



# **JACKSONVILLE DISTRICT ENFORCEMENT OVERVIEW**

**Cynthia Ovdenk**

**Project Manager, Enforcement Section**



## What We Hope to Answer:

-I have received a Cease and Desist order or a Notice of Noncompliance. Why and what happens next?

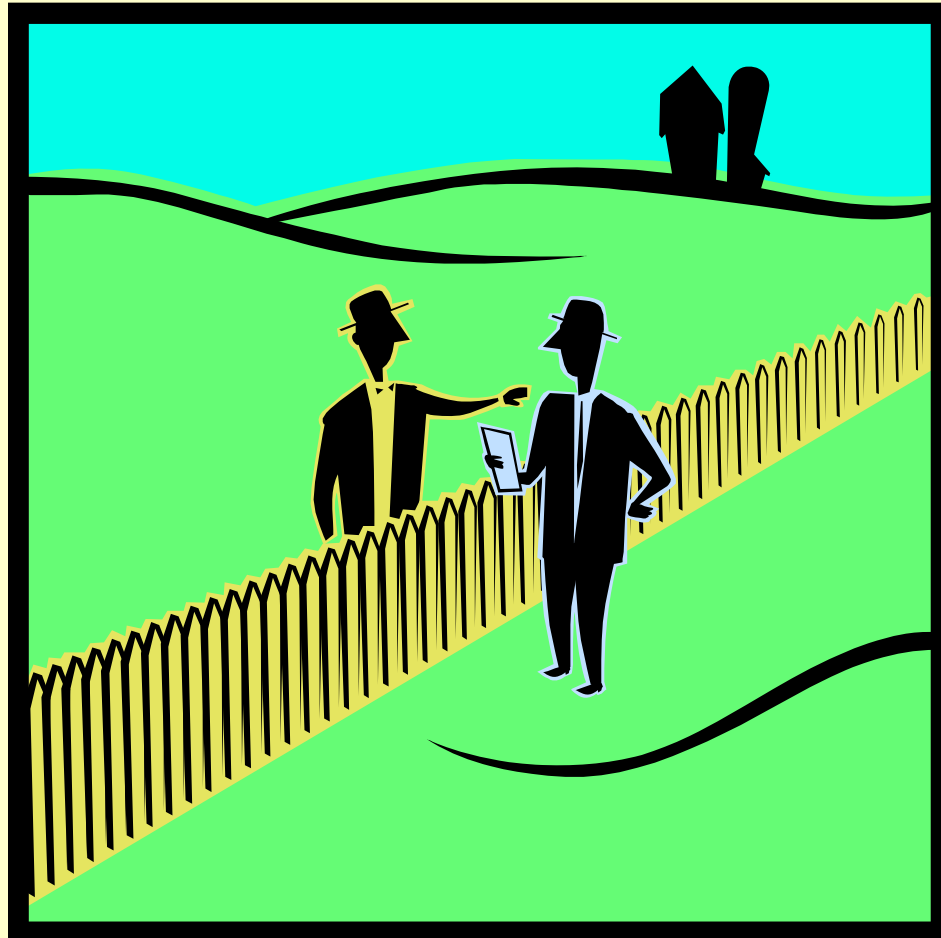
-Why is the Federal government involved in my business?

-How can I prevent unauthorized activities?





# Why Did This Happen?

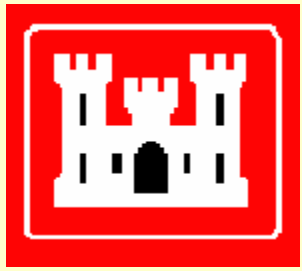




# ENFORCEMENT POLICY

## 326.2

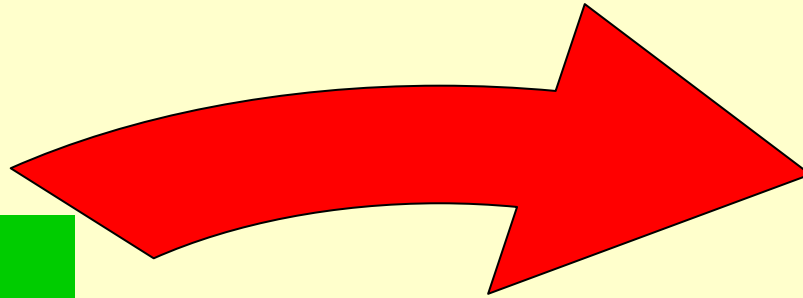
- Discourage activities that have not been authorized
- Take corrective measures, where appropriate
- Ensuring waters are not misused
- Maintain integrity of the regulatory program



# TWO TYPES OF ENFORCEMENT ACTIONS

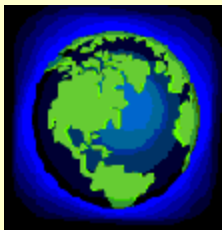
- WORK WITHOUT DA PERMIT:  
**UNAUTHORIZED**
- WORK OUTSIDE CONDITIONS OF  
PERMIT-**NONCOMPLIANCE**

# The Enforcement Process (Unauthorized Activities)

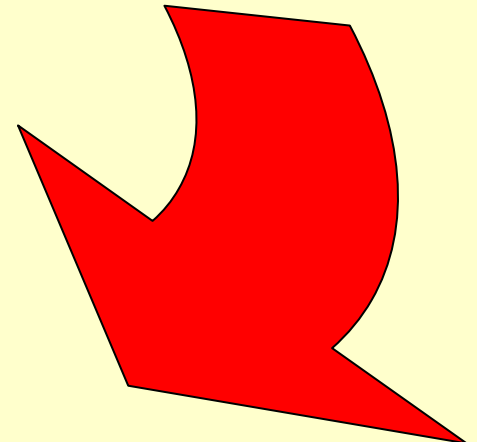


Violation reported.  
Corps investigates.  
If found to be regulated and  
unauthorized, issue Notice  
of Violation or to  
Cease and Desist.

Coordinates action with  
EPA for Lead Agency  
Determination. If  
appropriate, refers  
to EPA



If Corps is lead,  
continues investigation and  
determines severity of action,  
economic benefit, and  
need for legal action or other  
less formal resolution





# The Role of EPA in Unauthorized Activities

- Follow Field Level Agreement (1995)
- Identifies resource roles and capabilities
- Specifies “lead agency” responsibility
  - Flagrant (obligatory)
  - Repeat (obligatory)
  - Special Cases which EPA requests
  - Cases where Corps feels EPA is better suited to work case



# If CORPS IS LEAD: SUBSEQUENT INVESTIGATION

- Does the alleged violator have history?
- Duration or permanence of violation?
- The size and quality of the affected area?
- How culpable was the alleged violator?
- Was there an economic benefit gained?
- Any demonstrated good faith efforts to restore or come into compliance?
- Are there any issues of equity?



# WHAT WE LOOK FOR

Full restoration or compensation for all impacts -must directly relate to activity

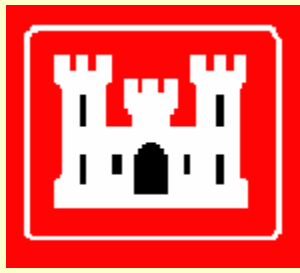
Complete recovery of any economic benefit.

Compensation related to gravity component impacts



# RESOLUTION OF U/A ACTIVITIES:

- Refer to EPA
- Restoration of site
- Litigation
- Nationwide 32/resolution agreement
- After-the-fact permit (326.3(e))
- No action



# WHEN AN ATF IS NOT APPROPRIATE

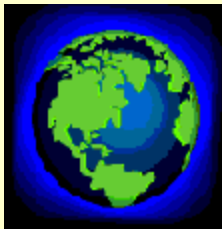
33 CFR PART 326.3(E)(1)(i-v)

- Restoration
- When Corps determines legal action
- When activity is denied by others
- When litigation is ongoing or pending
- App does not sign Tolling Agreement

# The Enforcement Process (Non-Compliant Activities)

Database or on-site visit reveals non-compliant action. Corps investigates. Determines whether formal or informal action is needed.

If formal action is warranted, Corps issues notice of non-compliance. Continues investigation. Seeks immediate compliance.



Gains compliance and/or determines need for penalty or legal action depending on severity of non-compliant action and economic benefit



# SUBSEQUENT INVESTIGATION

- **PREPARE A VIOLATION ANALYSIS**  
**DISCUSSING:**
  - ECONOMIC BENEFIT
  - TYPE OF RESOURCES IMPACTED
  - SIZE & NATURE OF VIOLATION
  - CULPABILITY
  - EQUITY ISSUES
  - PERMITABILITY



# RESOLUTION OF PERMIT VIOLATIONS

- BRING INTO COMPLIANCE\*
- NATIONWIDE 32 w/ RESOLUTION AGREEMENT\*
- LITIGATION
- AFTER-THE-FACT MODIFICATION
- NO ACTION

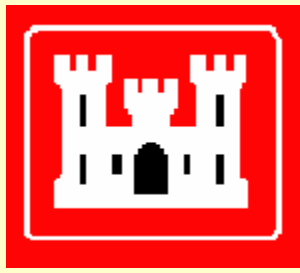
**\*Often Accompanied by Administrative  
Penalty**



# ADMIN. PENALTY CLASS I

- 33 CFR 326.6 (Fed. Register 12/8/89)
- Corps has authority to use for a violation of any permit condition or limitation under section 404
- Class I penalty amounts:
  - \$11,000 each violation
  - \$27,500 maximum





# ADMIN. PENALTY BENEFITS

- Deterrence value: public notice advertises violation educates public
- Swift resolution: does not involve U.S. Attorney
  - Proposed Order, 30 day public notice, Final Order, 60 days payment due



## What You Can Do to Prevent Violations:

-Seek professional advice from an expert environmental consultant prior to undertaking work.

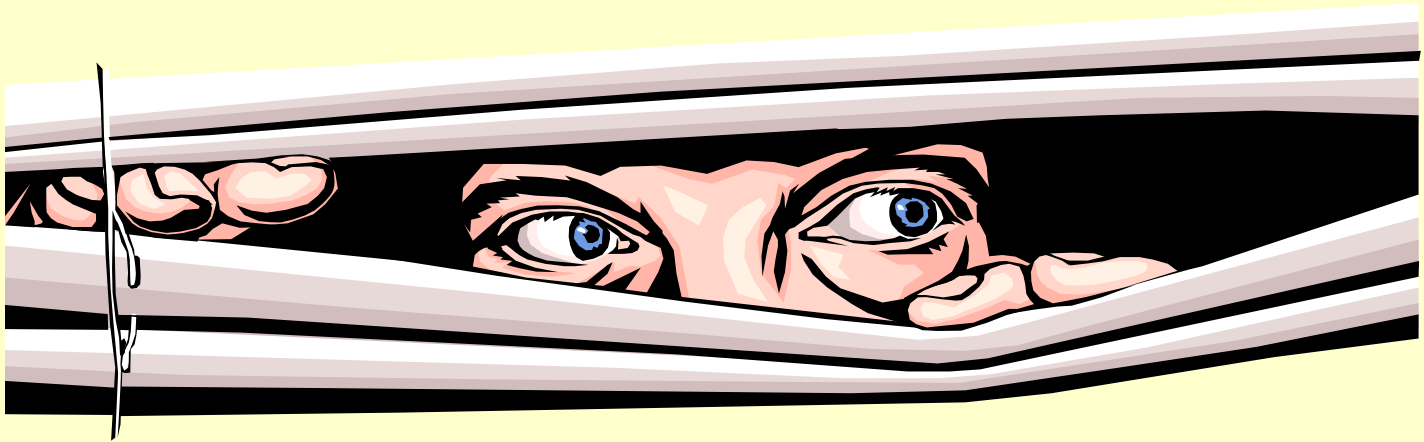
-If you have a permit or are seeking a permit become familiar with any conditions or stipulations of that permit.

-If you receive an Order or Notice do everything possible to respond and take corrective action immediately.



# What You Can Do to Prevent Violations:

Be good to your neighbors!  
They are watching you!!



# Recent Enforcement Actions

- **News Release**

- Release No: 0435 , Corporate Communications
- For Release: February 29, 2008 Phone: 904-232-2568
- P.O. Box 4970 Jacksonville, FL 32232-0019 FAX: 904-232-2237

- **\$65,000 Civil Penalty Assessed by the Army Corps of Engineers for an Unauthorized Impact to Wetlands**

- Jacksonville, Florida -- The Jacksonville District U.S. Army Corps of Engineers has completed its enforcement action against BK IV AS, LLC, a Massachusetts company working in Placida, Florida, with an assessment of a civil penalty. A civil penalty can be assessed to address violations associated with unauthorized activities. Penalty amounts can range from \$100 to \$27,500 per day. Violations are evaluated for quality of the resource impacted, quantity of the discharge, culpability of the violator, deterrence value, benefit from the violation and equitable considerations.
- BK IV AS, LLC has been assessed a civil penalty of \$65,000 for a discharge of fill into 0.16 acre of wetlands without prior authorization from the U.S. Army Corps of Engineers (Corps). BK IV AS, LLC submitted an application requesting authorization to expand a private airport to be known as “Coral Creek Airport” which was under review at the time the violation was discovered.
- The violation was the construction of a water main and access road through salt marsh wetlands with clear knowledge of the need for a Corps permit and with the intent to save money. Representatives for BK IV AS, LLC stated it was necessary to construct a water line to the existing airplane hangars for safety purposes. The company considered using a method called “directional boring” which would tunnel the water pipe underneath the wetlands and avoid wetland impacts, but decided the cost was too prohibitive. They instead chose to install the water pipe through the wetlands which resulted in the violation and resulting penalties.
- The impacted wetlands were part of a contiguous tidally influenced wetland area which connects to the east branch of Coral Creek in Charlotte County, Florida. The project site is in Placida, Florida.
- The Corps Regulatory Division and its attorneys worked in partnership with the Department of Justice Environmental Defense Section to analyze the impacts, assess the penalties and resolve the violation.
- The Jacksonville District has an ongoing and active enforcement program throughout Florida, Puerto Rico and the U.S. Virgin Islands with the express intent to deter unauthorized activities and maintain the integrity of aquatic resources, including wetlands.
- For more information on the enforcement program, visit the web site at: <http://www.saj.usace.army.mil/regulatory/what/rpe/regs-policy-enforcement.htm>

# Recent Enforcement Actions

- **News Release**

- Release No: \_\_\_\_\_, Corporate Communications
- For Release: April 22, 2008 Phone: 904-232-2568
- P.O. Box 4970 Jacksonville, FL 32232-0019 FAX: 904-232-2237

- **\$300,000 Civil Penalty and Restoration Assessed by the Army Corps of Engineers for Unauthorized Construction of Docking Facilities**

- Jacksonville, Florida -- The Jacksonville District U.S. Army Corps of Engineers has completed its enforcement action against David Arp and Triple Diamond Enterprises, LLC, with an assessment of a civil penalty. A civil penalty can be assessed to address violations associated with unauthorized activities. Penalty amounts can range from \$100 to \$32,500 per day. Violations are evaluated for quality of the resource impacted, quantity of the discharge, culpability of the violator, deterrence value, benefit from the violation and equitable considerations.
- David Arp and Triple Diamond Enterprises, LLC have been assessed a civil penalty of \$300,000, ordered to remove a boat ramp, restore the area and purchase 0.80 wetland credits at Little Pine Island Mitigation Bank.
- Triple Diamond Enterprises, LLC constructed a multi-vessel dock, a boat ramp, dredged 150 cubic yards of sediment and discharged riprap material within an unnamed tidal canal connected to Lemon Bay for use by residents of a development to be known as “Cape Haze Yacht Club”. They also placed shell rock within wetlands for an access road and parking lot. A total of 3.2 acres of wetlands and waters of the United States were impacted.
- Although they received a county permit, the company alleged a representative of the State told them no permit was needed from their agency, so they assumed a permit from the Corps was not necessary either. The company was aware of the Corps’ regulatory program through a prior request for authorization from the Department of the Army for a different project, which was subsequently withdrawn.
- The Corps Regulatory Division and its attorneys worked in partnership with the Department of Justice Environmental Defense Section to analyze the impacts, assess the penalties and resolve the violation.
- The Jacksonville District has an ongoing and active enforcement program throughout Florida, Puerto Rico and the U.S. Virgin Islands with the express intent to deter unauthorized activities and maintain the integrity of aquatic resources, including wetlands.
- For more information on the enforcement program, visit the web site at: <http://www.saj.usace.army.mil/regulatory/what/rpe/regs-policy-enforcement.htm>

# CONTACTS

- Contact Information
- Office Mailing Address: U.S. Army Corps of Engineers
  - Ft. Myers Regulatory Section
  - 1520 Royal Palm Square Blvd., Suite 310
  - Fort Myers, FL 33919
- Office Hours: Monday-Friday 0900-1500 unless previous appointment has been made.
- Telephone Number: 239-334-1975
- Fax Number: 239-334-0797
- Regulatory Staff All Regulatory Staff may be reached by email by utilizing the format: [firstname.i.lastname@usace.army.mil](mailto:firstname.i.lastname@usace.army.mil) (i.e. [monika.j.dey@usace.army.mil](mailto:monika.j.dey@usace.army.mil))
- Tunis W. McElwain (Chief): X 30
- Henriette A. Bailey (RPA) X 26
- Harry W. Bergmann, Jr. X 21
- Monika J. Dey X 29
- Melissa A. Ellis X 22
- Lauren B. Diaz X 31
- William D. DeFrance X 23
- Linda A. Elligott X 36
- Christian J. Emblidge X 33
- Liza J. Rollins (Student Aide) X 26
- Brent A. Stufflebeam X 26
- Cynthia D. Ovdenk (Enf/Comp) X 24
- Barry Vorse (Corporate Communications) 904-232-2236
- Useful Weblinks:
- Main Jacksonville District Regulatory Web page: <http://www.saj.usace.army.mil/>
- Permitting Web page: (contains information on types of permits etc.) <http://www.saj.usace.army.mil/regulatory/permitting/permitting.htm>
- Endangered Species Information:(contains manatee information, dock construction guidelines):  
<http://www.saj.usace.army.mil/regulatory/what/species/endangered.htm>
- Public Notice Web Page (contains link to current Public Notices for Jacksonville District):  
<http://www.saj.usace.army.mil/regulatory/what/species/endangered.htm>
- Jurisdictional Webpage: (contains information on how to submit a request, forms etc)  
<http://www.saj.usace.army.mil/regulatory/what/jurisdiction/jurisdictionals.htm>
- Forms Web Page: (links to web pages for joint application forms, permit transfer forms etc.):  
<http://www.saj.usace.army.mil/regulatory/forms/forms.htm>

We appreciate your feedback!

Please direct any comments or questions to:

239-334-1975, or at [cynthia.d.ovdenk@usace.army.mil](mailto:cynthia.d.ovdenk@usace.army.mil)



To report a violation or a non-compliant activity, visit our website to reach the project manager covering your area or to complete a confidential report.

[http://www.saj.usace.army.mil/permit/offices/  
Special Projects & Enforcement/enforcement.htm](http://www.saj.usace.army.mil/permit/offices/Special%20Projects%20&%20Enforcement/enforcement.htm)