

FIELD LEVEL AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION
AND
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX
CONCERNING FEDERAL ENFORCEMENT FOR THE SECTION 404 PROGRAM OF THE
CLEAN WATER ACT

1. Purpose and Scope

The U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (EPA) have enforcement authorities for the Section 404 program, specified in Sections 301(a), 308, 309, 404(n), and 404(s) of the Clean Water Act. The January 19, 1989, National Memorandum of Agreement (MOA) (see Appendix A) between the Corps and EPA concerning enforcement of the Section 404 program encourages the Corps and EPA to enter into local field level interagency enforcement agreements (MOA Section IV. B.). The South Pacific Division of the Corps and EPA Region IX hereby establish policy and procedures to undertake enforcement of Section 404 unauthorized discharges within the boundaries of Arizona, California and Nevada. The purpose of this Field Level Agreement (FLA) is to enable the Corps and EPA to more effectively and efficiently use their Section 404 enforcement resources by establishing a framework that will strengthen the enforcement program and reduce overlapping interagency work efforts. Nothing in this FLA is intended to diminish, modify or otherwise affect the policies and procedures established in the MOA.

2. Definitions

- a. Investigating Agency (IA): the agency that issues the initial contact letter (e.g., Cease and Desist Order, Notice of Violation, Administrative Order or Section 308 Information Request) and collects the field information necessary to complete the referral package and determine the lead enforcement agency.
- b. Lead Enforcement Agency (LEA): the agency responsible for pursuing an enforcement action to its legal conclusion.
- c. Repeat Violator: a party who has more than one documented instance of discharging dredged or fill material into waters of the United States without a Section 404 permit or who has more than one documented instance of being out of compliance with a previously issued Section 404 permit. Documentation may include Cease and Desist Orders, Notices of Violation, Administrative Orders, Notices of Non-Compliance, after-the-fact permits, field investigation records, and other internal memoranda as appropriate.
- d. Flagrant Violator: a party who is responsible for the unauthorized discharge and has documented prior knowledge that a Section 404 permit is required for discharging fill in waters of the United States. Examples of documented prior knowledge include previous

Section 404 permits; jurisdictional delineations performed on the site in question (or other sites known to the violator); previous Section 404 permit applications; applicable communication records; and previous Section 404 violations.

- e. Referral Package: the package of information submitted by one agency to the other when requesting that the other agency assume LEA status. The package shall include at a minimum: an Investigation Report, a preliminary or approved jurisdictional determination form, records of any pertinent communications with the violator or associated parties (including e-mails, conversation records and letters), photographic records (if available), copies of any Section 404 authorizations or permits issued to the violator, related jurisdictional determinations and any other documents deemed necessary.
- f. Investigation Report: a report that provides a detailed description of the illegal activity, the existing environmental setting, initial view on potential impacts, and a recommendation on the need for initial corrective measures.
- g. Notification Letter: for the Corps, the notification letter is typically a Cease and Desist Order or Notice of Violation. For EPA, this letter is often a Section 308 Request for Information or Section 309 Administrative Order.

3. Procedures: The following section elaborates on MOA Section III.

a. Investigation

Upon discovery of a potential Section 404 violation and throughout the investigation, the agencies are encouraged to conduct informal communications to coordinate site visits and other actions as resources allow. The IA will conduct an initial investigation to confirm whether a violation exists. Once confirmed, an Investigation Report will be prepared, and a Notification Letter shall be sent to the violator. If time allows and if conditions warrant, an order for initial corrective measures described in 3.b., below, may be included with the Notification Letter.

The Corps will send a copy of all Notification Letters to EPA Region IX, Clean Water Act Compliance Office Supervisor for Wetlands Enforcement, and other relevant federal, state, tribal and local agencies, regardless of whether they meet the criteria in MOA Section III. D. 1. EPA shall send a copy of all Notification Letters to the Corps District, Regulatory Division/Branch Chief, which oversees the geographic area in which the violation is located, and other relevant federal, state, tribal and local agencies regardless of whether they meet the criteria in MOA Section III. D. 2.

b. Initial Corrective Measures

In cases where a serious jeopardy to life, property, or important public resources is anticipated to occur before the violation can be resolved, the Corps as IA or LEA may issue an order of initial corrective measures to the parties responsible for the violation.

In determining whether or not to order initial corrective measures, the Corps will solicit the views of EPA, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and other federal, tribal, state, and local agencies as appropriate. Any order of initial corrective measures will specify the measures required and a timeline for completing the work. The order will specify that compliance with the order will not foreclose the Government's options to initiate appropriate legal action or require the submission of a permit application.

c. Lead Enforcement Agency

- (1) EPA will be the LEA for unauthorized discharge cases meeting the criteria in MOA Section III. D. 1. To request a class of cases, EPA must formally identify such a class in a letter from the Director of the Water Division to the Corps District or Division Engineers. Once requested, all subsequent cases involving similar unauthorized activities will be referred to EPA until the request is formally rescinded in a letter from the Director of the Water Division to the District or Division Engineers. If EPA intends to request a particular case after receiving a copy of the Corps' Notification Letter, including those cases for which the MOA would ordinarily designate the Corps as the LEA, EPA must make such a request in writing within **45 calendar days** of the date of the Corps' Notification Letter. EPA's written request will formally notify the Corps of EPA's desire to act as the LEA. This written notification may be through a formal letter or email from the EPA Clean Water Act Compliance Office Supervisor for Wetlands Enforcement to the applicable Corps Regulatory Division Chief.
- (2) The Corps will be the LEA in all other unpermitted cases not identified in MOA Section III.D.1. and for Corps-issued permit condition violations. Where EPA requests that the Corps take action on a permit condition violation, and the Corps provides written notification to EPA that, because of limited staff resources or other reasons, the Corps will not take action on a permit condition violation case, the EPA may take action commensurate with resource availability. Provided, however, if the Corps determines that the activity in question is in compliance with an applicable Clean Water Act Section 404 permit, that determination shall be binding on EPA.
- (3) When serving as the IA, the Corps shall notify EPA - by sending a Referral Package by electronic mail or postal service - of all cases for which MOA Section III.D.1. designates EPA as the LEA. Where EPA provides written notification¹ to the Corps that, because of limited staff resources or other reasons, it will not take action on a specific case, the Corps may take action commensurate with resource availability.
- (4) If, when acting as the IA, EPA determines the Corps should be the LEA, EPA shall submit a Referral Package to the Corps. Where Corps provides written

¹ For the purposes of this agreement, "in writing" or "written notification" may include electronic mail.

notification to the EPA that, because of limited staff resources or other reasons, it will not take action on a specific case, the EPA may take action commensurate with resource availability.

- (5) If the IA deems an alleged violation to be urgent (an on-going violation with pressing and probable continued loss of important aquatic resources, serious loss of property, or serious public safety hazard if not immediately pursued), the IA can use "Expedited LEA Determination Procedures." Expedited LEA Determination Procedures require the IA to phone the other agency to alert them of the need for expedited LEA determination. The IA will then send the Referral Package by electronic mail or postal service to the other agency, with a clearly marked subject line, requesting expedited review. The other agency shall respond, via electronic mail, fax or phone call, within 2 working days of receipt of the referral package. If the other agency declines LEA status, the IA may elect to assume LEA status. During the expedited LEA Determination Procedures, the IA may issue a Cease and Desist Order, Section 308 letter or Administrative Order. This provision in no way limits the discretion of EPA to take action pursuant to section 504 of the Clean Water Act (Emergency Powers).
- (6) Once an LEA is determined, the IA will forward a copy of any and all remaining file information not included in the Referral Package, including originals of any photos (for purposes of digital photography, *original* means saved in electronic form directly from the memory card without alteration in any form) in its enforcement file, and a correspondence letter. The IA will then close its enforcement case and no further action will be required from the IA regarding the unauthorized discharge. Once the LEA has concluded its enforcement action, it will notify the other agency of its final action.
- (7) The LEA shall determine whether remedial actions (e.g., restoration, compensatory mitigation) are required and determine when the Section 404 violation is resolved. The LEA shall make arrangements for proper monitoring of all remedial actions, and coordinate with other agencies involved in any related enforcement action resolutions as described below in 3.d. Environmental Protection Measures.
- (8) If the Corps is the LEA, it may decide to accept an application for an after-the-fact (ATF) permit and conduct an appropriate evaluation as provided for by 33 C.F.R. § 326.3(e). During the ATF permit-evaluation process, EPA can submit comments consistent with the requirements of the Section 404(q) MOA and/or during the Public Notice comment period, if required. Issuance of the permit will constitute resolution of the unauthorized work and any compensatory mitigation will be incorporated as a special condition(s) of the permit. Should an ATF permit be denied, the Corps may seek restoration or order removal and restoration.
- (9) If EPA is the LEA, the Corps will follow the procedures in the MOA Section III.G. concerning acceptance of ATF permit applications.

d. Environmental Protection Measures

If the LEA's enforcement action resolution includes either requiring remedial measures or ordering removal and restoration, the Corps and EPA may solicit each other's views regarding appropriate remedial actions. In addition, or as required (e.g. ESA compliance), the views of other federal, state, and local agencies may also be solicited as time and resources allow for incorporation into environmental protection measures. Any environmental protection measures shall be placed as an enforceable requirement upon the violator as authorized by law.

4. General Provisions

- a. Staff from the Corps Districts and EPA shall hold regularly scheduled meetings at least quarterly (in person or via conference call) to discuss all referred cases, existing case updates and Department of Justice referrals. These meetings shall be used to ensure that violations are pursued in a consistent manner, as a means of coordinating enforcement workload within the region and as a forum to discuss appropriate LEA selection in cases that may fall with either agency. Points of Contact for each District and EPA shall be identified and provided to all participants in this FLA.
- b. The Corps' Regulatory Division and Branch Chiefs, EPA's Clean Water Act Compliance Office Supervisor for Wetlands Enforcement and appropriate staff shall have a yearly enforcement program review: (i) to discuss the efficacy of the enforcement program; (ii) to identify areas of special concern; (iii) to evaluate the effectiveness of this FLA; and (iv) to recommend modifications to the FLA and enforcement procedures, where necessary.
- c. The policy and procedures contained in this FLA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by either agency or by the United States. Deviation or variation from these FLA procedures will not constitute a defense for violators or others concerned with any Section 404 enforcement action.
- d. All documents generated in the course of investigating a possible enforcement action, or in developing the enforcement action itself, may be considered privileged or otherwise exempt from release under the Freedom of Information Act (FOIA) and/or from discovery in litigation. Prior to releasing any such documents pursuant to a FOIA or discovery request, the agency subject to the request will either refer to or consult with the agency that generated the documents proposed to be released.
- e. This FLA may be modified or amended, as necessary, by mutual agreement of both parties, by a written amendment signed and dated by an authorized representative of each party.

- f. Either party may terminate this FLA, without cause, by providing thirty (30) days written notice to the other.

- g. Nothing in this FLA is intended to require an agency to obligate or expend funds in advance of or in excess of available appropriations. In addition, this FLA cannot be used to obligate or commit funds or as the basis for the transfer of funds. Any endeavor involving reimbursement or contribution of funds between the Corps and EPA will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This FLA does not provide such authority.

- h. This FLA shall take effect ten (10) days after the date of the last signature below and will continue until terminated.



Janice L. Dombi
Colonel, U.S. Army
Commanding
U.S. Army Corps of Engineers
South Pacific Division

17 April 2009
Date



Laura Yoshii
Acting Regional Administrator
U.S. Environmental Protection Agency
Region IX

22 April 2009
Date



**MEMORANDUM OF AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY AND
THE ENVIRONMENTAL PROTECTION AGENCY CONCERNING
FEDERAL ENFORCEMENT FOR THE SECTION 404 PROGRAM
OF THE CLEAN WATER ACT**

I. PURPOSE AND SCOPE

The United States Department of the Army (Army) and the United States Environmental Protection Agency (EPA) hereby establish policy and procedures pursuant to which they will undertake federal enforcement of the dredged and fill material permit requirements ("Section 404 program") of the Clean Water Act (CWA). The U.S. Army Corps of Engineers (Corps) and EPA have enforcement authorities for the Section 404 program, as specified in Sections 301(a), 308, 309, 404(n), and 404(s) of the CWA. In addition, the 1987 Amendments to the CWA (the Water Quality Act of 1987) provide new administrative penalty authority under Section 309(g) for violations of the Section 404 program. For purposes of effective administration of these statutory authorities, this Memorandum of Agreement (MOA) sets forth an appropriate allocation of enforcement responsibilities between EPA and the Corps. The prime goal of the MOA is to strengthen the Section 404 enforcement program by using the expertise, resources and initiative of both agencies in a manner which is effective and efficient in achieving the goals of the CWA.

II. POLICY

A. General. It shall be the policy of the Army and EPA to maintain the integrity of the program through federal enforcement of Section 404 requirements. The basic premise of this effort is to establish a framework for effective Section 404 enforcement with very little overlap. EPA will conduct initial on-site investigations when it is efficient with respect to available time, resources and/or expenditures, and use its authorities as provided in this agreement. In the majority of enforcement cases the Corps, because it has more field resources, will conduct initial investigations and use its authorities as provided in this agreement. This will allow each agency to play a role in enforcement which concentrates its resources in those areas for which its authorities and expertise are best suited. The Corps and EPA are encouraged to consult with each other on cases involving novel or important legal issues and/or technical situations. Assistance from the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS) and other federal, state, tribal and local agencies will be sought and accepted when appropriate.

B. *Geographic Jurisdictional Determinations.* Geographic jurisdictional determinations for a specific case will be made by the investigating agency. If asked for an oral decision, the investigator will caution that oral statements regarding jurisdiction are not an official agency determination. Each agency will advise the other of any problem trends that they become aware of through case by case determinations and initiate interagency discussions or other action to address the issue. (Note: Geographic jurisdictional determinations for "special case" situations and interpretation of Section 404(f) exemptions for "special Section 404(f) matters" will be handled in accordance with the Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act.)

C. *Violation Determinations.* The investigating agency shall be responsible for violation determinations, for example, the need for a permit. Each agency will advise the other of any problem trends that they become aware of through case by case determinations and initiate interagency discussions or other action to address the issue.

D. *Lead Enforcement Agency.* The Corps will act as the lead enforcement agency for all violations of Corps-issued permits. The Corps will also act as the lead enforcement agency for unpermitted discharge violations which do not meet the criteria for forwarding to EPA, as listed in Section III.D. of this MOA. EPA will act as the lead enforcement agency on all unpermitted discharge violations which meet those criteria. The lead enforcement agency will complete the enforcement action once an investigation has established that a violation exists. A lead enforcement agency decision with regard to any issue in a particular case, including a decision that no enforcement action be taken, is final for that case. This provision does not preclude the lead enforcement agency from referring the matter to the other agency under Sections III.D.2 and III.D.4 of this MOA.

E. *Environmental Protection Measures.* It is the policy of both agencies to avoid permanent environmental harm caused by the violator's activities by requiring remedial actions or ordering removal and restoration. In those cases where a complete remedy/removal is not appropriate, the violator may be required, in addition to other legal remedies which are appropriate (e.g., payment of administrative penalties) to provide compensatory mitigation to compensate for the harm caused by such illegal actions. Such compensatory mitigation activities shall be placed as an enforceable requirement upon a violator as authorized by law.

III. PROCEDURES

A. *Flow chart.* The attached flow chart provides an outline of the procedures

EPA and the Corps will follow in enforcement cases involving unpermitted discharges. The procedures in (B.), (C.), (D.), (E.) and (F.) below are in a sequence in which they could occur. However, these procedures may be combined in an effort to expedite the enforcement process.

B. Investigation. EPA, if it so requests and upon prior notification to the Corps, will be the investigating agency for unpermitted activities occurring in specially defined geographic areas (e.g., a particular wetland type, areas declared a "special case" within the meaning of the Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act). Timing of investigations will be commensurate with agency resources and potential environmental damage. To reduce the potential for duplicative federal effort, each agency should verify prior to initiating an investigation that the other agency does not intend or has not already begun an investigation of the same reported violation. If a violation exists, a field investigation report will be prepared which at a minimum provides a detailed description of the illegal activity, the existing environmental setting, initial view on potential impacts and a recommendation on the need for initial corrective measures. Both agencies agree that investigations must be conducted in a professional, legal manner that will not prejudice future enforcement action on the case. Investigation reports will be provided to the agency selected as the lead on the case.

C. Immediate Enforcement Action. The investigating or lead enforcement agency should inform the responsible parties of the violation and inform them that all illegal activity should cease pending further federal action. A notification letter or administrative order to that effect will be sent in the most expeditious manner. If time allows, an order for initial corrective measures may be included with the notification letter or administrative order. Also, if time allows, input from other federal, state, tribal and local agencies will be considered when determining the need for such initial corrective measures. In all cases the Corps will provide EPA a copy of its violation letters and EPA will provide the Corps copies of its §308 letters and/or §309 administrative orders. These communications will include language requesting the other agency's views and recommendations on the case. The violator will also be notified that the other agency has been contacted.

D. Lead Enforcement Agency Selection. Using the following criteria, the investigating agency will determine which agency will complete action on the enforcement case:

1. EPA will act as the lead enforcement agency when an unpermitted activity involves the following:

- a. Repeat Violator(s);
 - b. Flagrant Violation(s);
 - c. Where EPA requests a class of cases or a particular case; or
 - d. The Corps recommends that an EPA administrative penalty action may be warranted.
2. The Corps will act as the lead enforcement agency in all other unpermitted cases not identified in Part III D.1. above. Where EPA notifies the Corps that, because of limited staff resources or other reasons, it will not take action on a specific case, the Corps may take action commensurate with resource availability.
 3. The Corps will act as the lead enforcement agency for Corps-issued permit condition violations.
 4. Where EPA requests the Corps to take action on a permit condition violation, this MOA establishes a "right of first refusal" for the Corps. Where the Corps notifies EPA that, because of limited staff resources or other reasons, it will not take an action on a permit condition violation case, the EPA may take action commensurate with resource availability. However, a determination by the Corps that the activity is in compliance with the permit will represent a final enforcement decision for that case.

E. Enforcement Response. The lead enforcement agency shall determine, based on its authority, the appropriate enforcement response taking into consideration any views provided by the other agency. An appropriate enforcement response may include an administrative order, administrative penalty complaint, a civil or criminal judicial referral or other appropriate formal enforcement response.

F. Resolution. The lead enforcement agency shall make a final determination that a violation is resolved and notify interested parties so that concurrent enforcement files within another agency can be closed. In addition, the lead enforcement agency shall make arrangements for proper monitoring when required for any remedy/removal, compensatory mitigation or other corrective measures.

G. After-the-Fact Permits. No after-the-fact (ATF) permit application shall be accepted until resolution has been reached through an appropriate enforcement response as determined by the lead enforcement agency (e.g., until all administrative, legal and/or corrective action has been completed, or a decision has been made that no enforcement action is to be taken).

IV. RELATED MATTERS

A. *Interagency Agreements.* The Army and EPA are encouraged to enter into interagency agreements with other federal, state, tribal and local agencies which will provide assistance to the Corps and EPA in pursuit of Section 404 enforcement activities. For example, the preliminary enforcement site investigations or post-case monitoring activities required to ensure compliance with any enforcement order can be delegated to third parties (e.g., FWS) who agree to assist Corps/EPA in compliance efforts. However, only the Corps or EPA may make a violation determination and/or pursue an appropriate enforcement response based upon information received from a third party.

B. *Corps/EPA Field Agreements.* Corps Division or District offices and their respective EPA Regional offices are encouraged to enter into field level agreements to more specifically implement the provisions of this MOA.

C. *Data Information Exchange.* Data which would enhance either agency's enforcement efforts should be exchanged between the Corps and EPA where available. At a minimum, each agency shall begin to develop a computerized data list of persons receiving ATF permits or that have been subject to a Section 404 enforcement action subsequent to February 4, 1987 (enactment date of the 1987 Clean Water Act Amendments) in order to provide historical compliance data on persons found to have illegally discharged. Such information will help in an administrative penalty action to evaluate the statutory factor concerning history of a violator and will help to determine whether pursuit of a criminal action is appropriate.

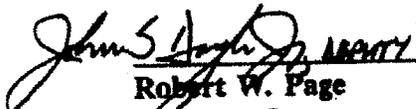
V. GENERAL

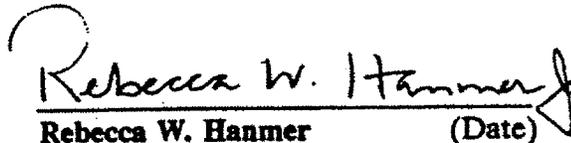
A. The procedures and responsibilities of each agency specified in this MOA may be delegated to subordinates consistent with established agency procedures.

B. The policy and procedures contained within this MOA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by either agency or by the U.S. Deviation or variance from these MOA procedures will not constitute a defense for violators or others concerned with any Section 404 enforcement action.

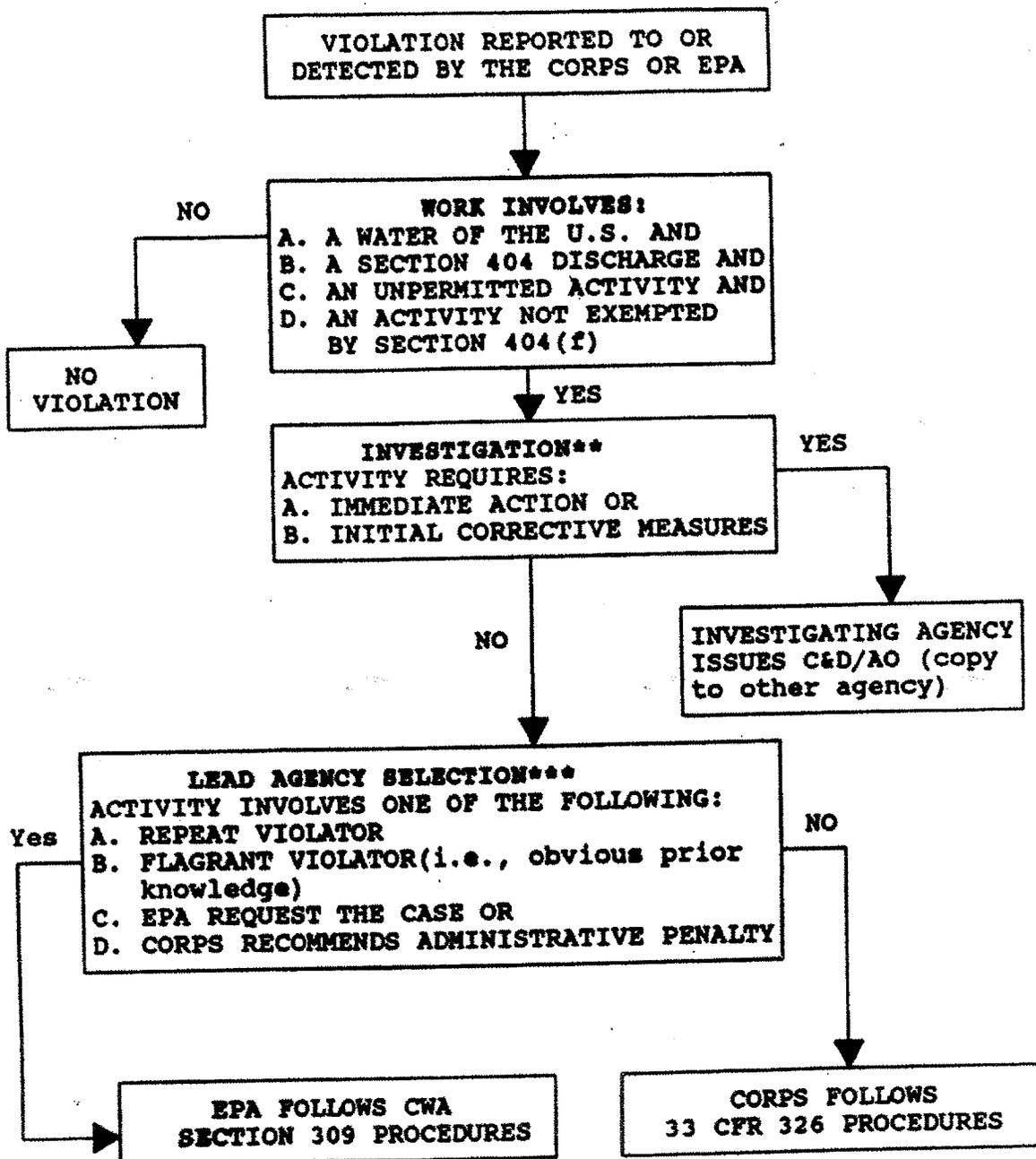
C. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of either agency. All formal guidance interpreting this MOA shall be issued jointly.

D. This agreement shall take effect 60 days after the date of the last signature below and will continue in effect for five years unless extended, modified or revoked by agreement of both parties, or revoked by either party alone upon six months written notice, prior to that time.


Robert W. Page (Date)
Assistant Secretary of
the Army (Civil Works)


Rebecca W. Hanmer (Date)
Acting Assistant Administrator
for Water
U.S. Environmental Protection Agency

**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.



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.

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. Page
for Robert W. Page (Date) JAN. 19, 1989
Assistant Secretary of
the Army (Civil Works)

Rebecca W. Hanmer Jan 19, 1989
Rebecca W. Hanmer (Date)
Acting Assistant Administrator
for Water
U.S. Environmental Protection Agency