The Clean Water Act authorizes the U.S. Army Corps of Engineers (the Corps) (Section 404(a)) or an EPA approved state or tribe (Section 404(g)) to issue permits for discharges of dredged or fill material at specified sites in waters of the United States. Section 404(c), however, authorizes EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

“Veto Authority”

Under Section 404(c), EPA may initiate a public process to prohibit or restrict the specification by the Corps or by a state or tribe of a site for the discharge of dredged or fill material. According to the Clean Water Act, Section 404(c) authority may be exercised before a permit is applied for, while an application is pending, or after a permit has been issued.

Because Section 404(c) actions have mostly been taken in response to unresolved Corps permit applications, this type of action is frequently referred to as an EPA veto of a Corps permit. Although the Corps authorizes approximately 74,000 permit activities in the Nation’s waters each year, EPA has used its Section 404(c) authority very sparingly, issuing only 13 final determinations since 1972. EPA has not used this authority in its oversight of EPA approved state or tribal programs.

An EPA Regional Administrator initiates a 404(c) action if he or she determines that the impact of a proposed permit activity is likely to result in:

- significant degradation of municipal water supplies (including surface or ground water) or,
- significant loss of or damage to fisheries, shellfishing, wildlife habitat, or recreation areas.

1 Source: Annual U.S. Army Corps of Engineers reports to Congress for fiscal years 1987 through 2018.
The 13 Section 404(c) actions that EPA has finalized as of January 2022 have involved unacceptable adverse impacts from a variety of projects to a variety of aquatic resources including freshwater forested, emergent, and shrub wetlands; tidal freshwater and tidal estuarine wetlands; as well as streams, rivers, and lakes.

### Final Section 404(c) Veto Determinations

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Initiation and Final Determination Dates</th>
<th>Location</th>
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</table>
| **Spruce No. 1 Surface Mine**  
Surface Coal Mine | • Initiated October 16, 2009  
• Final Determination issued January 13, 2011 | 3  
WV  
Huntington |
| **Yazoo Pumps**  
Flood Control Project | • Initiated February 1, 2008  
• Final Determination issued August 31, 2008 | 4  
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| **Two Forks**  
Water Supply Impoundment | • Initiated March 24, 1989  
• Final Determination issued November 23, 1990 | 8  
CO  
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| **Big River**  
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• Final Determination issued March 1, 1990 | 1  
RI  
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| **Ware Creek**  
Water Supply Impoundment | • Initiated August 4, 1988  
• Final Determination issued July 10, 1989 | 3  
VA  
Norfolk |
| **Lake Alma**  
Dam and Recreational Impoundment | • Initiated June 8, 1988  
• Final Determination issued December 16, 1988 | 4  
GA  
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| **Henry Rem Estates**  
Agricultural Conversion - Rockplowing | • Initiated April 22, 1987  
• Final Determination issued June 15, 1988 | 4  
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| **Russo Development Corps**  
Warehouse Development (After-the-fact permit) | • Initiated May 26, 1987  
• Final Determination issued March 21, 1988 | 2  
NJ  
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| **Attleboro Mall**  
Shopping Mall | • Initiated July 23, 1985  
• Final Determination issued May 13, 1986 | 1  
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| **Bayou Aux Carpes**  
Flood Control Project | • Initiated December 17, 1984  
• Final Determination issued October 16, 1985 | 6  
LA  
New Orleans |
| **Jack Maybank Site**  
Duck Hunting/Aquaculture Impoundment | • Initiated April 15, 1984  
• Final Determination issued April 5, 1985 | 4  
SC  
Charleston |
| **Norden Co.**  
Waste Storage/Recycling Plant | • Initiated September 30, 1983  
• Final Determination issued June 15, 1984 | 4  
AL  
Mobile |
| **North Miami**  
Landfill/Municipal Recreational Facility | • Initiated June 25, 1980  
• Final Determination issued January 19, 1981 | 4  
FL  
Jacksonville |

### Selected References

EPA Clean Water Act Section 404(c) website: [https://www.epa.gov/cwa-404/restriction-disposal-sites-under-cwa-section-404c](https://www.epa.gov/cwa-404/restriction-disposal-sites-under-cwa-section-404c)

EPA Clean Water Act Section 404(c) Fact Sheet: [https://www.epa.gov/cwa-404/clean-water-act-section-404c-veto-authority](https://www.epa.gov/cwa-404/clean-water-act-section-404c-veto-authority)

Chronology of Final Section 404(c) Actions: [https://www.epa.gov/cwa-404/chronology-cwa-section-404c-actions](https://www.epa.gov/cwa-404/chronology-cwa-section-404c-actions)

EPA Clean Water Act Section 404 website: [https://www.epa.gov/cwa-404](https://www.epa.gov/cwa-404)