any serious adverse impacts are occurring which would require initial corrective measures to protect life, property, or a significant public resource. Once that determination is made, such remedial measures can be administratively ordered and a decision can be made on whether legal action is necessary. In certain cases, district engineers, following the issuance of a cease and desist order, coordinate with state and Federal resource agencies in deciding what action is appropriate. Further evaluation of the violation takes into consideration voluntary compliance with a request for remedial action. A permit is not required for restoration or other remedial action.

Possible permit

For those cases that do not require legal action and for which complete restoration has not been ordered, the Department of the Army will accept applications for after-the-fact

permits. The full public interest review is deferred during the early stages of the enforcement process. A complete public interest review is conducted only if and when the district engineer accepts an application for an after-the-fact permit.

Legal action

The laws that serve as the basis for the Corps regulatory program contain several enforcement provisions which provide for criminal, civil, and administrative penalties. While the Corps is solely responsible for the initiation of appropriate legal actions pursuant to enforcement provisions relating to its Section 10 authority, the responsibility for implementing those enforcement provisions relating to Section 404 is jointly shared by the Corps and EPA. For this reason Army has signed a Section 404 enforcement memorandum of agreement (MOA) with EPA to ensure that the most efficient use is made of available Federal resources. Pursuant to this MOA, the Corps generally assumes responsibility for enforcement actions with the exception of those relating to certain specified violations involving unauthorized activities.

If a legal action is instituted against the person responsible for an unauthorized activity, an application for an after-the-fact permit cannot be accepted until final disposition of all judicial proceedings, including payment of all fees as well as completion of all work ordered by the court.

About 6,000 alleged violations are processed in Corps district offices each year. The approximate breakdown by authority:

- Section 10 -- 15 percent;
- Section 404 -- 60 percent; and
- Section 10 and 404 -- 25 percent.