



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this evaluation to assess the U.S. Environmental Protection Agency's (EPA's) effectiveness at identifying violations of the Clean Water Act (CWA) Section 404 (§404) that fall under its enforcement authority. CWA §404 regulates the discharge of dredged or fill material into wetlands and surface waters.

Background

Wetlands, lakes, streams, and other surface waters provide a variety of benefits, including pollution reduction, flood protection, erosion control, and critical habitat for wildlife. EPA has the lead enforcement role for flagrant or repeat violations involving cases where the violator has not applied for a valid §404 permit from the U.S. Army Corps of Engineers.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2010/20091026-10-P-0009.pdf

EPA Needs a Better Strategy to Identify Violations of Section 404 of the Clean Water Act

What We Found

EPA lacks a systematic framework for identifying the §404 violations for which it is responsible under a 1989 Memorandum of Agreement. Primarily because of its limited field presence related to §404 violations, EPA identifies violations through a passive, reactive method of relying on complaints and referrals from external sources. An incomplete national data system and sporadic coordination with federal and State partners further impair EPA's ability to maintain an effective §404 enforcement program.

EPA must develop a framework that includes a §404 enforcement strategy that includes such elements as: increased communication/coordination with enforcement partners, a system to track repeat and flagrant violators, performance measures, and cross-training. Without an effective framework or strategy, EPA cannot be assured that it is sufficiently protecting wetlands and other surface waters from §404 violations involving dredged or fill activity. Further, the current system does not provide EPA with the necessary inputs to make informed decisions about the allocation of resources for §404 enforcement.

What We Recommend

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance, in consultation with the Assistant Administrator for Water, develop and implement a comprehensive CWA §404 enforcement strategy addressing issues discussed in this report (such as communication with enforcement partners and a system to track violations). We also recommend that the Deputy Administrator revise the 1989 Memorandum of Agreement in collaboration with the Assistant Secretary of the Army for Civil Works.

The Agency agreed to develop and implement a comprehensive CWA §404 enforcement strategy. Although the Agency believes the enforcement strategy will clarify how it collaborates with the U.S. Army Corps of Engineers and processes referrals, and therefore may not require the 1989 Memorandum of Agreement be revised, we retained the second recommendation because we still believe this agreement should be revised. We consider both recommendations undecided.