



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

Memorandum for the Field

Subject: U.S. Environmental Protection Agency (EPA) coordination between Regional offices and Headquarters on Clean Water Act (CWA) Section 404(q) actions.

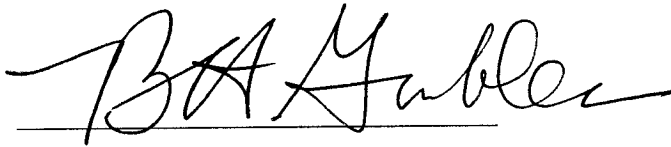
1. Purpose: The purposes of this memorandum are to facilitate improved communication, and ensure a more effective and consistent approach for implementing CWA Section 404(q). The coordination provisions articulated in this memorandum do not modify the Section 404(q) Memorandum of Agreement (MOA), but supplement the MOA's field level procedures as they apply to EPA.
2. Background: Signed by EPA and the Department of the Army in 1992, the Section 404(q) MOA "establishes policies and procedures to implement Section 404(q) of the CWA to 'minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits.'" The MOA is organized into four (4) distinct parts. Part IV of the 404(q) MOA provides procedures for the elevation of individual permit cases involving aquatic resources of national importance. More specifically, the MOA limits the elevation process to those individual permit cases where the environmental impacts from a project (including consideration of mitigation) will result in unacceptable and adverse effects to aquatic resources of national importance. In other words, impacts should be similar in magnitude to those documented in other 404(q) actions and Section 404(c) actions. The MOA acknowledges the potential delays in permitting resulting from the implementation of the coordination procedures outlined in Part IV and stated that actions under Part IV would be initiated "only when absolutely necessary." The MOA provides another mechanism, Part III, to address "the application of existing policy or procedure, or procedural failures in agency coordination" in the course of "an action or series of actions."
3. Current Practice: With regard to Part IV of the MOA, the Regional offices, pursuant to paragraph 3(a), may notify the Corps Districts during the public notice and comment period where they believe individual permit cases may result in substantial and unacceptable impacts to aquatic resources of national importance (hereinafter "3(a) letter"). Moreover, the Regional Administrators (RA), within the time allotted in paragraph 3(b), may notify the District Engineers (DE) where they believe individual permit cases will have a substantial and unacceptable impact to aquatic resources of national importance (hereinafter "3(b) letter"). Under the terms of the

MOA, when the DE intends to issue a permit for an action for which EPA issued a 3(b) letter, the DE is to notify EPA of the District's proposed decision and provide a copy of the draft permit. The RA, at that time, determines whether to request higher level, Headquarters (HQ), review of the individual permit case. Since the 404(q) MOA was signed in 1992, the Regions have requested elevation of 18 individual permit cases for EPA HQ consideration.

There are a range of practices and some variation in the manner, circumstances and frequency with which the Regions invoke Part IV of the 404(q) MOA. Indeed, the MOA encourages the EPA Regions and Corps Districts to develop field level procedures to ensure effective interagency coordination and to discuss issues, expedite comments, and foster strong professional partnerships and cooperative working relationships. Thus, some variation is to be expected. We are implementing the measures in this guidance to improve HQ understanding of how the 404(q) process is applied in the field and ensure the MOA is implemented in a consistent and effective manner.

4. Coordination Requirements: EPA Regional offices are expected to follow the internal coordination procedures outlined in Paragraph 5 below for actions taken for the elevation of individual permit cases pursuant to Part IV of the Section 404(q) MOA. In addition, the Regional offices are expected to continue to follow the field level procedures established by Part IV of the 404(q) MOA.
5. Coordination Procedures: The Regional offices are expected to implement the following procedures to improve and expedite coordination with HQ prior to the issuance of 3(a) and 3(b) letters:
 - a. The Region is expected to notify HQ immediately when the Region decides, at the level at which signature is required, to issue a 3(a) letter, or to bypass the 3(a) letter and immediately issue a 3(b) letter, pursuant to the MOA. In addition, the Region is expected to provide HQ with a copy of the draft letter, which has been approved by the level at which signature is required, no later than seven (7) business days before the letter is to be signed (i.e., at least 7 business days before the close of the comment period).
 - b. In accordance with the MOA, where a 3(a) letter has been provided by the Region during the comment period, a 3(b) letter may be issued within 25 days after the close of the public comment period. During this time, the Region is expected to review the information pertaining to the proposed action and decide whether a 3(b) letter is appropriate. The Region is expected to notify HQ immediately when the Region decides, at the Division Director level, to issue a 3(b) letter, pursuant to the MOA. In addition, the Region is expected to provide HQ with a copy of the draft letter that has been approved at the Division Director level, no later than five (5) business days before the letter is to be signed (i.e., at least 5 business days before the 25-day time period expires).

- c. HQ review of the draft Regional letter is intended to ensure consistency with national program regulations, policies, and goals and consistency with the purposes of the 404(q) MOA. Any comments provided by Headquarters are expected to be communicated to the Region within three (3) business days of receipt of the draft letter. If HQ does not communicate its concerns within 3 business days, the Region may proceed with the action.
6. Effective Dates: This memorandum goes into effect immediately upon signature. EPA HQ intends to collect information regarding the efficiency and effectiveness of the procedure outlined in this memorandum for one year, and then evaluate the application of the 404(q) process.



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Date: October 30, 2006