



**US Army Corps  
of Engineers**

Engineer Institute for  
Water Resources

---

# **Study of U.S. Army Corps of Engineers Enforcement Activities**

**Appendices 1-40**

**May 1984**

**Policy Study 84-PS(A)-2**

STUDY OF U.S. ARMY CORPS OF ENGINEERS  
ENFORCEMENT ACTIVITIES  
APPENDICES 1-40

by

James J. Comiskey

and

Thomas M. Ballentine

U.S. Army Corps of Engineers  
Institute for Water Resources  
Water Resources Support Center  
Casey Building  
Fort Belvoir, Viringina 2060

May 1984

Policy Study 84-PS(A)-2

LIST OF APPENDICES

	<u>Page</u>
APPENDIX 1: RELATED LEGAL BACKGROUND INFORMATION ON SECTION 10 AND SECTION 404 ENFORCEMENT ACTIVITIES	1-1
APPENDIX 2: DETAILED ANALYSIS OF OVERVIEWS OF CORPS OF ENGINEERS ENFORCEMENT ACTIVITIES BY SELECTED GROUPS	2-1
APPENDIX 3: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY CORPS OFFICIALS	3-1
APPENDIX 4: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY ENVIRONMENTAL GROUPS	4-1
APPENDIX 5: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY PRIVATE CITIZENS	5-1
APPENDIX 6: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY INDUSTRY AND COMMERCIAL ENTERPRISES	6-1
APPENDIX 7: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY STATE AGENCIES	7-1
APPENDIX 8: OVERVIEW OF U.S. ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404 PERMIT ENFORCEMENT PROGRAM BY FEDERAL AGENCIES	8-1
APPENDIX 9: OTHER COMMENTS ON ENFORCEMENT BY CORPS DISTRICT/DIVISIONS	9-1
APPENDIX 10: STRENGTHS, SUCCESSES AND PROBLEM AREAS OF CORPS ENFORCEMENT PROGRAM BY CORPS OFFICIALS	10-1
APPENDIX 11: NUMBER OF APPLICATIONS RECEIVED, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS FOR FY '78 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	11-1
APPENDIX 12: NUMBER OF APPLICATIONS RECEIVED, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS FOR FY '79 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	12-1

LIST OF APPENDICES CONTINUED

	<u>Page</u>
APPENDIX 13: NUMBER OF APPLICATIONS RECEIVED, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS FOR '80 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	13-1
APPENDIX 14: NUMBER OF APPLICATIONS RECEIVED, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS FOR FY '81 BY U.S. ARMY CORPS OF ENGINEERS	14-1
APPENDIX 15: FOUR-YEAR SUMMARY (1978, 1979, 1980 AND 1981) OF PERMIT APPLICATIONS, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	15-1
APPENDIX 16: SUMMARY SHEET (1978-1981) NUMBER OF APPLICATIONS RECEIVED, PERMITS ISSUED AND STATUS/RESOLUTION OF VIOLATIONS	16-1
APPENDIX 17: SOURCE OF VIOLATIONS REPORTED OR DETECTED DURING FY '78 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	17-1
APPENDIX 18: SOURCE OF VIOLATIONS REPORTED OR DETECTED DURING FY '79 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	18-1
APPENDIX 19: SOURCE OF VIOLATIONS REPORTED OR DETECTED DURING FY '80 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	19-1
APPENDIX 20: SOURCE OF VIOLATIONS REPORTED OR DETECTED DURING FY '81 BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	20-1
APPENDIX 21: FOUR-YEAR SUMMARY (1978, 1979, 1980, 1981) OF SOURCE OF VIOLATIONS REPORTED OR DETECTED BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	21-1
APPENDIX 22: STATUS OF SECTION 10 AND SECTION 404 CASES REFERRED TO U.S. DEPARTMENT OF JUSTICE FOR PROSECUTION	22-1
APPENDIX 23: SECTION 404 CASES REFERRED FOR PROSECUTION TO U.S. DEPARTMENT OF JUSTICE BY U.S. ENVIRONMENTAL PROTECTION AGENCY	23-1
APPENDIX 24: NUMBER OF <u>ACTIVE</u> SECTION 10, SECTION 404 AND COMBINATION 10/404 CASES ON FILE WITH U.S. DEPARTMENT OF JUSTICE BY CORPS DISTRICT	24-1

LIST OF APPENDICES CONTINUED

	<u>Page</u>	
APPENDIX 25:	NUMBER OF <u>ACTIVE</u> SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 CASES BY U.S. DISTRICT COURT (U.S. ATTORNEY'S OFFICE)	25-1
APPENDIX 26:	MANPOWER AND EXPENDITURES FOR ENFORCEMENT ACTIVITIES OF CORPS REGULATORY PROGRAM	26-1
APPENDIX 27:	COMPARISON BETWEEN NUMBER OF VIOLATIONS TO BE RESOLVED VS. NUMBER RESOLVED PER MAN YEAR OF EFFORT BY U.S. ARMY CORPS OF ENGINEERS DISTRICT	27-1
APPENDIX 28:	REPORTS, ARTICLES, AND CASE HISTORIES ON CORPS OF ENGINEERS SECTION 10 AND SECTION 404 ENFORCEMENT PROGRAM	28-1
APPENDIX 29:	ABBREVIATED ANALYSIS OF ENFORCEMENT ACTIVITES OF STATE COASTAL ZONE AGENCIES	29-1
APPENDIX 30:	ANALYSIS OF SOME PROGRAMS FOR ENFORCEMENT OF STATE/TERRITORIAL COASTAL PROTECTION LAWS	30-1
APPENDIX 31:	ANALYSIS OF ENFORCEABILITY OF STATE WETLAND STATUTES: ROSENBAUM STUDY	31-1
APPENDIX 32:	U.S. ARMY CORPS OF ENGINEERS EXPERIENCE WITH TITLE 36 (RANGER PROGRAM)	32-1
APPENDIX 33:	USE OF CIVIL MONEY PENALTIES BY OTHER FEDERAL ADMINISTRATIVE AGENCIES	33-1
APPENDIX 34:	CAPABILITY OF OFFICE OF U.S. MAGISTRATE TO HEAR SECTION 404 AND SECTION 10 MINOR VIOLATIONS	34-1
APPENDIX 35:	RATIONALE FOR USE OF COPRS HEARING OFFICERS IN PREFERENCE TO ADMINISTRATIVE LAW JUDGES	35-1
APPENDIX 36:	EXAMPLE OF STATE CITATION AUTHORITY PROGRAM: EVALUATION OF RESOLUTION OF WETLAND VIOLATIONS BY NEW YORK DEPARTMENT OF ENVIRONMAENTAL CONSERVATION THROUGH USE OF ADMINISTRATION LAW JUDGES	36-1
APPENDIX 37:	REVIEW OF COAST GUARD CIVIL PENALTY AND USE OF HEARING OFFICES FOR RESOLUTION OF VIOLATIONS	37-1

LIST OF APPENDICES CONTINUED

	<u>Page</u>
APPENDIX 38:       SOME SUGGESTED GUIDELINES FOR RIGHTS OF PARTIES CHARGED WITH VIOLATIONS UNDER CORPS ADMINISTRATIVE HEARING PROCESS	38-1
APPENDIX 39:       POTENTIAL GUIDELINES FOR DEVELOPMENT OF AN ENFORCEMENT STRATEGY	39-1
APPENDIX 40:       LIST OF ABBREVIATIONS OF COASTAL STATE PROGRAM ELEMENTS	40-1

## APPENDIX 1

### RELATED LEGAL BACKGROUND INFORMATION ON SECTION 10 AND SECTION 404 ENFORCEMENT ACTIVITIES

#### A. Jurisdiction of Section 10 Permits

The Corps of Engineers' jurisdiction over the navigable waters of the United States extends over the entire surface and bed of the waterbody up to the line of mean high tide on tidal waters and the ordinary high water mark on non-tidal waters. Thus wetlands along a navigable waterbody lying between deepwater and the line of mean high tide on the ordinary high tide are part of the navigable waters of the United States.<sup>1</sup>

On streams and rivers this jurisdiction extends upstream to the upper limit of navigability. The portion of the river upstream from the point where it is no longer navigable in fact is not a part of the navigable water of the U.S.<sup>2</sup>

#### B. Jurisdiction of Section 404 Permits.

The Federal Water Pollution control Act protects "the waters of the United States," including navigable waters and practically all other waters and wetland areas within the boundaries of the United States, a non-navigable waterbody will be covered by provisions of FWPCA if pollution "could affect interstate commerce." Thus if the pollution of a lake, river or wetland area is potentially of adverse impact on the navigable capacity of a waterway, destroying its recreational or commercial value or endangering agricultural or industrial activities, this state will prohibit such pollution.<sup>3</sup>

#### C. Past Court Decisions Concerning Civil Injunctive Remedies for Section 10 Violations<sup>4</sup>

In United States v. Republic Steel Corporation, (362 U.S. 482(1960), Justice Douglas envisioned a civil remedy for all portions of the Rivers and Harbors Act as well as 403. He said,

"Congress has legislated and made its purpose clear; it has provided enough Federal laws in Section 10 (33 U.S.C. 403) from which appropriate remedies may be fashioned even though they rest on inferences. Otherwise we impute to Congress a futility inconsistent with the great design of this legislation."

Too, in Wyandotte Transportation Co. et al. v. United States, 38 U.U.S. 191 (1967), the Court reasoned that Congress did not intend "to withhold from the government a remedy that ensures full effectiveness of the Act," and further concluded that a civil remedy did exist under the Rivers and Harbors Act.

While there are two possible types of Civil enforcement-actions for damages and actions for injunctions, a number of reported decisions also provide some important precedents for Corps enforcement of the former type of action. In United States v. Perma Paving Co. (332 F. 2nd 754, 2nd Cir., 1964), and in United States v. New York Central Railroad Co. (252 F. Supp. 508

(D. Mass 1965), the Courts ruled that the United States was entitled to recover money damages for the removal of obstructions in navigable channels.

D. Evaluation of the Penalties for Violation of Section 10 of the Rivers and Harbors Act

The array of civil remedies provided by the Rivers and Harbors Act of 1899 gives the Corps of Engineers considerable latitude in enforcement actions brought to protect environmentally valuable coastal areas and wetlands. Many decisions while recognizing the broad judicial power to order removal of unlawful obstructions and restoration of damaged areas have developed remedies based on a balance of the equities and realities of each situation.<sup>5</sup>

Such a balanced approach provides the Courts with enough flexibility to create very fair remedies in each case. The remedy selected depends primarily on the gravity of the harm done by the violation and the violator's willingness to comply with the law. Where a developer constructs an unlawful obstruction with full knowledge of the law and refuses under all circumstances to apply for a permit, a complete removal/restoration order seems highly appropriate. A more difficult case is presented where the obstruction has been in place for a long time and the Corps has refrained from requiring a permit, or where the offender has relied on some affirmative representation by the Corps that a permit is not required. The Corps of Engineers regulations do provide for an "after-the-fact" application procedure for bringing existing but unauthorized obstructions into compliance with the law. The existence of this procedure has determined the form of relief granted by several courts confronted with illegal obstructions. Of course, the Corps is not obliged to grant an after-the-fact permit, and if it chooses not to do so, the reviewing court must decide what relief is appropriate under the circumstances.<sup>5</sup>

Particularly where the obstruction has been in place for a long time and the Corps has refrained from taking action, or where the Corps has made an affirmative representation that a permit is not necessary, considerations of fairness require that a complete removal/restoration order be issued only in the most compelling of circumstances. This does not mean that the government can be stopped from enforcing the law or from requiring permits for new work in areas where it previously has not exercised jurisdiction. It means that the severity of the remedy should be treated with equity if the alleged violator has been misled or has shown some effort to comply with the law.

Other aspects of the penalties associated with Section 10 violations have received some harsh criticism. First of all the decision to seek a criminal penalty rests not with the Corps of Engineers but with the Department of Justice which under Section 17 of the 1899 Act has the responsibility for this litigation. Secondly criminal penalties as provided in the Rivers and Harbors Act of 1899 may be ineffective in preventing illegal construction and protecting the environment. Thirdly, illegal construction in a sense "rewards" the developer since the work can be completed without meeting environmental or other requirements. A law-abiding developer may be forced to make costly modifications or be denied a permit altogether while the illegal builder has successfully completed a similar project. Secondly, many

violators are large scale commercial enterprises, and the nominal fines and jail terms available under the Rivers and Harbors Act offer little incentive to change their behavior.<sup>6</sup>

E. 1976 Memorandum on EPA Enforcement Policy for Non Compliance with Section 404<sup>7</sup>

1. Administrative Enforcement Policy

According to this Memorandum of Understanding, the Corps of Engineers shall function as the first line of administrative enforcement. Where Corps cease and desist orders are violated, Corps regulations provide for immediate referral to U.S. Attorney. Since this procedure involves no delegation by EPA of the Administrations enforcement authority, EPA may select to prevent violation of Section 301 by issuance of one of its own Section 309 administrative orders. Only three situations were defined in which EPA enforcement personnel are to be involved in administrative enforcement related to a Section 404 violation:

1) When the Corps of Engineers does not issue a timely cease and desist order against a 404 violator, EPA may take appropriate action under Section 309 of FWPCA.

2) In emergency situations in which there is clearly insufficient time to notify the Corps of Engineers of facts available to EPA meriting administrative enforcement, EPA can commence appropriate action.

3) If the Corps of Engineers requests EPA to issue a Section 390 administrative order.

2. Civil and Criminal Enforcement Procedures Upon Referral

While administrative remedies are preferred, whenever it becomes apparent to EPA enforcement officials that a violation merits referral to the U.S. Attorney for civil and/or criminal proceedings, EPA will first notify Corps district personnel, advise them of the facts about the case and recommend a course of legal action. A case may also result in enforcement proceedings when referred by the Corps to the U.S. Attorney after consultation and coordination with EPA, or when referred by EPA should the Corps decide not to refer the case or when instituted by the Department of Justics on its own initiative.<sup>8</sup>

## NOTES

1. Office of Energy and Environmental Law, University of Alabama. A Survey of Wetlands Law. Monographs 3, no date.
2. Ibid, p. 7.
3. Ibid, p. 8.
4. Memorandum. Criminal and Civil Enforcement of Federal Anti-Pollution Laws. U.S. Department of Justice, N.D. From James T. B. Tripp and Richard D. Hall, assistant U.S. Attorneys to Whitney North Seymour, U.S. Attorney, Southern District of New York.
5. Neil J. Barber. Sections 9 and 10 of the Rivers and Harbors Act of 1899: Potent Tools for Environmental Protection. Ecology Law Review, Vol. 6, No. 1, 1976, pp. 151-152.
6. John P. Hills. Litigation Under the Federal Water Pollution Control Act Amendments of 1972. Land and Natural Resources Division Journal, Vol. 10, No. 10, October, 1972. Published by the U.S. Department of Justice, p. 377.
7. Letter of 5 September 1979 to Clifford J. Alexander, Jr. Secretary of the Army from Benjamin R. Civiletti, Attorney General, p. 6.
8. Michael C. Blum, The Clean Water Act's Section 404 Permit Program Enters Its Adolescence: An Institutional and Programmatic Perspective. Ecology Law Quarterly, 1980, pp. 440-441.

## APPENDIX 2

### DETAILED ANALYSIS OF OVERVIEWS OF CORPS OF ENGINEERS ENFORCEMENT ACTIVITIES BY SELECTED GROUPS

#### 1. Overview of US Army Corps of Engineers Section 10 and Section 404 Permit Enforcement Program by Corps Officials

To ascertain several opinions on the effectiveness of the present Corps enforcement program by Corps enforcement personnel, 20 district and 7 divisions were contacted through telephone conversations. Regulatory enforcement units at the district level included: Sacramento, Pittsburgh, Memphis, New Orleans, Wilmington, Buffalo, Jacksonville, New York, Baltimore, Kansas City, Seattle, St. Louis, Savannah, St. Paul, Detroit, Huntington, San Francisco, Charleston and Omaha. Personnel interviewed in division offices represented the South Pacific, North Pacific, Southwestern, Missouri River, North Central, Ohio River Valley, Lower Mississippi Valley, North Atlantic and South Atlantic regions of the United States. Comments and recommendations from these offices are presented in their entirety in Appendices 3 through 8. Other relevant observations about the Corps enforcement program contained on the Regulatory Impact Analysis Questionnaire submitted by district offices to the Institute for Water Resources in September, 1981 are discussed in Appendix 9.

#### 2. Evaluation of Strengths and Weaknesses of US Army Corps of Engineers Enforcement Program by Corps Officials

Corps personnel cited a variety of both successes and problem areas as a result of the implementation of its Section 10 and Section 404 enforcement program. A list of such successes and problem areas of this program is contained in Appendix 10. Although the number of problem areas enumerated by Corps personnel exceeds the list of program strengths, the type of accomplishments indicate close coordination and integration of other Federal agencies and issue areas in the completion of enforcement goals. For example, three Corps districts reported close working relationships with the U.S. Attorney's office. Two other Corps districts, Baltimore and Detroit were of the opinion that officials of the U.S. Department of Justice in these two areas actively prosecuted wetlands cases referred to them. As a result of notices, media, and other educational channels, overall compliance with permit conditions have been termed above average in the view of six Corps enforcement officers.

Although several specific problem areas presently characterize the Corps enforcement program, an overall concern of many Corps personnel interviewed during the course of this study effort centers on a sense of frustration and low morale among the enforcement staff. Some of these personnel stated that OCE has assigned a low priority to this aspect of the regulatory program. Some in district offices view the whole issue of enforcement as one of "benign neglect." Others perceive a major policy shift in the regulatory functions with emphasis on the utilization of nearly all available manpower and funds on processing of permits to the almost total exclusion of enforcement. Finally, since many willful and intentional violators may not be persecuted at all, a few Corps enforcement personnel are of the opinion that the permit applicant waiting patiently up to as many as 8 months is actually punished instead of the violator. Resolution of some of the specific problem areas discussed below may result in a more positive image of their program mission.

While about 20 different issues were raised by Corps enforcement personnel, 4 of these issues are considered major problem areas since each were noted by at least 4 Corps districts. These include:

- 1) Lack of basic statutory authority to effectively enforce Section 10 and Section 404 permit requirements and explicit authority to enforce regulations dealing with unauthorized work;
- 2) Reluctance on part of US Attorney to actively prosecute wetland cases;
- 3) Reactive rather than active enforcement programs;
- 4) Limited, if any, funds available for monitoring and surveillance staff and equipment.

More than one-half (10) of all Corps district personnel questioned considered basic statutory enforcement authority as a principal impediment to a more successful enforcement program. Even though the 1899 Rivers and Harbors Act provides civil penalties in the form of injunctive relief and restoration for violations of Section 10 permits, this same law provides no civil fines (only criminal). Since it is often unlikely that the U.S. Department of Justice would seek criminal penalties for Section 10 violations, there is actually no large or meaningful fine to dissuade potential violators. With regard to Section 404, some Corps enforcement personnel contended that the absence of authority to prosecute violators for unauthorized work, in conjunction with varying legal interpretations about EPA's explicit authority in this issue, may create the impression that the resolution of violations cannot be accomplished without an active participation by EPA and vigorous prosecution/litigation activities by the U.S. Department of Justice.

Enforcement personnel in four Corps offices (Memphis, Baltimore, Galveston and Lower Mississippi Valley) reported that enforcement actions in these areas are hampered by a reluctance on the part of U.S. Attorneys to prosecute cases referred to them by Corps counsels. While Wilmington District and New England Division stated that counsels in their respective districts may refer only larger cases to U.S. Department of Justice, a number of the Sacramento District regulatory staff was of the opinion that the Office of Counsel in this district was generally unwilling to refer cases for prosecution.

With limited manpower and funds for maintaining and surveillance, several districts viewed their enforcement program as reactive rather than active. Compliance monitoring is seldom if ever accomplished in seven Corps districts. Also, even districts with relatively high (80-90 percent) documented compliance records may soon experience only fragmented program effort in this area of enforcement from budget cutbacks. For example, Seattle, with an 85 percent compliance factor, no longer uses aerial photography due to lack of funds.

#### Perceptions of State Enforcement Program by Corps Officials

Of the six state enforcement programs discussed by Corps personnel (California, Florida, New Jersey, Michigan, Hawaii, New York) only New York was perceived to have an adequate program in this area. It was the opinion of other personnel that enforcement of Section 404 permit requirements by states would render it more susceptible to political influence.

## Recommendations for Improvements in Corps of Engineers Enforcement Program

Even though over 10 changes in the Corps enforcement program were proposed, the most important recommendations in terms of Corps personnel centered on the development of a citation authority. Representatives of 18 Corps districts favor the use of this "traffic-ticket" approach for the resolution of some violations while only two Corps districts opposed this means. In addition, Corps districts generally responsive to the idea of a citation authority also urged the development of a published schedule of higher administrative fines both for violations and ATF permits. Other recommendations for improvements in the program consisted of the following:

- 1) Revocation of permit should not require OCE approval;
- 2) Letter from Department of Justice indicating potential prosecution should follow after cease and desist order has been issued;
- 3) Legislation permitting inspectors to enter private property without securing permission from EPA;
- 4) Rescinding of requirement that Corps seek input from other agencies to issue ATF permits.

### 3. Overview of Corps of Engineers, Section 10 and Section 404 Permit Enforcement Programs by Environmental Groups

Of the eight major environmental groups contacted during the course of this study, three reported that the Corps is adequately enforcing its Section 404 and Section 10 mandates (Appendix IV). Both the Seattle District and New England Division are viewed by some conservation groups as maintaining effective enforcement programs. Representatives of three other such organizations stated no overall perceptions on the effectiveness of this aspect of the regulatory program.

The American Littoral Society as well as the Massachusetts Association of Conservation Officials suggested the development and implementation of citation authority for the Corps of Engineers to more readily resolve minor violations. In addition, the latter group is of the opinion that the Corps needs a schedule of administrative fines to be published and circulated to be based on (1) degree of severity - risk to health; (2) chronic nature of violation - repeat offenders; and, (3) risk to wildlife recreation (commercial opportunities). In regard to general permits, an official of the Conservation Foundation stressed the positive use of this type of system, providing for both a reduction in administrative paperwork on Corps enforcement activities and for greater scientific scrutiny of cumulative impacts.

### 4. Overview of Corps of Engineers Section 10 and Section 404 Permit Enforcement Program by Private Citizens

In addition to conservation organizations, views on the subject of Corps enforcement activities were also solicited from a few private citizens with publications of interest in Federal coastal issues (Appendix 5). While three of these individuals reported no specific information regarding these

activities, the rest of those interviewed by phone offered comments on the legal and organizational aspect of the program rather than suggesting any overall evaluation.

In terms of legal liabilities of the Corps program, it was stated that the Corps does not actually have authority to prosecute violators doing unauthorized work and that administrative costs to prosecute such violators is too high. On the other hand, the whole permit program including its enforcement was criticized as being one of "unfettered discretion" allowing for no due process or equal protection under the law.

With regard to its organizational aspects, the Corps was singled out as the only organization capable of doing a satisfactory job in protecting wetlands. In addition, besides relying on the Corps to enforce coastal regulations, state conservation officers may be of the opinion that certain Corps districts maintain higher levels of technical expertise in enforcement activities than those of state coastal programs.

Three major recommendations for changes in the Corps enforcement program emerged from conversations with these individuals:

- 1) A hierarchy of values/critical areas needs to be developed for Corps establishment of a threshold system for prosecuting important cases;
- 2) Congress should empower the Corps with stronger enforcement authority;
- 3) Scope of present 404 jurisdictions should be maintained.

#### 5. Overview of US Army Corps of Engineers Section 10 and Section 404 Enforcement Program by Oil and Gas Industry

Through the efforts of the Wetlands Energy Production Association, views on Corps of Engineers enforcement of its Section 404 and Section 10 permit requirements were secured from representatives of the oil and gas industry (Appendix 6). Both this Association as well as all of these company officials were of the opinion that Corps enforcement activities are no hindrance to the development of energy resources in coastal areas. In addition, with one exception, all stated that the Corps lacks sufficient manpower to adequately perform needed enforcement functions. In fact, one individual estimated that from 80 to 90 percent of oil and gas developments are never inspected by the Corps due to each of personnel, watercraft, etc. With regard to violations, one company official stated that the Corps concentrates too much effort on small violations while another official maintained that larger violations tended to receive more attention in terms of manpower.

In terms of recommendations for improving the enforcement program, the Wetlands Production Association prefers improvement on the administrative side of enforcement (better review and processing permits) and increased use of general permit procedures. While two of the four engineering companies indicated a preference for state enforcement of Section 404, another stated that such enforcement would likely be affected by "local emotion" while still the fourth company contacted considered that both the Corps and state were equally capable of handling the issue.

6. Overviews of the US Army Corps of Engineers Section 10 and Section 404 Permit Enforcement Program by State Agencies

Sixteen officials from either the state office of attorney general or the state department of conservation provided views and information on Corps enforcement of its coastal mandates (Appendix 7). States represented included: California, Louisiana, Minnesota, Florida, Connecticut, Michigan, Wisconsin, Georgia, Texas, New York and Virgin Islands. In general, there was no consensus concerning the overall effectiveness of the Corps enforcement program nor about the major generic types of problems affecting enforcement actions. On the positive side, one state representative reported that the Corps maintained a good working rapport with his state while another was of the opinion that Corps enforcement activities "set a good example" for state governments. Criticisms of the program cited were: lack of clear guidance from OCE, nonuniform enforcement practices varying greatly from district to district, and need for more compliance inspectors as well as more refinement of its jurisdictional boundaries.

Officials from five states (Louisiana, Minnesota, Wisconsin, Georgia and Texas) were of the opinion that their own state governments were not actively enforcing state wetland regulations due principally to three reasons: 1) state law lacks basic enforcement provisions; 2) enforcement is discretionary and state attorney general or local county solicitor may decline wetland violation cases; and, 3) limited manpower and equipment (inspection craft, helicopter, etc.) prohibits development of needed documentation for prosecution of case.

Only three recommendations emerged from telephone conversations with these state officials concerning improvements in the Corps enforcement program. These included 1) site inspections before issuance of any permits, 2) use of a citation authority, and 3) implementation of a system of administrative law judges for resolution of smaller violations. A representative with Department of Environmental Protection for the State of New York reported that such a system has been in effect there a number of years and has been effective in resolving most cases without the intervention of the Office of State Attorney General.

7. Overview of US Army Corps of Engineers Section 10 and Section 404 Permit Enforcement Program by Federal Agencies

Several Federal agencies whose program areas are affected by the Corps regulatory program were contacted during the course of this study for information concerning Corps enforcement actions. A total of eight agencies (US Department of Justice, Environmental Protection Agency, Congressional Research Service, Office of Technology Assessment, US Coast Guard, US Fish and Wildlife Service, National Marine Fisheries Service and National Park Service) were included in discussions about this issue either in Washington-based interviews or in phone conversations to field offices (Appendix 8). Officials from these agencies differed widely on both of their perceptions and reasons for the successes and failures of the Corps enforcement program.

Although staff members from both research units of the US Congress (Congressional Research Service and OTA) stated that they are presently interested in enforcement of Federal wetland statutes, they offered no evaluations on the Corps program in this area. Similar comments were received from the National Park Service and US Coast Guard. EPA officials were of the opinion that wide differences in enforcement procedures between districts often resulted in confusion on the part of the permittee concerning the likelihood of prosecution for noncompliance. The National Marine Fisheries Service cited prosecution agreements between the Jacksonville District and the Office of US Attorney in Florida as an important mechanism for resolution of violations while officials with the US Fish and Wildlife Service suggested that more effective use of the joint-permit process may eliminate potential enforcement conflicts.

Representatives from both the main headquarters of the US Department of Justice as well as the Office of US Attorney in Portland, Oregon, Seattle, Washington and Raleigh, North Carolina presented a number of opinions about Corps enforcement activities. Besides not desiring to refer cases to the US Attorney for prosecution, actual enforcement of Section 10 and Section 404 permit requirements is low priority in the Corps regulatory program. Despite this emphasis, however, a few Corps districts have nevertheless developed successful enforcement programs. An official from the Department of Justice also reported while a citation authority would assist in handling some violations, the Corps has adequate authority to handle most cases. Finally, efforts at prosecution of cases by the US Department of Justice may be hampered due to the fact that some Corps inspectors lack necessary training to adequately prepare background material for litigation.

Other important comments from Department of Justice concerning enforcement include: 1) To determine if prosecution is warranted, this department utilizes this criteria a) impact of violation on environment, and b) impact of violation on program; 2) the Department of Justice is not interested in seeking civil penalties for A-T-F permits; 3) use of administrative hearing officer has been successful in resolution of minor cases; 4) past efforts at giving agencies litigation authority have not been successful; and 5) the Department Justice has provided no guidance on enforcement of section 404 cases.

Three of the more important recommendations for changes in the Corps enforcement program suggested by Federal officials involve 1) use of citation authority or administrative in-house penalty for resolution of small violations, 2) organizational changes within the Regulatory Functions Branch of the Corps of Engineers, and 3) more active participation of other Federal representatives as expert witnesses during wetlands litigation cases.

APPENDIX 3

OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
PERMIT ENFORCEMENT PROGRAM BY CORPS OFFICIALS

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. Regulatory Program <sup>1</sup> <u>Sacramento</u> <u>District</u> Corps of Engineers	Counsel in Sacramento District may be reluctant to send violation cases to US Dept. of Justice  Increase in manpower would not necessarily result in more effective program	Transfer of some enforce- ment activities to State of California would do little for overall enforcement. California has not had much success in enforcing NPDES permit program.	33 CFR 326 should be revised so that cases referred to US Attorney are not connected through OCE  33 CFR 326.4 should also be changed so that revocation of a permit does not need OCE approval	Corps should define if "disking" is a full activity
2. Office of Counsel <sup>2</sup> <u>Pittsburgh</u> <u>District</u> , Corps of Engineers	Few enforcement activities in Pittsburgh District.  Corps may not have author- ity to prosecute violators who dispose of dredge and fill material <u>without</u> <u>permit</u>  There is currently a question about level of discretion district engi- neers can utilize in prosecution of violators  Cases involving suits against bankrupt companies are difficult to prosecute			
3. Regulatory Functions Branch, <u>Memphis</u> <u>District</u> , Corps of Engineers	District Counsel is willing to send violations to Office of US Attorney, but Dept. of Justice may be reluctant to prosecute cases			

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	<p>Most enforcement problems are associated with agricultural activities although EPA has authority to enter posted level, it has been unwilling at times to secure access for Corps to investigate alleged violators</p> <p>There is no tendency in district to use restoration as a means of punishment or enforcement</p> <p>Questions remain concerning Corps' authority to order an individual to fill an area/ditch</p>	<p>If 404 enforcement program is turned over to states, it may be more susceptible to political influences</p>		
<p>3-2</p> <p>4. Regulatory Program <u>Sacramento District,</u> Corps of Engineers</p>	<p>Major problem with enforcement is lack of statutory authority</p> <p>District office works closely with states in regulatory matters</p> <p>Corps does not have enforcement power to trespass on land</p>	<p>State of California does not want Section 404 permit program</p>	<p>Corps should consider citation authority resolution of minor violations<sup>26</sup></p> <p>Corps needs legislation to prosecute for unauthorized work<sup>26</sup></p>	<p>Present law already provides for citation authority for Section 10 permits<sup>26</sup></p> <p>Guidance from OCE has discouraged development of a citation authority<sup>26</sup></p> <p>US Dept. of Justice never initials actions itself<sup>26</sup></p>
<p>5. Office of Council, Office of Chief of Engineers, <u>OCE</u><sup>5</sup></p>	<p>Corps of Engineers has been given only <u>implicit</u> authority to enforce Section 404; EPA however has explicit authority in issue</p> <p>Districts may be issuing too many cease &amp; desist orders. As a result, they may not be a strong deterrent to an alleged violation</p>		<p>Corps may want to have Dept. of Justice followup with a letter indicating potential prosecution after a district engineer has issued a cease &amp; desist order</p>	<p>Although the US Department of Justice can hire or deportize outside attorneys, it seldom makes use of such people in litigation proceedings</p> <p>The chief counsel of the Corps has been silent about his interpretation of Section 301 of CWA</p> <p>Corps may not have manpower to use citation authority even if it acquires it</p>

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
				Corps can defer enforcement (it is discretionary) if state is prosecuting case
		States are against accepting Phase II & III waters		
6. Regulatory Functions Branch <u>OCE</u> <sup>6</sup>	Lack of uniformity in enforcement activities from Corps district to district			
	Difference of interpre- tation of Corps enforce- ment authorities causes problems in this area			
7. Office of Council, <u>New Orleans District,</u> Corps of Engineers <sup>7</sup>	For better enforcement Corps needs more guidance on issue from OCE			EPA has authority to enforce all Section 404 requirements
	Generally in prosecuting of violation, the New Orleans District has a good working relationship with US Dept. of Justice			If citation authority is given to Corps, each violation would have to be assessed individually
	Frequent turnover in Office of US Attorney sometimes can create prob- lems in long-term cases			
8. Regulatory Functions Branch, <u>Wilmington District,</u> Corps of Engineers <sup>8</sup>	80 percent of violations in Wilmington District do not warrant prosecution			
	Prosecution of cases may not always be done vigorously			
	District counsel prefers to prosecute only larger dredge & fill cases			

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
9. Regulatory Functions Branch, <u>Buffalo District</u> , Corps of Engineers <sup>9</sup>	Probably only one case has been referred to US Attorney from Buffalo District in 5 years	If state has a strong, visible wetland enforce- ment program as <u>New York</u> , few problems develop as in other areas with a weaker program (Ohio)		
10. Regulatory Functions Branch, <u>Jacksonville</u> <u>District</u> , Corps of Engineers <sup>10</sup>	Two field offices in district provide good support for compliance inspection activities  Success of enforcement actions in Jacksonville District can be judged by fact that no large , dredge or fill activities have taken place without a Corps permit	State of Florida is not doing an adequate job in enforcement  In Florida courts admini- strative appeals can take years to accomplish  In large cases State of Florida is often unwilling to compromise		
11. Regulatory Functions Branch, <u>North Central</u> <u>Division</u> , Corps of Engineers	Corps of Engineers enforcement programs are not working very well			
12. Regulatory Functions Branch, <u>Ohio River</u> <u>Division</u> , Corps of Engineers <sup>14</sup>	Enforcement efforts in Ohio River Division are mostly <u>reactive</u> , rather than active		It would be helpful if Corps had <u>citation</u> <u>authority</u> <sup>25</sup>	
13. Regulatory Functions Branch, <u>New York</u> <u>District</u> , Corps of Engineers <sup>13</sup>	New York District only seeks prosecution of <u>repeat offenders</u>  If RIF is enacted, en- forcement program will be only <u>reactive</u> , to com- plaints rather an <u>active</u> program  New York District has a moderately successful con- struction inspection program  District never monitors for compliance			Citation Authority/Hearing Officer Program would substantially expedite prosecution of cases

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	There is a lack of coordination between permit processing and enforcement branches in New York District Office			
	Enforcement efforts are not uniform. Little, if <u>any</u> , enforcement and surveillance activities for northern part of the state	New Jersey appears to be somewhat lax in its enforcement efforts		
14. Regulatory Functions Branch, <u>Baltimore District</u> , Corps of Engineers	Major problem of coordination between permit processing and enforcement section of act		Permit processors should spend some time in enforcement branches to ascertain type of violation Corps looks for	It sometimes costs more money to prosecute case than costs of actual environmental damage <sup>17</sup>
	In general, US Attorney in Maryland, has taken an active interest in prosecuting cases referred to them		Enforcement should be more standardized throughout Corps <sup>17</sup>	OCE has provided no standardized directive on enforcement <sup>17</sup>
	Some problem with referrals in US Attorney office in Delaware & in Richmond		Citation authority penalties could range from \$50 to \$500	<u>Measure of enforcement</u> no large violations reported <sup>17</sup>
15. Regulatory Functions Branch, <u>North Pacific Division</u> , Corps of Engineers <sup>15</sup>	<u>Alaska District</u> has only <u>one</u> compliance/enforcement officer		Corps of Engineers should develop and implement citation authority similar to that of Coast Guard	
	Staff in Alaska District believes it is doing an <u>inadequate</u> job in enforcement		Corps should dispense with requirement of referrals to OCE for those violations that have been substantially or completely restored	
	<u>Portland</u> uses some aerial surveillance and has not detected much change in level of noncompliance activities		Fines on any citation summons should be increased as people may be willing to pay up to \$250 fine just to get an after-the-fact permit	
	<u>Seattle District</u> staff deems their enforcement efforts for <u>Section 10</u> as <u>adequate</u> ; for Section 404 permits; <u>inadequate</u>		Sections 326.3 and 326.4 in CFR should be deleted	

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	Seattle District used to use surveillance methods but due to cutbacks, such detection methods may be no longer possible			
	Seattle District concentrates on prosecution of contractors			
	<u>Walla Walla District</u> staff of <u>only one</u> enforcement officer is <u>inadequate</u> to do required compliance inspections			
16. Regulatory Functions Branch, <u>Lower Mississippi Valley Division</u> , Corps of Engineers <sup>16</sup>	Surveillance/compliance operations have been considerably reduced		If EPA has option of defining bottom land hardwood jurisdiction, it should also <u>enforce</u> permit activities there	
	Problem of unwillingness of EPA to allow Corps inspectors to enter posted property		Corps needs legislation that will allow it to enter private property without getting permission from EPA	
	Most Corps districts in LMVP report that US Attorneys are <u>not</u> interested in prosecuting wetland cases		Each Corps district should have an attorney assigned solely to regulatory functions	
			Corps attorneys should be able to participate directly as trial lawyers in prosecution of Section 10 & 404 cases	
			All 4 Reg. Functions attorneys in LMV are for citation authority	
18. Regulatory Functions Branch, <u>New England Division</u> , Corps of Engineers <sup>18</sup>	New England Division presently has no active enforcement program; it simply responds to complaints		Citation authority could be used for more Section 10 violations; US Dept. of Justice may be reluctant to prosecute Section 10 violations	An analysis of quantitative data on OCE summary sheets may not lead to any conclusions about enforcement program in NED

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
19. Regulatory Function Branch, <u>Kansas City</u> <u>District</u> , Corps of Engineers <sup>19</sup>	<p>Prosecution of some cases end up as <u>interminable</u> correspondence</p> <p>There is presently a lack of communication between the Corps and Dept. of Justice</p> <p>In 404 cases, NED is usually able to secure consent decrees</p> <p>In most cases sent to Justice, consent decrees are obtained</p> <p>NED will usually refrain from taking action until the third repetition of the same violation</p> <p>NED has</p> <ul style="list-style-type: none"> <li>1) no compliance inspection</li> <li>2) no surveillance monitoring</li> <li>3) no program to educate people about need for a permit</li> </ul> <p>NED does not prosecute minor cases</p>		Fee for A-T-F permit should be increased significantly	Legal interns have been quite helpful in writing up background material for litigation
20. Regulatory Functions Branch, <u>Southwestern</u> <u>Division</u> , Corps of Engineers <sup>20</sup>	Enforcement/compliance of permit conditions appears to be adequate although most SWD districts have only small surveillance programs		Galveston District favors citation authority  Two Corps districts in SWD favor citation authority while two are opposed to it	Aerial photography has been successfully used by both Tulsa & Galveston Districts for compliance inspections

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	<p>US Attorney in SWD area has shown an unwillingness too prosecute <u>minor</u> violations</p> <p>Many district engineers in SWD prefer to seek voluntary restoration or ATF permit</p> <p>Galveston District has a good rapport with US Attorney</p> <p><u>ATF permits</u> (1) Number has increased in Fort Worth due to increase in acquisition of land in Louisiana</p> <p>(2) Number has increased in Galveston area due to increased surveillance by US Fish &amp; Wildlife Service</p>			<p>Many cases also simply do not warrant referral to US Dept. of Justice</p> <p>There have been no formal compliance studies in SWD</p>
21. Regulatory Functions Branch, South Pacific Division, Corps of Engineers <sup>21</sup>	<p>Overall enforcement in SPD has been minimal except for major projects</p> <p>Corps has been reluctant to send cases to US Dept. of Justice since it feels cases will not be prosecuted</p> <p><u>ATF permits</u> (1) In <u>San Francisco District</u>, decline in level of ATF permits due to (a) construction has peaked in area, (b) increased awareness of need for permit</p> <p>(2) In <u>Sacramento</u> area increase in ATF due to proliferation of boat docks in San Joachim delta area, and expanded jurisdiction in Rockies (mainly Colorado)</p>			<p>Enforcement must be viewed in two ways: (1) number of actions taken to resolve illegal activities, and (2) has enforcement resulted in protection of wetlands</p>

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
22. Regulatory Functions Branch, <u>Seattle District</u> Corps of Engineers <sup>27</sup>	It is easier to get US Dept. of Justice in Seattle to prosecute under Section 404 than under Section 10		Corps should not be required to seek input from other agencies to issue ATF permits	<u>Evaluation of US Attorney offices covered by <u>Seattle District</u></u> (1) Western Washington effective prosecution (2) Eastern Washington less effective than Western District Court (3) In Idaho - little prosecution of wetlands cases - more ATF permits
23. Regulatory Functions Branch, <u>St. Louis District</u> , Corps of Engineers <sup>23</sup>	St. Louis District has not referred any cases to Justice as it prefers to secure restoration in most cases			
24. Regulatory Functions Branch, <u>Savannah District</u> Corps of Engineers <sup>24</sup>	One case in district has taken up to 10 years to resolve		District engineers need citation authority to levy some types of larger fines for violations	
	Savannah District does not refer many cases to Dept. of Justice since most violations are only minor in nature			
	Enforcement program of Savannah District has only been <u>reactive</u> in nature due to large outbacks necessitating closing of three field offices			
	Little, if any, compliance monitoring is being accom- plished in Savannah District			

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
25. Office of Counsel, <u>St. Paul District</u> , Corps of Engineers <sup>27</sup>			Corps of Engineers needs a schedule of fines for violations with larger monetary penalties	
26. Office of Counsel, <u>Detroit District</u> , Corps of Engineers <sup>28</sup>	In general, Detroit Dis- trict has a good working relationship with Office of US Attorney	Misinformation about Corps permit program by Michigan DNR has caused some problems	Corps needs some mechanism, possibly a citation autho- rity to dispose of cases in a more expeditious manner	
27. Regulatory Functions Branch, <u>Pacific Ocean Division</u> , Corps of Engineers <sup>29</sup>	US Dept. of Justice has an active interest in prosecuting cases referred to them	State of Hawaii is negligent in its enforce- ment of state wetland laws	Corps needs more authority thereby to prosecute wet- lands cases	
28. Regulatory Functions Branch <u>Huntington District</u> , Corps of Engineers <sup>30</sup>	With no processing time requirement, enforcement will be assigned a low priority		Citation authority would aid in resolution of many violations. It would add credibility to enforcement program	
29. Regulatory Functions Branch <u>San Francisco District</u> , Corps of Engineers <sup>31</sup>	Poor cooperation between Corps and Office of US Attorney in San Francisco		Corps needs a citation authority for its enforcement action	A good measure of compliance - percentage of violations reported by public agencies including states
30. Regulatory Functions Branch <u>Charleston District</u> , Corps of Engineers <sup>32</sup>	Reluctance on part of Corps attorneys to refer cases to US Dept. of Justice	Overall, Charleston District seems to be doing an adequate job at enforcing Section 10 and 404	Citation authority would be beneficial to Corps enforcement program	
	Office of Counsel is reluctant to send cases to Dept. of Justice although US Attorney is willing to prosecute			

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	Corps has about 90 percent <u>compliance</u> for completed projects			
	District & State of South Carolina maintain a good working relationship			
31. Regulatory Functions Branch <u>Omaha District,</u> Corps of Engineers <sup>33</sup>	Reluctance on part of Corps attorney to send case to DOJ	States are not doing much to enforce their own wet-land laws	Citation authority for resolution of cases is needed	
	Environmental groups perceive Corps to be doing an adequate job			
	Major problem in Corps enforcement program is apathy <sup>34</sup>		Citation authority may help alleviate case load <sup>34</sup>	
	Corps is not doing a very reliable job in enforcement activities <sup>34</sup>			
	Reluctance on part of Corps counsel to send case to US DOJ unless actual environmental harm has been done <sup>34</sup>			
32. Regulatory Functions Branch Office of Counsel <u>Los</u> <u>Angeles District</u> Corps of Engineers	District is not performing its enforcement responsibilities very well <sup>35</sup>		Fees for violation and ATF should be substantially increased <sup>36</sup>	
	As a response to complaints about enforcement from US Fish & Wildlife Service, Reg. Functions Branch was reorganized <sup>35</sup>		ATF permits should be delayed until all restoration work is completed <sup>36</sup>	
	The district has no estimates about compliance <sup>35</sup>			Compliance contractors may be used if funds become available <sup>35</sup>
	Office of Counsel generally follows enforcement guides in CFR <sup>36</sup>			

Appendix 3 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
	Counsel prefers to secure restoration work rather than sending case to US Dept. of Justice <sup>36</sup>			
33. Regulatory Function Branch <u>Mobile District</u> Corps of Engineers <sup>37</sup>	Mobile District has a generally successful enforcement program  District appears to have a high level of <u>compliance</u> with permit conditions	States of Florida, Alabama & Mississippi only provide marginal enforcement of wetland statutes	Citation authority would help resolve smaller violations  Fines for ATF should be increased	

NOTES AND SOURCES

1. Art Champ, Chief, Regulatory Functions Branch, US Army Corps of Engineers, Sacramento District, telephone conversation, February 25, 1982.
2. George Craig, Office of Counsel, Pittsburgh District, Corps of Engineers, telephone conversation, February 25, 1982.
3. Gerald Davis, Chief, Regulatory Functions Branch, Memphis District, Corps of Engineers, telephone interview, February 26, 1982.
4. Robert Junnell, Regulatory Functions Branch, US, Army Corps of Engineers, Sacramento District, telephone conversation, February 26, 1982.
5. Lance Wood and Martin Cohen, Office of Counsel, Office of Chief of Engineers, interview, March 1, 1982.
6. Frank Torbett, Regulatory Functions Branch, US Army Corps of Engineers, OCE, telephone interview, March 1, 1982.
7. Elizabeth Griffin and Stanley Milan, Office of Counsel, US Army Corps of Engineers, New Orleans District, telephone interview, March 17, 1982.
8. Wayne Wright, Regulatory Programs Branch, Wilmington District, US Army Corps of Engineers, telephone interview, March 24, 1982.
9. Joseph Jernot, Regulatory Functions Branch, Buffalo District, US Army Corps of Engineers, telephone conversation, March 26, 1982.
10. Ronald Silver, Chief, Enforcement Section, Regulatory Functions Branch, Jacksonville District, US Army Corps of Engineers, telephone interview, May 6, 1982.
11. Mike Isoevitch, Regulatory Functions Branch, North Central Division, US Army Corps of Engineers, telephone conversation, May 5, 1982.
12. Roger Grahm, Regulatory Functions Branch, Ohio River Division, US Army Corps of Engineers, telephone conversation, May 6, 1982.
13. John Mórranzo, Chief, Enforcement Section, Regulatory Functions Branch, New York District, Corps of Engineers, telephone interview, May 12, 1982.
14. Jim Brogdan, Enforcement Branch, Regulatory Functions Branch, Baltimore District, Corps of Engineers, telephone interview, May 14, 1982.
15. Donald Lawyer, Regulatory Functions Branch, North Pacific Division, US Army Corps of Engineers, telephone conversation, May 13, 1982.
16. Curt Stevens, Regulatory Program Branch, Lower Mississippi Valley Division, US Army Corps of Engineers, telephone interview, May 17, 1982.
17. Robert Edwards, Chief, Enforcement Division, Regulatory Functions Branch, Baltimore District, US Army Corps of Engineers, telephone interview, May 17, 1982.
18. Hal Roach, Chief, Regulatory Functions Branch, New England Division, US Army Corps of Engineers, telephone conversation, May 17, 1982.
19. Mel Jewett, Chief, Regulatory Functions Branch, Kansas City District, US Army Corps of Engineers, telephone interview, May 19, 1982.

NOTES AND SOURCES (Continued)

20. Jack Chowning, Regulatory Functions Branch, Southwestern Division, US Army Corps of Engineers, telephone interview, May 20, 1982.
21. Ted Durst, Regulatory Functions Branch, South Pacific Division, US Army Corps of Engineers, telephone conversation, May 20, 1982.
22. Steven Wright, Regulatory Functions Branch, Seattle District, US Army Corps of Engineers, telephone conversation, May 24, 1982.
23. Ron Messarole, Regulatory Functions Branch, St. Louis District, US Army Corps of Engineers, telephone interview, June 10, 1982.
24. Steven Osvald, Regulatory Functions Branch, Savannah District, US Army Corps of Engineers, telephone interview, June 10, 1982.
25. Sam French, Regulatory Functions Branch, Ohio River Division, US Army Corps of Engineers, telephone interview, June 11, 1982.
26. Geott Wokstell, Office of Counsel, Sacramento District, US Army Corps of Engineers, telephone interview, June 14, 1982.
27. Thomas Larson, Office of Counsel, St. Paul District, US Army Corps of Engineers, telephone interview, June 17, 1982.
28. Mel Kalt, Office of Counsel, Detroit District, US Army Corps of Engineers, telephone interview, June 17, 1982.
29. Stanley Arakaki, Regulatory Functions Branch, Pacific Ocean Division, US Army Corps of Engineers, telephone interview, June 4, 1982.
30. Michael Sheen, Regulatory Functions Branch, Huntington District, US Army Corps of Engineers, telephone conversation, July 14, 1982.
31. Calvin Fong, Regulatory Functions Branch, San Francisco District, US Army Corps of Engineers, telephone conversation, July 2, 1982.
32. Steven Danker, Regulatory Functions Branch, Charleston District, US Army Corps of Engineers, telephone conversation, July 2, 1982.
33. Dan Hanses, Regulatory Functions Branch, Omaha District, US Army Corps of Engineers, telephone conversation, July 7, 1982.
34. David Freel, Regulatory Functions Branch, Omaha District, US Army Corps of Engineers, telephone conversation, July 2, 1982.
35. Roman Yavadski, Regulatory Functions Branch, Los Angeles District, US Army Corps of Engineers, telephone conversation, July 7, 1982.
36. Steven Temmel, Office of Counsel, Los Angeles District, US Army Corps of Engineers, telephone conversation, July 7, 1982.
37. James Winn, Regulatory Functions Branch, Mobile District, US Army Corps of Engineers, telephone conversation, July 7, 1982.

APPENDIX 4  
 OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
 PERMIT ENFORCEMENT PROGRAM BY ENVIRONMENTAL GROUPS

Organization/Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. Environmental Defense Fund <sup>1</sup>	In terms of jurisdictional issues, Corps of Engineers is doing an adequate job in delineating wetlands		More coordination is required between Corps and state environmental agencies	
2. American Littoral Society <sup>2</sup>	Philadelphia District appears to have a more active enforcement section than New York District	Massachusetts and Connecticut appear to have effective enforcement programs	Corps needs a citation authority	
	Reluctance is part of some Corps districts to enforce statutes in these areas that were not covered formerly by Section 10 permits	Enforcement in New Jersey is subject to political influences		
3. Chesapeake Bay Foundation <sup>3</sup>	Information to be sent			
4. National Wildlife Federation <sup>4</sup>	Federation has done no analysis of Corps enforcement program			
5. Friends of Earth <sup>5</sup>	Seattle District has a model enforcement program; good compliance inspection program			Corps should resolve jurisdictional area problems, boundaries
	Seattle District will only deny a permit if state denies a permit			
	After Corps issues a general permit, only major cases are reviewed in detail			
6. Natural Resources Council <sup>6</sup>	NRDC has no specific comments about Corps enforcement program			US Attorney's office in Texas sometimes prefers to have passive relationship with DOJ in Washington

Organization/Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
7. Conservation Foundation <sup>7</sup>	Use of general permits helps to reduce administrative paperwork on Corps enforcement activities		More cooperative agreements should be developed between Corps and states	General permits allow for greater scientific scrutiny of cumulative impacts of entire system  Land owners would be more willing to apply for Corps permit if they know local and state officials are also involved in the permitting process
8. Massachusetts Association of Conservation Officials	Overall New England division is performing well in its enforcement activities. The Division has a fast response time to complaints	Few states have public interest review as Corps regulations provide for	Corps should be willing to go to court with <u>realistic</u> and <u>important</u> cases  Corps of Engineers should continue to send out violation and <u>abatement</u> notices  If administrative hearing officers are used, there must be some consistency in their decisions  Corps needs a schedule of administrative fines to be published and circulated  Types of administrative penalties should be written based on 1) degree of severity - risk to health 2) chronic nature of violation - repeat offenders 3) risk to wildlife, recreation, commercial opportunities Preventative enforcement measures for Corps should include 1) aerial surveillance 2) high technology application 3) ground/environmental studies  Corps permit program must be independent of state involvement	

NOTES AND SOURCES

1. James Tripp, Environmental Defense Fund, telephone conversation, February 22, 1982.
2. Paul Dritsas, American Littoral Society, telephone interview, March 4, 1982.
3. Chris White, Chesapeake Bay Foundation, Annapolis, Maryland, telephone interview, March 8, 1982.
4. Thomas Tomasello, Office of Counsel, National Wildlife Federation, Washington, D.C., telephone interview, March 12, 1982.
5. Frank Ortman, Friends of Earth, Seattle Office, telephone interview, March 22, 1982.
6. Elizabeth Chasis, Natural Resources Defense Council, New York, telephone interview, March 24, 1982.
7. John Clarke, Conservation Foundation, telephone interview, March 26, 1982.
8. Gregory McGregor, President, Massachusetts Association of Conservation Officials, telephone interview, June 24, 1982.

APPENDIX 5  
 OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
 PERMIT ENFORCEMENT PROGRAM BY PRIVATE CITIZENS(1)

Organization/Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. Pacific Legal Foundation <sup>1</sup>	No specific comment on Corps enforcement			
2. Michael Blum <sup>2,3</sup>	<p>Present Corps program has no real incentive to dissuade potential violators</p> <p>Administrative costs to prosecute Section 10 &amp; 404 violators is high</p> <p>Corps does not have authority to prosecute violators doing <u>unauthorized</u> work</p>		<p>Corps of Engineers needs stronger enforcement authority</p> <p>Corps of Engineers needs to establish some threshold values for its enforcement actions</p> <p>US Fish and Wildlife Service should be included in enforcement activities for purposes of consultation</p>	<p>Congress may still have some problems with enforcement authority over section 402 NPDES</p>
3. Joseph Larson <sup>4</sup>	<p>Decentralization of Corps enforcement activities causes some problems</p> <p>Corps of Engineers is only agency capable of doing an adequate job to protect wetlands</p>		<p>Scope of present 404 jurisdiction should be maintained</p> <p>For a regulation of wetlands hierarchy of values/critical areas should be developed. All wetlands do <u>not</u> have same <u>public functions</u></p>	
4. Richard Hamam <sup>5</sup>	<p>In general, individuals rely on Corps to enforce wetland regulation</p> <p>Corps definition of wetlands is more extensive than those of state</p> <p>Corps has a higher quality of technical expertise on its enforcement staff than State of Florida</p> <p>For some projects Corps does not properly assess cumulative impacts</p>	<p>Florida does not have an active enforcement program</p> <p>State of Florida does not have access to airplanes for compliance &amp; inspection activities</p>		

Appendix 5 (continued)

Organization/Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
5. Anne Studds <sup>6</sup>	Council of State Governments has no information on Corps enforcement activities on state enforcement of coastal zone laws			
6. Paul Godfrey <sup>7</sup>				No specific information about standards for enforcement of coastal zone laws
7. Gary Parish <sup>8</sup>	<p>Enforcement of actions of Corps of Engineers can have a heavy impact on permittee if D.E. revokes permit</p> <p>Corps permit process is one of unfettered discretion--no due process or equal protection under law</p> <p>Corps can arbitrarily make new demands on permittee costing more money</p>		<p>Corps should not be required to enforce Section 401 certification for approval of permit. The Corps is, in effect, enforcing an unreasonable</p>	

NOTES AND SOURCES

1. Carol Curran, Pacific Legal Foundation, telephone interview, February 24, 1982.
2. Assistant Professor of Law, Lewis and Clark Law School, Portland, Oregon, author, The Clean Water Act's Section 404 Permit Program Enters Its Adolescence: An Institutional and Programmatic Perspective, 1980.
3. Telephone conversation, February 25, 1982.
4. Department of Forestry and Wildlife Management, University of Massachusetts, Amherst, telephone conversation, March 26, 1982.
5. Acting Director, Center for Governmental Responsibility, University of Florida Law School, Gainesville, Florida, telephone interview, April 7, 1982.
6. Anne Studds, Council of State Governments, Lexington, Kentucky, telephone interview, April 28, 1982.
7. Paul Godfrey, Department of Botany, University of Massachusetts, Amherst, telephone interview, May 4, 1982.
8. Gary Parish, senior attorney with law firm of Popham, Haik, Schnobrich, Kaufman and Doty Ltd., Denver, Colorado, author, History, Practice and Emergency Problems of Wetland Regulation: Reconsidering Section 404 of the Clean Water Act.

APPENDIX 6  
 OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
 PERMIT ENFORCEMENT PROGRAM BY INDUSTRY AND COMMERCIAL ENTERPRISES

Organization/Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. Wetlands Energy Production Association <sup>1</sup>	<p>Corps of Engineers Enforcement Program is generally short-handed except in flagrant cases</p> <p>Corps enforcement activities are <u>not</u> impeding efforts of energy production in Gulf of Mexico area</p> <p>When Corps of Engineers does enforce, it tends to be a "picking" affair</p> <p>1) Corps concentrates on small matters</p> <p>2) Corps should concentrate more on compliance of permit conditions</p> <p>While Fort Worth District has issued some general permits, Galveston District has yet to issue <u>one</u></p>	<p>Enforcement can be handled at either state or Federal level</p>	<p>Wetlands Energy Production Association would prefer to see Corps improve administrative side of its enforcement program</p> <p>Association favors greater use of general permits</p>	<p>Major duty of enforcement section is wetland determinations and communications with people seeking tide projects</p> <p>Majority of violations are due to a lack of knowledge of requirements rather than intentional</p>
2. Espez, Houston and Associates <sup>1</sup>	<p>COE activities are not a hindrance to development</p> <p>80 to 90 percent of the oil &amp; gas industries are never checked by COE due to lack of people and boats</p> <p>COE enforcement is not given enough priority</p> <p>In several cases COE had declared large areas to wetlands because they did not have time or people to properly map the areas</p>	<p>Enforcement can be handled at either state or Federal level</p>	<p>COE needs more consistency between districts, particularly in dealing with small violations</p>	<p>Majority of violations are due to a lack of knowledge of requirements rather than intentional</p>

Appendix 6 (continued)

Organization/Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
3. Ford Engineering <sup>2</sup>	<p>Good working relationship exists between Corps and company</p> <p>Enforcement activities have not been a hindrance to development</p> <p>Enforcement Division of Corps is using good judgement in the concentration of their time on major violations and not on trivial ones</p> <p>Manpower seems adequate, although at times there has been short delays for inspector</p>		<p>Enforcement activities should be delegated to the state</p> <p>Review board should be initiated to review within a reasonable length of time, any permit application that is subject to denial due to any state or Federal agency comments objecting to the issuance of the permit</p>	
4. Tenneco Oil Exploration and Production <sup>3</sup>	<p>No problem with COE enforcement activities</p> <p>COE inspectors concentrate on larger violations</p> <p>The New Orleans District with whom we have 90 percent of our dealings seems to be short-handed for experienced personnel</p>	<p>State agency would be more apt to be affected by local emotion and the county officials would be the least desirable as an enforcement agency</p>	<p>Preference for state over Corps enforcement</p>	<p>Corps enforcement activities have never been visible</p>
5. Houston Oil and Minerals	<p>Corps enforcement activities are not hindrances to oil &amp; gas development activities</p> <p>COE does not allocate proper manpower to its enforcement responsibilities</p>		<p>Preference for state over Corps enforcement</p>	<p>Corps enforcement activities have never been visible</p>

6-2

NOTES AND SOURCES

1. Allan K. Cluck, Wetlands Energy Production Association, Houston, Texas, telephone interview, April 19, 1982.
2. Consulting and Environmental Engineers, Houston, Texas. letter to Mr. B.J. Whitley, President, Wetlands Energy Producers, Houston, Texas. May 13, 1982.
3. Civil Engineers and Surveyors, Houston, Texas. Letter to Mr. B.J. Whitley, President, Wetlands Energy Producers, Houston, Texas. May 7, 1982.
4. Letter to Wetlands Energy Producers of May 6, 1972. R. L. Leggett, Sr. Environmental Coordinator of Tenneco.
5. Carolyn Lee Baker, Officer of Regulatory Affairs, Houston Oil and Mineral Co., Houston, Texas.

APPENDIX 7  
 OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
 PERMIT ENFORCEMENT PROGRAM BY STATE AGENCIES

Organization/Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. California Coastal Commission <sup>1,2</sup>		State of California has no cease & desist order  In general, California enforcement program is working		Big violators of California wetland laws are port and city authorities  Other than handling "consistency clause" matters, California Coastal Comm. is not involved with Corps enforcement activities <sup>2</sup>  If violation cannot be worked out administratively, they are referred for prosecution to state Attorney General
2. Louisiana Coastal Zone Program <sup>3</sup>	At present in Louisiana Corps regulations are only directives in effect for development in uplands	New directives are needed for state coastal areas  Oil & gas companies have generally been able to circumvent state wetland regulations		Violation of wetlands law is only a misdemeanor  In many instances, Minnesota Dept. of Natural Resources seeks restoration for civil actions  State of Minnesota can only prosecute cases if violation is (1) for lake greater than 10 acres in size, and (2) has class III, IV, V waters
3. Office of Attorney General State of Minnesota <sup>4</sup>	Corps of Engineers enforcement authority may be hampered by fact it does not have authority to control draining of wetlands	Prosecution of civil cases for violation of wetland law depends on willingness of county attorney to prosecute cases		Violation of wetlands law is only a misdemeanor  In many instances, Minnesota Dept. of Natural Resources seeks restoration for civil actions  State of Minnesota can only prosecute cases if violation is (1) for lake greater than 10 acres in size, and (2) has class III, IV, V waters
5. Office of Attorney General State of Florida <sup>5</sup>	There is generally a good working relationship between Corps and State of Florida			

Appendix 7 (continued)

Organization/Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, suggestions for Changes and Improvements	Other Comments
6. Dept. of Environmental Conservation, <u>State of Connecticut</u> <sup>6</sup>	Corps enforcement is hampered by its nonuniform enforcement practices (they vary from district to district) and frequent turnover in enforcement staff	State of Connecticut has duplicate enforcement authorities with those of the Corps		
7. Office of Coastal Zone <u>State of Michigan</u> <sup>7</sup>	Corps of Engineers has no clear guidance on what or how to enforce	Some violations of Michigan Coastal Protection Act have been recorded. None, however, are in litigation		
8. Office of Attorney General, <u>State of Wisconsin</u> <sup>8</sup>		Wisconsin wetland law is not very strong from point of view of enforcement, stronger bill being considered		
		As a rule Wisconsin Attorney General will only prosecute bigger, criminal cases		
		Smaller violations are generally settled, if settled at all, in county courts		
9. Dept. of Natural Resources <u>State of Georgia</u>	Corps program should require more frequent compliance inspections	State of Georgia regularly uses helicopter and planes for inspection/compliance purposes	Corps of Engineers should make site inspections before issuing any permits	State of Georgia does not want Section 404 program
	Corps enforcement proceedings should be done in conjunction with <u>state enforcement</u> proceedings	Georgia Coastal Marshland Act <u>lacks</u> enforcement provisions		State of Georgia prefers restoration/excavation of fill material in preference to fines
10. Bureau of Environmental Enforcement <u>Virgin Islands</u> <sup>10</sup>			State enforcement program could use a <u>citation</u> authority	Virgin Islands at present does not have a <u>citation</u> authority

Appendix 7 (continued)

Organization/Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, suggestions for Changes and Improvements	Other Comments
11. Texas Energy and Natural Resources Advisory Board <sup>11, 12</sup>	<p>Corps program covers area beyond <u>mean high tide</u></p> <p>Usually Corps of Engineers waits until state takes action on enforcement issue</p>	<p>State of Texas does not have a wetland program</p> <p>Texas has no state law preventing disposal of dredge &amp; fill operations</p> <p>On <u>publicly owned</u> land, state regulations about environmental activities are similar to those of the Corps</p> <p>Texas regulations for coastal areas only cover areas up to <u>mean high tide</u></p> <p>Texas Land Office has <u>no enforcement</u> authority</p> <p>State has a grant of interest in land (coastal areas) but no direct police power, state program is a "land use" permit</p> <p>State program for coastal area only has 2 inspectors for entire coastal area of Texas</p> <p>Many enforcement activities in Texas are aimed only at monitoring of certain <u>critical areas</u></p> <p>National Marine Fisheries Office/Texas Parks and Wildlife Office report some violations</p>		
13. Dept. of Water Resources <u>State of California</u> <sup>13</sup>	<p>Although Corps enforcement of its permits sets a solid legal example, there is no proof to actually substantiate claim with quantitative information</p>			

Appendix 7 (continued)

Organization/Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, suggestions for Changes and Improvements	Other Comments
14. Dept. of Environmental Resources, <u>State of New York</u> <sup>14</sup>		State of New York has 10 administrative law judges for resolution of environmental cases	Administrative law judges could aid Corps in resolution of many minor violations  Hearing officer process serves as a visible example that no minor violation will go unprosecuted	Each hearing officer is rotated throughout the state and may hear six to eight enforcement actions at a time
15. Dept. of Environmental Resources, <u>State of New York</u> <sup>15</sup>			Corps of Engineers would be better able to handle minor violations if it had administrative law judges	
16. Office of Governor, Div. of Environmental Affairs, <u>State of Florida</u> <sup>16</sup>	Major problem with enforcement for the Corps is defining its boundaries, jurisdictional areas			

NOTES AND SOURCES

1. Steven Brown, Office of Counsel, California Coastal Commission, San Francisco, telephone interview, March 5, 1982.
2. Mary Hudson, California Coastal Commission, San Francisco, telephone interview, March 10, 1982.
3. Paul Hribenick, Louisiana Coastal Zone Program, Baton Rouge, Louisiana, telephone interview, March 10, 1982.
4. Paul Fraisi, Office of Attorney General, State of Minnesota, telephone conversation, March 31, 1982.
5. Silvia Alderman, Deputy Attorney General, Dept. of Environmental Regulation, State of Florida, telephone interview, April 2, 1982.
6. Art Rocque, Dept. of Environmental Conservation, State of Connecticut and Chairman, Coastal States Organization, telephone conversation, April 7, 1982.
7. Dennis Hall, Michigan Office of Coastal Zone Management, Lansing, Michigan, telephone interview, April 2, 1982.
8. Ray Roder, Office of Attorney General, State of Wisconsin, Madison, Wisconsin, telephone interview, April 2, 1982.
9. Dr. Fred Marlin, Dept. of Natural Resources, State of Georgia, Brunswick, Georgia, telephone interview, April 8, 1982.
10. Frankie Hoheb, Chief Enforcement Officer, Bureau of Environmental Enforcement, Virgin Islands, telephone interview, April 14, 1982.
11. Mark Lawless, Director of Natural Resources Division, Texas Energy and Natural Resources Advisory Council, Austin, Texas, telephone interview, April 19, 1982.
12. Mark Thompson, Texas Energy and Natural Resources Advisory Council, Austin, Texas, telephone interview, April 26, 1982.
13. Thomas Cramer, Legal Division, California Department of Water Resources, Sacramento, California, telephone interview, May 4, 1982.
14. Donald Larson, Administrative Hearing Officer, New York Department of Environmental Resources, telephone interview, May 14, 1982.
15. Daniel Louis, Administrative Law Judge, New York Department of Environmental Resources, telephone interview, May 17, 1982.
16. Karl Woodburn, Division of Environmental Affairs, Office of the Governor, State of Florida, telephone interview, May 17, 1982.

APPENDIX 8

OVERVIEW OF US ARMY CORPS OF ENGINEERS SECTION 10 AND SECTION 404  
PERMIT ENFORCEMENT PROGRAM BY FEDERAL AGENCIES

Organization/ Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
1. Congressional Research Service <sup>1</sup>	The topic of Corps enforce- has not been addressed in detail to make any comments in CRS study reports			
2. US Depart- ment of Justice <sup>2</sup>	In Jacksonville District, Corps counsel works closely with Office of US Attorney  In some Corps districts Corps counsel do not want to send cases to Dept. of Justice for prosecution	Section 10 enforcement authority <u>could not</u> be delegated to states  Although State of Alaska has no legal authority to issue cease and desist orders, the state can (and does) have several inves- tigators to determine level of compliance with state wetland law	US Department of Justice prefers not to prosecute minor cases. Some type of administrative in-house penalty system would be better  Dept. of Justice prefers not to have Corps attor- neys in <u>active</u> litigation as trial lawyers	Of the 200-300 cases re- ferred to Dept. of Justice by Corps each year the vast majority are violations of dredge and fill without permit  70 percent of all Corps referrals are from Jacksonville, Galveston, Baltimore or Seattle  There has been an increasing case load from New Orleans District  All cases referred to Dept. of Justice are handled on an equal basis  For prosecution of cases of US Dept. of Justice uti- lizes two criteria: 1) im- pact of violation on envi- ronment; (2) impact of vio- lation on program  US Dept. of Justice is not interested in seeking civil penalties for ATF. permits  US Dept. of Justice in Washington may not be aware of <u>all</u> referrals to US attorneys

Appendix 8 (continued)

Organization/ Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
3. US Coast Guard <sup>3</sup>				In its citation authority, US Coast Guard imposes civil penalties, while US Attorney can suggest criminal fines  Use of administrative hearing officer has been successful in resolution of minor cases  If defendant refuses to pay penalties, case is referred to US Dept. of Justice
4. US Environmental Protection Agency <sup>4</sup>	Problem with enforcement of Section 404 provisions includes definition of fill material  <u>General</u> Permits may discourage individuals from complying with law in that they will not secure permit but wait until a <u>general</u> permit has been issued for a particular activity			While Corps of Engineers has no statutory authority to prosecute unauthorized work, EPA can perform such prosecution  Coast Guard civil penalties may be too lenient to defer action  If Dept. of Justice refuses to prosecute case EPA can begin litigation proceedings on its own  Past efforts at giving agencies <u>litigation authority</u> have not been successful
5. Office of US Attorney Portland, Dept. of Justice <sup>5</sup>	Corps enforcement program has been <u>moderately successful</u>		Use of magistrate to collect penalties would be helpful  Corps should institute a citation authority	Due to recession, little building construction is presently being done and number for permits has declined
6. US Fish & Wildlife Service <sup>6</sup>	Baltimore and Norfolk Districts have good enforcement programs  Use of joint-permitting process may help to eliminate potential <u>enforcement</u> conflicts later			US Fish & Wildlife service is establishing a computer data base for reading of violations

Appendix 8 (continued)

Organization/ Unit Name	Evaluation/Comments on Corps Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
7. National Fisheries Service, US Dept. of Commerce <sup>7</sup>	Jacksonville District gives blanket consent to US Attorney to prosecute cases	States with good coastal zone enforcement activities include: North Carolina, Georgia, Washington, Oregon, South Carolina, and Florida		
8. Office of Assessment, US Congress <sup>8</sup>	OTA is only studying issue of enforcement of wetland statue in a generalized format			
9. US Dept. of Justice <sup>9</sup>	Enforcement is the lowest priority in the regulatory program  Although citation authority would assist in handling some violations, Corps has adequate authority to handle case load.		<p>Enforcement section should be removed from Regulatory Program Branch</p> <p>Enforcement activities should be placed in Office of General Counsel of Corps</p> <p>Enforcement activities should be centralized at the division level, since enforcement problems generally are associated with watershed</p> <p>The Corps enforcement program needs full time employees</p> <p>Corps district counsels should be required to send copies of all cases referred to US Dept of Justice to main DOJ</p> <p>An element of uniformity and fairness must be devel- oped throughout the Corps enforcement program</p> <p>Regulatory Functions Branch could be placed in separate <u>directorate</u></p> <p>ATF permits should only be granted after 1) all remedial work is performed, 2) fines and penalties are paid</p>	<p>Section 10 does not allow for after-the-fact permits</p> <p>District Engineer actually has no enforcement authori- ty, he is not a judicial officer of the US</p>

## Appendix 8 (continued)

Organization/ Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of State Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
9. (Continued)			Section 309(B) of Clean Water Act should be amended to define more precisely enforcement provisions of act	
10. Office of <u>Eastern</u> <u>District of</u> <u>North Carolina</u> U.S Dept. of Justice <sup>10</sup>	Wilmington District of Corps appears to have a good enforcement staff  For each cease and desist order from Wilmington district engineer, Office of US Attorney sends out notice that case is being investigated	State of Georgia has an active and strong state enforcement program		
11. Office of US Attorney <u>Western</u> <u>District of</u> <u>Washington,</u> US Dept. of Justice <sup>11</sup>	Corps at present lacks manpower in Seattle to adequately enforce <u>entire</u> coastal area  Some Corps inspectors do not have necessary background to adequately prepare background material for litigation  At present there is not enough communication between Seattle District & US Dept. of Justice		US Fish & Wildlife Service and EPA should be more willing to act as active expert witnesses in 404 cases  Corps should <u>not</u> seek additional agency comments before granting an ATF permit	If US Attorney prefers to prosecute environmental cases then there is a better chance for bringing suit against section 10 & 404 violators  US Dept. of Justice has provided <u>no guidance</u> on enforcement of Section 404 cases  <u>Only three cases</u> have actually been tried in court in past 3 years  Usually only one case a year referred by Corps actually goes to <u>court</u>  Western District Court of Wash. has taken a more <u>active</u> role in prosecution of Corps violation cases
12. Region I, US Environmental Protection Agency <sup>12</sup>	In general New England Division of Corps is doing a good job in enforcement  There is wide variation in enforcement between Corps districts  Too much time is required for Corps either to take legal action or to decide not to take such action		Questions about jurisdictions and what comprises "fill material" must be resolved.	

Appendix 8 (continued)

Organization/ Unit Name	Evaluation/Comments on <u>Corps</u> Enforcement Program	Perception of <u>State</u> Enforcement Programs	Recommendations, Suggestions for Changes and Improvements	Other Comments
13. Region VI, US Environmental Protection Agency <sup>13</sup>	There is much variation in enforcement activities from district to district  St. Paul has a well- developed surveillance/ compliance unit  Corps is sometimes reluc- tant to use CPA attorneys in cases			Prosecution of case depends on environmental interest of US Attorney
14. Federal Law Enforcement Center, <u>Nation- al Park Service</u> US Dept. of Interior <sup>14</sup>				No standards are presently available to gauge successes or weaknesses of Federal environmental enforcement programs
15. <u>Enforcement</u> <u>Section</u> , US Dept. of the Interior <sup>15</sup>				All decisions regarding en- forcement are generally made on <u>park-specific</u> basis rather than as applied to generic issues  Budgets and manpower needs for enforcement are based on <u>supportive</u> basis--when a particular event happens

## APPENDIX 9

### OTHER COMMENTS ON ENFORCEMENT BY CORPS DISTRICT/DIVISIONS

1. Memphis                    -Increase public awareness of 404/10 program
2. New Orleans              -Minor improvements are needed in surveillance and enforcement  
  
                                  -Increase public awareness of enforcement program  
  
                                  -Corps should assume full responsibility for section 404 program or give it to EPA
3. Kansas City              -Corps should have better enforcement of section 404 and section 10 permit requirements
4. New York                 -Corps should continue expanding awareness of 404 Phase II and Phase III Jurisdiction
5. Norfolk                  -Information concerning need for a permit should be increased as well as enforcement activities
6. Buffalo                  -Public is becoming aware of 404 program due to surveillance and enforcement activities
7. Chicago                  -The Corps should eliminate need for referral of unauthorized activities to US Attorney and allow (Corps) Office of Counsel to enter directly into court system as EPA does  
  
                                  -Corps should not get involved in prosecution of cases - this is role of US Dept. of Justice
8. Detroit                  -The Corps should prosecute minor offenses much like traffic violations
9. Alaska                    -More legal authority should be placed in the Office of Council  
  
                                  -There should be a fine schedule prepared for use on minor violations so that the violators would think twice before they perform the work without a permit  
  
                                  -Enforcement activities should be increased
10. Seattle                  -Increased awareness of program is needed
11. Huntington              -Authority should be delegated to District Engineers for enforcement activities

12. Louisville            -A measured response to violations is needed instead of going to the US Attorney each time for resolution of cases
- Improved surveillance technique are also needed
13. Nashville            -Districts should not have to go to OCE to get permit revoked
- Enforcement capabilities should be expanded
14. Savannah            -District Engineers should have more authority over enforcement of routine violations
15. Sacramento           -Requirement should be changed involving forwarding case to OCE for removal action
16. Albuquerque        -Regulatory Functions Enforcement Guide should be published
17. Fort Worth            -Surveillance should be increased
18. Tulsa                 -Present need for more active surveillance program and detection of violations

Notes

1. Source: Regulatory Impact Analysis Questionnaire prepared by Institute of Water Resources, September, 1981.

APPENDIX 10

STRENGTHS, SUCCESSES AND PROBLEM AREAS  
OF CORPS ENFORCEMENT PROGRAM BY CORPS OFFICIALS

A. Strengths/Successes of Enforcement Program	Number of Districts
1. Corps District maintains a good working relationship with State on enforcement matters.	1
2. Corps District is performing an adequate job in enforcement.	1
3. District Staff works closely with U.S. Department of Justice officials during prosecution of wetland cases.	3
4. Consent decrees rather than other punitive measures including referral of cases of Justice are secured by district counsel.	1
5. Due to an active enforcement branch, most permit applicants <u>comply</u> with conditions of the permit.	6
6. The U.S. Department of Justice generally takes an active interest in the prosecution of wetlands cases.	2
7. Public is becoming more aware of section 10 and section 404 permit requirements due to district's surveillance and enforcement program.	1
B. Problem Areas of Enforcement Program/Weaknesses	Number of Districts
1. The Corps of Engineers lacks basic statutory authority to enforce section 10 and section 404 permit requirements.	5
2. District Counsel is unwilling/reluctant to refer case to U.S. Attorney for prosecution.	1
3. The Corps lacks authority to enforce regulations dealing with <u>unauthorized</u> work.	5
4. District Personnel cannot trespass on property to secure needed inspection data.	2

Appendix 10 (continued)

5. The U.S. Attorney is unwilling/reluctant to prosecute section 404 and section 10 cases. 4
6. District lacks adequate manpower to effectively enforce permit program. 4
7. There is a general lack of uniformity on enforcement categories and procedures from district to district. 2
8. OCE has not provided clear guidance and policy on enforcement. 1
9. There is frequent staff turnover both in Corps enforcement program and in U.S. Attorneys Office. 1
10. District Counsel prefers to prosecute only larger wetland cases. 2
11. Enforcement program is generally reactive not active. 4
12. Compliance monitoring is seldom accomplished at district level. 7
13. Lack of coordination between processing and enforcement branches results in problems and duplication. 2
14. District budgets permit little expenditure for needed Monitoring and surveillance equipment, airplanes, helicopter, aerial photography etc. 7
15. There is poor communication between District Counsel/Regulatory Staff and U.S. Department of Justice. 1
16. Too much criticism of enforcement program from public causes apathy among district enforcement staff. 1
17. District staff may be characterized by low morale, frustration. 1
18. Lack of information/education about program results in some unnecessary enforcement actions and administrative paperwork. 3
19. Some referral procedures for prosecution of cases should be changed. 3
20. A measured response to violations is needed instead of going to U.S. Attorney each time for resolution of cases. 2
21. District Engineer issues too many cease and desist orders to be effective. 1

Appendix 11  
Number of Applications Received, Permits Issued and  
Status/Resolution of Violations for FY 78  
by US Army Corps of Engineers District

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS						
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY	
1. Memphis	62	3	58	3	1	54	3	0	17	0	38	
2. New Orleans	2159	110	1851	280	5	64	32	6	11	6	41	
3. St. Louis	79	8	58	10	1	13	--	--	4	--	20	
4. Vicksburg	149	10	118	7	0	34	9	0	17	0	18	
5. Kansas City	388	54	121	282	2	258	174	0	15	2	152	
6. Omaha	264	80	307	75	0	68	13	0	25	6	83	
7. New England	553	102	548	38	4	288	108	3	66	24	484	
8. Baltimore	986	265	889	104	3	162	98	4	65	6	197	
9. New York	440	169	357	50	13	203	51	104(10)	98	0	142	
10. Norfolk	614	123	186	296	9	66	14	2	10	11	93	
11. Philadelphia	760	79	465	58	16	88	34	5	25	20	61	
12. Buffalo	277	56	351	58	3	100	30	0	2	2	73	
13. Chicago	347	64	378	37	9	82	23	4	41	10	46	
14. Detroit	1032	244	702	35	0	131	18	0	29	2	234	
15. Rock Island	273	50	235	2	3	40	13	0	36	21	23	
16. St. Paul	666	163	402	178	9	206	92	2	17	4	167	
17. Alaska	259	16	172	3	1	155	21	0	16	9	118	
18. Portland	305	73	185	17	1	24	28	0	29	1	17	
19. Seattle	693	121	622	1	0	65	34	17	48	2	81	
20. Walla Walla	129	36	78	7	1	52	25	3	14	0	24	
						<u>72</u>	<u>2,153</u>	<u>320</u>	<u>150</u>	<u>585</u>	<u>126</u>	<u>2,112</u>

1-11

Appendix 11 (continued)

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
21. Huntington	1229	32	157	50	4	75	22	1	29	0	43
22. Louisville	180	10	81	11	1	68	41	3	36	12	177
23. Nashville	960	65	342	461	5	178	60	2	46	2	168
24. Pittsburgh	166	36	124	21	1	140	6	0	112	63	91
25. Pacific Ocean	72	14	43	20	3	51	3	2	67	1	29
26. Charleston	408	71	359	20	19	197	52	3	166	31	88
27. Jacksonville	1977	476	843	348	26	276	111	35	53	9	361
28. Mobile	521	120	364	43	19	216	30	0	126	18	123
29. Savannah	181	7	153	18	5	98	15	0	21	20	194
30. Wilmington	488	102	344	36	16	73	7	30	50	0	82
31. Los Angeles	222	80	73	46	5	3	12	11	12	0	50
32. Sacramento	269	28	215	24	11	99	15	0	58	0	232
33. San Francisco	273	71	153	73	9	273	33	0	325	4	226
34. Albuquerque	56	11	37	0	1	23	14	0	6	0	6
35. Fort Worth	27	4	22	0	0	5	3	0	0	0	2
36. Galveston	1878	119	1766	52	5	215	4	35	0	0	404
37. Little Rock	199	19	118	99	3	26	13	1	9	0	25
38. Tulsa	72	10	48	18	0	70	13	0	34	3	24
<u>Totals</u>	18,613	3,101	13,314	2,881	133	2,086	450	123	1,150	163	2,325
				16,195	205	4,239	1,270	179	1,735	289	4,437

Appendix 12  
 Number of Applications Received, Permits Issued and  
 Status/Resolution of Violations for FY 79  
 by US Army Corps of Engineers District

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
1. Memphis	42	2	47	3	1	80	36	0	33	3	47
2. New Orleans	2563	229	1975	292	7	87	54	5	6	0	68
3. St. Louis	106	7	71	8	0	11	4	0	7	2	18
4. Vicksburg	128	5	89	6	1	65	12	2	35	2	34
5. Kansas City	695	24	89	509	1	479	402	0	63	7	159
6. Omaha	351	25	257	18	3	197	88	2	70	11	108
7. New England	459	72	407	33	7	275	69	3	116	21	553
8. Baltimore	814	151	572	32	2	207	81	7	41	31	251
9. New York	580	145	373	46	9	219	97	110(11)	147	0	117
10. Norfolk	581	85	413	35	11	216	73	3	130	49	57
11. Philadelphia	554	90	492	50	9	38	9	1	0	1	8
12. Buffalo	454	61	241	79	3	375	43	0	231	3	171
13. Chicago	493	28	289	200	13	106	23	11	48	1	80
14. Detroit	987	252	910	44	33	147	30	6	5	1	345
15. Rock Island	206	18	221	1	7	86	9	0	28	10	62
16. St. Paul	572	103	326	73	23	232	83	4	117	26	159
17. Alaska	292	20	167	11	0	35	0	0	1	11	136
18. Portland	290	72	184	17	0	35	6	2	3	19	24
19. Seattle	778	134	516	0	1	120	43	19	40	0	118
20. Walla Walla	114	16	110	8	3	21	18	0	7	0	20
	<u>10,999</u>	<u>1,539</u>	<u>7,749</u>	<u>1,465</u>	<u>134</u>	<u>3,031</u>	<u>1,180</u>	<u>76</u>	<u>1,128</u>	<u>198</u>	<u>2,535</u>

## Appendix 12 (continued)

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
21. Huntington	241	37	132	49	2	117	11	3	85	1	47
22. Louisville	260	16	194	34	4	29	56	3	13	1	133
23. Nashville	915	104	301	634	3	182	96	7	57	15	182
24. Pittsburgh	104	4	111	12	1	65	11	0	91	49	5
25. Pacific Ocean	57	9	38	17	2	46	5	2	35	5	30
26. Charleston	378	123	271	15	20	232	49	5	196	26	49
27. Jacksonville	1915	494	516	639	35	247	78	44	135	13	382
28. Mobile	556	97	372	27	9	183	90	2	97	11	107
29. Savannah	177	24	140	14	2	69	4	0	44	7	208
30. Wilmington	357	99	293	18	11	94	8	2	81	0	57
31. Los Angeles	347	78	129	112	2	38	2	0	0	0	66
32. Sacramento	313	38	212	24	16	183	74	0	81	9	251
33. San Francisco	301	88	131	82	3	248	20	0	289	68	91
34. Albuquerque	44	12	48	0	0	14	5	0	4	2	9
35. Fort Worth	31	5	21	3	0	7	5	0	0	1	3
36. Galveston	1872	117	1655	48	2	109	35	4	35	6	233
37. Little Rock	181	25	122	78	0	24	24	1	14	1	10
38. Tulsa	65	7	55	15	0	50	4	0	56	7	7
<u>Totals</u>	<u>8,114</u> 19,113	<u>1,377</u> 2,916	<u>4,741</u> 12,490	<u>1,821</u> 3,286	<u>112</u> 246	<u>1,937</u> 4,968	<u>577</u> 1,757	<u>73</u> 149	<u>1,313</u> 2,441	<u>222</u> 420	<u>1,870</u> 4,405

Appendix 13  
Number of Applications Received, Permits Issued and  
Status/Resolution of Violations for FY 80  
by US Army Corps of Engineers District

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
1. Memphis	103	3	66	5	7	165	49	2	104	2	57
2. New Orleans	2111	193	1878	164	6	93	65	0	5	1	90
3. St. Louis	98	2	98	4	2	38	24	--	7	3	22
4. Vicksburg	108	7	92	10	3	116	34	1	65	2	49
5. Kansas City	561	23	97	388	1	426	399	1	45	0	141
6. Omaha	349	84	258	38	5	114	57	0	51	21	93
7. New England	502	50	316	39	3	184	47	8	70	81	539
8. Baltimore	734	217	480	117	3	285	54	11	52	24	406
9. New York	565	67	320	54	6	145	97	12	43	0	122
10. Norfolk	511	109	235	247	15	175	25	4	86	36	79
11. Philadelphia	532	103	434	1	4	59	35	2	1	0	108
12. Buffalo	440	84	312	43	5	517	62	0	357	10	259
13. Chicago	61	16	80	31	3	68	29	3	14	14	57
14. Detroit	684	128	599	11	31	127	20	4	59	0	242
15. Rock Island	287	41	189	9	7	50	49	0	30	14	19
16. St. Paul	639	126	331	126	37	219	74	14	128	34	142
17. Alaska	386	97	272	23	18	40	19	5	87	2	68
18. Portland	258	69	210	11	1	25	9	5	17	--	23
19. Seattle	668	143	571	0	6	150	88	57	57	0	123
20. Walla Walla	92	12	51	16	6	37	34	0	5	0	18
	<u>9,689</u>	<u>1,574</u>	<u>6,889</u>	<u>1,337</u>	<u>169</u>	<u>3,033</u>	<u>1,270</u>	<u>129</u>	<u>1,283</u>	<u>244</u>	<u>2,657</u>

## Appendix 13 (continued)

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
21. Huntington	198	59	149	28	6	104	2	0	59	8	13
22. Louisville	288	21	254	16	8	108	128	5	85	--	28
23. Nashville	848	110	295	520	9	160	60	0	62	10	210
24. Pittsburgh	103	6	85	7	6	69	5	1	25	39	5
25. Pacific Ocean	57	9	38	17	2	38	1	1	34	0	33
26. Charleston	371	77	244	4	13	250	31	8	159	35	74
27. Jacksonville	2144	441	724	1031	71	369	67	33	179	10	495
28. Mobile	483	140	237	20	7	227	60	1	98	0	176
29. Savannah	142	14	118	26	0	62	16	0	43	25	185
30. Wilmington	356	54	251	24	10	81	11	7	62	--	63
31. Los Angeles	284	44	95	105	0	32	9	1	6	5	78
32. Sacramento	388	58	241	23	37	196	95	1	129	8	216
33. San Francisco	275	52	125	87	3	266	17	3	180	75	111
34. Albuquerque	52	11	35	0	0	20	4	0	7	2	16
35. Fort Worth	69	4	41	8	0	26	13	0	8	2	6
36. Galveston	1650	153	1621	6	8	117	31	7	87	11	221
37. Little Rock	228	14	114	81	1	45	24	1	6	3	22
38. Tulsa	57	6	35	12	0	47	11	0	36	0	7
<u>Totals</u>	<u>7,993</u>	<u>1,273</u>	<u>4,702</u>	<u>2,015</u>	<u>181</u>	<u>2,217</u>	<u>585</u>	<u>69</u>	<u>1,265</u>	<u>233</u>	<u>1,959</u>
	17,682	2,847	11,591	3,347	350	5,250	1,855	198	2,548	477	4,616

Appendix 14  
 Number of Applications Received, Permits Issued and  
 Status/Resolution of Violations for FY 81  
 by US Army Corps of Engineers District

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
1. Memphis	119	9	91	7	9	133	53	2	88	0	49
2. New Orleans	2364	138	1938	242	2	83	40	5	8	8	117
3. St. Louis	94	6	76	12	0	33	9	0	9	0	37
4. Vicksburg	270	19	147	9	15	159	66	1	43	55	44
5. Kansas City	800	24	203	517	2	602	546	1	71	3	123
6. Omaha	399	45	277	21	1	154	42	3	90	23	93
7. New England	504	76	384	26	2	194	86	9	81	92	474
8. Baltimore	721	58	635	60	9	88	0	107	28	--	449
9. New York	265	66	315	55	4	167	165	9	34	3	87
10. Norfolk	613	54	254	261	15	147	34	11	109	33	50
11. Philadelphia	584	56	401	157	5	119	132	5	0	0	95
12. Buffalo	549	45	331	93	4	213	91	3	212	2	167
13. Chicago	76	3	46	39	1	19	5	1	25	7	39
14. Detroit	616	69	516	39	30	82	25	7	29	0	270
15. Rock Island	349	29	301	63	6	31	13	0	17	6	14
16. St. Paul	769	37	442	173	62	150	130	17	9	7	107
17. Alaska	451	80	351	19	8	109	12	2	22	--	136
18. Portland	335	99	176	26	1	38	8	2	17	3	31
19. Seattle	655	150	564	18	9	134	62	26	83	--	126
20. Walla Walla	108	15	83	19	4	63	29	0	18	1	33
	<u>10,641</u>	<u>1,078</u>	<u>7,531</u>	<u>1,856</u>	<u>189</u>	<u>2,718</u>	<u>1,548</u>	<u>211</u>	<u>993</u>	<u>243</u>	<u>2,541</u>

1-71

Appendix 14 (continued)

Corps District/ Division	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or US Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
21. Huntington	170	50	135	29	3	42	4	0	23	9	19
22. Louisville	231	64	158	47	9	69	16	2	41	2	31
23. Nashville	905	46	230	593	1	206	96	3	131	21	168
24. Pittsburgh	134	3	71	42	10	61	4	0	34	24	3
25. Pacific Ocean	43	9	26	7	1	34	1	16	38	0	28
26. Charleston	377	84	320	2	22	332	62	15	229	30	85
27. Jacksonville	1866	631	682	576	87	394	99	39	60	19	484
28. Mobile	532	145	236	133	9	251	63	6	72	14	195
29. Savannah	125	34	85	19	4	56	18	1	14	3	205
30. Wilmington	366	49	246	65	7	90	16	--	68	--	62
31. Los Angeles	237	51	133	57	0	19	22	0	3	0	72
32. Sacramento	392	57	310	39	25	257	99	0	137	24	213
33. San Francisco	345	46	195	116	2	436	12	3	279	40	216
34. Albuquerque	52	20	37	0	0	14	10	0	7	0	13
35. Fort Worth	84	8	49	14	1	47	30	1	3	2	18
36. Galveston	1811	126	1508	13	2	116	58	5	80	2	197
37. Little Rock	264	6	116	151	4	39	20	0	13	6	22
38. Tulsa	79	5	46	14	1	15	7	0	13	0	2
<u>Totals</u>	<u>8,013</u>	<u>1,434</u>	<u>4,583</u>	<u>1,917</u>	<u>188</u>	<u>2,478</u>	<u>637</u>	<u>91</u>	<u>1,245</u>	<u>199</u>	<u>2,033</u>
	18,654	2,512	12,114	3,773	376	5,196	2,185	302	2,238	442	4,544

APPENDIX 15  
 Four-Year Summary (1978, 1979, 1980, 1981)  
 of Permit Applications, Permits Issued and Status  
 Resolution of Violations by US Army Corps of Engineers District

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued.	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
1. Memphis	1978	62	3	58	3	1	54	3	0	17	0	38
	1979	42	2	47	3	1	80	36	0	33	3	47
	1980	103	3	66	5	7	165	49	2	104	2	57
	1981	<u>119</u>	<u>9</u>	<u>91</u>	<u>7</u>	<u>9</u>	<u>133</u>	<u>53</u>	<u>2</u>	<u>88</u>	<u>0</u>	<u>49</u>
	Total	<u>326</u>	<u>17</u>	<u>262</u>	<u>18</u>	<u>18</u>	<u>432</u>	<u>141</u>	<u>4</u>	<u>242</u>	<u>5</u>	<u>191</u>
Average	82	4	66.5	5	5	108	35	1	61	1	48	
2. New Orleans	1978	2159	110	1851	280	5	64	32	6	11	6	41
	1979	2563	229	1975	292	7	87	54	5	6	0	68
	1980	2111	193	1878	164	6	93	65	0	5	1	90
	1981	<u>8364</u>	<u>138</u>	<u>1938</u>	<u>242</u>	<u>2</u>	<u>83</u>	<u>40</u>	<u>5</u>	<u>8</u>	<u>8</u>	<u>117</u>
	Total	<u>9167</u>	<u>670</u>	<u>7642</u>	<u>978</u>	<u>20</u>	<u>327</u>	<u>191</u>	<u>16</u>	<u>30</u>	<u>15</u>	<u>316</u>
Average	2299	168	1911	245	5	82	48	4	8	4	79	
3. St. Louis	1978	79	8	58	10	1	13	0	6	4	0	20
	1979	106	7	71	8	0	11	4	0	7	2	18
	1980	98	2	98	4	2	38	24	0	7	3	22
	1981	<u>94</u>	<u>6</u>	<u>76</u>	<u>12</u>	<u>0</u>	<u>33</u>	<u>9</u>	<u>0</u>	<u>9</u>	<u>0</u>	<u>37</u>
	Total	<u>377</u>	<u>23</u>	<u>303</u>	<u>34</u>	<u>3</u>	<u>95</u>	<u>37</u>	<u>0</u>	<u>27</u>	<u>5</u>	<u>97</u>
Average	94	6	76	9	1	24	9	0	7	1	24	
4. Vicksburg	1978	149	10	118	7	0	34	9	0	17	0	18
	1979	128	5	89	6	1	65	12	2	35	2	34
	1980	108	7	92	1	3	116	34	1	65	2	49
	1981	<u>270</u>	<u>19</u>	<u>147</u>	<u>9</u>	<u>15</u>	<u>159</u>	<u>66</u>	<u>1</u>	<u>43</u>	<u>55</u>	<u>44</u>
	Total	<u>655</u>	<u>41</u>	<u>446</u>	<u>32</u>	<u>19</u>	<u>374</u>	<u>121</u>	<u>4</u>	<u>160</u>	<u>59</u>	<u>145</u>
Average	164	10	112	8	5	94	30	1	40	15	36	
5. Kansas City	1978	388	54	121	282	2	258	174	0	15	2	152
	1979	695	24	89	509	1	479	402	0	63	7	159
	1980	561	23	97	388	1	426	399	1	45	0	141
	1981	<u>800</u>	<u>24</u>	<u>203</u>	<u>517</u>	<u>2</u>	<u>602</u>	<u>546</u>	<u>1</u>	<u>71</u>	<u>3</u>	<u>122</u>
	Total	<u>2444</u>	<u>125</u>	<u>510</u>	<u>1696</u>	<u>6</u>	<u>1765</u>	<u>1521</u>	<u>1</u>	<u>194</u>	<u>12</u>	<u>579</u>
Average	611	31	128	424	2	441	380	1	49	3	145	
6. Omaha	1978	264	80	307	75	0	68	13	0	25	6	83
	1979	351	25	257	18	3	197	88	2	70	11	108
	1980	349	84	258	38	5	114	57	0	51	21	93
	1981	<u>399</u>	<u>45</u>	<u>277</u>	<u>21</u>	<u>1</u>	<u>154</u>	<u>42</u>	<u>3</u>	<u>90</u>	<u>23</u>	<u>93</u>
	Total	<u>1363</u>	<u>234</u>	<u>1099</u>	<u>152</u>	<u>9</u>	<u>533</u>	<u>200</u>	<u>5</u>	<u>236</u>	<u>61</u>	<u>377</u>
Average	341	59	275	38	2	133	50	1	59	15	94	

Appendix 15 (continued)

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
7. New England	1978	553	102	548	34	4	288	108	3	66	24	484
	1979	459	72	407	33	7	275	69	3	116	21	553
	1980	502	50	316	39	3	184	47	8	70	81	539
	1981	<u>504</u>	<u>76</u>	<u>384</u>	<u>26</u>	<u>2</u>	<u>194</u>	<u>86</u>	<u>9</u>	<u>81</u>	<u>92</u>	<u>474</u>
	Total Average	<u>2018</u> 505	<u>300</u> 75	<u>1655</u> 414	<u>132</u> 33	<u>16</u> 4	<u>941</u> 235	<u>310</u> 78	<u>23</u> 6	<u>333</u> 83	<u>218</u> 55	<u>2050</u> 513
8. Baltimore	1978	986	265	889	104	3	162	98	4	65	6	197
	1979	814	151	572	32	2	2207	81	7	41	31	251
	1980	734	217	480	177	3	285	54	11	52	24	406
	1981	<u>721</u>	<u>68</u>	<u>635</u>	<u>60</u>	<u>9</u>	<u>88</u>	<u>0</u>	<u>10</u>	<u>28</u>	<u>0</u>	<u>449</u>
	Total Average	<u>3255</u> 814	<u>69</u> 173	<u>2576</u> 644	<u>313</u> 78	<u>17</u> 4	<u>742</u> 185	<u>233</u> 58	<u>32</u> 8	<u>186</u> 456	<u>61</u> 15	<u>1303</u> 326
9. New York	1978	440	169	357	50	13	203	51	10	98	0	142
	1979	814	151	572	32	2	207	81	7	41	31	251
	1980	734	217	480	177	3	285	54	11	52	24	406
	1981	<u>265</u>	<u>66</u>	<u>315</u>	<u>55</u>	<u>4</u>	<u>67</u>	<u>165</u>	<u>9</u>	<u>34</u>	<u>3</u>	<u>87</u>
	Total Average	<u>1849</u> 462	<u>447</u> 112	<u>1365</u> 341	<u>205</u> 51	<u>32</u> 8	<u>734</u> 183	<u>410</u> 102	<u>42</u> 11	<u>322</u> 81	<u>3</u> 1	<u>468</u> 117
10. Norfolk	1978	614	123	186	296	9	66	14	2	10	11	93
	1979	580	145	373	46	9	219	97	11	147	0	117
	1980	565	67	320	54	6	145	97	12	43	0	122
	1981	<u>613</u>	<u>54</u>	<u>254</u>	<u>261</u>	<u>15</u>	<u>147</u>	<u>34</u>	<u>11</u>	<u>109</u>	<u>33</u>	<u>50</u>
	Total Average	<u>2319</u> 580	<u>371</u> 93	<u>1088</u> 272	<u>839</u> 210	<u>50</u> 12.5	<u>604</u> 151	<u>146</u> 37	<u>20</u> 5	<u>335</u> 84	<u>129</u> 32	<u>279</u> 70
11. Philadelphia	1978	760	79	465	58	16	88	34	5	25	20	61
	1979	554	90	492	50	9	38	9	1	0	1	8
	1980	532	103	434	1	4	59	35	2	1	0	108
	1981	<u>584</u>	<u>56</u>	<u>401</u>	<u>157</u>	<u>5</u>	<u>119</u>	<u>132</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>95</u>
	Total Average	<u>2430</u> 607	<u>328</u> 82	<u>1792</u> 448	<u>266</u> 66	<u>34</u> 8	<u>304</u> 76	<u>210</u> 52	<u>13</u> 3	<u>26</u> 6	<u>21</u> 5	<u>272</u> 68
12. Buffalo	1978	277	56	351	58	3	100	30	0	2	2	73
	1979	454	61	241	79	3	375	43	0	231	3	171
	1980	440	84	312	43	5	517	62	0	357	10	259
	1981	<u>549</u>	<u>45</u>	<u>331</u>	<u>93</u>	<u>4</u>	<u>213</u>	<u>91</u>	<u>3</u>	<u>212</u>	<u>2</u>	<u>167</u>
	Total Average	<u>1720</u> 430	<u>246</u> 61	<u>1235</u> 309	<u>273</u> 68	<u>15</u> 4	<u>1205</u> 301	<u>226</u> 57	<u>3</u> 1	<u>802</u> 201	<u>17</u> 4	<u>670</u> 168

## Appendix 15 (continued)

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
13. Chicago	1978	347	64	378	37	9	82	23	4	41	10	46
	1979	493	28	289	200	13	106	23	11	48	1	80
	1980	61	16	80	31	3	68	29	3	14	14	57
	1981	<u>76</u>	<u>3</u>	<u>46</u>	<u>39</u>	<u>1</u>	<u>19</u>	<u>5</u>	<u>1</u>	<u>25</u>	<u>7</u>	<u>39</u>
	Total Average	977 244	111 28	793 198	307 77	26 7	275 69	80 20	19 5	128 32	32 8	222 56
14. Detroit	1978	1032	244	702	35	0	131	18	0	29	2	204
	1979	927	252	910	44	33	147	30	6	5	1	345
	1980	684	128	599	11	31	127	20	4	59	0	242
	1981	<u>616</u>	<u>69</u>	<u>516</u>	<u>39</u>	<u>30</u>	<u>82</u>	<u>25</u>	<u>7</u>	<u>29</u>	<u>0</u>	<u>270</u>
	Total Average	3259 815	593 173	2727 682	129 32	94 24	487 122	93 23	17 4	122 31	3 1	1070 268
15. Rock Island	1978	273	50	25	2	3	40	13	0	36	21	23
	1979	206	18	221	1	7	86	9	0	28	10	62
	1980	287	41	189	9	7	50	49	0	30	14	19
	1981	<u>349</u>	<u>29</u>	<u>301</u>	<u>63</u>	<u>6</u>	<u>31</u>	<u>13</u>	<u>0</u>	<u>17</u>	<u>6</u>	<u>14</u>
	Total Average	1115 288	138 35	946 237	75 19	23 6	207 52	84 21	0 0	111 28	51 13	118 30
16. St. Paul	1978	666	163	402	178	9	206	92	2	17	4	167
	1979	572	103	326	73	23	232	83	4	117	26	159
	1980	639	126	331	126	37	219	74	14	128	34	142
	1981	<u>769</u>	<u>37</u>	<u>442</u>	<u>173</u>	<u>62</u>	<u>150</u>	<u>130</u>	<u>17</u>	<u>9</u>	<u>7</u>	<u>107</u>
	Total Average	2646 662	429 107	1501 375	550 138	131 33	807 202	379 95	39 10	271 68	71 18	575 144
17. Alaska	1978	259	16	172	3	1	155	21	0	16	9	118
	1979	292	20	167	11	0	35	0	0	1	11	136
	1980	386	97	272	23	18	40	19	5	87	2	68
	1981	<u>451</u>	<u>80</u>	<u>351</u>	<u>19</u>	<u>8</u>	<u>109</u>	<u>12</u>	<u>2</u>	<u>22</u>	<u>0</u>	<u>136</u>
	Total Average	1388 347	213 53	962 241	56 14	27 7	339 85	52 13	7 2	126 32	22 6	458 115
18. Portland	1978	305	73	185	17	1	24	28	0	29	1	17
	1979	290	72	184	17	0	35	6	2	3	19	24
	1980	258	69	210	11	1	25	9	5	17	0	23
	1981	<u>335</u>	<u>99</u>	<u>176</u>	<u>26</u>	<u>1</u>	<u>38</u>	<u>8</u>	<u>2</u>	<u>17</u>	<u>3</u>	<u>31</u>
	Total Average	1188 297	313 78	755 189	71 18	3 1	122 31	51 13	9 2	6 17	23 6	95 24

Appendix 15 (continued)

Corps District/ Or Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
19. Seattle	1978	693	121	622	1	0	65	34	17	48	2	81
	1979	778	134	516	0	1	120	43	19	40	0	118
	1980	668	143	571	0	6	150	88	57	57	0	123
	1981	655	150	564	18	9	134	62	26	83	0	126
	Total	2794	548	2273	19	16	469	221	119	228	2	448
Average	699	137	568	5	4	117	57	30	57	<1	112	
20. Walla Walla	1978	129	36	67	7	1	52	25	3	14	0	24
	1979	114	16	110	8	3	21	18	0	7	0	20
	1980	92	12	51	16	6	37	34	0	5	0	18
	1981	108	15	83	19	4	63	29	0	18	1	33
	Total	443	79	311	50	14	187	106	3	44	1	95
Average	111	20	18	13	4	47	27	1	1	<1	24	
21. Huntington	1978	229	37	157	50	4	75	22	1	29	0	43
	1979	241	37	132	49	2	117	11	3	85	1	47
	1980	198	59	149	28	6	104	2	0	59	8	13
	1981	170	50	155	29	3	42	4	0	23	9	19
	Total	838	178	573	156	15	338	39	4	196	17	122
Average	210	45	143	39	4	85	10	1	49	4	31	
22. Louisville	1978	180	10	81	11	1	68	41	3	36	12	177
	1979	260	16	194	34	4	29	56	3	13	1	133
	1980	288	21	254	16	8	108	128	5	85	0	28
	1981	231	64	158	47	9	69	16	2	41	2	31
	Total	959	111	687	108	22	274	241	13	175	15	369
Average	240	28	172	27	6	69	60	3	44	4	92	
23. Nashville	1978	960	65	342	461	5	178	60	2	46	2	168
	1979	915	104	301	634	3	182	96	7	57	15	182
	1980	848	110	295	520	9	160	60	0	62	10	210
	1981	905	46	23	503	1	206	96	3	131	21	168
	Total	3628	325	1168	2208	18	726	312	12	291	48	728
Average	907	81	292	552	5	182	78	3	74	12	182	
24. Pittsburgh	1978	166	36	124	21	1	140	6	0	112	63	91
	1979	104	4	111	12	1	65	11	0	91	49	5
	1980	103	6	85	7	6	69	5	1	25	39	5
	1981	134	3	71	42	10	61	4	0	34	24	3
	Total	507	49	391	82	18	335	26	1	262	175	104
Average	127	12	98	21	5	84	7	<1	66	44	26	

15-4

Appendix 15 (continued)

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
25. Pacific Ocean	1978	72	14	43	20	3	51	3	2	67	1	29
	1979	57	9	38	17	2	46	5	2	35	5	30
	1980	57	9	38	17	2	38	1	1	34	0	33
	1981	43	9	26	7	1	34	1	16	38	0	28
	Total	229	41	145	61	7	169	10	21	174	6	120
Average	57	10	36	15	2	42	3	5	44	2	30	
26. Charleston	1978	408	71	359	20	19	197	52	3	166	31	88
	1979	378	123	271	15	20	232	49	5	196	26	49
	1980	371	77	244	4	13	250	31	8	159	35	74
	1981	377	84	320	2	22	332	62	15	229	30	85
	Total	1534	355	1194	41	74	1011	194	31	750	122	296
Average	384	89	299	10	19	253	49	8	188	31	74	
27. Jacksonville	1978	1977	476	843	348	26	276	111	35	53	9	361
	1979	1915	494	516	639	35	247	78	44	135	13	382
	1980	2144	441	724	1031	71	369	67	33	179	10	495
	1981	1866	631	682	576	87	394	99	39	60	19	484
	Total	7902	2042	2765	2594	219	1286	355	151	427	51	1722
Average	1976	511	691	649	55	321	89	38	107	13	431	
28. Mobile	1978	521	120	364	43	19	216	30	0	126	18	123
	1979	556	97	372	27	9	183	90	2	97	11	107
	1980	483	140	237	20	7	227	60	1	98	0	176
	1981	532	145	236	133	9	251	63	6	72	14	195
	Total	2092	502	1209	223	44	877	243	9	393	43	601
Average	523	126	302	56	11	219	61	2	98	11	150	
29. Savannah	1978	181	7	153	18	5	98	15	0	21	20	194
	1979	177	24	140	14	2	69	4	0	44	7	208
	1980	142	14	118	26	0	62	16	0	43	25	185
	1981	125	34	85	19	4	56	18	1	14	3	205
	Total	625	79	496	77	11	285	53	1	122	55	792
Average	156	20	124	19	3	71	13	<1	31	14	198	
30. Wilmington	1978	488	102	344	36	16	73	7	30	50	0	82
	1979	357	99	293	18	11	94	8	2	81	0	57
	1980	356	54	251	24	10	81	11	7	62	0	63
	1981	366	49	246	65	7	90	16	0	68	0	67
	Total	1567	304	1134	143	44	338	42	39	261	0	269
Average	392	76	284	36	11	85	11	10	65	0	67	

## Appendix 15 (continued)

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
31. Los Angeles	1978	222	80	73	46	5	3	12	11	12	0	50
	1979	347	78	129	112	2	38	2	0	0	0	66
	1980	284	44	95	105	0	32	9	1	6	5	78
	1981	<u>237</u>	<u>51</u>	<u>133</u>	<u>57</u>	<u>0</u>	<u>19</u>	<u>22</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>72</u>
	Total	1090	253	430	320	7	92	45	12	21	5	266
Average	273	63	108	80	2	23	11	3	5	1	67	
32. Sacramento	1978	269	28	215	24	11	99	15	0	58	0	232
	1979	313	38	212	24	16	183	74	0	81	9	251
	1980	388	58	241	23	37	196	95	1	129	8	216
	1981	<u>392</u>	<u>57</u>	<u>310</u>	<u>39</u>	<u>25</u>	<u>257</u>	<u>99</u>	<u>0</u>	<u>137</u>	<u>24</u>	<u>213</u>
	Total	1362	181	973	110	89	735	283	1	405	41	912
Average	341	45	245	28	22	184	71	<1	1011	10	228	
33. San Francisco	1978	273	71	153	73	9	273	33	0	325	4	226
	1979	301	88	131	82	3	248	20	0	289	68	91
	1980	275	52	125	87	3	266	17	3	180	75	111
	1981	<u>345</u>	<u>46</u>	<u>195</u>	<u>116</u>	<u>2</u>	<u>436</u>	<u>12</u>	<u>3</u>	<u>279</u>	<u>40</u>	<u>216</u>
	Total	1194	257	604	358	17	1223	82	6	1073	187	644
Average	299	64	151	90	4	306	21	2	268	47	161	
34. Albuquerque	1978	56	11	37	0	1	23	14	0	6	0	6
	1979	44	12	48	0	0	14	5	0	4	2	9
	1980	52	11	35	0	0	20	4	0	7	2	16
	1981	<u>52</u>	<u>20</u>	<u>37</u>	<u>0</u>	<u>0</u>	<u>14</u>	<u>10</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>13</u>
	Total	204	54	157	0	1	71	33	0	24	4	44
Average	51	14	39	0	<1	18	8	0	6	1	11	
35. Fort Worth	1978	27	4	22	0	0	5	3	0	0	0	2
	1979	31	5	21	3	0	7	5	0	0	1	3
	1980	69	4	41	8	0	26	13	0	8	2	6
	1981	<u>84</u>	<u>8</u>	<u>49</u>	<u>14</u>	<u>1</u>	<u>47</u>	<u>30</u>	<u>1</u>	<u>3</u>	<u>2</u>	<u>18</u>
	Total	211	21	133	25	1	85	51	1	11	5	29
Average	53	5	33	6	<1	21	13	<1	3	1	7	
36. Galveston	1978	1878	119	1766	52	5	215	4	35	0	0	404
	1979	1872	117	1655	48	2	109	35	4	35	6	233
	1980	1650	153	1621	6	8	117	31	7	87	11	221
	1981	<u>1811</u>	<u>126</u>	<u>1508</u>	<u>13</u>	<u>2</u>	<u>116</u>	<u>58</u>	<u>5</u>	<u>80</u>	<u>2</u>	<u>197</u>
	Total	7211	515	6550	119	17	557	128	51	202	19	1055
Average	1803	129	1638	30	4	139	32	13	51	5	264	

Appendix 15 (continued)

Corps District/ Division	Year	# Received During FY	# Cancelled or Withdrawn	# Issued	Ltrs of Permission Issued	Permits Denied	# Reported or Detected During FY	# of ATF Appls. Accepted	# Submitted to OCEW US Attorney for Litigation	# in Which Permit Found Not Necessary	# Already Under Permit	# to be Resolved at End of Year
37. Little Rock	1978	199	19	118	99	3	26	13	1	9	0	25
	1979	181	25	122	78	0	24	24	1	14	1	10
	1980	228	14	114	81	1	45	24	1	6	3	22
	1981	<u>264</u>	<u>6</u>	<u>116</u>	<u>151</u>	<u>4</u>	<u>39</u>	<u>20</u>	<u>0</u>	<u>13</u>	<u>6</u>	<u>22</u>
	Total Average	<u>872</u> 218	<u>64</u> 16	<u>470</u> 118	<u>409</u> 102	<u>8</u> 2	<u>134</u> 34	<u>81</u> 20	<u>3</u> 1	<u>42</u> 11	<u>10</u> 3	<u>79</u> 20
38. Tulsa	1978	72	10	48	18	0	70	13	0	34	3	24
	1979	65	7	55	15	0	50	4	0	56	7	7
	1980	57	6	35	12	0	47	11	0	36	0	7
	1981	<u>79</u>	<u>5</u>	<u>46</u>	<u>14</u>	<u>1</u>	<u>15</u>	<u>7</u>	<u>0</u>	<u>13</u>	<u>0</u>	<u>7</u>
	Total Average	<u>273</u> 68	<u>28</u> 7	<u>184</u> 46	<u>59</u> 15	<u>1</u> <1	<u>182</u> 46	<u>35</u> 9	<u>0</u> 0	<u>139</u> 35	<u>10</u> 3	<u>40</u> 10

APPENDIX 16  
 Summary Sheet (1978-1981)  
 Number of Applications Received, Permits Issued  
 and Status/Resolutions of Violations

Fiscal Year	APPLICATIONS		PERMITS			STATUS/RESOLUTION OF VIOLATIONS					
	No. Received During FY	No. Cancelled or Withdrawn	No. Issued	Ltrs of Permission Issued	Permits Denied	No. Reported or Detected During FY	No. of ATF Appl. Accepted	No. Submitted to OCE or U.S. Attorney for Litigation	No. In Which Permit Found Not Necessary	No. Already Under Permit	No. to be Resolved at End of FY
1978	18,613	3,101	13,314	2,881 (16, 195)	205	4,239	1,270	179	1,735	289	4,437
1979	19,113	2,916	12,490	3,286 (15,776)	246	4,968	1,757	149	2,441	420	4,405
1980	17,682	2,847	11,591	3,347 (15,887)	350	5,250	1,855	198	2,548	477	4,616
1981	18,654	2,512	12,114	3,773 (15,887)	376	5,196	2,185	302	2,238	442	4,544
	(18,515)	(2,844)	(12,377)	(3,322)	(294)	(4,913)	(1,767)	(2070)	(2,240)	(407)	(4500)

APPENDIX 17  
Source of Violations Reported or Detected During FY 78  
By US Army Corps of Engineers District

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other
1. Memphis	5	29	--	--	10	--	10
2. New Orleans	37	1	--	1	24	--	1
3. St. Louis	16	--	--	4	7	--	--
4. Vicksburg	48	2	--	--	4	--	14
5. Kansas City	38	--	--	--	36	1	12
6. Omaha	19	6	--	--	15	--	28
7. New England	177	6	5	15	65	2	12
8. Baltimore	74	8	--	--	55	--	25
9. New York	51	--	--	--	151	1	--
10. Norfolk	30	1	1	--	30	--	4
11. Philadelphia	58	16	1	10	8	--	--
12. Buffalo	82	--	--	--	10	--	8
13. Chicago	36	10	--	2	15	--	19
14. Detroit	63	1	0	3	53	1	10
15. Rock Island	13	7	--	--	6	1	13
16. St. Paul	102	40	--	--	11	--	53
17. Alaska	129	12	0	2	9	0	3
18. Portland	24	1	2	0	2	0	4
19. Seattle	21	5	0	5	19	0	15
20. Walla Walla	MISSING						
	<u>1,023</u>	<u>145</u>	<u>9</u>	<u>43</u>	<u>530</u>	<u>7</u>	<u>221</u> (3,784)

I-1

Appendix 17 (continued)

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other	
21. Huntington	40	2	--	1	29	--	3	
22. Louisville	60	5	--	--	3	--	--	
23. Nashville	24	6	0	0	21	1	126	
24. Pittsburgh	127	2	--	--	11	--	--	
25. Pacific Ocean	22	6	1	0	13	0	9	
26. Charleston	62	2	3	1	43	0	86	
27. Jacksonville	270	--	--	--	--	--	6	
28. Mobile	149	4	--	--	31	--	28	
29. Savannah	78	1	--	8	7	--	4	
30. Wilmington	58	--	--	--	1	--	14	
31. Los Angeles	NOT REPORTED							
32. Sacramento	77	--	--	--	4	--	18	
33. San Francisco	NOT REPORTED							
34. Albuquerque	17	--	--	--	4	--	2	
35. Fort Worth	--	1	--	--	--	--	4	
36. Galveston	79	58	29	13	33	1	2	
37. Little Rock	23	--	--	--	--	--	3	
38. Tulsa	54	1	--	--	10	--	5	
	<u>1,140</u>	<u>88</u>	<u>33</u>	<u>23</u>	<u>210</u>	<u>2</u>	<u>310</u>	
<u>Totals</u>	2,163	233	42	66	740	9	531	(3,784)
<u>Percent</u>	(57%)	(6%)	(1%)	(2%)	(19%)	(0%)	(14%)	

**APPENDIX 18**  
**Source of Violations Reported or Detected During FY 79**  
**By US Army Corps of Engineers District**

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other
1. Memphis	42	6	--	--	22	1	9
2. New Orleans	55	2	--	1	26	1	2
3. St. Louis	6	2	--	2	8	--	--
4. Vicksburg	28	19	--	--	5	--	13
5. Kansas City	77	5	--	--	21	--	14
6. Omaha	96	17	--	--	53	--	31
7. New England	199	6	1	8	49	1	11
8. Baltimore	126	6	2	--	37	--	34
9. New York	89	--	--	--	129	1	--
10. Norfolk	119	4	1	--	92	--	--
11. Philadelphia	21	4	--	5	3	--	2
12. Buffalo	258	27	--	--	62	--	28
13. Chicago	28	25	0	3	35	--	15
14. Detroit	70	1	0	4	58	2	12
15. Rock Island	33	39	--	--	9	--	5
16. St. Paul	93	30	--	4	31	--	74
17. Alaska	5	8	--	--	--	3	19
18. Portland	31	0	0	0	2	0	2
19. Seattle	68	5	0	1	25	0	21
20. Walla Walla	7	--	--	--	--	3	11
	<u>1,451</u>	<u>206</u>	<u>4</u>	<u>28</u>	<u>667</u>	<u>12</u>	<u>303</u>

## Appendix 18 (continued)

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other
21. Huntington	30	13	--	--	25	4	45
22. Louisville	21	4	--	--	4	--	--
23. Nashville	45	2	0	1	32	0	102
24. Pittsburgh	13	10	--	--	42	--	--
25. Pacific Ocean	21	2	0	0	9	0	14
26. Charleston	98	1	1	0	52	2	78
27. Jacksonville	243	--	--	--	1	--	3
28. Mobile	75	2	1	1	76	--	28
29. Savannah	38	2	0	8	20	--	--
30. Wilmington	47	1	--	--	2	--	17
31. Los Angeles	24	10	0	2	2	0	0
32. Sacramento	139	6	0	2	12	1	23
33. San Francisco	138	4	0	6	38	0	62
34. Albuquerque	8	2	--	--	2	--	2
35. Fort Worth	4	1	--	--	1	--	1
36. Galveston	37	44	0	1	34	2	6
37. Little Rock	21	--	--	--	--	2	1
38. Tulsa	45	1	--	--	4	--	--
	<u>1,047</u>	<u>105</u>	<u>2</u>	<u>21</u>	<u>356</u>	<u>11</u>	<u>382</u>
<u>Totals -</u>	2,498	311	6	49	1023	23	685

APPENDIX 19  
 Source of Violations Reported or Detected During FY 80  
 By US Army Corps of Engineers District

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other
1. Memphis	97	6	0	0	25	0	37
2. New Orleans	60	2	1	2	27	0	1
3. St. Louis	23	1	--	--	5	--	9
4. Vicksburg	58	16	--	1	35	--	7
5. Kansas City	77	--	--	5	31	--	27 (286 ATF)
6. Omaha	51	12	0	3	29	8	11
7. New England	118	6	3	7	36	0	14
8. Baltimore	180	12	--	2	35	--	28
9. New York	47	8	--	22	68	--	--
10. Norfolk	64	9	17	9	76	--	--
11. Philadelphia	30	5	--	10	7	--	5
12. Buffalo	385	14	--	--	81	3	34
13. Chicago	18	16	--	4	20	1	9
14. Detroit	79	25	--	15	8	--	--
15. Rock Island	16	7	--	1	15	--	16
16. St. Paul	57	16	--	41	34	--	71
17. Alaska	21	7	3	--	9	--	--
18. Portland	13	1	--	--	5	--	6
19. Seattle	52	2	--	3	25	--	68
20. Walla Walla	19	--	--	--	8	--	10
	<u>1,465</u>	<u>165</u>	<u>23</u>	<u>125</u>	<u>579</u>	<u>12</u>	<u>353</u>

Appendix 19 (continued)

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other	
21. Huntington	3	1	--	1	29	1	0	
22. Louisville	69	5	--	--	16	2	16	
23. Nashville	63	3	--	--	39	--	55	
24. Pittsburgh	24	7	--	5	33	--	--	
25. Pacific Ocean	9	0	0	0	24	0	5	
26. Charleston	32	6	0	2	54	1	155	
27. Jacksonville	268	1	--	44	36	--	20	
28. Mobile	98	50	10	15	10	44	0	
29. Savannah	29	2	--	5	22	1	3	
30. Wilmington	65	--	--	--	11	--	5	
31. Los Angeles	MISSING							
32. Sacramento	150	9	--	2	15	--	20	
33. San Francisco	111	--	--	10	36	1	108	
34. Albuquerque	3	4	--	--	8	--	5	
35. Fort Worth	9	1	--	--	12	--	4	
36. Galveston	40	29	0	0	43	0	5	
37. Little Rock	44	--	--	--	--	1	--	
38. Tulsa	28	4	0	2	4	--	9	
	<u>1,045</u>	<u>122</u>	<u>10</u>	<u>86</u>	<u>392</u>	<u>51</u>	<u>410</u>	
<u>Totals</u>	2,510 (52)	287 (6)	33 (0)	211 (4)	971 (20)	63 (1)	763 (16)	(4,838)

APPENDIX 20  
Source of Violations Reported or Detected During FY 81  
By US Army Corps of Engineers District

Corps District/Division	A Corps. of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other	
1. Memphis	65	3	--	--	45	--	20	
2. New Orleans	72	--	--	--	10	--	1	
3. St. Louis	12	6	--	1	6	--	8	
4. Vicksburg	89	3	--	--	60	--	6	
5. Kansas City	250	--	--	--	34	--	328 (6) (322 ATF)	
6. Omaha	40	25	23	1	34	37	14	
7. New England	55	5	4	6	70	0	54	
8. Baltimore	73	11	--	--	33	2	40	
9. New York	44	5	--	14	95	9	--	
10. Norfolk	9	15	11	14	98	--	--	
11. Philadelphia	42	25	0	4	12	1	35	
12. Buffalo	127	32	--	--	32	--	20	
13. Chicago	11	0	0	0	13	0	13	
14. Detroit	27	2	--	11	20	--	22	
15. Rock Island	9	1	--	--	8	--	12	
16. St. Paul	51	26	0	6	25	0	42	
17. Alaska	53	22	4	0	43	0	14	
18. Portland	26	3	0	1	4	1	38	
19. Seattle	72	1	--	--	--	35	26	
20. Walla Walla	45	--	--	--	12	--	6	
	<u>1,172</u> (46)	<u>185</u> (7)	<u>42</u> (2)	<u>58</u> (2)	<u>654</u> (26)	<u>50</u> (2)	<u>377</u> (15)	(2,538)

## Appendix 20 (continued)

Corps District/Division	A Corps of Engineers	B USFWS	C NOAA	D Environmental Group	E Citizen	F USGS	G Other
21. Huntington	16	19	0	0	7	0	0
22. Louisville	31	4	--	--	21	1	12
23. Nashville	68	4	--	--	29	--	105
24. Pittsburgh	56	17	--	10	36	--	--
25. Pacific Ocean	13	0	0	0	12	0	9
26. Charleston	65	6	0	0	57	2	202
27. Jacksonville	223	8	--	76	58	4	15
28. Mobile	112	55	12	16	11	45	0
29. Savannah	19	11	0	0	15	0	11
30. Wilmington	59	--	--	--	19	--	12
31. Los Angeles	4	--	5	1	--	6	3
32. Sacramento	225	1	0	1	13	0	17
33. San Francisco	76	4	2	10	47	--	295
34. Albuquerque	7	1	--	--	4	--	2
35. Fort Worth	27	--	--	--	17	--	3
36. Galveston	44	13	--	--	49	11	9
37. Little Rock	34	--	--	--	4	--	1
38. Tulsa	15	--	--	--	6	--	1
	<u>1,094</u>	<u>143</u>	<u>19</u>	<u>114</u>	<u>405</u>	<u>59</u>	<u>697</u>
<u>Totals</u>	2,266	328	42	172	1,059	109	1,074

Appendix 21  
 Four-Year Summary  
 (1978, 1979, 1980, 1981)  
 of Source of Violations  
 Reported or Detected by

Corps District/ Division	Year	US Army Corps of Engineers District						
		A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
1. Memphis	1978	5	29	--	--	--	--	10
	1979	42	6	--	--	22	1	9
	1980	97	6	--	--	25	--	37
	1981	65	3	--	--	45	--	20
	Total	209	44	0	--	92	1	76
Average	52	11	--	--	23	<1	19	
2. New Orleans	1978	37	1	--	--	24	--	1
	1979	55	2	--	1	26	1	2
	1980	60	2	1	2	27	--	1
	1981	72	--	--	--	10	--	1
	Total	224	5	1	3	87	1	5
Average	56	1	<1	<1	22	<1	1	
3. St. Louis	1978	16	--	--	4	7	--	--
	1979	6	2	--	2	8	--	--
	1980	23	1	--	--	5	--	9
	1981	12	6	--	1	6	--	8
	Total	57	9	--	7	26	--	17
Average	14	2	--	2	7	--	4	
4. Vicksburg	1978	48	2	--	--	4	--	14
	1979	28	19	--	--	5	--	13
	1980	58	16	--	1	35	--	7
	1981	89	3	--	--	60	--	6
	Total	223	40	--	1	84	--	40
Average	56	10	--	<1	21	--	10	
5. Kansas City	1978	38	--	--	--	36	1	12
	1979	77	5	--	--	21	--	14
	1980	77	--	--	5	31	--	27
	1981	250	--	--	--	34	--	6
	Total	442	5	--	5	122	1	59
Average	111	1	--	1	31	<1	15	
6. Omaha	1978	19	6	--	--	15	--	28
	1979	96	17	--	--	53	--	31
	1980	51	12	--	3	29	8	11
	1981	40	25	23	1	34	37	14
	Total	206	60	23	4	131	45	84
Average	52	15	6	1	33	11	21	

## Appendix 21 (continued)

Corps District/ Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
7. New England	1978	177	6	5	15	65	2	12
	1979	199	6	1	8	49	1	11
	1980	118	6	3	7	36	--	14
	1981	55	5	4	6	70	3	54
	Total	549	23	36	36	220	3	91
	Average	137	6	9	9	55	<1	23
8. Baltimore	1978	74	8	--	--	55	--	25
	1979	126	6	2	--	37	--	34
	1980	180	12	--	2	35	--	28
	1981	73	11	--	--	33	2	40
	Total	453	37	2	2	160	2	127
	Average	113	9	<1	<1	40	<1	32
9. New York	1978	51	--	--	--	151	1	--
	1979	89	--	--	--	129	1	--
	1980	47	8	--	22	68	--	--
	1981	44	5	--	14	95	9	--
	Total	231	13	--	36	443	11	--
	Average	58	3	--	9	111	3	--
10. Norfolk	1978	30	1	1	--	30	--	4
	1979	119	4	1	--	92	--	--
	1980	64	9	17	9	76	--	--
	1981	9	15	11	14	98	--	--
	Total	222	29	30	23	296	--	4
	Average	56	7	8	6	74	--	1
11. Philadelphia	1978	58	16	1	10	8	--	--
	1979	21	4	--	5	3	--	2
	1980	30	5	--	10	7	--	5
	1981	42	25	--	4	12	1	35
	Total	151	50	1	89	30	1	42
	Average	38	13	<1	7	6	<1	11
12. Buffalo	1978	82	--	--	--	10	--	8
	1979	258	27	--	--	62	--	38
	1980	385	14	--	--	81	3	34
	1981	127	32	--	--	32	--	20
	Total	852	73	--	--	185	3	100
	Average	213	18	--	--	46	<1	25

Appendix 21 (continued)

Corps District/ Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
13. Chicago	1978	36	10	--	2	15	--	19
	1979	28	25	--	3	35	--	15
	1980	18	16	--	4	20	1	9
	1981	11	--	--	--	13	--	13
	<b>Total</b>	93	51	--	9	83	1	56
<b>Average</b>	23	13	--	2	21	<1	14	
14. Detroit	1978	63	1	0	3	53	1	10
	1979	70	1	0	4	58	2	12
	1980	79	25	--	15	8	--	--
	1981	27	2	--	11	20	--	22
	<b>Total</b>	239	29	0	33	139	3	44
<b>Average</b>	60	7	0	8	35	<1	11	
15. Rock Island	1978	13	7	--	--	6	1	13
	1979	33	39	--	1	9	--	5
	1980	16	7	--	--	15	--	16
	1981	9	1	--	--	8	--	12
	<b>Total</b>	71	54	--	1	38	1	46
<b>Average</b>	18	14	--	<1	10	<1	12	
16. St. Paul	1978	102	40	--	--	11	--	53
	1979	93	30	--	4	31	--	74
	1980	57	16	--	41	34	--	71
	1981	51	26	--	6	25	--	42
	<b>Total</b>	303	112	--	51	101	--	240
<b>Average</b>	76	28	--	13	25	--	60	
17. Alaska	1978	129	12	0	2	9	0	3
	1979	5	8	--	--	--	3	19
	1980	21	7	3	--	9	--	--
	1981	53	22	4	--	43	--	14
	<b>Total</b>	208	49	7	2	61	3	36
<b>Average</b>	52	12	2	<1	15	<1	9	
18. Portland	1978	24	1	2	0	2	0	4
	1979	31	--	--	--	2	--	2
	1980	13	1	--	--	5	--	6
	1981	26	3	--	1	4	--	38
	<b>Total</b>	94	5	2	1	11	1	63
<b>Average</b>	24	1	<1	<1	3	<1	16	

## Appendix 21 (continued)

Corps District/ Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
19. Seattle	1978	21	5	0	5	19	0	15
	1979	68	5	--	1	25	--	21
	1980	52	2	--	3	25	--	68
	1981	72	1	--	--	35	--	26
	<b>Total</b>		<b>213</b>	<b>13</b>	<b>--</b>	<b>9</b>	<b>117</b>	<b>0</b>
<b>Average</b>		<b>53</b>	<b>3</b>	<b>--</b>	<b>2</b>	<b>29</b>	<b>--</b>	<b>33</b>
20. Walla Walla	1978	Missing						
	1979	7	--	--	--	--	3	11
	1980	19	--	--	--	8	--	10
	1981	45	--	--	--	12	--	6
	<b>Total</b>		<b>71</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>20</b>	<b>3</b>
<b>Average</b>		<b>18</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>5</b>	<b>1</b>	<b>7</b>
21. Huntington	1978	40	2	--	1	29	--	3
	1979	30	13	--	--	25	4	45
	1980	3	1	--	1	29	1	0
	1981	16	19	--	--	7	--	--
	<b>Total</b>		<b>89</b>	<b>35</b>	<b>--</b>	<b>2</b>	<b>90</b>	<b>5</b>
<b>Average</b>		<b>22</b>	<b>9</b>	<b>--</b>	<b>&lt;1</b>	<b>23</b>	<b>1</b>	<b>12</b>
22. Louisville	1978	60	5	--	--	3	--	--
	1979	21	4	--	--	4	--	--
	1980	69	5	--	--	16	2	16
	1981	31	4	--	--	21	1	12
	<b>Total</b>		<b>181</b>	<b>18</b>	<b>--</b>	<b>--</b>	<b>44</b>	<b>3</b>
<b>Average</b>		<b>45</b>	<b>5</b>	<b>--</b>	<b>--</b>	<b>11</b>	<b>1</b>	<b>7</b>
23. Nashville	1978	24	6	0	0	21	1	126
	1979	45	2	--	1	32	--	102
	1980	63	3	--	--	39	--	55
	1981	68	4	--	--	29	--	105
	<b>Total</b>		<b>200</b>	<b>15</b>	<b>--</b>	<b>1</b>	<b>121</b>	<b>1</b>
<b>Average</b>		<b>50</b>	<b>4</b>	<b>--</b>	<b>&lt;1</b>	<b>30</b>	<b>&lt;1</b>	<b>97</b>
24. Pittsburgh	1978	127	2	--	--	11	--	--
	1979	13	10	--	--	42	--	--
	1980	24	7	--	5	33	--	--
	1981	56	17	--	10	36	--	--
	<b>Total</b>		<b>220</b>	<b>36</b>	<b>--</b>	<b>15</b>	<b>122</b>	<b>--</b>
<b>Average</b>		<b>55</b>	<b>9</b>	<b>--</b>	<b>4</b>	<b>31</b>	<b>--</b>	<b>--</b>

Appendix 21 (continued)

Corps District / Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
25. Pacific Ocean	1978	22	6	1	--	13	--	9
	1979	21	2	--	--	9	--	14
	1980	9	--	--	--	24	--	5
	1981	13	--	--	--	12	--	9
	Total	65	8	1	--	58	--	37
Average	16	2	<1	--	15	--	9	
26. Charleston	1978	62	2	3	1	43	--	86
	1979	98	1	1	--	52	2	78
	1980	32	6	--	2	54	1	155
	1981	65	6	--	--	57	2	202
	Total	257	15	4	3	206	5	521
Average	64	4	1	1	52	1	130	
27. Jacksonville	1978	270	--	--	--	--	--	6
	1979	243	--	--	--	1	--	3
	1980	268	1	--	44	36	--	20
	1981	223	8	--	76	58	4	15
	Total	1004	9	--	76	215	4	44
Average	251	2	--	19	54	1	11	
28. Mobile	1978	149	4	--	--	31	--	28
	1979	75	2	1	1	76	--	28
	1980	98	50	10	15	10	44	--
	1981	112	55	12	16	11	45	--
	Total	434	11	23	32	128	89	56
Average	109	28	6	8	32	22	14	
29. Savannah	1978	78	1	--	8	7	--	4
	1979	38	2	--	8	20	--	--
	1980	29	2	--	5	22	1	3
	1981	19	11	--	--	15	--	11
	Total	164	16	--	21	64	1	18
Average	41	4	--	5	16	<1	5	
30. Wilmington	1978	58	--	--	--	1	--	14
	1979	47	1	--	--	2	--	17
	1980	65	--	--	--	11	--	5
	1981	59	--	--	--	19	--	12
	Total	229	1	--	--	33	--	48
Average	57	<1	--	--	8	--	12	

Appendix 21 (continued)

Corps District / Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
31. Los Angeles	1978	Missing						
	1979	24	10	--	2	2	--	--
	1980	Missing						
	1981	4	--	5	1	--	6	3
	Total	28	--	5	3	2	6	3
Average	7	--	1	1	<1	1	1	
32. Sacramento	1978	77	--	--	--	4	--	18
	1979	139	6	--	2	12	1	23
	1980	150	9	--	2	15	--	20
	1981	225	1	--	1	15	--	17
	Total	591	16	--	5	44	1	78
Average	148	4	--	1	11	<1	20	
33. San Francisco	1978	Missing						
	1979	138	4	--	6	38	--	62
	1980	111	--	--	10	36	1	108
	1981	76	4	2	10	47	--	295
	Total	325	8	2	26	121	1	465
Average	81	2	<1	7	30	<1	116	
34. Albuquerque	1978	17	--	--	--	4	--	2
	1979	8	2	--	--	2	--	2
	1980	3	4	--	--	8	--	5
	1981	7	1	--	--	--	--	--
	Total	35	7	2	10	14	--	9
Average	9	2	<1	3	4	--	2	
35. Fort Worth	1978	--	1	--	--	--	--	4
	1979	4	1	--	--	1	--	1
	1980	9	1	--	--	12	--	4
	1981	27	--	--	--	17	--	3
	Total	40	3	--	--	30	--	12
Average	10	1	--	--	8	--	3	
36. Galveston	1978	79	58	29	13	33	1	2
	1979	37	44	--	1	34	2	6
	1980	40	29	--	--	43	--	5
	1981	44	13	--	--	49	1	9
	Total	200	144	29	14	159	4	22
Average	50	36	7	4	40	1	6	

Appendix 21 (continued)

Corps District/ Division	Year	A Corps Engineers	B USFWS	C NOAA	D Environ Group	E Citizen	F USGS	G Other
37. Little Rock	1978	23	--	--	--	--	--	3
	1979	21	--	--	--	--	2	3
	1980	44	--	--	--	--	1	--
	1981	34	--	--	--	4	--	1
	Total	122	--	--	--	4	3	5
Average	31	--	--	--	1	1	1	
38. Tulsa	1978	54	1	--	--	10	--	5
	1979	45	1	--	--	4	--	--
	1980	28	4	--	2	4	--	9
	1981	15	--	--	--	6	--	1
	Total	142	6	--	2	24	--	15
Average	36	2	--	<1	6	--	4	

## APPENDIX 22

STATUS OF SECTION 10 AND SECTION 404 CASES REFERRED TO US  
DEPARTMENT OF JUSTICE FOR PROSECUTION

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
<u>Lower Mississippi Valley Division</u>				
Memphis	Tennessee Western	7/81		Order filed, 8/81 - Settlement Meeting
Memphis	Tennessee Western	2/82		Order agreed & filed
Memphis	Tennessee Western	11/81	Unlawful construc- tion of ditch and levee system	Under review by DOJ attorney
Memphis	Tennessee Eastern	7/81	Channelization in Tennessee River	Case referred to US Attorney
New Orleans	Louisiana Western	10/81	Challenge to the permit denial	Permit issued by Corps with no conditions in 3/82
New Orleans	Louisiana Eastern			Case closed
New Orleans	Louisiana Middle	11/81		Motion for reconsidering denied, filed
New Orleans	Louisiana Western	5/80		Judgement entered
New Orleans	Louisiana Eastern	1/82		Petition
New Orleans	Louisiana Western	11/81	Referenced by Corps for unlawful construc- tion of ditch and land cleaning activities in wetlands	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
New Orleans	Louisiana Eastern	9/81	Illegal fill in tidal wetland	Complaint being prepared by AUSA
New Orleans	Louisiana Eastern			Complaint being prepared by AUSA
New Orleans	Louisiana Western	10/81		Case reopened
New Orleans	Louisiana Eastern	4/81	Small penalty only - D&F case	To be delegated to US Attorney
New Orleans	Louisiana Eastern			Case closed
New Orleans	Louisiana Eastern	7/81	Wetlands case in which district court upheld court judisdiction & denial of permit	Motion for leave denied
New Orleans	Louisiana Eastern	3/82	The issue decided upon which petition is now appealed, is whether the Section 404 program was constitutionally delegated to COE	Order entered
New Orleans	Louisiana Eastern	5/81		Judgement entered
New Orleans	Louisiana Eastern	5/80		Case dismissed; Wrong party sued
New Orleans	Louisiana Eastern	11/81		Appeal notice
New Orleans	Louisiana Eastern	4/80		Judgement Entered
New Orleans	Louisiana Eastern	2/82	Suit alleged that district engineer acted arbitrarily when permitting stopped in re: cit. Corps construction of project	First set request
New Orleans	Louisiana Eastern	10/81	Penalty fill & dredge case	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
St. Louis	Missouri Eastern	10/81	D&F in wetland	Case in discovery stage; direct referral to US Attorney
St. Louis	Illinois Southern		Dredge & fill Section 404 case	
Vicksburg	Mississippi Northern	7/81	Significant violation of D&F laws; restoration needed	Draft complaint under review
Vicksburg	Arkansas Eastern	1/81	Defendant constructed levees without permit Restoration sought	
Kansas City	Missouri Western	5/81	Complaint filed	Settlement draft sent to defendant
Kansas City	Missouri Western	3/82	Unlawful dredging activity on Lake of Ozarks	Referred to US Attorney
Omaha	Colorado	7/81	Potential criminal case 1 Radiation project	Case will probably be settled out of court
Omaha	Nebraska	4/81	Construction of unlawful dam	Case dismissed by Plaintiff
Omaha	Colorado			Corps has withdrawn case
Omaha	Colorado	5/81	Unpermitted discharge of fill	Case never filed
Omaha	Montana		Dredge & fill case	Case referred
<u>New England Division</u>				
New England	Massachusetts			
New England	Connecticut	7/81	Dredge & fill illegal dock	
New England	Massachusetts	1/82	Referral for unlawful filling on Chelsea River	Corps agreed to the allow party to apply for A-T-T permit. If granted party will pay \$5,000 fine.
				If not case will be litigated

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
New England	Connecticut	9/81	D&F case illegal bulkhead	Proposed consent decree at defendant from Corps
New England	Connecticut		Case closed	
New England	Connecticut	4/80		Complaint filing case inactive
New England	Connecticut	9/81	Unauthorized discharge of material into creek	Case inactive
New England	Connecticut	12/76		Complaint filing, case closed
New England	Connecticut	12/81		Motion to remove fill filed  Case closed
New England	Maine			Case inactive
New England	Massachusetts	11/80		Motion for pro- duction filing, Case closed
New England	Massachusetts	6/81	Illegal lock	
New England	Massachusetts	3/81		Stipulation; consent decree lodged
New England	Massachusetts			
New England	Rhode Island			
New England	Rhode Island			
New England	Vermont			
New England	Massachusetts	9/81	D&F case	Pre-settled case complaint and consent decree sent to AUSA
New England	Massachusetts	8/81		Complaint filed No answer filed; Settlement nego- tiations underway

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
New England	Vermont	12/81	Suit in part from filling material in a wetland; action to compel COE & EPA to exert jurisdiction	
New England	Massachusetts		Some negotiations	in progress
New England	Massachusetts	7/81		Petition to close case filed
New England	Massachusetts		Case filed and	settled in 1979 without POF's knowledge, case to be closed
New England	Connecticut	9/81	Dredge & fill	Complaint filed
New England	Maine	8/81	Unlawful dredging & filling	Complaint filed
New England	Maine	4/82	Unlawful dredging & filling	Complaint filed
New England	Massachusetts	12/81	Unlawful dredging of river	Consent decree filed
New England	New Hampshire	7/81	Unauthorized Dredging and filling	Preliminary injunction filed
<u>North Atlantic</u> Baltimore	<u>Division</u> Dist. Columbia	1/82		Brief for appellant
Baltimore	Maryland	12/81		Settlement entered
Baltimore	Maryland	3/82	Suit for unlawful dredging & filling	
Baltimore	Maryland	1/82		Order scheduling filed
Baltimore	Maryland	12/81		Settlement entered

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Baltimore	Dist. Columbia	9/81	Case involves an alleged talking due to denial of Corps dredge & fill permit	
Baltimore	Dist. Columbia	5/80		Judgement entered
Baltimore	Maryland	2/82	Dredge & fill	Final judgement filed
Baltimore	Dist. Columbia	3/82		Motion for all parties filed granting
Baltimore	Maryland	4/81	Unpermitted construction of pier & place of fill in wetland	
Baltimore	Maryland	6/81	Suit by citizens' group to block construction of marina	Defendant's motion for summary judgement granted case to be closed
Baltimore	Pennsylvania Middle	2/82	Small wetland and restoration case	
Baltimore	Maryland	3/82	Challenge to Corps denial of permit to fill wetlands	Order scheduling entered
Baltimore	Pennsylvania Middle	7/72	Dredge & fill case	US Attorney preparing complaint
Baltimore	Maryland	11/80		Complaint surmised filing; consent decree entered
Baltimore	Maryland	9/79		Complaint filing; case closed by AUSA.  State action underway
Baltimore	Maryland			Judgement entered for US; penalties only

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
New York	New York Eastern	6/74		Filing
New York	New York Eastern			Case not filed; closed
New York	New York Southern	10/79		Consent judgement filing
New York	New York Eastern	3/81	Dredge & fill discharge of fill & debris into Bay with out a permit	AUSA withdrew case - Investigative data missing
New York	New York Eastern	12/80		Judgement entered; Case to be closed
New York	New York Eastern			No defendant to serve in case; to be dismissed
New York	New York Eastern			Judgement entered
New York	New York Eastern			Case to be closed when docket is found
New York	New York Southern	6/81	Challenge to Section 404 permit issued	
New York	New York Southern	9/81	Denial of an after-the-fact dredge & fill permit	Case referred to US Attorney
New York	New York Eastern	7/74		Complaint filing
New York	New York Eastern			
Norfolk	Virginia Eastern	2/82		Decision & order entered
Norfolk	Virginia Eastern	5/81	Dredge & fill direct referral	No yet filed; Corps may accept A-T-F permit applications from the alleged violation

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Norfolk	Virginia Eastern	3/82		Motion to compel (several)
Norfolk	Virginia Eastern	7/81	Illegal bulk- head & backfill	
Norfolk	Virginia Eastern	7/81	Small D&F case on Chincoteaque	
Philadelphia	New Jersey			
Philadelphia	New Jersey	4/81	Unlawful blockage of a tidal ditch	
Philadelphia	New Jersey	3/82		Order filed
Philadelphia	Delaware	7/81		Stipulation filing consent decree entered
Philadelphia	New Jersey	6/80		Consent decree filed
Philadelphia	New Jersey	2/81	Deposit of illegal fill	Case will be declined unless Corps can find defendant
<u>North Central</u> Buffalo	<u>Division</u> Ohio Northern	2/77		Filing
Buffalo	New York Northern	10/18	Discharge of fill into creek without permit; restoration requested	
Buffalo	New York Northern	7/81	Dredge & fill	Complaint not yet filed; AUSA negotiating settlement
Buffalo	Ohio Northern	2/82		Notice of filing
Buffalo	Ohio Northern	2/77		Judgement entered
Chicago	Illinois Northern			

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Chicago	Illinois Central	3/81	Injunctive and damages action arising out of loss of R.R. Bridgedue to allegedly unpermitted filling, channeling	Filing
Chicago	Illinois Northern	11/81		Memo order & opinion filed
Chicago	Illinois Northern	7/81		Memo opinion order entered
Chicago	Illinois Northern	5/81	Small dredge & fill case	Case to be delegated to US Attorney; no pleadings filed
Chicago	Illinois Northern		Unlawful filing	
Detroit	Michigan Eastern	12/81		Presettled dredge & fill case
Detroit	Michigan Eastern	11/81		Opinion & order filed
Detroit	Michigan Western	2/81	Major deposit of fill material into a navigable water without permit; registration & levee penalty sought	
Detroit	Michigan Eastern	12/81		Report status filed
Detroit	Michigan Eastern	5/81	Small D&F case	Summons filed; settlement negotiations
Detroit	Michigan Eastern	5/81	Dredge & fill	Settlement negotiations
Detroit	Michigan Eastern	8/81		Stipulation missing motion for preliminary injunction filed
Detroit	Michigan Eastern	2/81		Stipulation and consent filing

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Detroit	Michigan Eastern			Case closed
Rock Island	Iowa Southern	3/82	D&F Section 404	
Rock Island	Iowa Southern			
St. Paul	Minnesota	5/80		Case closed last year; decided not to appeal
St. Paul	Wisconsin Western	8/81	Case involves restoration	Settlement entered
<u>North Pacific</u> Alaska	<u>Division</u> Alaska	8/81	Dredge & fill	To AAG for action commercial & civil actions
Alaska	Alaska	10/81	D&F & Section 10 case	
Alaska	Alaska	8/81	D&F case	Complaint to be filed
Portland	Oregon	6/81	Dredge and fill case	Case under review at US Attorney's office
Portland	Oregon			
Seattle	Washington Western			
Seattle	Washington Western	12/80	Unauthorized float	
Seattle	Washington Western	12/81	Criminal referral of dredge and fill case	
Seattle	Washington Western	4/81		
Seattle	Washington Western			
Seattle	Washington Western			

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Seattle	Washington Western	2/81	Section 10 case involving a pier	AUSA requested more information from Corps, but never received it, case closed
Seattle	Washington Western	3/81	Small D&F case	Case declined
Seattle	Washington Western	2/81	Small D&F case	Case declined
Seattle	Washington Western	2/81	Small D&F case	Violation removed, Case resolved
Seattle	Washington Western			Complete restora- tion; file closed
Seattle	Washington Western	3/81		Will soon file an action
Seattle	Washington Western	2/81	Small D&F case	AUSA awaiting report from Corps
Seattle	Washington Western			Case declined and closed
Seattle	Washington Western			Case declined and closed
Seattle	Washington Western			Case declined and closed
Seattle	Washington Western			Case declined and closed
Seattle	Washington Western	1/81	Small D&F case	Case referred to US attorney
Seattle	Washington Western	1/81	Small D&F case	Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western	9/1	Dredge & fill	Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western			Direct referral to US Attorney
Seattle	Washington Western		Small Section 10 case	Case to be delegated to US Attorney
Seattle	Washington		Unlawful filling of Bay	
Seattle	Idaho	5/81		
Seattle	Idaho	3/82		Interrogations for plaintiff service
Seattle	Idaho	5/81	Section 10 violation involving marina construction	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Seattle	Idaho			Case closed
Seattle	Washington Eastern			Case closed without action
Seattle	Idaho	8/80		Case declined by US Attorney
Seattle	Idaho	8/80		Case declined by US Attorney
Seattle	Idaho	8/80		Case declined by US Attorney
Seattle	Idaho	8/80		Case declined by US Attorney
Seattle	Idaho	11/81	Unlawful dredging and filling in connection with construction of dry boat storage facility	
Seattle	Washington Western	3/82		Case referred to US Attorney
Seattle	Washington Western	12/81	Unlawful dredge & fill	Case referred to US Attorney
Seattle	Washington Western	2/81		Case referred to US Attorney for criminal prosecution
Seattle	Washington Western	12/81	Unlawful dredge & fill	Case referred to US Attorney
Seattle	Washington Western	11/81	Referenced against contractor for un- lawful construction of bulkhead	Case referred to US Attorney
Seattle	Washington Western		No action on case	
Seattle	Washington Western		No action on case	
Seattle	Washington Eastern			Letter from US Attorney declining to send letter of reprimand

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Seattle	Washington Eastern			Case declined and closed
Seattle	Washington Eastern			Case declined and closed
Seattle	Washington Western		Restoration not requested	Letter sent to US Attorney
Seattle	Washington Western		Small violation of D&F laws	No action taken except letter of reprimand; case closed
Seattle	Washington Western	11/81		
Walla Walla	Idaho			Case to be closed
Walla Walla	Idaho	12/81		Motion to dismiss filing
Walla Walla	Idaho			Settlement entered case closed
<u>Ohio River Division</u>				
Huntington	Ohio Southern	5/81		Appeal being handled by Appel- late Court 1; certified record on appeal fixed
Huntington	West Virginia Southern	9/81		Order of settle- ment entered
Louisville	Kentucky Eastern	8/81		Preliminary service
Louisville	Kentucky Western	2/82		Order entered
Louisville	Kentucky Western			Case under review at US Attorney's Office
Louisville	Kentucky Western	8/81	Dredge and fill case	Case withdrawn by Corps
Nashville	Tennessee Eastern	10/79	Complaint	Filing

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Nashville	Tennessee Middle			Restoration per- formed; no need to file suit
Nashville	Tennessee Eastern	4/79		Complaint filing
Nashville	Tennessee Western	6/81		Stipulation con- sent decree filed
Pittsburgh	Pennsylvania Western			Case referred to US Attorney
<u>Pacific Ocean Division</u>				
Pacific Ocean	Hawaii	2/80		Judgement entered
Pacific Ocean	Hawaii	2/76		Motion to inter- vene. No action on case
Pacific Ocean	Hawaii			No action on case
Pacific Ocean	Hawaii			No action on case
Pacific Ocean	Hawaii	7/76		Stipulation/ settlement filing; no action on case
Pacific Ocean	Hawaii	7/76		Stipulation/ settlement filing; no action on case
Pacific Ocean	Hawaii			Case withdrawn; defendant died
Pacific Ocean	Hawaii	4/80	Complaint	US Attorney did not file; indecision about case on part of Corps
Pacific Ocean	Hawaii	5/80		Judgement entered
<u>South Atlantic Division</u>				
Charleston	South Carolina	2/81		Judgement default entered
Charleston	South Carolina	3/82		Motion for leave

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Charleston	South Carolina	4/73		Complaint filing
Charleston	South Carolina	5/80		Complaint filing
Charleston	South Carolina	8/80		Complaint filing
Charleston	South Carolina	3/79		Complaint filing dismissed with prejudice
Jacksonville	Florida Middle			
Jacksonville	Florida Middle	11/81	Section 404 case involving restoration	Stipulation of dismissal filed
Jacksonville	Florida Northern	4/81		Case file closed; final judgement consent (entered)
Jacksonville	Florida Southern	9/80	Case involves unauthorized filling of wetlands, requires restoration	
Jacksonville	Florida Southern	2/82		Filing
Jacksonville	Florida Middle	11/81		Pretrial and stipulation
Jacksonville	Florida Southern	3/82		Order entered
Jacksonville	Florida Southern	1/82	Referral for unlawful filing	
Jacksonville	Florida Middle	11/81	Objection to findings of service	
Jacksonville	Florida Middle	4/81	Motion to amend filed	7/81 presettled-small D&F case
Jacksonville	Florida Middle	2/82	Criminal prosecution for performing unauthorized maintenance dredging	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Northern	11/81	Referral to compel defendant to close breach in canal system connected to navigable water	
Jacksonville	Florida Southern	11/81		Motion for extension filed; granting
Jacksonville	Florida Southern	12/81	Tugboats create dredged channels by running through shallows	Interrogatives 1st set
Jacksonville	Florida Southern	2/82		Motion to compel filed
Jacksonville	Florida Southern	3/82		Order for disposal filed
Jacksonville	Florida Middle	2/79		Judgement entered
Jacksonville	Florida Middle	9/81	Motion to enlarge time filed	11th circuit; argued on 3/82; awaiting decision
Jacksonville	Florida Middle	3/81		Old case - reopened
Jacksonville	Florida Northern			Proposed consent decree will be rejected
Jacksonville	Florida Southern	1/82		Motion to approve filing; granting
Jacksonville	Florida Southern	11/81		Await decision; notice of filing
Jacksonville	Florida Southern	3/82	Motion to withdraw filed	Case to be closed
Jacksonville	Florida Middle	10/81	Dredge and fill - small case	Case to be closed
Jacksonville	Florida Middle	3/82		Notice filed
Jacksonville	Florida Middle	7/81		Stipulation and motion filed

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Middle	4/81	Small D&F	Consent decree negotiations in progress
Jacksonville	Florida Northern	3/81	Section 404 restoration case	
Jacksonville	Florida Northern	2/25	Criminal referral of D&F case	Complaint to be filed soon
Jacksonville	Florida Southern	11/81		Interrogatives 1st set; plaintiff's first service
Jacksonville	Florida Southern	2/82		Order containing filed
Jacksonville	Florida South	8/81	Dredge and fill referral	Investigation continuing in US Attorney's office
Jacksonville	Florida Southern	3/82		Interrogatives 1st set
Jacksonville	Florida Southern			
Jacksonville	Florida Southern	5/81	Interrogator's answer from defendant	Summary motion to be filed within two weeks
Jacksonville	Florida Southern	11/81		Final judgement consent served, small presettled D&F case
Jacksonville	Florida Southern	12/81		Presettled D&F case
Jacksonville	Florida Southern	2/82		Order containing filed
Jacksonville	Florida Southern	3/82		Application for dismissal service
Jacksonville	Florida Southern	11/81	Unlawful filing in Everglades	Under review by AUSA
Jacksonville	Florida Middle	12/79	Complaint	Case already closed

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Middle	4/80	Complaint	Consent decree entered; case closed
Jacksonville	Florida Middle	8/79		Judgement entered
Jacksonville	Florida Northern	3/82		Notice to the court service
Jacksonville	Florida Southern	11/79		Stipulation settlement filing, case closed
Jacksonville	Florida Northern	8/81	Illegal dredge and fill violation	Fine paid and completed; case closed
Jacksonville	Florida Middle	7/81	Wetlands case	Corps drafting four separate complaints; negotiations underway to settle one case
Jacksonville	Florida Southern	12/80	Unlawful dredging of boat slip	Case referred to US Attorney for grand jury investigation
Jacksonville	Florida Middle	4/77		Complaint filing awaiting court setting on oral argument on summary judgement motion
Jacksonville	Florida Middle	2/82		Case basically presettled
Jacksonville	Florida Middle	5/79	Removal of barge	Case file closed
Jacksonville	Florida Middle	2/82		Case basically presettled
Jacksonville	Florida Middle	5/79	Removal of barge	Case file closed
Jacksonville	Florida Middle	3/81	Second offense D&F case restoration required	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Southern			
Jacksonville	Florida Southern			DOJ plans to decline case
Jacksonville	Florida Middle	7/81	Challenge to cease and desist; challenges COE jurisdiction	Case dismissed without prejudice
Jacksonville	Florida Southern	5/78		Final (consent) judgement entered
Jacksonville	Florida Southern	3/82		Final judgement entered; case to be transferred to appellate
Jacksonville	Florida Southern	1/81		Motion to compel filed
Jacksonville	Florida Southern	3/82	Dredge and fill repeat-offender	Motion for leave filed
Jacksonville	Florida Northern	3/82		Suggestion filed
Jacksonville	Florida Northern	3/82		Order for pre- trial conference
Jacksonville	Florida Northern	2/82		Order filed
Jacksonville	Florida Middle	4/79		Complaint filed
Jacksonville	Florida Middle	3/82	Corps referral to compel removal of sunken barge	Corps referral deferred until Corps completes litigation report
Jacksonville	Florida Middle			US Attorney to file complaint
Jacksonville	Florida Middle	12/80		Complaint petition for service; Corps attorney experi- encing problems in enforcing judgement

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Southern	3/82		Motion for hearing filed
Jacksonville	Florida Southern	11/80		Referral under review by US Attorney
Jacksonville	Florida Southern			Settlement negoti- ations underway by US Attorney
Jacksonville	Florida Southern			Corps has with- drawn case; case to be closed
Jacksonville	Florida Southern	1/82	Small D&F case presettled	Order of discharge and satisfaction filed
Jacksonville proceed	Florida Southern	4/80	Court entered consent decree requiring restora- tion of canal	Restoration proceeding accord- ing to consent decree
Jacksonville	Florida Southern			Defendant proposed some restoration to property; it may be sold to USFWS
Jacksonville	Florida Southern	7/78	Counterclaim answer	US Attorney will file motion for contempt; defend- ant has failed to perform restora- tion
Jacksonville	Florida Southern	2/82		Motion to substi- tute granting
Jacksonville	Florida Southern	1/82		Motion to dis- charge filed; old fill case settled prior to filing
Jacksonville	Florida Southern	10/81		Judgement consent entered
Jacksonville	Florida Southern	6/81		Consent judgement entered; case to be closed

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Southern	9/81		Order of dismissal entered
Jacksonville	Florida Southern	9/81	Complaint to an enforcement action previously filed by government against plaintiff	Order of dismissal entered
Jacksonville	Florida Southern	12/81		Stipulation of settlement filed
Jacksonville	Florida Southern	3/82	Consent decree requires restora- tion; not completed as yet	Final consent judgement entered
Jacksonville	Florida Southern	10/81	Reopening of old case	Consent decree has been complied with; case to be closed
Jacksonville	Puerto Rico	2/82	Suit to enjoin EPA from existing jur- isdiction over irrigation return flow pumps	
Jacksonville	Puerto Rico	11/81		Motion for en- largement service; order entered dismissing com- plaint for failure to exhaust admin. remedies
Jacksonville	Florida Southern	12/81		Motion to withdraw granting
Jacksonville	Florida Middle	8/81		Consent decree entered 2/82
Jacksonville	Florida Middle			
Jacksonville	Florida Middle	2/82		Judgement consent filed
Jacksonville	Florida Middle			

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Middle	12/80		Stipulation fined consent entered
Jacksonville	Florida Northern	4/80		Complaint filing
Jacksonville	Florida Northern	9/81		Notice of entry entered
Jacksonville	Puerto Rico			
Jacksonville	Florida Middle	12/81	Dredge and fill case	Case was presettled
Jacksonville	Florida Northern		Referral for con- struction of bulk- head and discharge of pollutants without permit	
Jacksonville	Florida Middle	7/79		Complaint entered
Jacksonville	Florida Middle			Case withdrawn
Jacksonville	Florida Middle		Corps wanted to reinstitute case	Case dismissed
Jacksonville	Florida Middle	8/79		Motion to dismiss filing
Jacksonville	Florida Middle	12/81		Final judgement restoration order
Jacksonville	Florida Middle	4/80		Stipulation settlement filing
Jacksonville	Florida Southern		Court ordered restoration plan	US Attorney is seeking status is restoration activities
Jacksonville	Florida Southern	11/80	Motion to include service	Consent decree requires restora- tion of manpower
Jacksonville	Florida Middle	1/82	Presettled dredge and fill case	Final consent entered

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Florida Middle	6/81	Presettled D&F case involving unlawful access road	Final consent entered
Jacksonville	Florida Southern	10/81	Incompatible structures across a navigable water	Motion renewal filed
Jacksonville	Florida Southern	4/81	Violation of special condition in Section 404 permit which required permittee to maintain tidal flushing	Negotiations underway with US Attorney and Corps and defendant
Jacksonville	Florida Northern	12/80		Settlement negotiations underway
Jacksonville	Florida Southern	6/81		Motion renewed to service; await decision on motion to dismiss for summary judgement
Jacksonville	Puerto Rico	9/78		Dismissed
Jacksonville	Puerto Rico			Case is being closed
Jacksonville	Puerto Rico	4/77		Case has been closed
Jacksonville	Puerto Rico	11/81	Potential suit regarding EPA objective to Corps determination of each of Section 404 jurisdiction over fill	No referral was ever made; case is being closed
Jacksonville	Puerto Rico	9/79		Judgement entered subject structure burned down and case is closed
Jacksonville	Puerto Rico	1/80		Judgement entered; total restoration defendant restored only three-fourths of area; case may be reopened

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Jacksonville	Puerto Rico	9/81		Judgement entered
Jacksonville	Puerto Rico			Permanent injunc- tion entered, enjoin further filling
Jacksonville	Puerto Rico	7/80		Opinion and order filed
Jacksonville	Virgin Islands			
Mobile	Alabama Northern	11/77	Complaint; filing	
Mobile	Alabama Northern			
Mobile	Alabama Southern			Case closed
Mobile	Mississippi Southern			Case closed in 1980
Mobile	Alabama Southern	2/82	Unlawful discharge of dredge and fill material	
Mobile	Mississippi Southern	12/80	Action seeking declaratory judg- ment that COE is without jurisdiction	Judgement consent filed
Mobile	Alabama Southern	4/81	Defendant has placed fill in wetland, relatively small	
Mobile	Mississippi Southern	2/82		Motion for order filed; motion for partial summary judge denied 3/82
Mobile	Mississippi Southern			
Mobile	Alabama Northern	3/79		US Court appeal Notice
Wilmington	North Carolina East	11/81		Contempt hearing held; continued until 6/82

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Wilmington	North Carolina East	5/81	Possible contempt action for failing to perform restora- tion as required by court	
Wilmington	North Carolina East	10/81		Final judgement entered
Wilmington	North Carolina East			Compromise prior to filing; closed on 7/81
Wilmington	North Carolina East	3/82		Motion for contin- uance filed; case was closed and is now reactivated
Wilmington	North Carolina East	8/81	Developer challeng- ing COE denial of a permit. Develop- er has appealed decision	Magistrate entered summary judgement against developer
Wilmington	North Carolina East	4/78		Complaint filing
Wilmington	North Carolina East		Unlawful filling of cypress gum swamps	
<u>South Pacific</u> Los Angeles	<u>Division</u> Calif. Central	1/82		Status report filed
Los Angeles	Calif. Central	10/80		Consent decree entered; case to be closed
Sacramento	Calif. Eastern	4/81	Small case to be delegated	
Sacramento	Nevada	4/81	Violations of permit, small case	
Sacramento	Calif. Eastern	7/79	Decree ordering defendant to apply for permit	

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Sacramento	Colorado	3/82	Motion form extension filed; granting	
Sacramento	Utah	11/81	Summary judgement rendered in favor of US	
Sacramento	Utah	9/81	Wetlands violation including a pending resolution through ongoing settlement	Case to be closed
Sacramento	Colorado	4/81		Permanent injunction entered
Sacramento	Colorado	12/81	Challenge to 404 permit denial	US Attorney to ask for dismissal
Sacramento	Utah	9/81		Settlement proposed to Corps
Sacramento	Calif. Eastern			Case referred to US Attorney
San Francisco	Calif. Northern	12/81	Interrogatives 1st set filed	
San Francisco	Calif. Eastern	4/79	Complaint 1 filing	No record of case at US Attorney's Office
San Francisco	Calif. Northern			
San Francisco	Guam			Case inactive
San Francisco	Calif. Eastern	5/81	Major dredge & fill case; restoration requested	Direct referral to US Attorney; no papers received yet
San Francisco	Calif. Central	1/82		Notice of dismissal filed
San Francisco	Calif. Northern			Case referred to US Attorney
San Francisco	Calif. Northern	1/80		Interrogation's answer; case referred to US Attorney

## Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
San Francisco	Calif. Northern	6/81		Order status conference; case referred to US Attorney
San Francisco	Calif. Northern	10/81		Court entered summary judgement in favor of defendant on the grounds that the Corps has no jurisdiction under Section 10 to require permits for houseboats
San Francisco	Calif. Northern			Case referred to US Attorney; DOJ wants to close case
<u>Southwestern Division</u>				
Galveston	Texas Southern	10/81	Challenge to cease and desist order	
Galveston	Texas Southern	2/79		Settlement filing
Galveston	Texas Southern			
Galveston	Texas Southern			
Galveston	Texas Southern			
Galveston	Texas Southern	12/81		Judgement filed
Galveston	Texas Southern			AUSA awaiting reply from Corps
Galveston	Texas Southern			AUSA awaiting report from Corps
Galveston	Texas Southern	6/77	Complaint	Case to be closed
Galveston	Texas Southern			

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Galveston	Texas Southern			AUSA awaits report from Corps
Galveston	Texas Southern	3/82		Order of dismissal filed
Galveston	Texas Southern			
Galveston	Texas Eastern	2/81	Illegal bulkhead	Defendant paid fine to Corps; case to be closed
Galveston	Texas Eastern	5/81	Canals in river dug without Corps permit	Complaint filed
Galveston	Texas Eastern	5/81	Fill in river without permit	Defendant has no attorney and is in hospital
Galveston	Texas Eastern	5/81	Small D&F case in wetland	Settlement negoti- ations underway
Galveston	Texas Eastern	2/81	Direct referral in- volving placement of fill (tires) on shore	
Galveston	Texas Eastern	5/81	Dredge and fill enforcement case	Complaint filed; case referred to US Attorney
Galveston	Texas Eastern	5/81		Complaint filed
Galveston	Texas Eastern	5/81	Dredge and fill enforcement case	Complaint filed
Galveston	Texas Southern	5/81		Complaint filed
Galveston	Texas Southern	5/81		Complaint filed
Galveston	Texas Southern	5/81		Complaint filed
Galveston	Texas Southern	5/81		Complaint filed
Galveston	Texas Eastern	3/82	Challenge to permit denial and may be voluntarily dismissed	Discussion with plaintiff counsel ongoing

Appendix 22 (continued)

Corps District or Division	District Court	Date Filed at Dept. of Just.	Nature of Alleged Violation; Rationale Referral to DOJ	Known Status of Case (as of 4/82)
Galveston	Texas Southern	12/81		Motion to dismiss service
Galveston	Texas Southern		Small dredge and fill case	
Galveston	Texas Southern			
Galveston	Texas Southern	1/81		Motion for con- tinuance service
Galveston	Texas Southern	5/80		Motion to dismiss felony
Galveston	Texas Southern			
Galveston	Texas Southern	7/81	Dredge and felony of tidal wetland	
Galveston	Texas Southern	11/81		Stipulation for settlement service
Galveston	Texas Southern			

Appendix 23  
SECTION 404 CASES REFERRED FOR PROSECUTION TO U.S. DEPARTMENT  
OF JUSTICE BY U.S. ENVIRONMENTAL PROTECTION AGENCY

EPA Region (Number)	State	Federal Court District	Nature of Alleged Violation Rationale for Reference to U.S. Department of Justice	Present Status of Case (Including Date, if Known)
1. 2	New York	-----	Illegal File, No Permit; Litigation	Judgment Entered Not on Consent, 8/78
2. 3	Delaware	Delaware	Dredge and Fill Material Discharge without Section 404 Corps of Engineers Permit	Draft Consent Decree Sent to Department of Justice for review, 5/81
3. 3	West Virginia	Southern District West Virginia	Dredge and Fill without 404 Permit From Corps of Engineers in violation of A. 301 CWA	Draft Civil Complaint Sent to DOJ, 5/81
4. N/A	N/A	N/A	Discharge without 404 permit failure to report, monitor, and notify the public	Case to be filed, 5/82
5. 3	Virginia	N/A	Discharge Dredge or Fill Material into 3 wetlands without Corps of Engineers Authorization	Case filed; Trial conference scheduled for 1/82; answers to Interrogatives due 2/82
6. N/A	N/A	N/A	Violation S. 404 Dredget Fill	Restoration plans for Settlement being drawn up, 2/82
7. 4	Tennessee	Western District Tennessee	Violation A. 404 Dredget Fill	Pre-trial Conference scheduled 1 held; consent agreement prepared and being reviewed by regional Headquarters and DOJ; 3/82
8. 4	Florida	Southern District Florida	Violation S. 404 Dredget Fill	EPA and DOJ Found Settlement Proposal acceptable. Awaiting concurrence of Corps of Engineers, 12/81
9. 9	Idaho	Idaho	Discharging without UNPDES a Department of Army Permit S. 404 violation	Stipulation of fact being negotiated; witnesses being interviewed. Trial continued and subject to call, 12/81

APPENDIX 24

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 ON FILE WITH U.S. DEPARTMENT OF JUSTICE BY CORPS DISTRICT<sup>1,2</sup>

Corps District Division	Number of Referral Cases Presently Active	Percent of All Active Section 10 and 404 at US Dept. of Justice
1. Memphis	4	1
2. New Orleans	19	4
3. St. Louis	2	(<1)
4. Vicksburg	2	(<1)
5. Kansas City	2	(<1)
6. Omaha	5	1
7. New England	28	7
8. Baltimore	17	4
9. New York	13	3
10. Norfolk	5	1
11. Philadelphia	6	1
12. Buffalo	5	1
13. Chicago	6	1
14. Detroit	9	2
15. Rock Island	2	(<1)
16. St. Paul	2	(<1)
17. Alaska	3	1
18. Portland	2	(<1)
19. Seattle	59	14
20. Walla Walla	3	1
21. Huntington	2	(<1)

APPENDIX 24 (continued)

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 ON FILE WITH U.S. DEPARTMENT OF JUSTICE BY CORPS DISTRICT<sup>1,2</sup>

Corps District Division	Number of Referral Cases Presently Active	Percent of All Active Section 10 and 404 at US Dept. of Justice
22. Louisville	4	1
23. Nashville	4	1
24. Pittsburgh	1	0
25. Pacific Ocean	9	2
26. Charleston	6	1
27. Jacksonville	123	29
28. Mobile	10	2
29. Savannah	0	0
30. Wilmington	8	2
31. Los Angeles	2	(<1)
32. Sacramento	10	2
33. San Francisco	11	3
34. Albuquerque	0	0
35. Fort Worth	0	0
36. Galveston	39	9
37. Little Rock	0	0
38. Tulsa	0	0
TOTAL	423	100

<sup>1</sup>Source: U.S. Department of Justice Computer Print-out 4/82.

<sup>2</sup>Does not include 9 cases on EPA Litigation Print-out.

APPENDIX 25

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 BY U.S. DISTRICT COURT (U.S. ATTORNEY'S OFFICE)<sup>1</sup>

U.S. District Court/ U.S. Attorney's Office	Number of Active Section 10 & 404 Cases	Percent of All Section 10 and 404 Cases Referred
1. Alabama - Northern	3	1
2. Alabama - Southern	3	1
3. Alaska	3	1
4. Arkansas - Eastern	1	(<1)
5. California - Northern	5	1
6. California - Eastern	5	1
7. California - Central	3	1
8. Colorado	6	1
9. Connecticut	8	2
10. Delaware	2	(<1)
11. District of Columbia	4	1
12. Florida - Northern	12	3
13. Florida - Middle	36	9
14. Florida - Southern	69	14
15. Guam	1	(<1)
16. Hawaii	9	2
17. Idaho	13	3
18. Idaho	13	3
19. Illinois - Northern	5	1
20. Illinois - Central	1	(<1)
21. Illinois - Southern	1	(<1)

APPENDIX 25 (continued)

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 BY  
U.S. DISTRICT COURT (U.S. ATTORNEY'S OFFICE)<sup>1</sup>

U.S. District Court/ U.S. Attorney's Office	Number of Active Section 10 & 404 Cases	Percent of All Section 10 and 404 Cases Referred
22. Iowa - Southern	2	(<1)
23. Kentucky - Eastern	1	(<1)
24. Kentucky - Western	3	1
25. Louisiana - Eastern	17	4
26. Louisiana - Middle	1	(<1)
27. Louisiana - Western	4	1
28. Maine	3	1
29. Maryland	11	3
30. Massachusetts	12	3
31. Michigan - Eastern	8	2
32. Michigan - Western	1	(<1)
33. Minnesota	1	(<1)
34. Mississippi - Northern	1	(<1)
35. Mississippi - Southern	4	1
36. Missouri - Eastern	1	(<1)
37. Missouri - Western	2	(<1)
38. Montana	1	(<1)
39. Nebraska	1	(<1)
40. Nevada	1	(<1)
41. New Hampshire	1	(<1)
42. New Jersey	5	1

## APPENDIX 25 (continued)

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 BY  
U.S. DISTRICT COURT (U.S. ATTORNEY'S OFFICE)<sup>1</sup>

U.S. District Court/ U.S. Attorney's Office	Number of Active Section 10 & 404 Cases	Percent of All Section 10 and 404 Cases Referred
43. New York - Northern	2	(<1)
44. New York - Southern	3	1
45. New York - Eastern	9	2
46. North Carolina - Eastern	8	2
47. Ohio - Northern	3	1
48. Ohio - southern	1	(<1)
49. Oregon	2	(<1)
50. Pennsylvania - Middle	2	(<1)
51. Pennsylvania - Western	1	(<1)
52. Puerto-Rico	13	3
53. Rhode Island	2	(<1)
54. South Carolina	6	1
55. Tennessee - Eastern	17	4
56. Tennessee - Middle	1	(<1)
57. Tennessee - Western	5	1
58. Texas - Southern	8	2
59. Texas - Eastern	8	2
60. Utah	3	1
61. Vermont	2	(<1)
62. Virgin Islands	1	(<1)
63. Virginia - Eastern	5	1

APPENDIX 25 (continued)

NUMBER OF ACTIVE SECTION 10, SECTION 404 AND COMBINATION SECTION 10/404 BY U.S. DISTRICT COURT (U.S. ATTORNEY'S OFFICE)<sup>1</sup>

U.S. District Court/ U.S. Attorney's Office	Number of Active Section 10 & 404 Cases	Percent of All Section 10 and 404 Cases Referred
64. Washington - Eastern	4	1
65. Washington - Western	38	9
66. West Virginia - Southern	2	(<1)
67. Wisconsin - Western	1	(<1)
TOTAL	428	100

<sup>1</sup>Source: U.S. Department of Justice Computer Printout, April 1982, EPA Computer Printout of Section 404 Cases, May, 1982.

## APPENDIX 26

## MANPOWER AND EXPENDITURES FOR ENFORCEMENT ACTIVITIES OF CORPS REGULATORY PROGRAM

Corps District/ Division	Manpower		Expenditures (1980)		Percent Expended on Enforcement <sup>17</sup>
	Person-years (Enforcement)	Percent of all person-years in Reg. Functions	Total Activities	Enforcement & Surveillance	
1. Memphis	37	37	650,000	16,000 <sup>18</sup>	2
2. New Orleans	57	15	1,721,000	273,000	16
3. St. Louis	17	15	515,000	28,000	5
4. Vicksburg	67	25	579,000	169,000	29
5. Kansas City	2012	50	1,900,000	816,000	43
6. Omaha	413	25	837,000	132,000	16
7. New England	4,511	30	2,219,000	330,000	15
8. Baltimore	84	25	1,172,000	171,000	15
9. New York	284.5	30	2,320,000	648,000	28
10. Norfolk	4.3 <sup>4</sup>	20	1,315,000	242,000	18
11. Philadelphia	6.5 <sup>4</sup>	25	785,000	187,000	24
12. Buffalo	83	40	1,351,000	277,000	21
13. Chicago	13	23	1,095,000	455,000	42
14. Detroit	63	20	2,107,000	269,000	13
15. Rock Island	23	10	764,000	54,000	7
16. St. Paul	73	25	1,386,000	301,000	22
17. Alaska	13	15	900,000	273,000	30
18. Portland	26	25	1,272,000	218,000	17
19. Seattle	36	12	1,294,000	148,000	11
20. Walla Walla	16	20	401,000	61,000	15
21. Huntington	2.59	15	881,000	172,000	20
22. Louisville	2.59	20	810,000	168,000	21

Appendix 26 (continued)

Corps District/ Division	Manpower		Expenditures (1980)		
	Person-years (Enforcement)	Percent of all person-years in Reg. Functions	Total Activities	Enforcement & Surveillance	Percent Expended on Enforcement <sup>17</sup>
23. Nashville	29	20	976,000	186,000	19
24. Pittsburgh	2.59	25	943,000	254,000	27
25. Pacific Ocean	0.510	25	467,000	147,000	31
26. Charleston	514	20	717,000	301,000	42
27. Jacksonville	15	15	2,477,000	290,000	12
28. Mobile	316	33	1,664,000	284,000	17
29. Savannah	1.3	15	957,000	316,000	33
30. Wilmington	4	15	580,000	96,000	17
31. Los Angeles	<115	25	848,000	72,000	8
32. Sacramento	9	35	933,000	127,000	14
33. San Francisco	61.2	25	1,457,000	236,000	16
34. Albuquerque	18	10	256,000	122,000	48
35. Fort Worth	0.28	10	310,000	31,000	10
36. Galveston	1.88	25	870,000	150,000	17
37. Little Rock	1.58	30	709,000	181,000	26
38. Tulsa	1.08	40	398,000	200,000	50
TOTAL	181.1	24%	40,856,000	8,401,000	21%

NOTES AND SOURCES

1. Includes compliance, monitoring and settlement of jurisdictional questions.
2. Source: Calvin Fong, Regulatory Functions Branch, San Francisco District, US Army Corps of Engineers, telephone conversation, July 1, 1982.
3. Source: Michael Isoevitch, Regulatory Functions Branch, North Central Division, US Army Corps of Engineers, telephone interview, May 5, 1982.
4. Source: Jerry Savage, Regulatory Functions Branch, North Atlantic Division, US Army Corps of Engineers, telephone interview, May 13, 1982.
5. If new proposed budget for regulatory programs for New York District, enforcement staff will be reduced from 28 to 13.
6. Source: Donald Lawyer, Regulatory Functions Branch, North Pacific Division, US Army Corps of Engineers, telephone interview, May 13, 1982.
7. Source: Kirk Stevens, Regulatory Functions Branch, Lower Mississippi Valley Division, US Army Corps of Engineers, telephone interview, May 25, 1982.
8. Source: Jack Chowing, Regulatory Functions Branch, Southwestern Division, US Army Corps of Engineers, telephone interview, May 25, 1982.
9. Source: Samuel French, Regulatory Functions Branch, Ohio River Division, US Army Corps of Engineers, telephone interview, June 11, 1982.
10. Source: Stanley Arakaki, Regulatory Functions Branch, Pacific Ocean Division, US Army Corps of Engineers, telephone interview, June 24, 1982.
11. Source: Hal Roach, Regulatory Functions Branch, New England Division, US Army Corps of Engineers, telephone interview, May 17, 1982.
12. Source: Mel Jewett, Regulatory Functions Branch, Kansas City District, US Army Corps of Engineers, telephone interview, May 19, 1982.
13. Source: Dan Hanses, Regulatory Functions Branch, Omaha District, US Army Corps of Engineers, telephone interview, July 2, 1982.
14. Source: Steven Danker, Regulatory Functions Branch, Charleston District, US Army Corps of Engineers, telephone interview, July 2, 1982.
15. Source: Roman Zavadski; Regulatory Functions Branch, Los Angeles District, US Army Corps of Engineers, telephone interview, July 2, 1982.
16. Source: James Winn, Regulatory Functions Branch, Mobile District, US Army Corps of Engineers, telephone interview, July 2, 1982.
17. Percentages included here are estimated of manpower for Corps Section 10 and Section 404 enforcement activities provided by district personnel in a September, 1981 IWR questionnaire in the regulatory program.
18. This figure may be atypical of exnepditure for enforcement in the Memphis District in that in 1981 and 1982 about 220,000 was budgeted for this item.

APPENDIX 27

COMPARISON BETWEEN NUMBER OF VIOLATIONS TO BE RESOLVED VS NUMBER RESOLVED PER MAN YEAR OF EFFORT BY U.S. ARMY CORPS OF ENGINEERS DISTRICT

Corps District/ Division	Violations		Percent Resolved with Present Manyr of Effort
	Number to be Reslvd Manyr of Effort	Number Reslvd Manyr of Effort	
1. Memphis	36	20	55
2. New Orleans	16.4	.6	4
3. St. Louis	24	--1	--
4. Vicksburg	15.6	9.8	63
5. Kansas City	22	14.8	67
6. Omaha	33	9.7	29
7. New England	52	NA2	--
8. Baltimore	23	NA3	--
9. New York	6.5	2.3	35
10. Norfolk	36.5	20.2	55
11. Philadelphia	11.7	1.2	10
12. Buffalo	37.6	16.6	44
13. Chicago	69	13	19
14. Detroit	20.3	NA2	--
15. Rock Island	26	16	61
16. St. Paul	28.8	8.3	29
17. Alaska	28.3	NA2	--
18. Portland	5.1	1.2	23
19. Seattle	39	31	78.6
20. Walla Walla	47	23	49
21. Huntington	34	21.6	63
22. Louisville	27.6	NA2	--
23. Nashville	91	--1	--
24. Pittsburgh	33.6	23.2	69
25. Pacific Ocean	84	24	28
26. Charleston	50.1	35.8	71
27. Jacksonville	21.4	NA2	--
28. Mobile	73	23	31
29. Savannah	54.6	NA2	--
30. Wilmington	21.2	4.5	21
31. Los Angeles	23	NA2	--
32. Sacramento	20.4	NA2	--
33. San Francisco	51	190.8	27
34. Albuquerque	18	7	39
35. Fort Worth	105	28	27
36. Galveston	77.2	NA2	--
37. Little Rock	22.6	9.3	41
38. Tulsa	46	36	78
<u>Corpswide</u>	<u>37.9</u>	<u>22.4</u>	<u>59</u>

<sup>1</sup>Since the average number violations reported or detected was equal to the average number to be resolved over a four year period (1978-81), it was impossible to determine the average number of violations resolved.

<sup>2</sup>Since the average number of cases to be resolved over the period 1978-1981 exceeded the average number of violations reported, no estimate of the average number of violations resolved could be made.

APPENDIX 28

REPORTS, ARTICLES AND CASE HISTORIES ON CORPS OF ENGINEERS SECTION 10 AND SECTION 404 ENFORCEMENT PROGRAM

A. Reports and Articles

GAO Study on Corps of Engineers Permit Activities

In 1977 the U.S. General Accounting Office published a report containing some recommendations germane to the Corps Section 10 and Section 404 permit enforcement program. This report, entitled Improvements Needed in the Corps of Engineers Regulatory Program for Protecting the Nation's Waters, stated that the Corps needs to be more consistent in the treatment of violators and to improve its guidance in the resolution of violations so that permit violators can be treated more uniformly and equitably. In addition the report concluded that Corps policy does not specify whether program emphasis should be placed on permit processing, monitoring, or whether each function should be given equal treatment. To a certain extent, some of these same comments are still voiced by both Corps enforcement personnel and state officials. However, in response to another major criticism of the enforcement element of the Regulatory program by the GAO study, substantial improvements have been made. The study maintained that for nearly all violations reported or investigated, After-the-Fact (A-T-F) permits were issued. With the exception of the Jacksonville district, the other four districts audited by GAO issued a high percentage of A-T-F for Section 10 and Section 404 permit violations. The following table shows a considerable percentage reduction in the number of violations resolved with A-T-F.

District	1977 GAO Report	Four Year Average (1978-1981)
1. New Orleans	99%	58%
2. Galveston	96%	23%
3. New York	89%	55%
4. Detroit	87%	19%
5. Jacksonville	55%	28%

At present A-T-F permits are only issued for about 35 percent of all violations reported or investigated.

Evaluation of Selected Corps District Enforcement Activities - Part of Master's Theses on Overall Regulatory Program of U.S. Army Corps of Engineers

Although still unpublished, a section of a Master's thesis completed by Irwin Garokof of the Baltimore District on the Corps' Regulatory Program offers some insights into one aspect of the enforcement issue about which, little, if any data, are presently available -- resolution of violations by restoration. Table 10 summarizes relevant statistical information compiled by Garokof primarily through questionnaires to eleven Corps districts. Excluding violations occurring on the Charleston and Portland Districts, approximately 60 percent of violations recorded required restoration in the Norfolk, New York, Wilmington, Seattle, Jacksonville, Sacramento, Alaska, Mobile and Baltimore Districts. In particular Norfolk, Sacramento and Baltimore

Table 9  
Unpublished Data on Resolution of Violation Through Restoration Activities

Corps District	Number of Violations Recorded 1975-1979	Percent of Wetland Fill Violations Requiring Restoration	Percent Voluntary Compliance For Pursued Wetland Fill Violations	Percent of Restoration Achieved Through Legal Action <sup>2</sup>
1. Norfolk	122	100	90	17
2. New York	1000 (approx)	15	0	<1
3. Wilmington	320	73	75	32
4. Seattle <sup>3</sup>	224	33	30	12
5. Jacksonville	1,500 (approx)	80	70	100
6. Sacramento	66	100	--	--
7. Alaska	31	<1	100	--
8. Mobile	222	90	90	<1
9. Portland	NA	--	--	0
10. Baltimore	500	98	75	58
11. Charleston	762	--	--	<1

<sup>1</sup>This table was extracted from an uncompleted and unpublished master's thesis by Irwin Garokof of Baltimore District, Corps of Engineers.

<sup>2</sup>Of those not restored voluntarily.

<sup>3</sup>The Seattle District has indicated reservations about this data concerning its Regulatory Program.

Districts pursued restoration for virtually all wetland fill violations. Yet in New York and Alaska restoration was utilized as a method to resolve reported violations in only 15 and <11 percent respectively. It may be argued that this, in part, reflects regional differences, either in the resource itself or on local socio-economic needs.

In terms of voluntary restorations achieved, results of Garokof's questionnaire again suggest wide variability between districts. In the New York district, none of the approximately 150 cases pursued resulted in voluntary compliance, yet the 90 percent compliant rate was secured for the same type of cases in the Norfolk and Mobile Districts. These figures again may reflect regional differences in public attitude towards the need for or value of a wetlands protection program.

A third area of interest concerning restoration is the level of effectiveness achieved by legal action. As demonstrated in Table 10, with the exception of the Baltimore and Jacksonville districts, there has been relatively little success in restoration of wetlands through this means. Denial of prosecution (declining to accept case) by U.S. Attorney was the principal rationale for the failure of the legal action alternative. Although the same reason has also been cited by Corps enforcement personnel for not submitting cases to the Department of Justice, an analysis of active case listings for Section 10 and Section 404 cases indicates that this department has only declined 5 percent of such cases submitted to it for prosecution.

#### Study Involving Certain Aspects of Corps of Engineers Enforcement Activities in Portland District

As part of a small study<sup>1</sup> on the Section 404 Permit System in the Portland, Oregon area, some information and criticisms of enforcement element of regulatory program were noted. These include --

- 1) While outright prevention of fill rarely occurs, mitigation is improving.
- 2) District Engineers are vaguely guided in their determination of legal action.
- 3) Corps of Engineers first awaits unanimous approval from other state and Federal agencies before justifying prosecution.
- 4) Much enforcement action in the Portland District results in the issuance of an After-the-Fact permit. This "backdoor" approach offers the applicant alternative to the permit process. Its abuse is encouraged since it has only been denied once within the Portland District.
- 5) In the two cases referred to the U.S. Department of Justice, from the time the cease and desist orders were issued until the cases were referred, 19 and 27 months respectively elapsed. Much of the time was spent awaiting input from other agencies, and reevaluating the unauthorized work prior to deciding whether legal action was appropriate.

---

<sup>1</sup> Completed by Ben Rosenthal as part of legal internship for Office of U.S. Attorney, Portland, Oregon in June, 1981. Unpublished.

Finally in the opinion of the author, enforcement of violations must be encouraged since through litigation, an effective array of penalties could be applied and would restore order and compliance to the permit system.

### Evaluation of U.S. Army Corps of Engineers Enforcement Actions in Los Angeles District

In December, 1980 the Ecological Services Field Office of the U.S. Fish and Wildlife Service at Laguna Niguel, California completed a review of Section 10, and 404 regulations program. Review comments on the report were also solicited from the U.S. Environmental Protection Agency, (EPA), National Marine Fisheries Service (NMFS) and California Department of Fish and Game (CDFG). Countries in the study area included Mono, Inyo, San Bernadino, Riverside, Imperial, San Diego, Orange, Los Angeles, Ventura, Santa Barbara, Southern San Luis Obispo and Kern.

#### Major Conclusions of this include:

- 1) Most of the forty alleged unauthorized activities investigated by USFWS that occurred without a permit have yet to be resolved.
- 2) Resolutions of violations with proper regard for fish and wildlife concerns were achieved only 20 percent of the time.
- 3) Written cease and desist orders are issued in less than 15 percent of all cases reviewed.
- 4) Views from resource agencies are rarely sought.
- 5) In general, no enforcement actions requiring mitigation for the activity or removal of the fill have been achieved.
- 6) In over 80 percent of the cases a year or more has passed between detection of non-compliance violation and restoration of an area to permitted conditions (in compliance).

In a letter to the area manager of the U.S. Fish and Wildlife Service in Sacramento concerning the above report, the Los Angeles District Engineer stated that, while regulatory personnel may have spent an inordinate amount of time in the processing of permits, much of the dissatisfaction voiced in the report centered on decisions made by past Corps officials. In addition, lack of manpower in surveillance and enforcement as well as an infrequent number of meetings between Los Angeles district staff and U.S. FWS may have contributed to the development of some problems in the regulatory program.

#### Selected Case Histories of Enforcement Actions

Members of the study advisory groups were asked to submit examples of case histories that would represent the types of successes, failures or problems encountered in the enforcement of Section 10 and Section 404 permit requirements in their districts. While some of the names of the alleged violators have been changed, all the other details of the case were abstracted from district enforcement files. Each case history will be prefaced with a short sentence stating the type of enforcement action and/or rationale for its inclusion here.

1. Coordination with other Federal Agencies proved helpful in resolution of violations by a utility contractor (Pittsburgh District).

The Contractor dredged a canal leading from 900 acre lake through a wetland area for the purpose of developing building lots along the canals. The 404 violation was the side casting of the dredged material into the wetland. Approximately 10% of the canal dredging work was through the wetland adjacent to the land, the remainder of the project was in upland and out of Corps of Engineers' jurisdiction.

After coordination with EPA and USPWS, it was determined that restoration was in order. An after-the-fact permit was denied and contractor removed material from wetland area and grading and seeding in area above Corps jurisdiction.

2. In addition to the resolution of a violation through restoration, effective coordination and good communications between the alleged violator and Corps district officials resulted in the creation of an environmental training course for company employees (Wilmington District).

In August-September 1980, Phosphemine, Inc., a phosphate mining operation, requested authorization to maintain (dredging) a barge slip and docking facility. After inspecting the disposal area, we authorized maintenance dredging only after repair of dikes. Dredging proceeded simultaneously with an effort to repair dikes and resulted in a failure to retain a large quantity of very fine material which entered the Pimlico River and covered a 7-8 acre area of the river. After cease orders and discussions with the company, a voluntary effort to remove the material was undertaken involving a long period of time, and using new technology for removal of material from areas inaccessible by normal means, for \$200,000. The result was 90 percent removal. In addition, a consent order was negotiated including a \$5,000 fine and the development by the company of a detailed "Environmental Excellence" program, including a training program for employees and commitments to disciplinary action against employees found to be responsible for environmental incidents in the future.

3. An inordinate amount of time in prosecution of case may be viewed by some potential violators as a license to perform more unauthorized work in the navigable waters of the United States (Wilmington District).

U.S. vs. Rainbow Hills, Inc. In 1975, an extensive area of wetlands was filled without a permit as a part of a residential housing development. A cease order was issued and an investigation begun. A short while later, more work was done and another cease order was issued, and a referral was made to the U.S. Attorney in March 1976. An extensive study including before and after color aerial photography was undertaken at a cost of many thousands of dollars to establish and map the preexisting wetlands and the extent of fill. Also included was a study and recommendations regarding restoration. In the meanwhile, property was bought and sold and changed hands frequently. Extensive preparation and

time was spent by regulatory functions personnel in monitoring the area and continuing contacts with parties involved. The violator went through three lawyers, three or four U.S. Attorneys, a Federal Judge's retirement, and many land transactions. The case is still open today with no progress toward any restoration, fines, or other penalties. The violators have meanwhile proceeded to perform five other violations in other areas of the country, none of which have gone to court. This case is a vivid example of the chaos that can be created in a case by extended period of time during which attorneys, witnesses, and other involved parties change, conditions change, attitudes change, and perspectives change.

4. Many enforcement cases may be successfully resolved without recourse to the U.S. Department of Justice (St. Paul).

United States vs. Mr. Smith. The St. Paul District recently achieved substantial success in enforcing the Clean Water Act without referral to a United States Attorney. A disposal project in a small isolated lake and wetland was reported to the St. Paul District by the Wisconsin Department of Natural Resources. After an investigation, the St. Paul District Engineer ordered that the fill site be restored. The violator complained that he was financially unable to restore the site. An analysis of the violator's income tax returns resulted in some modification of the restoration order. This restoration order was then obeyed by the violator. The wetland restoration site is serving as a research site for use in further restoration orders.

5. Although the Corps effectively argued that a certain waterbody indeed was covered by provisions of Section 404 of FCWA, failure to secure court decision diminished the future use of the case as an example of successful enforcement action (St. Paul District).

United States vs. Mr. Smith. This Clean Water Act enforcement case was brought by the United States Attorney in the United States District Court, District of Minnesota. Mr. Smith was ordered by the St. Paul District Engineer to cease and desist from the discharge of dredged and fill material into a wetland adjacent to an isolated lake in St. Paul, Minnesota. He refused to stop filling. The United States Attorney filed a complaint and obtained an injunction from a United States District Judge. After the case had been prepared for trial and after much negotiation, Mr. Smith agreed to apply for a permit and the case was settled.

After waiting several months for Mr. Smith to apply for a permit, the United States Attorney brought a contempt action. The United States District Judge found Mr. Smith in contempt and directed that he apply for a permit within five days or forfeit a penalty of \$1,000 per day for each day thereafter.

This case represents both a success and a failure to the St. Paul District enforcement program. The case was a success in that we were able to prove convincingly that a small isolated waterbody had a connection to interstate commerce. Through the diligent effort of the St. Paul District investigators, we found that there was a small rental boat operator on the lake who regularly rented his boats to persons who traveled interstate to boat and fish. We also proved that there was a person who kept a float airplane on the lake and regularly flew this airplane in international and interstate travel. The lake also has a county park with a swimming beach and a boat launch. These park facilities are regularly used by interstate travelers. In addition, the wetlands surrounding the lake are habitat for numerous migratory birds. The case was also a success in that the United States District Judge granted an injunction and a contempt order.

The case was a failure in that we agreed to settle the case. In retrospect, we should have pressed for a decision by the court. A decision by the court would have prevented Mr. Smith avoiding the application of Federal and state law through his dilatory tactics. A decision would have also served as an example of swift and certain justice for the public.

5. Payment of sizeable civil penalty should promote voluntary compliance with the Clean Water Act (St. Paul District).

United States vs. Mr. Smith. This violation of the Clean Water Act involved the disposal of about 4,000 cubic yards of dredged material into Lake of the Woods. The Lake of the Woods is a boundary water between the State of Minnesota and the Province of Ontario, Canada. Based upon an environmental evaluation of the violation site, it was determined that restoration was not appropriate. The matter was referred to the United States Attorney upon the belief that a civil penalty should be imposed for a violation of the Clean Water Act. After some discussion the defendant agreed to pay a civil penalty of \$10,000. The payment of this sizeable civil penalty should promote voluntary compliance with the Clean Water Act.

6. Although the investigation of a violation was successfully completed by Corps enforcement personnel, an injudicious decision by a United States District Judge resulted in a misapplication of the Clean Water Act (St. Paul District).

United States vs. Mr. Smith. The St. Paul District has suffered a minor set back in its regulatory program. This was not an enforcement case, but rather a lawsuit brought in United States District Court, District of Minnesota by a person whose permit application had been denied. The United States District Court Judge found that the site of the project was not a wetland and not subject to the Clean Water Act. This decision was made in spite of a well documented determination that the area was in fact an important wetland and that the decision to deny the application was based upon substantial evidence as set forth in the administrative decision file. The problem with the case is that the investigation and regulatory process were handled very well, and an injudicious decision by a United States District Judge resulted in a misapplication of the Clean Water Act.

8. Present Regulations should be revised so that the denial without prejudice requirement does not apply to after-the-fact or violation activities (Kansas City District).

An application was accepted for the placement of a large quantity of fill material in a wetland adjacent to Parsons Creek in Missouri. A joint public notice on this activity was put out with the Missouri Department of Natural Resources (MDNR), the State agency which issues 401 water quality certifications. Due to the number of requests and adverse comments, a public hearing was scheduled. However, shortly prior to the hearing, in February of 1980, MDNR denied 401 certification for the activity. Under the Missouri statutes, a timely appeal was made of the 401 denial to the Missouri Clean Water Commission. Information from the public hearing and additional information yielded the preliminary determination that restoration of some of the fill material would be in the public interest. However, pursuant to the regulations at 33 CFR 320.4(j), the Corps denied the permit without prejudice. The Corps did not order any remedial measures at this time to avoid prejudicing the applicant's rights if new information was revealed in the appeal of the 401 denial and reversal were obtained. At present, the Missouri Clean Water Commission has upheld the 401 denial, and review is currently being sought in the state court. In the meantime, the Corps has been unable to order any restoration, and, it is possible that due to time and accretion, restoration will no longer be in the public interest when the 401 appeal process is completed.

9. When major differences between the Corps and other agencies delayed significant litigation, such differences should be resolved within 30 days by a higher authority in order that litigation not be unduly delayed (Kansas City District).

This case involves a long standing conflict between the Corps and EPA over the extent of the corps jurisdiction under 404. In a two month period between December, 1979 and January, 1980, Corps field investigators reported on a nine mile channelization project being undertaken by over thirty farmers along the East Fork of the Little Chariton River, Missouri. Incidental to the channel straightening was the placement of channel crossing fills at various locations along the river. In January, 1980, the Corps sent cease and desist letters to those farmers who had already placed fills and advisory letters to those contemplating placement of fills in connection with the channelization. It is critical to note that, in these letters, the Corps delineated its 404 jurisdiction as only being applicable to the fills. EPA, Fish and Wildlife and the Missouri agencies took exception to this position and urged the Corps in letters and meetings to take jurisdiction over the channelization activity itself as a 404 discharge of dredged material. The Corps sought guidance from higher headquarters on this question and received the official guidance that excavation of a pilot channel did not involve the discharge of dredged material. The guidance further indicated that the Corps should not involve itself in litigation involving that theory. Consistent with that guidance, Corps personnel provided all field reports and other materials to EPA for their pursuit of the matter as a Section 402 violation. Nevertheless, EPA has still propounded the theory that the matter should

be litigated as a 404 violation. At present, two separate litigation reports detailing the EPA position and the Corps position are being referred to higher headquarters and the U.S. Department of Justice for resolution.

10. U.S. v. Leonard Weisman, 489 F. Supp. 1331 (M.D. Fla., 1980); affirmed by the Fifth Circuit in 1981. This case is a good example of effective team-work. On 17 December 1979, a Corps field inspector notified the Jacksonville District Office of an unauthorized fill road being constructed in wetlands and across several small tidal creeks. When the undersigned telephoned the land owner on 18 December 1979, he indicated that he would continue to work and wanted the Corps to sue him. On 20 December 1979, a civil complaint and motion for a temporary restraining order were filed in Jacksonville, Florida. The swift action taken resulted in the court's entry of a temporary restraining order and later a preliminary injunction forbidding any further work on the illegal roadway. Team-work between the field office, the district office and the Assistant U.S. Attorney, and expert witnesses resulted in the injunctions mentioned above and subsequently resulted in an order for removal and restoration of the entire roadway area. This restoration work has been successfully completed and the area is now revegetating with wetland tree species. In addition, the defendant has paid a \$10,000.00 civil penalty to the United States, under the Clean Water Act. The court adopted the U.S. v. Sexton Cove Estates, Inc., case test in analyzing the restoration remedy.

11. U.S. v. J.T. Murff, Case No. MCA 80-0223, N.D. Fla. This case involved approximately 10,000 acres of wetlands including tidal marsh, freshwater wetland forests, and isolated cypress heads in the Apalachicola River floodplain, Gulf County, Florida. This violation began as a Section 10 violation in the southern portion of M-K Ranches, while Mobile District handled this portion of the Florida panhandle. Considerable investigation was accomplished by Mobile District prior to transfer of this case (in 1977) to the Jacksonville District. Minimal restorative measures were voluntarily taken by the Gulf County Commissioners to restore Browns Creek and its adjacent wetlands, which had been blocked by an illegal county roadway on M-K ranch property. Nevertheless, the major violations were not resolved and the matter was referred to the U.S. Attorney's Office in Tallahassee, Florida. A civil complaint was filed in 1980 and 2 years of active discovery ensued. Massive farming operations on the north half of the ranch resulted in Section 404 violations. Finally, on 13 July 1982 a Final (Consent) Judgment was entered by the court based upon a settlement negotiated by a Department of Justice Attorney, which required the preservation and restoration of approximately 8,000 acres of wetlands. The local U.S. Attorney did not play an active role in this case after the case was filed due to the magnitude of the case. The U.S. Department of Justice in Washington assigned two attorneys to this case, which was necessary due to the substantial discovery efforts and requests. The issues were very complex concerning Section 404 and Section 10. All parties were winners when the matter was resolved by mutual agreement.

12. U.S. v. New Port Largo, Inc., Case No. 81-2056-CIV-JAG, S.D. Fla. This case involved a dredge and fill violation which occurred in the early 1970's and which destroyed approximately 20 acres of intertidal mangrove areas in the Florida Keys. At that time, the violator submitted an after-the-fact permit application which was finally denied by OCE in 1978. Thereafter, the matter was referred to the U.S. Attorney's Office. Due to history and the magnitude of the case, Miami U.S. Attorney's Office was inactive and the U.S. Department of Justice Attorney, took primary responsibility. The parties agreed upon a settlement involving the payment of \$550,000 into a fund called the Florida Keys Environmental Mitigation Trust Fund. Said monies are to be used by the Florida Audubon Society to create and enhance mangrove wetlands in the Florida Keys, to offset the damage done to the area filled. During the 5-year permit process, innocent third parties had purchased home sites and constructed homes in the illegally-filled areas, making actual restoration impossible under the Fifth Circuit's U.S. v. Sexton Cove Estates, Inc., test.

13. U.S. v. Vincent Conrad, Case No. 80-877-CIV-T-GC, M.D. Fla. This case involved criminal and civil litigation. Defendant plead guilty and paid a \$2,500.00 fine criminally and then litigated the civil issues of alleged violations and restoration. After a 3-day trial which ended 15 October, a Federal Judge ruled from the bench and ordered the defendants to restore 20 acres of filled wetland marsh and saltern areas and to either pay a \$100,000 fine or deed over additional undisturbed wetlands to Pasco County for preservation purposes.

## APPENDIX 29

### ABBREVIATED ANALYSIS OF ENFORCEMENT ACTIVITIES OF STATE COASTAL ZONE AGENCIES\*

The following discussions about selected state programs is in no way to be construed as evaluations in nature. They are simply included here to give an indication of the type of information and detail needed before any really serious consideration of transfer to or participation on present Corps Section 404 enforcement mandates to any particular state proceeding without a coastal development permit. Moreover, without CCC stop order authority, potential violations must be resolved through the courts - a more inefficient, costly and time-consuming process.

#### Alaska

No specific information on the subject of enforcement activities by the State of Alaska in coastal areas was contained in the evaluation findings report prepared by the US Office of Coastal Zone Management. However, the report recommended the state pursue the development of a coordinated interagency system to improve monitoring and enforcement. Although state funds have been utilized for a contracted compliance inspection program, these inspectors lack any enforcement authority. Until more information becomes available, it is doubtful if the State of Alaska could realistically enforce Section 404 permit requirements should Congress provide state assumption of this program.

#### American Samoa

Lack of data about the territorial wetland enforcement program precludes analysis of its capability.

#### California

Although the California Coastal Commission developed a permit enforcement system including procedures and guidelines in 1981, the system needs further refinement and more attention to the details of its implementation by District Office, approximately 6,000 permits are issued each year with little follow-up monitoring to ensure compliance with permit conditions. There is also little Commission enforcement in terms of determining whether activities are proceeding without a coastal development permit. Moreover, without CCC stop-order authority, potential violations must be resolved through the courts - a more inefficient, costly and time-consuming process.

---

\*Largely extracted from evaluation findings reports of US Office of Coastal Zone Management.

The Bay Conservation and Development Commission (BCDC) enforcement program began in late 1977 and has continued to investigate reports of unauthorized fill and construction activities within BCDC's jurisdiction. When violations were found, negotiations and enforcement proceedings were initiated. To carry out its enforcement program, an officer has been assigned in each of the six regional offices and at the state office; a schedule for surveying the entire coastal area once every 10 months has been developed.

The US Office of Coastal Zone Management has recommended that the California Coastal Commission improve its regular field-checking and enforcement program and schedules and to better integrate monitoring activities at District Office operations. In addition, the California Coastal Commission was also advised to explore the idea of stop-order authority to reduce the need for court action to resolve violations.

While the two principal resources agencies in California dealing with coastal protection and development (California Coastal Commission and Bay Conservation and Development Commission), have made some progress in the development of their enforcement programs, due to their relatively recent efforts in this area and apparent lack of some enforcement authority, these agencies are presently not fully capable of implementing either the type or size of enforcement program required for Section 404 permit activities.

#### Connecticut

The Connecticut Department of Environmental Protection (DEP) has established comprehensive monitoring and enforcement procedures to ensure that coastal municipalities comply with its policies and provisions of their contracts. The DEP monitors local development activities through extensive reviews of all coastal newspapers, spot field checks, monthly overflights of the entire coast, citizen complaints, and coordination with local officials. Monitoring activities have resulted in the identification of several situations where proposed development activities may conflict with Connecticut coastal management policies.

#### Delaware

During its second year of assistance from the US Office of Coastal Zone Management, the State of Delaware is conducting hearings and new legislation to permit civil penalties for violations of the Wetlands Act. Expenditure for enforcement activities include (1) \$37,000 for regulation development for beaches and wetlands and continued litigation in private encroachment on public land, and (2) \$40,000 for the expanded use of marine police for on-the-water monitoring for violation of wetlands and submerged lands statute and regulation.

Although the use of coastal zone management funding by the Department of Natural Resources and Environmental Control's legal office has resulted in significant support for utilization activities the US Office of Coastal Zone Management has nevertheless recommended that a monitoring system be developed to assure compliance of permit condition and to utilize the resources of ECL should the need arise. Inasmuch as the Delaware Coastal Management Program (DCMP) has not monitored compliance with permits issued under the Coastal Zone Act, but relies on other permit issuing agencies, the program needs to be improved before any evaluation could be made about its overall adequacy to enforce Federal coastal mandates.

#### Guam

The territory of Guam maintains four units in its Conservation Department that involve enforcement activities: Wildlife Conservation Enforcement, Flood Hazard Area and Wetlands Enforcement, Zoning and Sign Law Enforcement, and Legal Counsel.

Conservation officers routinely conduct land and water patrols to detect and apprehend violators and to provide a visible deterrent. The public is also encouraged to report suspected violations and conservation officers are on call 24 hours a day to respond.

Enforcement of the Guam Coastal Management Program (GCMP) is hampered by the inability of the various enforcement agencies to maintain adequate staffing levels and insufficient documentation of enforcement actions. Although seven conservation officer positions have been established, only three of these have been filled, reducing the staff's enforcement capability. In addition this program has also experienced problems in the area of legal support. The Conservation Department does not consistently assign the same lawyers to GCMP related issues, resulting in a lack of continuity and accountability.

Given the fact that the US Office of Coastal Zone Management made over seven recommendations for improving enforcement capability of the GCMP, ranging from increased compliance inspection staff support to the development of an adequate violation reporting system, it appears unlikely that the Guam Coastal Management Program could at this time successfully manage and prosecute violation of Section 10 and Section 404 permit conditions.

#### Hawaii

It is anticipated that significant improvement in enforcement activities will be made in the Hawaii Coastal Zone Management Program (HCZMP) due to the funding of two activity areas: Program Compliance and Enforcement. Expenditure of approximately \$140,000 for compliance effort will involve the revision and strengthening of its monitoring and enforcement procedures to ensure state agency and local government compliance with the enforceable policies of the HCZMP. Funding of an \$81,000 enforcement element will enable the HCZMP to substantially expand its present effect to improve enforcement of critical statutory authorities.

Successful implementation of HCZMP initiated enforcement codes and programs has prompted the state legislature to extend the authority of the enforcement officers to make arrests for any violation of law in county park areas as well as in the State park system. Due to the establishment of more severe penalties for violations of natural resource protection regulation, the HCZMP has expanded its ability to protect water, land, and wildlife resources. To aid its monitoring function, a sophisticated computerized monitoring tool has been developed: H-PASS. This data base was successfully employed during the establishment of an interim monitoring and enforcement program.

While the HCZMP is making satisfactory process in the enforcement of its coastal mandate, until the full impact of both the \$140,000 compliance program and \$81,000 enforcement grant are fully known, no evaluation about the potential application of this enforcement capability to Section 404 activities can be performed.

### Louisiana

In its evaluation findings report the US Office of Coastal Zone Management stated that the office is aware that the State of Louisiana has made improvements in its monitoring effort. These included development of a system of permittee notification to the Coastal Zone Management office upon commencement of authorized work, increased field monitoring of selected activities, and requirement of performance bands of permittees. However, there remains a lack of formalized enforcement procedures to address reported violations. In addition, it is presently unclear whether the state has the authority to issue cease and desist orders for unauthorized activities.

Recommendations from the US Office of Coastal Zone Management concerning improvements to the Louisiana Coastal Zone Management Program include:

- 1) Development and formulation of a comprehensive permit monitoring program using both Federal and state personnel, aerial surveillance, etc.
- 2) Determination of lines of enforcement action (cease and desist order, legal assistance, etc.)
- 3) More effective supervision of activities of contracted field inspectors.

Assumption of some Corps wetland enforcement activities by the State of Louisiana would necessitate considerable funding and manpower improvement in the state Coastal Zone Office.

### Maine

In compliance with the US Office of Coastal Zone Management recommendation to improve state enforcement of Corps wetland laws, the Department of Environmental Protection contracted with Arthur Lerman Associates to conduct a study of the enforcement of four statutes important to coastal management. The most significant obstacle to improved enforcement was identified as lack of adequate staffing. Besides noting that between 10 and 20 percent of the development activity within Maine's coastal zone as occurred without the necessary permits, the report also states that noncompliance with Maine's laws is the result of both ignorance and attitude. The Department of Environmental Protection is presently managing a grant of about \$94,000 to provide for the addition of three field inspectors.

In order to meet the needs of enforcement, the US Office of Coastal Zone Management recommended severe courses of action for the Maine coastal program. One of the more important of these recommendations centers on the addition of staff or consultants to provide technical assistance to towns on ordinance development. Until these recommendations are properly implemented, no decision can be made about the suitability of state participation or assumption of present Corps enforcement activities.

### Maryland

Upon completion of review of the Maryland Coastal Zone Management Program, the US Office of Coastal Zone Management reported that more public assurance of aggressive enforcement and monitoring is needed in Maryland. More specifically, efforts should include assistance in the enforcement of the Beach Erosion Control District Act through the provision of better information about development activities. Coastal program staff should work to establish priorities for completing the watershed management plans pursuant to the Flood Control and Watershed Management Act and to institute procedures to assist localities developing ordinances to implement plans and to monitor the enforcement of these laws.

Should enforcement activities of the Maryland Coastal Zone Management Program be substantially expanded in terms of manpower and funding, this unit of government may be able to assume some Federal wetland regulation enforcement responsibilities.

### Massachusetts

Staff personnel at the US Office of Coastal Zone Management are of the opinion that rigorous monitoring by the Massachusetts Coastal Zone Management Program (MCZMP) will be required to assure compliance with permit conditions. The program has evolved a "passive" approach to monitoring and enforcement. Monitoring of permit activities occurs after a permit is issued or a complaint is reported. Until recently no "active" approach to enforcement has been attempted. Until the MCZMP implements a variety of recommendations concerning enforcement, it appears doubtful that any major portion of enforcement activities for Section 404 presently being carried out by the New England Division of the Corps of Engineers could be transferred to the state level.

## Michigan

In its evaluation findings report, the US Office of Coastal Zone Management stated that Michigan is monitoring and enforcing aggressively the State Coastal laws, through surveillance flight, permit denials, criminal prosecution and civil orders requiring restoration. In addition, the state is effectively controlling dredge and fill activities. An amendment to a coastal law is as passed, providing for both the strengthening of enforcement provisions and more expeditious handling of minor applications.

Based on the analysis of the enforcement component of the Michigan coastal program, there is some indication that this state may be able to assume some Section 10 and 404 enforcement responsibilities. Such an assumption of course would require continued funding and manpower at least at the present level.

## Mississippi

Noteworthy accomplishments of the Mississippi Coastal Zone Management Program include monitoring and enforcement. Efforts of the Bureau of Marine Resources wetlands inspectors, including the use of air and water reconnaissance have resulted in an increased rate of detection of violations of the permit requirements for wetland alterations. Violations not conforming to the wetland alteration regulations have resulted in the issuance of several orders for restoration of wetlands to their original condition.

While enforcement activities of the Mississippi Coastal Zone Management Program are adequate based on the evaluation findings report of the US Office of Coastal Zone Management, more information needs to be secured before any determination can be made about participating in major Federal wetland enforcement activities.

## New Jersey

In terms of program accomplishments, through the Bureau of Coastal Enforcement and Field Service's vigorous enforcement of the New Jersey Wetlands Act, wetland fillings on the Bay and Ocean Shore segment and the Delaware River were held to less than an acre from 1979 to 1980. Prior to the passage of the Wetlands Act (1950-1970), 1,900 acres of wetlands were filled on an annual basis.

## North Carolina

According to officials in the US Office of Coastal Zone Management, the North Carolina Coastal Management Program has strengthened its permit monitoring and enforcement capabilities. Improved monitoring and enforcement activities by the State Coastal Resources Commission along with the promulgation of new standards and training programs have increased the protection of the coastal area. Overflights of the area are conducted on a routine monthly basis. Additional improvements are possible in enforcement especially in use of aerial surveillance.

## Pennsylvania

The Coastal Zone Management Program has underway, but not yet completed an evaluation of the Department of Environmental Resources' present efforts for past-permit monitoring and for enforcement. The Bureau of Dams and Waterway Management administers and monitors its permits through a central office and may lack sufficient field personnel to carry out a vigorous monitoring effort if needed. The Coastal Zone Management Program is presently examining the feasibility of conducting aerial flights over the Lake Erie and Delaware Estuary Coastal Zone to aid in the monitoring of permitted activities and the location of illegal activities.

Active enforcement of Corps Section 10 and Section 404 permit conditions by the State of Pennsylvania Coastal Zone Management program would necessitate the expenditure of larger levels of funding for both manpower and aerial surveillance activities.

## Rhode Island

With regard to enforcement, most of the State's coastal waters are patrolled each day by enforcement staff. In general, enforcement efforts of the Rhode Island Coastal Region including professional inspections, prosecution of violators shows substantial accomplishments. The Department of Environmental Management has maintained daily surveillance of the coastal zone and logged in 4,500 complaints during the past (FY 81) year. During the same period, 51 cease and desist orders and 25 orders to restore and remove were issued. In addition, 340 staff site visits and 25 hearings were conducted by the Division of Coastal Resources.

## South Carolina

According to the program reviews at the US Office of Coastal Zone Management, the State of South Carolina's implementation of its Coastal Zone Management Program has resulted in a highly effective and efficient system of permitting and permit enforcement and monitoring. The South Carolina Coastal Zone Management Program has aggressively implemented a monitoring and enforcement program designed to monitor permitted activities and provide routine air and ground surveillance of the entire coastal zone for the purpose of detecting any illegal alterations of resources within coastal areas. South Carolina has developed and is implementing a strong permit monitoring and enforcement system. The South Carolina Wildlife and Marine Resources Department (SCWMRD) provides five conservation officers to the SCCC for monitoring and enforcement activities. These officers, in conjunction with SCCC staff, provide for an effective and well-coordinated program of permit violation detection and other enforcement activities.

## Virgin Islands

The Bureau of Environmental Enforcement (BEE) has continued to operate efficiently and presently carries out numerous activities including monitoring for illegal development. The BEE has followed up on 46 violations many of which were reported by citizens. The violations (bulldozing, clearing, dumping or filling in) were stopped either voluntarily or by cease and desist orders. Removal of sand, coral and aggregate from beaches is also monitored by BEE. This agency has also been active in enforcing fishing regulations. During FY 81, the Virgin Islands expended in excess of \$160,000 for a variety of enforcement-related matters (surveillance, enforcement administration, continuing training).

## Washington

Although a comprehensive assessment of compliance with the Washington Shoreline Management Act has begun, the Department of Ecology's procedures for compliance need to be improved. In order to increase the effectiveness of enforcement activities of the Washington Coastal Zone Management Program, the US Office of Coastal Zone Management recommends the following courses of action:

- 1) strengthening local governments' ability to monitor and enforce their Shoreline Master Programs,
- 2) including provisions on contracts with local governments that require specific enforcement activities, and
- 3) specifying provisions for the Department of Ecology to ensure that local governments are complying with the state-approved shoreline plans. Until all three recommendations are implemented, and their success measured, it is presently not possible to evaluate any future the State of Washington may play in the enforcement of Section 10 and Section 404 Corps of Engineers permit requirements.

## Wisconsin

The three Wisconsin Coastal Zone Management Program investigators assigned to the three coastal areas of Wisconsin have greatly improved the administration and enforcement of shoreland and flood plain regulations. This intensified monitoring and enforcement effort, along with greater coordination with local officials, has resulted, particularly in the southeast district, in greater compliance with permit application requirements and restrictions. As a result, particularly in the southeast district, there has been a decrease in the violation rate and greater compliance.

## ANALYSIS OF SOME PROGRAMS FOR ENFORCEMENT OF STATE/TERRITORIAL COASTAL PROTECTION LAWS

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Alaska	No specific information on enforcement activities in Office of Coastal Zone Management (OCZM) evaluation findings report	No specific information available in OCZM evaluation findings report	The Alaska Office of Coastal Management (OCM) should prepare an administrative order and procedures manual that indicates operating policy for when and how the OCM may delegate responsibilities under its present regulations. The OCM should actively pursue the development of a coordinated interagency system to improve monitoring and enforcement. This system should include continued training of agency personnel to make jurisdictional determinations on wetland permits, provide information to applicants and to perform compliance inspections.
American Samoa	The US Office of Coastal Management report on the American Samoa Coastal Management Program (ASCMP) included no information about program cost or man concerning enforcement and monitoring activities	No specific information was contained in evaluation findings report	No recommendations for improvement in enforcement activities appeared in the evaluations findings report
California	Expenditure for permit monitoring and enforcement of California coastal regulations include: <u>Permit Monitoring</u> (\$5,703) More person years have been added to provide increased effort in the review of permits to assure that the requirements of those permits are satisfied. The effort will focus on those permits relating to access and open space to assure that the legal instruments will have been properly recorded. Benchmark: (1) Identify the permits related to access and open space; (2) Increase the process of	The Bay Conservation and Development Commission (BCDCE) <u>enforcement program</u> , begun in late 1977, continued with an emphasis on the investigation of reports of unauthorized fill and construction activities within the BCDC's jurisdiction. When violations were found, negotiations and enforcement proceedings were initiated. The BCDC initiated permit enforcement actions in 20 cases and issued 7 cease and desist orders. This effort is part of two significant improvement tasks. The state established an enforce-	The California Coastal Commission (CCC) should complete development of its statewide guidelines for local permit monitoring and strongly assert its monitoring responsibilities in order to give higher visibility to and increased understanding of this aspect of the program. While not all local decisions will be reviewed, it is important to define what will be monitored, how the review will demonstrate whether local programs are carrying out their responsibilities effectively under the California Coastal Act (CCA), and what recourse is available to the CCC to remedy deficiencies in local coastal

\* Based on 1981 Evaluation Findings Reports prepared by U.S. Office of Coastal Zone Management, U.S. Department of Commerce.

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
	<p>reviewing or inspecting these permits to determine whether these permits and their conditions are being complied with and document the added reviews and inspections by December 31, 1981.</p> <p><u>Enforcement</u> (\$23,817) The BCDC will increase its permit enforcement effort by increasing the number of files reviewed and cases resolved.</p> <p>Benchmark: (1) Identify the elements that need updating; (2) Identify the studies that may need to be undertaken; (3) Establish priorities for undertaking these studies; (4) Develop a schedule for completing and implementing the studies and results and how much it will cost.</p>	<p>ment program in response to a grant condition. The program provides procedures for permit enforcement in (1) areas where the state administers the permit and (2) areas where local governments administer the permit. To carry out the procedures, an enforcement officer has been assigned in each of the six regional offices and at the state office; a schedule for surveying the entire coastal zone once every 2 months has been established; and forms have been developed for reporting violations and notifying violators.</p> <p><u>Local Coastal Program Monitoring</u> Permit decisions made by local governments with approved land-use plans or LCPs are subject to monitoring by the CCC for compliance with the California Coastal Management Program (CCMP), and are subject to appeal to the Commission in certain areas. Although certified LCPs include requirement for notifying the Commission of local regulatory decisions, the evaluation indicated that some local governments may have the impression that once LCPs are certified, <u>the CCC is no longer actively involved in monitoring their decisions or in hearing appeals</u>. It is also unclear whether the state and district offices of the CCC are organized and staffed for LCP monitoring. This aspect of the program has received little attention in the past, however, recently a full-time staff member has been assigned to the management of the local monitoring effort. A monitoring program is being developed, which includes procedures for Commission staff, guidance to local governments, regulations for hearings and appeals, and policies for the consistent processing of appeals. These statewide guidelines should be completed in early spring 1982. A more active monitoring program also should assist in identify-</p>	<p>program (LCP) implementation. The CCC should strengthen and improve the regular field-checking and enforcement program and schedule, building in the assistance of local governments as much as possible, and better integrating monitoring activities into the district office operations. The CCC also should continue to explore the idea of "stop order" authority in order to reduce the need for court action to resolve violations, which would require amendment of the CCA by the Legislature.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Delaware	<p>During its second year of assistance, the Delaware Coastal Management Program (DCMP) budgeted \$26,000 for conducting hearings on new wetlands maps, developing and supporting new legislation to <u>permit civil penalties for violations of the Wetlands Act</u>, examining the feasibility of remote sensing for monitoring and developing new management programs for freshwater wetlands. Expenditure for similar activity include: <u>Enforcement Capabilities (DNREC) (\$37,400)</u> - Funding will continue the expanded legal services established in the first grant. Efforts will be concentrated on regulation development for beaches, wetlands, and septic tanks; legal research into particular land ownership and associated rights; continued litigation associated private encroachment on public lands; and, the enforcement of key coastal management statutes. <u>Monitoring (\$40,000)</u> - Funding supports the expanded use of the Marine Police for on-the-water monitoring for violations of wet-</p>	<p>ing the technical assistance needs of local governments. <u>Permit Monitoring and Enforcement</u> The CCC developed a permit enforcement system, including procedures and guidelines, last year, but this system needs further refinement and more attention to the details of its implementation by district offices. Approximately 6,000 permits are issued each year with little follow-up monitoring to ensure compliance with permit conditions. There also is little Commission enforcement in terms of determining whether activities are proceeding without a coastal development permit. Moreover, without CCC stop order authority, potential violations must be resolved through the courts -- a more inefficient, costly, and time-consuming process.</p> <p>Use of coastal zone management funding by the Department of Natural Resources and Environmental Control's (DNREC) Legal Office has resulted in significant administrative support which has given attorneys the ability to back up trial-bound cases and pretrial settlement negotiations with carefully prepared technical legal evidence. Specifically, trial notebooks are now prepared which assist in case presentation in court; and legal research on key issues, contingencies, and daily changes in laws and regulations that implement coastal programs are done in order to keep the legal staff's knowledge current. In addition to the lack of regulations, the DCMP has not monitored compliance with conditions to permits issued under the Coastal Zone Act, but relies on other permit issuing agencies to also consider DCMP conditions. When new manufacturing uses, or changes to existing uses, are permitted, special conditions are employed</p>	<p>A monitoring system should be developed employing the regulatory branches of the DNREC with the possible assistance of the Environmental Protection Office and the Marine Police to assure compliance with its Coastal Zone Act and permit conditions under the same act.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Guam	<p>lands and submerged lands statutes and regulations.</p> <p>From August 1979 to November 1980, \$172,000 were expended on Regulatory and Enforcement Programs. These five program areas included: a. <u>Wildlife Conservation Enforcement and Public Awareness Programs</u> -- this subelement provides funds to develop and implement a conservation education program that will assist the people of Guam to develop an appreciation of the value of natural resources. The subelement also funds additional manpower in order to increase the efficiency of the fish and wildlife enforcement program by increasing the available manpower. b. <u>Flood Hazard Area and Wetlands APC Enforcement</u> -- this subelement funds additional personnel to monitor development with flood hazard and wetlands, assure sufficient, accurate and current maps of the area are available for public dissemination and review, and update and revise appropriate regulation as needed. c. <u>Zoning and Sign Law Enforcement</u> -- this subelement funds the continued enforcement of the Zoning Law of which the Sign Law is a part through the addition of a zoning law inspector. d. <u>Legal Counsel</u> -- this subelement funds the Office of the Attorney General to provide continued legal advice to the Territorial Planning Commission (TPC) and TSPC, develop a more efficient system for enforcing the Sign Law, parking laws, Open Beach provisions and the Guam Coastal Management Program (GCMP), coordinate with the Department of Agriculture in developing revised zoning code provisions, and coordinate with Department of Land</p>	<p>to ameliorate adverse environmental impacts. With no formal system to monitor the permits there is no assurance that compliance with the special conditions occurs.</p> <p><u>The Department of Agriculture's Division of Aquatic and Wildlife Resources (AWR) has aggressively enforced fish and game laws.</u> Conservation officers routinely conduct land and water patrols to detect and apprehend violators and to provide a visible deterrent. The public is encouraged to report suspected violations, and conservation officers are on call 24 hours a day to respond. Enforcement of the GCMP is hampered by the inability of the various enforcement agencies to maintain adequate staffing levels and the insufficient documentation of enforcement actions. The DPW and the Department of Agriculture each have responsibilities for enforcing separate aspects of the GCMP. The DPW is primarily responsible for enforcement of land use laws and TPC permits; and the Department of Agriculture is responsible for the enforcement of wildlife, hunting, and fishing regulations. Two of the sign and zoning inspector positions at DPW have not been filled. Although seven conservation officer positions have been established in the Department of Agriculture, only three of these positions have been filled, reducing the AWR's enforcement capability by one-half. Other Territorial agencies indicated that the DPW does not report back on its enforcement activities and that the TPC does not have any assurance that applicants have complied with TPC permits and conditions. Further, the TPC has not been made aware of any violations detected by the DPW. Several Territorial agencies have experienced problems in the imple-</p>	<p>The Bureau of Planning (BOP) should develop reporting procedures for the Department of Public Works (DPW) on their enforcement actions which would enable the BOP to produce records of written findings of fact on permits, enforcement actions concerning permits, compliance with special permit conditions, and the status or result of any appeals on permits, conditions, or violations. The BOP should ensure it has sufficient information from the AWR to monitor AWR enforcement actions. The BOP should find permanent solutions to the hiring of personnel funded by the GCMP. The AWR should consider using trained volunteers to augment existing staff and also the use of radios, additional boats, vehicles, and other means to improve the efficiency of the available conservation officers. Although the BOP does not maintain "on the ground" enforcement capabilities, it does have ultimate responsibility for the enforcement of the GCMP. The BOP should perform an analysis of legal support requirements for the effective implementation of the GCMP. The analysis should include a survey of the TPC and other Territorial agencies to ascertain legal support requirements. This analysis should then be used as a basis to establish the level of legal support required to enforce the GCMP.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
	<p>Management (DLM) shoreline area access.</p> <p>e. <u>Guam Water Quality Standards</u> -- this subelement funds the Guam Environmental Protection Agency (GEPA) review and revision of Guam water quality standards and classification of Guam's surface waters.</p>	<p>mentation of the GCMP because of inadequate legal support. The TPC expressed the need for legal advice from the Office of the Attorney General (AG) concerning the potential legal implications of some of their decisions. DPW representatives indicated that their enforcement efforts would be enhanced if violators of land use laws and TPC permits were issued a violation notice or summons by the AG rather than the DPW. In addition, the AG does not consistently assign the same lawyer to GCMP related issues, resulting in a lack of continuity and accountability.</p> <p>A related legal issue involves the court's disposition of violations which are persecuted by the AG. For example, the AG recently prosecuted a case that involved the use of explosives while fishing, which is in violation of Guam law and the policies of the GCMP. However, the court imposed the minimum \$50 fine for the offense. The penalty does not serve as a deterrent. The BOP is commended for preparing a proposed revision to the law which will make illegal fishing practices a felony punishable by a minimum \$500 fine. However, the BOP should aggressively support this change in the media and other public forums and encourage the Legislature to pass this revision in the near future. There is also a need for continued AG review of new and proposed Territorial laws and regulations that might modify or be inconsistent with existing provisions of the GCMP.</p>	
Hawaii	<p>It is expected that significant improvements in enforcement activities will be made in the Hawaii Coastal Zone Management Program (HCZMP) during the period (November 1980 to October 1981. Areas funded include: a. Program Compliance \$142,680 -- The lead state agency</p>	<p>The 1980 review highlighted the Department of Land and Natural (DLNR) volunteer conservation officer program. At that time the use of trained volunteers on weekends, evenings, and other special times to augment the enforcement capability of full-time conservation</p>	<p>On the basis of these identified problems, OCZM and the Department of Planning and Economic Development (DPED) agreed in October 1981 on an approach to resolving the outstanding problem areas. The DPED will demonstrate that it is effectively carrying out its responsibilities as lead</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
	<p>will be significantly revising and strengthening its monitoring and enforcement procedures to ensure state agency and local government compliance with the enforceable policies of the HCZMP. Instituting these major procedural changes to its monitoring and enforcement program will complement the lead state agencies efforts to more aggressively pursue significant improvements in the CZMA national policy areas of: protecting natural resources, managing coastal development in hazardous areas, and increasing public access to the coasts. Findings: The DPED will improve monitoring and enforcement based on its agreement with OCZM.</p> <p>b. DLNR Enforcement Program \$81,080 -- Funding of this project will enable the DLNR to substantially expand its present efforts to improve enforcement of critical statutory authorities networked into the program and administered by the DLNR. It is expected that significant improvements will result in protecting natural resources and managing coastal development.</p>	<p>officers was a new initiative. Since that review, the DLNR Division of Conservation and Resource Enforcement (DOCARE) has substantially strengthened its enforcement capability through an increase in legislated authority and through legislative authorization of four volunteer coordinator positions previously funded by the HCZMP. <u>Successful implementation of HCZMP-initiated enforcement codes and programs has prompted the State Legislature to extend the authority of the enforcement officers to make arrests for any violation of law in county park areas as well as in the state park system.</u> More severe penalties for violations of DLNR natural resource protection regulations have also been instituted. Of the original 60 volunteers trained in the previous year, 57 remained with the program, have passed their 1-year evaluation, and are working in the field. In addition, 29 new volunteer officers have been selected and trained bringing the total to 86 officers. During the review period 144 citations, 8 penal summons, and 4 arrests were made by volunteer conservation officers for fishing, hunting, and forestry violations in state parks and natural reserves. These achievements have expanded the scope of DLNR's ability to protect water, land, and wildlife resources. This project is a significant improvement task.</p> <p>The DPED's Monitoring and Enforcement Program is the primary means by which agency compliance with the HCZMP objectives and policies is assured. In view of the management network of existing authorities, monitoring is critical to ensure the coordinated and consistent application of the HCZMA in the actions of state and county networked agencies. To aid its monitoring function the DPED has been developing a sophisticated</p>	<p>agency for the HCZMP by ensuring compliance with the Hawaii Coastal Zone Management Act (HCZMA). Evidence of the DPED's role will be transmitted routinely via the quarterly monitoring and enforcement reports. Hawaii Permit Application and Support System's (H-PASS)'s role in monitoring should be fully realized as provided for in the letters of commitment signed by the state agencies in late September 1981. The DPED's August 26, 1981 monitoring and enforcement program will be fully implemented and refined by the development of a guide which will identify coastal concerns and define what constitutes patterns of compliance and non-compliance and which the DPED will use to ensure compliance with the HCZMP and in preparing quarterly monitoring and enforcement reports. The DPED will also seek to amend the HCZMA to institutionalize the DPED monitoring and enforcement program by clarifying networked agency reporting and analyzing obligations and clearly establishing the DPED's role in resolving conflicts, monitoring and enforcing compliance with the HCZMP, and improving Hawaii's permitting process.</p>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Louisiana	The evaluation findings report of the Louisiana Coastal Resources Program (LCRP) made no reference to program costs associated with enforcement activities.	The Coastal Management Section of the Department of Natural Resources (CMS/DNR) must improve its methodology and strategy for its monitoring and enforcement activities necessary to ensure compliance terms and conditions of Act 361 and Coastal Use Permit (CUPs). Under the present award, the CMS/DNR	The CMS/DNR should develop and formalize a comprehensive permit monitoring program. This program could use a combination of public input, the DWF and CMS/DNR personnel, aerial surveillance and any other local, state or Federal personnel that could be formally or informally tied into such an effort. Care should be

computerized monitoring tool: H-PASS. While the DPED viewed H-PASS as an integral part of its monitoring and enforcement program it also worked on establishing a satisfactory interim monitoring and enforcement program. Improvement and implementation of this interim monitoring and enforcement program was the most important challenge to emerge from last year's evaluation of the HCZMP. Recommendations in the 1980 evaluation findings addressed this matter and special award conditions were subsequently negotiated with the DPED to ensure that the evaluation recommendations would be acted upon. During the review period, the DPED developed, refined and partially implemented a monitoring and enforcement program in response to those special award conditions. Important monitoring and enforcement shortcomings include the delays in producing quarterly monitoring and enforcement reports and initiating a formal field verification program; a lack of procedures by which the networked agencies would routinely inform the DPED of monitoring and enforcement activities; and DPED's passive role in networked agency decisionmaking processes that involve significant coastal resources or pose significant coastal management related issues. In addition, the OCZM found that state agencies have failed to amend their rules and regulations to enhance the procedural and substantive basis for their coastal-related decisionmaking processes.

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
		<p>contracts with the Department of Wildlife and Fisheries (DWF) to provide the services of six field investigators, who inspect the sites of proposed activities at the request of the CMS/DNR as part of the application review process. Under the terms of the contract, the CMS/DNR also may request specific follow-up investigations as a form of monitoring to determine if work is being undertaken in a manner consistent with the terms and conditions of a CUP once it is issued. During the last six months of the review period, only a pilot monitoring effort involving 25 such investigations was carried out with the following results: work had not been initiated on 13 projects, and of the remaining 12, six projects were determined to be in some form of violation of the conditions of the CUPs.</p> <p>The OCZM is aware that the CMS/DNR has made substantial improvements to its monitoring effort since the end of the review period. These include: development of a system whereby permittees notify CMS upon commencement of permitted work; increased field monitoring by the DWF of permitted activities selected randomly and individually by the CMS/DNR offices; the requirement of performance bonds of permittees in certain cases; notification from other Federal and state agencies and other DNR offices of suspected violations; and the cross checking of the DNR Office of Conservation's (OC) permits to ensure applicants are obtaining a CUP.</p> <p>However, there remains a lack of formalized enforcement procedures to address violations when they are found. For example, it is unclear whether the DWF has the authority to issue cease and desist orders to stop work on a project that does not have a CUP. It appears that</p>	<p>taken to choose realistic options considering the huge expanse of land and water that would have to be covered by such a program and limited fiscal resources. Innovative and low cost concepts such as public education, shared or joint use of personnel and equipment, should be examined.</p> <p>At the same time the CMS/DNR must develop and formalize its enforcement procedures so that it is clear who is responsible for the issuance of cease and desist orders and how prosecution of violators is to be carried out. The need for additional legal assistance for enforcement efforts should also be determined. Furthermore, all participants in the monitoring program should know the enforcement procedures so that enforcement action can be taken quickly. This can be achieved through training and the production of an enforcement manual. The experience of other state coastal programs may be helpful in the development of such a program.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Maine	<p><u>Local Access and Enforcement Assistance</u> - \$10,000 -- During the past two years, the Maine Municipal Association (MMA) has prepared a step-by-step handbook for local enforcement officials and has conducted a series of workshops designed to train local officials who need legal assistance to implement these procedures in many instances, particularly in negotiating voluntary compliance and in preparing cases for prosecution. By continuing the legal assistance program which has been provided during the past few years as a supplement to the handbook and workshops, the MMA staff attorney can further strengthen local enforcement efforts by helping to develop expertise and confidence at the local level.</p> <p><u>Department of Environmental Protection Staff</u> - \$94,500 -- Funds will provide for three employees within the DEP for field inspection, enforcement and permit application assistance. The primary tasks of these employees will be to facilitate simple and effective administration of the DEP especially the Site Location of Development Law and the Coastal Wetlands Law. They will assist permit applicants in applying for permits under these and other DEP laws, advise applicants on development procedures and methods necessary for compliance with the law and gather and report information necessary for enforcement actions when violations occurs.</p>	<p>the DWF field investigators must contact the CMS/DNR who in turn must take some enforcement action.</p> <p>In compliance with OCZM's recommendation to upgrade the state's enforcement of the core laws, the Department of Environmental Protection (DEP) contracted with Arthur Lerman Associates to conduct a study of the enforcement of four statutes important to coastal management: the Site Location of Development Act; the Alteration of Coastal Wetlands Law; the Mandatory Shoreline Zoning Act; and the Solid Waste Management Act. The resulting report, which recommended how DEP enforcement activities could be strengthened, has been accepted and action is being taken on the recommendations. The most significant obstacle to improved enforcement was identified as a lack of adequate staffing. Additional staff to increase DEP enforcement capabilities and additional review and planning staff for review of site location and wetlands permit applications were recommended. As a result, the DEP is using MeCP funds to employ three additional people to work in these areas. The DEP has looked at each of the remaining recommendations and is using them in reconciling enforcement issues. <u>The state, and the DEP,</u> should be commended for pursuing this issue with such a high degree of commitment to core law enforcement as a part of MeCP implementation. During this evaluation period, the pollution abatement staff at the Department of Marine Resources has initiated legal actions against polluters to force compliance with Maine's Water Improvement and Protection Statutes.</p> <p>The Lerman Report noted that "between 10 percent and 20 percent of the development activity within</p>	<p>To adequately meet the needs of enforcement, the Maine Coastal Program (MeCP) must include the following as a part of its upcoming work program:</p> <ol style="list-style-type: none"> <li>1. The state should consider either adding staff or providing a consultant effort to furnish technical assistance to towns on ordinance development and enforcement and must assure that the Regional Planning Commissions (RPC's) devote 80 percent of their time to local code development.</li> <li>2. The regional RPC's must provide workshops on ordinance development and enforcement and spend a majority of MeCP funds received in the provision of technical assistance to towns on ordinances.</li> <li>3. The State's handbook containing Shoreland Zoning Standards should be reprinted and disseminated in a timely manner in support of the above recommendations.</li> <li>4. The state should continue to assist the MMA in providing technical assistance at current or higher levels.</li> <li>5. Priority for local project funding should be either for local ordinance preparation and enforcement, the provision of access, improved management of marine resources, or for low-cost waterfront projects. The state should assure that the smaller localities retain a competitive opportunity in obtaining grant services and worthwhile local projects should continue to be funded where loss of funding would clearly be detrimental and continued funding would result in clear accomplishments.</li> <li>6. The state must report to OCZM on arrangements it will propose to bring about adequate state level enforcement.</li> </ol>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
		<p>Maine's coastal zone has occurred without obtaining the necessary State and local approvals under the Site Location, Coastal Wetlands, and Shoreline Zoning Laws." This report also notes that "non-compliance ... is the result of both ignorance and attitude" and that "local officials and individuals are not familiar with the specific requirements of the laws." The state's Ordinance Enforcement Handbook, which would provide the information to localities, is in short supply and should be reprinted. While Washington County RPC conducted a highly successful enforcement workshop, there was no indication that this type of activity was emulated in other regions of the state, in spite of a strong recommendation from last year.</p> <p>During the 3-1/2 years of program implementation, only 65 of 143 towns have adopted zoning and subdivision or other development ordinances as a result of coastal planning funding. In addition, there are severely inadequate questions about the continued approvability of the MeCP. For instance, the Boothbay Harbor case reviewed by OCZM in the previous evaluation findings has yet to be acted upon. To institutionalize coastal policies in Maine, it is crucial that at the time of Federal funding phase-down, local codes become the first line of implementation improvement.</p>	
Maryland	<p>The evaluation findings report of the Maryland Coastal Zone Management Program (MCZMP) contained no information about manpower program costs associated with the implementation of enforcement activities.</p>	<p>More public assurance of aggressive enforcement and monitoring of coastal laws is needed. Several areas where improvements in program implementation would enhance the capacity of the Coastal Resources Division (CRD) to deal with coastal issues were identified during the evaluation. The CRD staff recognizes that most of these areas need improvement; several are</p>	<p>In keeping with its role as the focal point for the coordination of coastal management efforts and its responsibilities under the program review function, the CRD should increase its assistance to the WRA to enhance the implementation of the statutes discussed above. These efforts should include assistance in <u>the monitoring and enforcement of the Beach Erosion Control</u></p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
		<p>continuing problems identified in the 1980 evaluation (also see Appendix II.) The role of the CRD monitoring the enforcement of basic MCZMP authorities and the level of emphasis on program enforcement by the CRD are in need of strengthening. The basic authorities include the State wetlands law, the State permit program for 100 year riverine flood plains, the Beach Erosion Control District Act, the Flood Control and Watershed Management Act and the Sediment Control Act. Administration of the first three laws is carried out by the Water Resources Administration (WRA) within the Department of Natural Resources (DNR). Local governments are responsible for the latter two; however local administration is monitored by the WRA which has ultimate authority for enforcing these laws. The CRD reviews all wetlands and flood plain permits adding a broader, nonbiological perspective to the review of wetlands permits. Comments from the CRD are used primarily to modify project designs associated with the permit applications, while the WRA makes the basic issuance or denial decision. The CRD role in administering and enforcing the Beach Erosion Control District Act has been very limited although it will soon fund low-level overflights to provide aerial photographs delineating the dune line, building limit line, and property lines. This will help in monitoring compliance with the act. However, it is unclear under what procedures and schedule this monitoring will take place and what the CRD role will be in it. Enforcement at the local level includes the two basic MCZMP authorities of the Flood Control and Watershed Management Program and the Sediment Control Act. In the Flood Control and Watershed Management Program, local governments are</p>	<p>District Act through the provision of better information on the location of the building line in relation to existing and proposed development and the establishment of a joint state and local monitoring system to ensure compliance with the act. The CRD should work with the WRA to establish priorities for completing the watershed management plans pursuant to the Flood Control and Watershed Management Act and to institute procedures to assist localities developing ordinances to implement the plans and to <u>monitor the enforcement of these ordinances</u>. The contracts negotiated annually with local governments should reflect this priority list. The CRD should assist the WRA in its enforcement programs including the possible <u>funding of personnel to increase its monitoring capability</u>.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
		<p>required to develop watershed management plans and develop management mechanisms to implement those plans. Of future importance will be the CRD's role in assisting the local governments to develop the plans, enact the ordinances, and assist the WRA in the monitoring of local enforcement of this statute. When state enforcement officials note sediment violations they refer them to local jurisdictions. If the local jurisdictions fail to act, the state is empowered to enforce local sediment control ordinances. There is additional monitoring of compliance at the local level and spot checking, particularly of larger construction projects, by the state. Enforcement of the major MCZMP authorities administered directly by the WRA has been impacted as a result of the loss of enforcement officers. The WRA therefore, depends on help from the Marina Police and Natural Resources Police to assist in identifying violations to the state wetlands law.</p>	
Massachusetts	<p>A transfer of funds of \$482,000 from the Massachusetts Coastal Zone Management Program (MCZMP) to the Massachusetts Department of Environmental Quality (DEQE) will necessitate completion of the following tasks: <u>monitoring and enforcement of wetlands protection</u>, waterways, water pollution control, and shellfish sanitation programs and regulations.</p>	<p>Rigorous monitoring by the Massachusetts Coastal Zone Management (MCZM) will be required to assure that significant improvements established in the FY 81 award in compliance with the 1980 amendments to the Coastal Zone Management Act will be accomplished within its time limits agreed upon. MCZM and DEQE evaluated the degree of compliance with the MCZMP and took assertive action in the third year grant to improve the compliance efforts of the permitting agencies. Two new positions were funded in DEQE, one in the Wetlands Protection Program and the other in the Division of Waterways so that two person years effort would be expended in improving the compliance of the MCZM policies. The responsibility to process</p>	<p>The OCM should carefully review its regulatory review processes and provide a report to OCZM on its findings. Specifically, the increased number of nonapplicability determinations should be assessed to determine if corrective measures are needed in DEQE's review of permit actions or if the increase is justified; the OCM and the DEQE should review staff requirements and, if called for, employ at least one additional staff attorney for the Wetlands Protection Program; the OCM and the DEQE should continue to assess carefully their monitoring programs to determine the need for more active enforcement of the MCZMP; <u>the OCM should explore new methods of improving enforcement</u>, both through self-enforcing provisions in regulations and increased public education; and the DEQE should</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Michigan	<p>The Michigan Coastal Management Program's third-year implementation tasks includes a provision for <u>improving enforcement</u> in its \$537,000 general administration budget. In addition, another task in this budget provides for Field Staff Coastal Operations to support work its monitoring and enforcement of the four basic statutes for Michigan wetland protection.</p>	<p>adjudicatory hearings, review orders of conditions, and carry out enforcement actions has recently been returned to the DEQE by the Attorney General's office. However, staff has not been transferred to carry out these new duties. At the same time, a number of actions are pending which need to be actively pursued.</p> <p>The DEQE has evolved what it terms a "passive" approach to monitoring and enforcement tied to permit actions and complaints. Monitoring of permit activities occurs after a permit is issued or when a complaint is made. Until recently, no "active" approach to enforcement has been attempted. With the employment of a North East regional coordinator, the DEQE has embarked upon a pilot program of careful monitoring of 20 critical sites. Should this prove to be a successful way of addressing significant development areas the DEQE may expand the program to other areas.</p> <p>Michigan is monitoring and enforcing aggressively the state coastal laws, including among others Acts 245, 346, and 222, through surveillance flights, permit denials, criminal prosecution, and civil orders requiring restoration. The state is controlling dredge and fill activities effectively through Act 247, and integrating the recently enacted Wetlands Protection Act (Act 203) successfully with the dredge and fill program of Act 247 to insure protection of contiguous wetlands. <u>The state continues processing dredge and fill permits jointly with the Corps.</u> The DNR is coordinating enforcement of Act 347, which is enforced locally by the coastal counties.</p> <p>The Land Resources Programs Division (LRPD) staff from the six field offices play an important role in implementing regulatory authorities.</p>	<p>monitor and review all notices of intent and orders of conditions to ensure their consistency with State standards.</p> <p>No suggestions or recommendations were made concerning enforcement aspects of the MCMP by the OCZM in its 1981 evaluation findings report.</p>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Mississippi	<p>Mississippi Coastal Program's (MCP) financial award tasks includes: 1) pilot training for two Bureau of Marine Resources employees to operate aircraft for <u>enforcement activities</u>; and, 2) retention of an attorney whose duties will include counsel with lawsuits.</p>	<p>Field staff conduct site inspections, meet with permit applicants, issue and deny permits, watch for violations, and advise Lansing headquarters of their activities. During the last 6 months the LRPD field staff took final action on 239 permit applications under Acts 247 and 346. Modifications were required for 24 of these and 3 were denied. Major coastal enforcement actions during the last 6 months included six substantial cases, two of which are still on the Attorney General's agenda; the other four were settled by agreement and/or by retroactive orders to restore wetlands or revegetate sand dunes. <u>An amendment to Act 346 was passed. As well as strengthening certain enforcement provisions</u>, the amendment provided for ways to speed handling of minor permit applications. Routine repair operations are exempted. Administrative rules pursuant to the amendment will be developed for identifying minor project categories with minimal adverse environmental impact, so that on-site permits may be issued without the usual public notice and final inspection.</p> <p>Noteworthy accomplishments of the MCP includes monitoring and enforcement efforts. During the review period, <u>the monitoring and enforcement efforts of the Bureau of Marine Resources wetlands inspectors</u>, including the use of air and water reconnaissance have resulted in an increased rate of detection of violations of the permit requirements for wetland alterations. Violations not conforming to the wetland alteration regulations have resulted in the issuance of several orders for restoration of the wetlands to their original condition. During the reporting period a total of 89 permit applications were received. Forty of the applicants received a letter of "no permit required," 16 received a waiver of</p>	<p>The evaluation findings report contained no recommendations regarding enforcement or monitoring activities for the MCP.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
New Jersey	<p><u>The Bureau of Coastal Enforcement and Field Services is the monitoring and enforcement arm of the New Jersey Coastal Management Program (NJCMP).</u> During the review period its responsibilities increased as a result of its expanded jurisdiction under the Waterfront Development Act and through being assigned to participate in collecting overdue tidelands lease fees. The BCEFS currently has a staff of 19 including supervisory inspectors, environmental staff, and support staff. Only two staff members cover the Waterfront Region. The BCEFS also has the responsibility to monitor large developments in Atlantic County. By its own admission the BCEF cannot adequately monitor these developments with its existing staff capability.</p>	<p>permit requirements, 5 received permits with conditions, and 1 received a denial. At the time of the performance report 28 applications were pending and 1 had been withdrawn. Violations totaled 23, of which 13 were resolved and 10 were unresolved. A total of three restoration orders were processed, two of which were completed. Wetland gains during the period totalled 0.9 acres and wetlands losses totalled 1.6 acres. Enforcement practices have been established to effectively monitor newly developed oyster depuration operations. These practices were developed in cooperation with the US Food and Drug Administration and the State Board of Health. Monthly summaries of the depuration process and resulting oyster production are generated and made available to each participating agency. These monitoring and reporting procedures will be further refined for the 1981-82 oyster season.</p> <p>In terms of program accomplishments, through the BCEFS vigorous enforcement of the New Jersey Wetlands Act, wetland fillings in the Bay and Ocean Shore segment and the Delaware River were held to 0.75 acres from 1979 through 1980. The fillings authorized were the result of water-dependent construction. Prior to the passage of the Wetlands Act (1950-1970), 1,900 acres of wetlands were filled on an annual basis.</p> <p>In September 1980, two Harvey Cedars residents filled 0.3 acres of wetlands on their property along Barnegat Bay in violation of the Wetlands Act (N.J.S.A.-13:99A-1). The DEP sued the defendants and the New Jersey Superior Court ruled on April 28, 1981 that the defendants must pay the DEP \$1,000 in fines and must excavate and revegetate the filled area.</p>	<p>The New Jersey Division of Coastal (DCR) should continue its efforts to have personnel from the DEP or personnel hired to enable the BCEFS to carry out its enforcement responsibilities. The DCR should also examine other sources of funds to complement revenues from tidelands leases and charges for Coastal Area Facility Review Act and other permits to fund enforcement and field service.</p>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
North Carolina	<p><u>Workload and Time Required for Permit Processing.</u> During the review period 549 minor and 117 North Carolina Coastal Area Management Act (CAMA) permits were issued. Fifteen minor and 9 major permits were denied. In addition, 56 permit renewals and/or modifications of existing permits were made. About 100 staff hours are spent on each major permit with an average processing time of 61 days. Most minor permits, issued by local permitting officers, take between 15 and 20 days to be issued with 8 days as the legal minimum time. The majority of minor permits (354) are for estuarine activities - one-third (210) are for ocean hazard activities.</p>	<p>The North Carolina Coastal Management Program (NCCMP) has strengthened its permit monitoring and enforcement capabilities. Improved monitoring and enforcement activities by the State Coastal Resources Commission (CRC), Office of Coastal Management (OCM), and Local Permitting Officers (LPO), along with the promulgation of new standards and training program have increased the protection of the coastal area management permitting and enforcement activities have included requirements for restoration of damaged areas. Texas Gulf, a large petro-chemical company, was recently required to restore damaged coastal areas at a cost of \$120,000 in addition to any other possible civil and criminal penalties. Overflights of the coastal areas started in October 1980 and are conducted on a routine monthly basis. OCM field staff are frequent passengers on the overflights which provide them with detailed information about coastal area activities. This information had led to increased detection of violations.</p>	<p>Additional improvements are possible in enforcement activities, particularly by providing LPO with information obtained through aerial surveillance of their coastal areas. Technical assistance to LPO should be increased in enforcement and monitoring activities especially by using scheduled overflights. OCM activities should be maintained or strengthened and the use of aerial surveillance continued.</p>
Pennsylvania	<p>No specific information was available concerning program costs, manpower, etc. for enforcement activities in the evaluation findings report of the Pennsylvania Coastal Zone Management Program (PCZMP).</p>	<p>The CZMP has underway, but not yet completed an evaluation of the Department of Environmental Resources (DER) current processes for post-permit monitoring and for enforcement. To date, permit violations or problems brought to the attention of the PCZMP concerning activities monitored by regional DER districts have been forwarded to those regional offices and have received prompt action. The Bureau of Dams and Waterway Management (BDWM) administers and monitors its permits through its central office and may lack sufficient field personnel to carry out a vigorous monitoring effort if one is needed.</p>	<p>The CZMP should evaluate the current DER and other state agency processes for monitoring and enforcement, identify any weaknesses or gaps, and develop a strategy to improve monitoring and enforcement of the regulatory authorities of the coastal program.</p>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Rhode Island	<p>Contained in the Third Year Work Program for the Rhode Island Coastal Resources Management Program (RICRMP) is a work unit of \$73,000 that includes legal fees associated with criminal prosecutions of violations and civil court actions, and coastal overflights for enforcement, attendance at right-of-way meetings and designations.</p>	<p>As a result of program implementation, substantive and procedural accomplishments have been made in area of Department of Environmental Management (DEM) actions. Most of the state's coastal waters are patrolled each day by enforcement staff. <u>The enforcement of the RICRMP by professional inspections, permitting activities, prosecution of violators and the defense of contested cases in court</u>, shows substantial accomplishments. At least 12 civil or criminal cases have been litigated or filed during the period from July 1 through November 30, 1980. The DEM has maintained daily surveillance of the coastal zone,</p>	<p>The evaluation findings report of the RICRMP listed no recommendations or changes concerning enforcement on monitoring activities.</p>

PCZMP funds are currently being used to fund half of a staff person's time in the BDWM to ensure that permit monitoring activities in the coastal zone receive specific attention. In addition to coordination with the BDWM staff, the Coastal Zone Management Office (CZMO) staff makes occasional site visits and relies upon Corps of Engineers (COE) field staff, the PCZMP's regional consultants, and Pennsylvania Fish Commission field staff, when appropriate, in review and monitoring of coastal areas. Additionally, the CZMO is informed of potential violations through the local Coastal Zone Steering Committees, the Coastal Zone Advisory Committee, and from other public contacts. The CZMO has recently acquired improved maps tailored to the PCZMP's needs and has also recently acquired aerial slides and stereoscopic photos of the Erie coastal zone. Copies of the slides and photos have been supplied to the BDWM to assist them in permit review activities. The CZMO is currently looking into the feasibility of conducting aerial flights over the Lake Erie and Delaware Estuary coastal zones to help in the monitoring of permitted activities and location of illegal activities.

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
South Carolina	<p><u>Law Enforcement and Administrative Support</u> - During 1980 the South Carolina Coastal Council (SCCC) awarded a contract of \$48,000 with South Carolina Wildlife and Marine Resources Department (SCWMRD) for five conservation officers to work full time for the SCCC for monitoring and enforcement duties. (SCWMRD)</p>	<p>The State's implementation of its Coastal Management Program has resulted in a highly effective and efficient system of permitting and permit enforcement and monitoring. The SCWMRD has aggressively implemented a monitoring and enforcement program designed to monitor permitted activities and provide routine air and ground surveillance of the entire coastal zone for the purpose of detecting any illegal alterations of resources within coastal areas. South Carolina has developed and is implementing a strong permit monitoring and enforcement system. The SCWMRD provides five conservation officers to the SCCC for monitoring and enforcement activities. These officers, in conjunction with SCCC staff, provide for an effective and well-coordinated program of permit violation detection and other enforcement activities. Permit sites are not only checked before a permit is issued, but are visited after construction is completed to ensure compliance with permit specifications. In a separate activity, enforcement personnel, along with SCCC staff,</p>	<p>The SCCC should develop a method of monitoring Federal and state agencies certification compliance, evaluate the extent to which its certification conditions are being met, and if problems exist, develop an enforcement process that ensures compliance and conflict resolution where necessary.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
--	--	---	---

patrol the coast by land, water, and air looking for unauthorized alteration of critical areas. Low altitude patrols by helicopter have located unauthorized activities that would have been difficult, if not impossible, to find without aerial surveillance. Unauthorized activities are reported to the SCCC with pertinent information concerning the responsible party, the location of the activity, and the type of activity and photographs when possible. After the initial report from the investigating officer is received, the site is investigated and evaluated by a SCCC staff member. If a permit violation or an unauthorized activity has occurred and the site is not restored after a specified time, the Council can take appropriate legal action by filing either civil or criminal charges against the responsible party. At the time of the site visit, approximately 100 violations had been detected by the SCCC and approximately 40 had been corrected voluntarily. The remaining 60 were in various stages of being corrected. The Council has also filed three civil suits and one criminal action. The SCCC has confronted in court difficult issues concerning the limits of the state's use of its permit authority in critical areas to ensure the protection of natural resources. In one instance a property owner applied to the SCCC to build an addition to an existing structure. The addition would have required wetland fill, and the petition was denied because of the SCCC policy prohibiting filling of wetlands for private residential use. Subsequently, the state was charged with "unjust taking" through its denial of the permit to build in a wetland. The SCCC permit denial was upheld by the 15th Judicial Court of South Carolina. The Court found that the SCCC's denial of a permit to fill marshland on private property was a reasonable

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Virgin Islands	<p>\$52,000 was allocated for surveillance, permit monitoring and enforcement as part of the Virgin Islands second year coastal plan. Expenditures of this money included monitoring and inspection of permit sites for conformance with permits; alleged violations; field inspections and appropriate action for violations.</p> <p>The Virgin Islands spent about \$15,000 for Training to Improve inspection skills and another \$24,000 on <u>enforcement administration</u>. The expenditure of these latter funds included scheduling and direction of the activities of 18 enforcement officers to monitor permits, conduct field investigations, periodically inspect vessels and respond to public complaints. Continuing Training for Enforcement Personnel (\$24,300) - continue training efforts on firearms expertise, oil spill prevention, response and clean-up, inspection techniques for earth change violations and monitoring compliance with CZM permits and the new duties and responsibilities of the Water Use Plan.</p> <p>Implementation of Ticketbook System for Enforcement (\$48,600) - submit materials to the Senate for hearings and floor actions, conduct public information campaign directed at the public, establish administrative system and develop forms, procedures and record keeping process.</p>	<p>exercise of police power and not an exercise of eminent domain. The plaintiff had contended that the permit denial amounted to the taking of private property without just compensation. The Court found that efforts to fill the marsh amounted to an attempt to change the essential natural character to the detriment of the general public. This case illustrates the SCCMP's willingness to take on difficult issues.</p> <p>The Bureau of Environmental Enforcement (BEE) <u>has continued to operate efficiently and currently carries out numerous activities including monitoring for illegal development. The BEE has followed up on 46 violations, many of which were reported by citizens.</u> The violations (bulldozing, clearing, dumping or filling in most cases) were stopped either voluntarily or by cease and desist orders. Removal of sand, coral and aggregate from beaches is also monitored by the BEE. There were 26 cases of violations or sand stealing reported ranging from the removal of bucketfuls of sands to cubic yards and the BEE apprehension efforts have included posting stakeouts and placing large boulders along the access to some beaches to prevent entry by vehicles.</p> <p>The BEE has been active in enforcing fishing regulations with four arrests made and illegal traps confiscated. Convictions and fines resulted in three cases. There is one violation still pending trial. The BEE officers have also inspected imported spiny lobsters. Spiny lobsters bearing eggs may not be harvested and must be returned to the sea to replenish the species.</p> <p>The DCCA has continued to improve the training of its staff to enforce statutes and regulations protecting natural resources.</p>	<p>The Department of Conservation and Cultural Affairs (DCCA) should continue to offer assistance in the areas of training personnel to recognize violations. In addition, the DPW should avail itself on the expertise offered by the Soil Conservation District in port-permit site inspections. The DCCA should continue to investigate the possibility and cost effectiveness of amending the laws to transfer responsibility from DPW to DCCA. The DCCA should redouble its efforts to find and hire suitable legal counsel. While the search is continuing, the DCCA policy staff should begin to draft legislation, memoranda of understanding or other agreements that had originally been the attorney's duties, to reduce the time required to produce the drafts.</p>

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
Washington	<p>The U.S. Office of Coastal Zone Management in its evaluation report of the Washington Coastal Zone Management Program (WCZMP) provided no information about funding or manpower associated with enforcement of coastal/environmental mandate.</p>	<p>A comprehensive assessment of compliance with the Shoreline Management Act (SMA) was begun and several counties have been reviewed the Department of Ecology (DOE). The DOE ment is attempting to develop a strategy for ensuring enforcement of the coastal program which will be implemented in the 1981/1982 grant year. County compliance assessments, reviews of each county's enforcement activity, are only partially completed.</p> <p>The DOE's procedures for ensuring compliance with the SMA and state-approved Shoreline Master Programs (SMP) need to be improved. In response to the previous OCZM evaluation, the DOE initiated a county-by-county assessment of compliance with the SMA. The assessments and information obtained during the most recent site visit indicate that local enforcement actions vary greatly</p>	<p><u>RECOMMENDATION: The DOE should complete the assessments underway and develop a strategy for the state-wide enforcement of the WCZMP and local SMPs that includes:</u></p> <p>Strengthening local governments' ability to monitor and enforce their SMPs by providing appropriate guidance, examples of successful enforcement programs, or additional funding for field inspections of permitted activities and detection of illegal actions.</p> <p>Provisions in contracts with local governments that require specific enforcement activities (field inspections, detection and reporting of violations) and that all violations be reported to the DOE. Local governments should routinely report to the DOE on their enforcement activities. The DOE should review this material and provide additional guidance as necessary.</p> <p>Provisions for the DOE to ensure that local governments are complying with</p>

Appendix 30 (continued)

State/Territorial Coastal Zone Program	Present Status of Program Costs, Manpower, Etc.	Evaluation of State Efforts/ Enforcement Program	Suggestions for Changes, Improvements in Enforcement Program
		<p>among jurisdictions. As the assessments have not been completed, the DOE has not developed guidance for the enforcement of SMPs by local governments. The assessments and the OCZM's discussions with local SMA administrators indicate that local governments could use assistance on the more significant enforcement issues involving non-permitted activities and cumulative impacts from minor violations.</p>	<p>the state-approved SMP through random samples of permits and field inspections to verify permitted and conditioned activities, variances, and to detect non-permitted activities. The DOE may want to encourage other state agencies' participation in this process. The DOE should routinely brief other state agency field personnel to alert them to the requirements of the WCZMP, SMPs, and other related WCZMP authorities and have them report on activities or developments that may appear to be in violation of state laws. The DOE should publicize these enforcement activities through the various media, seminars, and meetings with local, state, and Federal officials.</p>
Wisconsin	<p>The evaluation findings report for the Wisconsin Coastal Management Program (WCMP) made no specific evaluation of program costs, personnel for its enforcement activities.</p>	<p>The three WCMP investigators assigned to the three coastal areas of Wisconsin have greatly improved the administration and enforcement of shoreland and flood plain regulations. This intensified monitoring and enforcement effort, along with greater coordination with local officials, has resulted, particularly in the southeast district, in greater compliance with permit application requirements and restrictions. As a result, particularly in the southeast district there has been a decrease in the violation rate and greater compliance in this area. The Wisconsin's Department of Natural Resources Training Conference provided valuable enforcement training to its regulation staff.</p>	<p>Procedures for enforcing compliance with the provisions of Section 307 of the Coastal Zone Management Act should be quickly developed and implemented.</p>

## Appendix 31

### Analysis of Enforceability of State Wetland Statutes: Rosenbaum Study

In 1978 Nelson Rosenbaum of the Urban Institute published a report entitled Statutory Structure and Policy Implementation: The Case of Wetlands Regulation in which he presented an outline of a conceptual framework for the assessment of Statutory structure of state wetlands authorities. Two criteria utilized in the evaluation of these authorities included specificity and enforceability. This brief analysis of the Rosenbaum study will concentrate on the latter criteria.

In general enforceability refers to the need for a balance between the stringency of the mandate for behavioral change and the stringency of the enforcement process established to insure adherence to the requirements of the law. The more stringent the mandate for change, the more stringent the enforcement process must be. The core of the implementation problem created by many statutes is that extremely stringent and ambitious mandates for change are sometimes unaccompanied by adequate enforcement procedures.

Rosenbaum conceives the enforcement process in terms of two distinct components: 1) securing bureaucratic cooperation and 2) insuring private compliance. Every program must achieve some minimum level of bureaucratic cooperation to have any change of effective implementation. Private compliance is only necessary in those programs demanding some direct behavioral change on the part of citizens - i.e., regulation of business and private property, taxation of income etc.

Analysis of wetland statutes for the states of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Rhode Island and Virginia indicated some similarities. Each statute contains provisions for 1) permit programs; 2) formal submission of an application and fee for the processing of the application; 3) civil and/or criminal penalties for failure to comply with the permitting requirement.

In contrast to federal statutes generally establishing a specific funding authorization and staffing quote, state wetland laws cases set such specific allocations, allowing such matters to be handled by an executive or the annual legislative appropriations process. Assessment of statutory variation in authorizations and personnel may not therefore be a proper criteria in any evaluation of Statutory enforcement activity. However in any overall evaluation of program enforceability these elements are especially important.

Four variables were defined as measures of enforceability of these wetland mandates. The first variable measured, in quantitative sense, statutory requirement for detailed environmental impact statements and/or site plans before issuing permits. Another variable measured the specifications of mandatory development conditions (water quality, fish & wildlife protection etc). The last two variables evaluated the stringency of administrative legal remedies and the amount of fines to deter non-compliance with the law.

In terms of statistical validity, few of these variables suggested any strong correlations, although some correlation exists between the requirement for permit and level of maximum fine. Rosenbaum is of the opinion that administrative remedies greatly influence the success of the enforcement component of a state wetland statute.

"Administrative remedies are the key to effective enforcement in wetlands regulations because of the disinclination of courts and prosecutors to take wetlands violations seriously and because of the long delays that typically accompany the judicial enforcement process. To the extent that a statute authorizes imposition of severe administrative penalties, the deterrent effect of the law is likely to increase."

Based on his analysis, Rosenbaum assigned an enforceability score to each of the state statutes evaluated potentially ranging from 7 to 22, with a mean score of 13 indicating a general imbalance between the stringency of the mandate for change and the stringency of enforcement mechanisms. A comparison of the use of some of Rosenbaum's findings with conclusions on present enforcement efforts of some state coastal zone programs indicates some important differences.

While the statutes for the State of Maine scored 8 - only one point above the low end of the potential range suggesting possible future enforceability problems with the statute, a recent report on enforcement activities of Maine Coastal Program prepared by Arthur Lehrman Associates did not cite statutory authority as a major problem area with the enforcement program. With regard to Rhode Island, in direct contrast to Rosenbaum's analysis of the wetlands law and program in this state:

"Indeed, in practice, the Rhode Island program is less likely to be successful because of the weak enforcement process. Indeed, in practice, the Rhode Island law has achieved an unenviable reputation as an ineffective and unenforceable statute. Part of the problem is unquestionably non-statutory. The wetlands section of the Department of Natural Resources has never been provided with adequate manpower to do its job responsibility."

The evaluation findings report of US Office of Coastal Zone Protection is generally complementary about present State of Rhode Island efforts in this area.

As illustrated in preceding examples, the evaluation of an enforcement program cannot be made in the absence of empirical data linking statutory authority to actual implementation.

## Appendix 32

### US ARMY CORPS OF ENGINEERS EXPERIENCE WITH TITLE 36 (RANGER PROGRAM)

Chapter III, Title 36 of the US Code provides for Corps of Engineers citation authority for handling of routine minor enforcement actions at water resource projects. Approximately 2,500 citations were issued in 11 southeast and southwestern Corps districts in 1980 for a variety of violations. Most of these violations concerned illegal parking, while others included unauthorized hunting and fishing violations, illegal dumping and destruction of vegetation. Nearly 60 percent of these 2,500 citations were resolved through mail-in payment system; 20 percent required hearings in the Office of US Magistrate while another 20 percent were dismissed or remain unresolved.

The success of the Corps Ranger Enforcement Program, like the regulatory program varies from district to district depending on the policy and cooperation with the local representatives of US Department of Justice. In some areas Federal judiciaries may be reluctant to make judgments against individuals for minor infractions at Corps reservoirs. In other instances, however, magistrates have taken an active interest in the resolution of the vast majority of ranger-referred enforcement cases. A Corps ranger at one of the more popular reservoirs in the Southeast was of the opinion that, in comparison to enforcement procedures of other Federal agencies dealing with national resources, the Corps Title 36 Program did not contain sufficient provisions for resolving other violations through the use of the citation authority.

## Appendix 33

### USE OF CIVIL MONEY PENALTIES BY OTHER FEDERAL ADMINISTRATIVE AGENCIES

In order to provide some insight into the successes and failures of civil money penalties by other Federal agencies, this section will summarize some information on the subject and examine in detail its use. Agencies now settle well over 90 percent of the cases by means of a compromise, remission or mitigation device. Settlements are made because civil penalty cases generally involve relatively small amounts of money (an average of less than \$1,000 per case), and most adjudications would require substantial inputs of time and effort, familiarity with specialized vocabularies and other matters of expertise, and meaningful litigation expense.<sup>1</sup>

Settlements are not wrong per se. But the quality of the settlements being made under the present money penalties system is of real concern. Those who suggest that it is probably of little significance which system is used are surprisingly far from the mark. The most significant finding in this report is that settlements reached under the present system are, as a rule, substantially inferior to those that would occur under an administrative imposition scheme.<sup>2</sup>

There is evidence that under the present system regulatory needs, at times, are being sacrificed for what is collectable - i.e. agencies are settling for what the traffic will bear. Agency administrators suggest that unwise settlements are being made principally because the Department of Justice presents an immovable roadblock; "we cannot get our cases into court." Manifestly, a knowledgeable defendant may have undue leverage and may ultimately be able to force an unwise settlement (from the standpoint of the public interest) as a result of his situation.<sup>3</sup>

Of course, many of the settlements offered by agencies are perfectly fair. But there is every reason to provide an impartial forum and procedural protections for those few who wish to question a proposed imposition. The possibilities for arbitrariness, lack of consistency, and discriminatory exercises of authority are unnecessarily accentuated under the present system.<sup>4</sup> Especially where relatively small sums are involved, the realistic choice is either (i) to provide that very small percentage of alleged offenders who wish to litigate (or the agency itself in an equally small number of instances) an opportunity for speedy and inexpensive adjudications under an administrative imposition scheme, or (ii) to deny (on the basis of the theoretical availability of de novo judicial review) both sides an impartial forum altogether. For most money penalty cases, the opportunity for a speedy and inexpensive adjudication is basic to a just imposition scheme.<sup>5</sup>

In his comprehensive study on the subject of civil money penalties<sup>6</sup>, Mr. Colin S. Diver has concluded:

"The administrative civil money penalty has unquestionably come of age. Disillusioned with cumbersome criminal, injunctive, and license-removal sanctions, students of regulation have increasingly turned to the civil fine in their search for a more effective enforcement device. The call has not gone unheeded; in the past decade the civil fine has assumed a place of paramount importance in the compliance arsenal of Federal regulators. Indeed, it is today almost inconceivable that Congress would authorize a major administrative regulatory program without empowering the enforcing agency to impose civil monetary penalties as a sanction.<sup>7</sup>

Title I, Chapter III of the Administrative Conference of the United States also is of the same opinion in its statement about the effectiveness of the use of monetary penalties to avoid delays, high costs, and "jurisdictional frictions" inherent in the traditional system of the imposing civil money penalties (court action initiated on behalf of the agency by the Department of Justice):

"... the use of civil money penalties in general and of administratively imposed and civil money penalties in particular has increased significantly, and the constitutionality and desirability of administratively imposed penalties has been widely recognized..."<sup>8</sup>

There are an estimated 348 civil penalties enforced by 27 Federal departments and independent agencies. These penalties are used for the enforcement of regulatory orders relating to such varied areas as broadcasting, safety standards, vessels, revenue laws and pollution control. They may be involved for violating statutes or administrative orders; for failure to file reports, permit entry, unauthorized conduct. In the past many statutes specified a fixed monetary penalty indicative of doubts about the constitutional authority of a flexible fining system of an administrative agency. Today, fixed penalty statutes are increasingly yielding to variable penalty statutes authorizing the penalty to be set at any level up to a statutory limit, sometimes supplemented by a list of facts to be included in the process.<sup>9</sup>

Most civil penalties are by express provision or by implication subject to ultimate collection in a civil action to be brought in a United States district court. Such an action includes the opportunity for trial by jury of "contested factual issues not foreclosed by previous binding judgment." Enforcement actions must be initiated by the US Department of Justice in a few cases in which an agency is specifically authorized by statute to appear in court through its own counsel. However, once a case has been referred, the Department of Justice has control over prosecution, and all appeals and ultimate settlement unless a statute states otherwise.<sup>10</sup>

#### Penalty Amount

Except for three, all 348 civil penalty statutes possess an upper limit on the penalty amount; 57 percent of these statutes provide a fixed penalty amount while another 43 percent (151) contain authority for imposition of a variable amount up to a specified limit.<sup>11</sup> In terms of actual dollar amounts,

approximately half of civil money penalties have upper limits between \$100 and \$1,000, the average figure being \$500. Thirty-five penalties carry limits of \$10,000 or more for each violation while another 12 have limits of \$25,000 or more.<sup>12</sup>

With regard to assessment and mitigation authorities, 141 (41 percent) of the 348 statutes, Congress has given administrative agencies the power to assess penalties while the remainder are of the court assessment type of penalties or statutorily permitted and appropriate for an offense. This same legislative body has also explicitly authorized agencies to mitigate or compromise 79 percent of the civil money penalties in existence. This authority also makes it clear that the decisionmakers are not to be bound to impose the fixed penalty where it would be unjust to do so.<sup>13</sup>

### Problem of Civil Penalty System

The most likely constraint on a civil penalty system is lack of adequate fiscal resources. Agencies have limited funding to devote to processing and handling of cases. Most agencies state they investigate and prosecute only a fraction of all violations that occur. The types of detection and investigation procedures place limits on the case load that can be generated. The costs associated with these procedures force tradeoffs between the number of cases that can be prosecuted and the amount of detail and attention they can give to each case. Effective deterrence for some cases may necessitate the imposition of a money penalty specifically designed to the circumstances of the offense and the alleged offender. Finally, the statutory authority for the Federal regulatory agency, the US Department of Justice and courts also provide other constraints on the choice of the procedure of an administrative agency.

1. Goldschmid, Harvey J. Report in Support of Recommendation 72-6. An Evaluation of the Present and Potential Use of Civil Money Penalties as a Sanction by Federal Administrative Agencies.
2. Ibid, p. 899.
3. Ibid, p. 900.
4. Ibid, p. 901.
5. Ibid.
6. Diver, Colin S., The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies. Columbia Law Review. Vol. 79, No. 8, December 1979.
7. Ibid, p. 1436.
8. Title I, Chapter III Administrative Conference of the United States, part 305, 79-3 p. 107.
9. Diver, op. cit., p. 1438.
10. Ibid, p. 1440.
11. Ibid, p. 1441.
12. Ibid, p. 1441.
13. Ibid, p. 1443.

## Appendix 34

### CAPABILITY OF OFFICE OF US MAGISTRATES TO HEAR SECTION 404 AND SECTION 10 MINOR VIOLATIONS

The implementation of a US Army Corps of Engineers citation authority would not result in any unnecessary burden on US Magistrates Office to potentially handle a few hundred Section 10 and/or Section 404 minor violations. Of the approximately 600,000 citations issued each year by Federal enforcement officers about 17 percent are referred to the US Magistrate for nonpayment of collateral. At present there are approximately 200 full and 250 parttime Federal magistrates with full sentencing authority. Salaries for full-time magistrates range from about \$30,000 a year for a full time position to as little as \$900 for a part-time official. Due to its flexibility for rapid expansion in terms of the number of available judiciaries, it is anticipated that resolution of minor violations would not create any large manpower funding burdens for the US Department of Justice. Use of this system would also provide more free time for both Corps and US Attorneys to prosecute larger and more important cases. Only Corps officers who have issued the citation would be expected to be present at a hearing in the Magistrate's office.

## Appendix 35

### RATIONALE FOR USE OF CORPS HEARING OFFICERS IN PREFERENCE TO ADMINISTRATIVE LAW JUDGES

It is anticipated that the Corps staff either civilian or military would be employed as hearing officers instead of hiring outside ALJs for resolution of minor violations. First of all, the use of ALJs would be much more expensive and would necessitate hiring 10 to 12 highly trained lawyers with a civil service grade level of at least GS-15 to staff Corps hearing offices at the division level. In addition, while ALJs may be very precise about legal processes, they may not have sufficient background in wetlands/ecology to properly assess damages for possible imposition of civil penalties. Finally, the minor Section 10 and Section 404 violations to be resolved under this system may not merit the type of legal complexities and lengthy appeal systems so often part and parcel of proceedings conducted by ALJs.

## Appendix 36

### EXAMPLE OF STATE CITATION AUTHORITY PROGRAM: EVALUATION OF RESOLUTION OF WETLAND VIOLATIONS BY NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION THROUGH USE OF ADMINISTRATIVE LAW JUDGES

Chapter 622, Title VI of the New York Code provides for uniform enforcement hearing procedures for resolution and prosecution of violation of state conservation law and all civil administrative enforcement proceedings. In general, according to these procedures the Department of Environmental Conservation first serves notice of hearing and complaint or motion for summary order\* together with supporting affidavits reciting all the material facts and other available evidence. Within 20 days of receipt of such notice the respondent (charged with violation) is required to submit answering papers on the motion. The motion for summary order can be granted if upon receipt of all papers, proofs etc., the cause of action or defense can be established sufficiently to warrant the granting of a summary judgement in favor of any party. The motion can be denied if any party can show fact or reason for a hearing.

In addition to setting the time and place of hearing and issuing subpoenas, a hearing officer appointed by the Department of Environmental Conservation can: (1) administer oaths and affirmations; (2) admit or exclude evidence; and, (3) hear arguments on facts or law. Within 30 days after receipt of hearing officer's report, the commissioner of the department makes a final determination including:

- 1) dismissal of charges
- 2) assessment of penalties consistent with applicable provisions of Environmental Conservation Law
- 3) direction for abatement
- 4) any combination of 1, 2, 3

The New York Department of Environmental Conservation employs about 10 hearing officers frequently rotated throughout the state based on a "calendar call" system of hearing dates. The system is initiated by regional staff through the regional attorney who "calendars" the hearing to a specific time and place. The administrative law judge (ALJ) receives copies of the notice and appears at the scheduled hearing and thereafter sets the adjournments. Approximately six to eight such cases are scheduled for each hearing session, generally held every 2 or 3 weeks. Since the function of the ALJ is to adjudicate, the function of assessing penalties is routinely performed by the prosecuting attorney.

---

\* A judgement on the merits may be rendered without hearing when there is not genuine issue of material fact to be tried.

Evaluation of New York ALJ System for Resolution of Violations of Environmental Law

Most of the several hundred cases handled each year by ALJ in the State of New York are settled out of court. Both of the ALJs interviewed during this study were of the opinion that the present system (calendar call) has generally been effective in resolving violations in an expeditious way, given the significant increases recently in wetland cases.

## Appendix 37

### REVIEW OF COAST GUARD CIVIL PENALTY AND USE OF HEARING OFFICERS FOR RESOLUTION OF VIOLATIONS\*

The Water Quality Improvement Act of 1970 established the responsibility of the US Coast Guard for the assessment of civil penalties in cases of illegal discharges of oil. While the 1972 Federal Water Pollution Control Act amendments and the 1977 Clean Water Act have extended this declaration of policy to cover hazardous substances and a greater geographical area, the basic congressional "no discharge" policy remains the same as it was in 1970. See e.g. Section 311(b)(1), Federal Water Pollution Control Act, as amended, 33 USC 1321(b)(1). One consequence of this declaration is that the penalty provisions of Section 102 (now Section 311(b), FWPCA) have been strictly construed in favor of the assessment of penalties. Stated differently, if in a given case it is established that a party is statutorily liable to a penalty, the Coast Guard has no discretion to refrain from assessing a penalty.

In considering whether a person is liable for a penalty, the Coast Guard is bound by the following provision of Section 311(b)(6) of FWPCA: "No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge." Faced with the task of administering a sizable case load (See Table 1), the Coast Guard has attempted to develop hearing and assessment procedures which satisfy the constitutional and statutory requirements for procedural due process, and yet provide a simple, flexible system in which a citizen can afford to participate.

TABLE I

Calendar year	1975	1976	1977	1978	1979 <sup>4</sup>
Number of spill cases	11,119	12,022	12,928	12,237	11,244
Number of penalties actual assessed	7,394	6,517	7,042	7,526	5,765

While most of the parties who appear at Coast Guard proceedings prefer to present their side of the story to the hearing officer in a straightforward, inexpensive manner, a few attorneys have sought to require the Coast Guard to conduct formal trial-like hearings which utilize the procedures of the Administrative Procedures Act.

Some interesting legal issues and opinions have developed from court decisions regarding the Coast Guard penalty system. First of all, there are the congressional purposes of eliminating all oil spills and of allowing EPA

---

\*Source: Stephen J. Delaney, "Statutory Criteria: Coast Guard Assessments Under Section 311(b), FWPCA. 1981 Oil Spill Conference Paper #207.

to promulgate regulations encompassing even small quantities of oil in an enforceable manner. The courts have repeatedly rejected the notions that a "miniscule amount of harm" is acceptable and that Congress only intended to prohibit large spills that have substantial and permanent effect. Similarly, the courts have rejected arguments that the economic inefficiencies that may be necessary to prevent small spills are contrary to the provisions of statute or Constitution. Rather, "it is widely recognized that the FWPCA policy subordinates economic efficiency to the goals of clean water" (U.S. vs Atlantic Richfield Co. (1978)).

With regard to a determination of the size of the penalty, the Coast Guard hearing officer is statutorily required to consider the "gravity of the violation" in making his assessment. In response testimony that expert witness can determine harmful effects of oil spills a court stated:

"No definition of harmful quantities of oil could ever be achieved which would satisfy the various competing interests, nor from which there would not be differences of expert opinion. . . (the expert's proposal) obviously would be completely unworkable for reporting cases and, very likely, as a practical matter in determining harmful effect"

Normally, a small spill will, therefore, only result in a small, reasonable penalty. PIRS statistics show, for example, that spills in the "less than 100 gallons" category were assessed in an average amount of only \$93 for calendar years 1975 through 1979. Even more striking is the fact that the annual averages have been decreasing as follows: 1975-\$118, 1976-\$100; 1977-\$105; 1978-\$88; 1979-\$56. Perhaps this apparent trend reflects a growing agreement on the part of hearing officers that there are relatively minor effects from small spills. Whatever the reason for this trend, which different segments may view with satisfaction or alarm, it is probably true that the effort of having to defend against such penalty actions continues to constitute an incentive to eliminate these spills. Further, it is hard to agree with the view that the Coast Guard has been oppressive or irrational in dealing with small spills. Rather, it appears that there has been a balancing of the 1972 congressional mandate, that a penalty be assessed in every case, with the statutory requirement that penalty size be proportionate to the gravity of the violation.

One further point worthy of note is the oft raised question of whether the Coast Guard should assess a penalty against a company which is the owner, operator, or person in charge of the discharge source, or whether to assess it against an individual employee of the company. It is the stated policy of the Coast Guard that penalty action will normally be instituted against the employer as a means of encouraging greater care in the hiring, training, and direction of its personnel, as well as in the proper maintenance and operation of its equipment. However, improvements by some employers in this area suggested that there was a need for a better definition of the exceptional circumstances in which penalties would be assessed against an individual employee. Therefore, in a recent case, the Chief Counsel clarified this question by holding that, "In a particular case in which it is established that: 1) diligence has been exercised in the hiring, training, equipping, and

direction of an employee; 2) the discharge directly resulted from acts or omissions within the control of the employee; and 3) the acts or omissions were contrary to expressed company policy and training which was communicated to the employee, and they were without the consent, fault, or collusion of the employer; the assessment of the penalty provided by Section 311(b)(6)(A) against the individual employee may be appropriate." It should be noted that, in a companion decision, the Chief Counsel ruled that a civil penalty action against an employee does not preclude action against an employer under Section 311(f) for collection of removal expenses or give rise to a valid third party defense operating in favor of the employer."

### Penalty Size

Assuming that the occurrence of an illegal discharge has been established, and that the appropriate party against whom a penalty should be assessed has been identified, a question arises as to what should be the proper penalty size. The act specifically provides that the penalty may not exceed \$5,000 per discharge and that the hearing officer must consider "the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation."

There have been occasional complaints from dischargers that consideration of the first two economic factors is unconstitutional because it violates the principle of equal protection. According to this argument, the act mandates a form of discrimination based on the factor of wealth, resulting in higher penalties for large companies. In view of the fact that this sort of discrimination may be legally upheld upon a mere showing that there is a rational basis for treating classes of people differently, the courts have had little difficulty in dismissing these complaints. Normally, the congressional intent against forcing small businesses into insolvency has been a sufficiently rational basis for the disparity of treatment. In addition, the Coast Guard has indicated that in two similar cases calling for a similar deterrent, this similarity of effect may be rationally achieved by the assessment of different penalty amounts. USCG Marine Safety Manual, Section 13-2-20. One problem which arises in this area involves the gathering of proof of a company's financial condition. Since these statutory economic factors are normally treated as matters in mitigation of penalty size, the Coast Guard has considered that dischargers must take primary responsibility for ensuring that accurate financial data is submitted to the hearing officer. Failure to do so may be considered as a waiver by the discharger of the right to have this information considered in mitigation.

In evaluating the third penalty factor, gravity of the violation, there are certain obvious factors which are considered in nearly every case. Among these are spill size, causative factors, the discharger's past violation history, and the damage caused by the spill. Two other considerations have been quite controversial in discussions of gravity. The first of these is the question of whether a substantial penalty may be assessed in the face of a finding that a spill occurred with little or no fault on the part of the discharger. An early court case held that a one dollar penalty was appropriate in a low fault or no fault spill, overruling a higher Coast Guard

assessment. However, subsequent cases have uniformly rejected this approach. In view of the multiplicity of considerations involved in evaluating gravity, a finding that a single factor (such as lack of fault) operated in favor of the discharger does not automatically mandate that only a nominal penalty is assessable. Rather, it is now reasonably well settled that a substantial penalty may be assessed in the absence of fault. Further, in the absence of a clearly arbitrary and capricious decision of the hearing officer in setting penalty size, the courts are unwilling to substitute their views for those of the hearing officer on this point.

Another controversial factor involved in the consideration of gravity is the issue of how to treat a discharger's removal activities. Legally speaking, a successful removal operation is not a defense against the imposition of a civil penalty. Nevertheless, it is not unreasonable for a spiller to assert that a good removal activity should be considered in mitigation of the penalty size. (On the other hand, some have indicated that a poor cleanup should be considered as an aggravating factor.) One point relevant to this issue is the statutory provision that a discharger who fails to satisfactorily clean up shall be held liable for the government's actual (not necessarily reasonable) cleanup costs. Thus, it may frequently be to the spiller's advantage to perform the removal and avoid the potentially higher costs of a government cleanup. For this reason, the Coast Guard originally refused to consider removal efforts as a mitigating factor. However, in 1978, additional recognition was given to the fact that the spiller is usually in the best position to take immediate containment and removal action. This is clearly an area where a stitch in time does save nine. The early booming of a spill can minimize the amount of ecological damage which occurs and can also greatly simplify the overall cleanup task. Therefore, as a matter of policy, the Coast Guard decided to encourage spillers to undertake prompt and effective removal measures by considering these measures in the process of determining the appropriate penalty size. In any given case, it is to the discharger's advantage to present the hearing officer with a detailed and properly documented description of the removal effort so that this matter can be properly considering the evidence submitted by investigators and persons charged. To the extent that the persons charged, their counsel, and governmental personnel are aware of the current state of the law and enforcement policies, they will be better able to present their positions to the hearing officer, and contribute to further improvements which will be beneficial to the industrial, environmental and governmental interest affected by this law and the enforcement system.

## Appendix 38

### SOME SUGGESTED GUIDELINES FOR RIGHTS OF PARTIES CHARGED WITH VIOLATIONS UNDER CORPS ADMINISTRATIVE HEARING PROCESS

Although it is anticipated that most of the cases handled by a Corps hearing officer would be presented in direct and simple proceedings, rules of the Administrative Procedures Act would be applied under certain circumstances. For the assessment of its civil penalties, the Corps of Engineers may issue guidelines clearly enumerating the rights of individuals charged with a violation. These may include:

- Notice of initiation of action
- Notice of alleged violation
- Notice of applicable laws and regulations
- Notice of procedures to be followed
- Notice of the maximum civil penalty
- Right to review evidence in case file
- Right to be represented by counsel
- Right to be heard and to present evidence or to submit written materials in lieu of a hearing
- Right to appeal the assessment of any court penalty to Chief of Engineers.

## Appendix 39

### Potential Guidelines for Development of an Enforcement Strategy

After a determination that a Section 404 or Section 10 violation has occurred and all the relevant information has been assembled, a decision must be made as to the proper direction for successful prosecution of the case. There is no simple formula or set of criteria that will provide an answer. Each enforcement action must be evaluated on a case-by-case basis, taking into account many different and sometimes conflicting factors to arrive at a decision concerning the proper course of action.

The most important factors to consider in developing an enforcement strategy are discussed below. These factors are not inclusive, nor are they intended to be. All relevant information should be considered when determining the best way to pursue an enforcement action. The general guidelines which follow may assist district personnel in the establishment of enforcement priorities and should provide a framework for the development of an enforcement strategy. Priorities should be established realistically, recognizing that not all cases can be given highest priority.

#### High Priority Violations

When it is believed that a situation may merit enforcement action, the relative priority of the violation must first be established. The highest priority should be given to those cases involving a significant environmental danger or threat to public health.

The factors to be considered in determining whether a case merits this priority are as follows:

1. The nature and extent of the damage or threat - those violations involving the greatest degree of damage or threat obviously warrant greater attention than those involving only limited damage or threat.
2. Duration or anticipated duration of the violation - violations that are expected to be of long duration merit a higher priority than those which are merely transitory.
3. Public visibility - the successful pursuit of those violations which have high public visibility (either because of their location or because of media coverage) adds to the Corps enforcement credibility and may deter others from committing similar violations. The most efficient use of scarce Department resources is made by vigorously pursuing high visibility violations. However, care should be taken that the Corps give its attention to those violations only if such attention is merited. In other words, a low priority violation should not become a high priority violation merely because of high visibility.

## Intermediate Priority Violations

The second level of priority is reserved for violations of unauthorized work permit conditions that do not involve major environmental damage but which would have significant cumulative effect. Examples of these types of violations are failure to receive permits for projects resulting in imperceptible environmental damage, violations, or failure to comply with significant permit conditions. The factors to be considered in determining whether a violation is of intermediate priority are:

1. The nature of the violation - violations warranting intermediate priority ranking do not involve major environmental damage or threat to public health but they are more serious than the low priority violations described. The common element of this level of offense is the failure to acknowledge Corps of Engineer authority or failure to comply with a significant Corps regulatory program.

2. Public visibility - generally, prosecution of highly visible violations within this category may be more effective than prosecution of isolated or similar violations located in obscure areas. Of course, in certain situations, this general principle may not be applicable.

## Response to Intermediate Priority Violations

There are several possible actions to take in response to a violation of intermediate priority. The most common response for District officials is to send a cease and desist order to the alleged violator. While each district may use a somewhat different format, the letter generally contains a brief description of the Section 10 or Section 404 violation and a brief summary of the nature of the violation, sufficient to put the violator on notice about Corps concerns over the illegal activities. The letter usually also contains citations and Corps of Engineers rules allegedly violated and a summary of their provisions. Further the letter advises the alleged violator to cease unauthorized activities and informs him of the possible consequences of inaction. Finally the letter may request the violator to contact a Corps district enforcement staff member in order to discuss the matter.

Another possible approach to an intermediate priority violation includes a letter of intent to prosecute from the local U.S. Attorney as an immediate follow-up to a cease and desist order. The Office of the U.S. Attorney for Eastern North Carolina has routinely mailed out such letters after issuance of notice of violations by the Wilmington District, Corps of Engineers.

## Low Priority Violations

A third level of enforcement case priority can be established for violations involving repeat offenses of federal wetland statutes or Corps of Engineers regulations for those cases in which there is an open disregard for the law, but no known environmental damage or threat to human health. Examples may include small dredging companies that consistently exceed amount of material excavated in terms of their permit conditions. Again public visibility and other relevant considerations will influence the relative prosecution of violations within this level of priority.

## Summary

It is very important that the guidelines outlined above be followed and that careful consideration be given to all the competing factors when determining the best course of action to be taken in an enforcement matter. Enforcement will most likely be effective and efficient if the action taken in a particular case is the result of cooperation and coordination between OCE and the district offices.

Any cases which do not fall into one of the three categories listed above, and which do not warrant special consideration because of unique circumstances, should be resolved by the sending of a warning letter and, if the violator is agreeable, the entering of a consent order. Some insignificant violations may even warrant no action. Because of limited time and money at the Corps district level and in the Office of U.S. Attorney, only a small percentage of violations may be pursued by civil action, and these remedies should be reserved for higher priority cases of some significance.

APPENDIX 40

LIST OF ABBREVIATIONS OF COASTAL STATE PROGRAM ELEMENTS

<u>State</u>	<u>Abbreviation</u>	<u>Meaning</u>
Alaska	OCZM	Office of Coastal Zone Management
California	CCC	California Coastal Commission
"	CCA	California Coastal Act
"	LCP	Local coastal program
"	CCMP	California Coastal Management Program
"	BCDC	Bay Conservation and Development Commission
Delaware	DCMP	Delaware Coastal Management Program
"	DNREC	Department of Natural Resources and Environmental Control
Guam	BOP	Bureau of Planning
"	DPW	Department of Public Works
"	TPC	Territorial Planning Commission
"	GCMP	Guam Coastal Management Program
"	DLM	Department of Land Management
"	GEPA	Guam Environmental Protection Agency
Hawaii	HZCMP	Hawaii Coastal Zone Management Program
"	DPED	Department of Planning and Economic Development
"	DLNR	Department of Land and Natural Resources
"	HCZMA	Hawaii Coastal Zone Management Act
"	H-PASS	Hawaii Permit Application and Support System
"	DOCARE	Division of Conservation and Resource Enforcement
Louisiana	CMS/DNR	Coastal Management Section of the Department of Natural Resources
"	CUP	Coastal Use Permit
"	DWF	Department of Wildlife and Fisheries
Maine	DEP	Department of Environmental Protection
"	MeCP	Maine Coastal Program
"	RPC's	Regional Planning Commissions
Maryland	CRD	Coastal Resources Division
"	WRA	Water Resources Administration
"	DNR	Department of Natural Resources
Massachusetts	MCZMP	Massachusetts Coastal Zone Management Program
"	MCZM	Massachusetts Coastal Zone Management
"	DEQE	Department of Environmental Quality
Michigan	MCMP	Michigan Coastal Management Program
"	LRPD	Land Resources Programs Division
Mississippi	MCP	Mississippi Coastal Program
New Jersey	NJCMP	New Jersey Coastal Management Program
"	BCEFS	Bureau of Coastal Enforcement and Field Services
"	DCR	Division of Coastal Resources
N. Carolina	CAMA	Coastal Area Management Act
"	NCCMP	North Carolina Coastal Management Program
"	CRC	Coastal Resources Commission
"	OCM	Office of Coastal Management

Pennsylvania	PCZMP	Pennsylvania Coastal Zone Management Program
"	DER	Department of Environmental Resources
"	COE	Corps of Engineers
Rhode Island	RICRMP	Rhode Island Coastal Resources Management Program
"	DEM	Department of Environmental Management
S. Carolina	SCCC	South Carolina Coastal Council
"	SCWMRD	South Carolina Wildlife and Marine Resources Department
"	SCCMP	South Carolina Coastal Management Program
Virgin Islands	BEE	Bureau of Environmental Enforcement
"	DCAA	Department of Conservation and Cultural Affairs
Washington	WCZMP	Washington Coastal Zone Management Program
"	DOE	Department of Ecology
"	SMA	Shoreline Management Act
"	SMP	Shoreline Master Programs
Wisconsin	WCMP	Wisconsin Coastal Management Program