

**US Environmental Protection Agency/Army Corps of Engineers  
Review/Elevation Process - Required Steps  
Clean Water Act Section 404 Permit Decision**

**EPA "May Affect" Letter**

*(within the Public Notice comment period)*

The EPA Regional Administrator (EPA-RA) may notify the Corps District Engineer (Corps-DE) by letter if he believes the proposed project *may* result in substantial and unacceptable impacts to Aquatic Resources of National Importance ("ARNIs"). This is known as a 3a letter.

Decision  
Point

**EPA "Will Affect" Letter**

*(within 25 days of the end of the Public Notice comment period)*

If the issues raised in the 3a letter remain unresolved, the EPA-RA may notify the Corps by letter stating that the project *will* have substantial and unacceptable impacts to an ARNI. The "will affect" letter must be signed by the EPA-RA and is known as a 3b letter.

**Corps Notice of Intent to Proceed**

*(within 5 calendar days prior to issuance of a draft permit)*

The Corps-DE must notify EPA-RA if the Corps intends to issue the 404 permit contrary to EPA's 3b letter. The Corps must provide the EPA Region with a copy of the draft permit and decision document. If the Corps and permit applicant resolve the EPA concerns identified in the 3b letter, the Corps may issue the permit.

**EPA Case Elevation**

*(within 15 calendar days of receipt of Corps' notice of intent to proceed)*

The EPA-RA must decide whether to request EPA Headquarters to seek Department of the Army level review of the Corps' permit decision, and subsequently notify the Corps of this decision. The draft permit is held in abeyance pending EPA Headquarters review.

**EPA Review of Corps Decision**

*(within 20 calendar days of receiving EPA Regional Administrator's request for elevation)*

The EPA Assistant Administrator (EPA-AA), Office of Water, must decide whether to seek higher-level review of the Corps' permit decision by the Assistant Secretary of the Army (Civil Works) (ASA).

**Army Review of Permit Decision**

*(within 30 calendar days of EPA Assistant Administrator's request for review)*

If the EPA-AA agrees with the EPA-RA and requests case elevation, the draft permit is reviewed by the Assistant Secretary of the Army (Civil Works). The ASA may either direct the Corps-DE to proceed with the permit, proceed with the permit in accordance with policy guidance specific to the case, or make a final permit decision. The ASA must notify the EPA-AA immediately of their decision.

**EPA Permit Veto Decision**

*(within 10 calendar days of receipt of Assistant Secretary of the Army (Civil Works) decision)*

If the ASA decides to proceed with the issuance of the permit over EPA's objections, EPA must decide whether to initiate a Section 404(c) "veto" action.

This decision can be appealed by the permit applicant. EPA has taken this action only 11 times in the past 20+ years. The Corps processes 60,000 permit actions a year.

Permit Issuance