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

**“Veto Authority”**

Under Section 404(c), EPA may exercise a veto over the specification by the Corps or by a state of a site for the discharge of dredged or fill material. EPA may also prohibit or otherwise restrict the specification of a site under Section 404(c) with regard to any existing or potential disposal site before a permit application has been submitted to or approved by the Corps or a state. In effect, Section 404(c) authority may be exercised before a permit is applied for, while an application is pending, or after a permit has been issued.

Because Section 404(c) actions have mostly been taken in response to unresolved Corps permit applications, this type of action is frequently referred to as an EPA veto of a Corps permit. Although the Corps processes approximately 60,000 permit actions per year, EPA has used its Section 404(c) authority very sparingly, issuing only 13 final veto actions since 1972.

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

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

1 Source: Corps permit data 1988-2010, U.S. Army Corps of Engineers Headquarters, Regulatory Branch.

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**Section 404(c) “Veto” Process**

**Intent to Issue Notice of Proposed Determination**

The EPA Regional Administrator notifies the Corps and the project proponent of his or her intention to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for discharge of dredged or fill material.

**Notice of Proposed Determination**

If the Regional Administrator is not satisfied that no unacceptable adverse effects will occur, a notice of the Proposed Determination is published in the Federal Register. The Proposed Determination begins the process of exploring whether unacceptable adverse effects will occur.

**Public Comment Period**

*(generally between 30 and 60 days)*

A public hearing is usually held during the comment period.

**Recommended Determination or Withdrawal**

*(within 30 days of the public hearing or, if no public hearing is held, within 15 days of the end of the comment period)*

The Regional Administrator prepares a Recommended Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for disposing of dredged or fill material and forwards it along with the administrative record to the EPA Assistant Administrator for Water. Alternatively, he or she withdraws the Proposed Determination.

**Corrective Action**

*(within 30 days of receipt of the Recommended Determination)*

The EPA Assistant Administrator contacts the Corps and project proponent and provides them 15 days to take corrective action to prevent unacceptable adverse effects.

**Final Determination**

*(within 60 days of receipt of the Recommended Determination)*

The EPA Assistant Administrator affirms, modifies, or rescinds the Recommended Determination and publishes notice of the Final Determination in the Federal Register.
The thirteen 404(c) actions that EPA has finalized as of 2011 have involved unacceptable adverse impacts to a variety of aquatic resources including freshwater forested, emergent and shrub wetlands; tidal freshwater and tidal estuarine wetlands; as well as streams, rivers, and lakes. As noted in the following table, these final 404(c) actions have involved a variety of projects across a broad geographic area.

<table>
<thead>
<tr>
<th>#</th>
<th>Project Name</th>
<th>Initiation and Final Determination Dates</th>
<th>Location</th>
</tr>
</thead>
</table>
| 13 | Spruce No. 1 Surface Mine  
Surface Coal Mine | Initiated October 16, 2009  
Final Determination issued January 13, 2011 | 3 WV  
Huntington |
| 12 | Yazoo Pumps  
Flood Control Project | Initiated February 1, 2008  
Final Determination issued August 31, 2008 | 4 MS  
Vicksburg |
| 11 | Two Forks  
Water Supply Impoundment | Initiated March 24, 1989  
Final Determination issued November 23, 1990 | 8 CO  
Omaha |
| 10 | Big River  
Water Supply Impoundment | Initiated August 24, 1988  
Final Determination issued March 1, 1990 | 1 RI  
New England |
| 9  | Ware Creek  
Water Supply Impoundment | Initiated August 4, 1988  
Final Determination issued July 10, 1989 | 3 VA  
Norfolk |
| 8  | Lake Alma  
Dam and Recreational Impoundment | Initiated June 8, 1988  
Final Determination issued December 16, 1988 | 4 GA  
Savannah |
| 7  | Henry Rem Estates  
Agricultural Conversion - Rockplowing | Initiated April 22, 1987  
Final Determination issued June 15, 1988 | 4 FL  
Jacksonville |
| 6  | Russo Development Corps  
Warehouse Development (After-the-fact permit) | Initiated May 26, 1987  
Final Determination issued March 21, 1988 | 2 NJ  
New York |
| 5  | Attleboro Mall  
Shopping Mall | Initiated July 23, 1985  
Final Determination issued May 13, 1986 | 1 MA  
New England |
| 4  | Bayou Aux Carpes  
Flood Control Project | Initiated December 17, 1984  
Final Determination issued October 16, 1985 | 6 LA  
New Orleans |
| 3  | Jack Maybank Site  
Duck Hunting/Aquaculture Impoundment | Initiated April 15, 1984  
Final Determination issued April 5, 1985 | 4 SC  
Charleston |
| 2  | Norden Co.  
Waste Storage/Recycling Plant | Initiated September 30, 1983  
Final Determination issued June 15, 1984 | 4 AL  
Mobile |
| 1  | North Miami  
Landfill/Municipal Recreational Facility | Initiated June 25, 1980  
Final Determination issued January 19, 1981 | 4 FL  
Jacksonville |