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

MAY 0 3 2012

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Audit Report, "EPA Should
Strengthen Records Management on Clean Water Act Section 404 Permit
Notification Reviews for Surface Coal Mining", Report No. 12-P-0249
(February 2, 2012)

FROM: Nancy K. Stoner
Acting Assistant Administrator

TO: Melissa M. Heist
Assistant Inspector General for Audit
Office of Inspector General

This memorandum serves as the U.S. Environmental Protection Agency (EPA)'s response to the
February 2, 2012 audit report, "EPA Should Strengthen Records Management on Clean Water Act
Section 404 Permit Notification Reviews for Surface Coal Mining," Report No. 12-P-0249 (Final
Report). This response has been coordinated with EPA Regions 3, 4, and 5. The purpose of the Final
Report was to determine whether EPA Regions 3, 4, and 5 maintain records in accordance with the
Federal Records Act for Clean Water Act (CWA) Section 404 permit notification reviews for surface
coal mining.

As your Final Report acknowledges, the official agency of record for the Section 404 permitting process
is the U.S. Army Corps of Engineers (Corps), not the EPA. The Corps receives permit applications;
circulates these applications and associated documents for public review and comment; considers and
evaluates comments; and issues permits. The EPA's role is to review permit applications and to provide
comments to the Corps on areas in which the EPA has expertise, including water quality-related matters,
the Section 404(b)(1) Guidelines, and the potential that a project may result in significant environmental
degradation or unacceptable adverse environmental effects. The process of EPA review generates
records that, as your Final Report recognizes, should be maintained consistent with the Federal Records
Act.

We appreciate your coordination with the Office of Water and with Regions 3, 4, and 5 during your
review. We agree with your overall conclusion that further steps can be taken to better document our
CWA Section 404 reviews of projects seeking authorization from the Corps or authorized states. It is a
clear priority for the Office of Water to provide maximum transparency in the administration of the
EPA's role under the CWA Section 404 regulatory program. The OIG recommendations should
contribute to helping us achieve this important goal.

With regards to your recommendations, the EPA concurs with recommendations 1, 2, 3, and 4. The following is the corrective action plan outlining EPA's response to each recommendation. My staff is available to further discuss this response if you have any questions.

Recommendation 1 - Coordinate with the appropriate headquarters and regional personnel to identify DARTER as an official recordkeeping system and to identify the basic information entered in DARTER (such as pre-application coordination, public notice review, and post-permit review) as official records documenting EPA's role in CWA Section 404 permit notification reviews.

Response: We concur with Recommendation 1. The Data on Aquatic Resources Tracking for Effective Regulation (DARTER) system is now an official recordkeeping system and as such has been assigned official records schedules to guide disposition. DARTER, used in conjunction with the EPA's existing policies, systems, and requirements for official records management, contains official records of the EPA's actions in CWA 404 public notice review. We commit to continue to coordinate with Headquarters and Regional staff to ensure that they recognize that DARTER contains records that should be maintained consistent with the applicable EPA records schedules.

The Office of Water's Record Management Program has clarified that DARTER is a data and workflow tracking system that contains records, or copies of records, relating to the EPA's permit application review actions and coordination. As an electronic information system, DARTER has five components that can be handled separately for matching with appropriate records schedules: 1) electronic software program, 2) electronic data, 3) system documentation, 4) outputs and reports, and 5) data inputs. The EPA Records Schedule 171 addresses data inputs and sources used to create, modify, or update electronic records and is used for materials received by DARTER from ORM2 (OMBIL Regulatory Module version 2, the Corps' internal tracking system) and other systems. Records Schedule 514 addresses CWA Section 404 Program File records retention and requires the EPA Office of Water, Headquarters, to transfer the records to the National Archives and Records Administration at the end of their retention period after file closure. The Headquarters program office maintains DARTER and all entries into DARTER are covered under Records Schedule 514. Documentation of pre-application coordination, public notice review, and post permit review that is not entered into DARTER by the Regions is maintained in the Region offices under the appropriate records schedule.

Future Actions: Recommendation is complete as of May 2, 2012. The Office of Water will continue to manage information in DARTER in accordance with appropriate approved records schedules. The Office of Water will also work with the Regional offices to develop a consistent national records management plan for the CWA 404 program consistent with the response to Recommendation 4.

Recommendation 2 - Coordinate with the regions to develop a full implementation plan for DARTER identifying when DARTER will incorporate additional permit actions (e.g., nationwide permits, jurisdictional determinations).

Response: We concur with Recommendation 2. We recognize that DARTER implementation remains in progress and can be improved and commit to developing an implementation plan in FY13 to improve upon the existing requirements to incorporate significant standard permit actions and coordination events. In light of resource constraints, this plan will be implemented in phases.

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In January 2010, the Wetlands Division within the Office of Water and all Regional Offices agreed to a specific expected level of data entry in DARTER for the review of activities proposed or authorized under Section 404. These requirements included all public notices for proposed activities to be authorized under standard permits, and any "significant coordination events" completed during the review of proposed activities to be authorized under standard permits. "Significant coordination events" are defined as site visits, meetings, and letters completed during both the pre-application and public notice period of 404 application review. In addition, the Regions are expected to complete final review, for all applications on which the EPA coordinated, to determine if the EPA's involvement resulted in environmental improvements in the Corps' final application decision.

Our decision to initially focus our limited resources on tracking the results of our review of Corps standard permits reflects that standard permits are the permitting vehicle that the Corps typically uses to review the most potentially significant impacts to the Nation's waters in the CWA Section 404 program. Standard permits are those individual permits that have been processed through application of the Corps public interest review procedures (33 CFR 325) and EPA's Section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits are not letters of permission, regional permits, nationwide permits, or programmatic permits.

The Office of Water is working with the Regions to ensure this minimum level of information is being completed by all Regions, with the expectation that as the Regions become more proficient with using DARTER, they will expand their utilization beyond these minimum levels of data entry. The current agreement requires all proposed public notices to be identified as one of six categories: "not screened", "screened/not reviewed", "reviewed/no comments", "reviewed/comment and start a file", "pending", and "reviewed/no comment (issued raised in pre-app were addressed)." Starting with project files after January 2010, these categories will easily allow the EPA to determine if Regional staff reviewed a public notice, and what action was taken as part of that review.

Currently, DARTER version 1.12 (released 2/10/12) has the ability to track any coordination events or relevant files for all types of 404 project review including general permits, mitigation projects, or draft jurisdictional determinations. While Regional staff can choose to add this information, these elements are not required under the current DARTER user agreement with the Regions. The EPA has minimal day-to-day interaction with the Corps on general permit authorizations and rarely receives notification that general permit actions have occurred. Similarly, draft jurisdictional determinations are not consistently tracked or entered into ORM2 by the Corps Districts, and the EPA only has coordination events on a small subset of the draft jurisdictional determinations made by the Corps. Because these activities constitute only a small part of the EPA actions under Section 404, they were not considered to be the most essential data elements to be tracked in the early stages of DARTER implementation.

Future Actions: The Office of Water is focusing in FY 2012 on ensuring that all Regions complete the basic DARTER data entry as agreed to in January 2010. This includes the continued loading of Public Notices by Headquarters for those Regions needing data entry support. The Office of Water will also develop an implementation plan in coordination with the Regions for improving entries by May 31, 2013. This plan will be based on an evaluation of the significant actions not yet being comprehensively tracked, Regional data needs, and available resources. Full implementation of the plan will depend upon appropriations in FY 2013 and later years.

Recommendation 3 - Work with Region 5 to reconcile any data duplication between DARTER and Region 5's Coal Tracker system.

Response: We concur with Recommendation 3. DARTER and the Coal Tracker system utilized by Region 5 are designed to fulfill different program needs but have some common information. DARTER is a national tool for managing the EPA's workload and coordination actions in the 404 program with a focus on the issues raised and the actions that have the greatest likely impact on the environment. Coal Tracker is an in-depth database for tracking specific details on proposed and authorized surface coal mines, including site-specific environmental information, monitoring reports, and effectiveness of best management practices and compensatory mitigation intended to offset the environmental impacts of authorized discharges.

After consultation with Region 5 users and developers of Coal Tracker, the only duplication between the two systems is the basic project identifier information such as project name and location. The Office of Water and Region 5 agreed that the existing systems are sufficient, the duplication is very small, and no further action is needed at this time.

Future Actions: Recommendation is complete as of May 2, 2012. The Office of Water and Region 5 will keep in contact to monitor any further development of DARTER and Coal Tracker to ensure that data entry duplication is avoided.

Recommendation 4 - Revise Records Schedules 205 and 514 as appropriate to clarify usage/applicability and retention requirements for CWA Section 404 reviews for both headquarters and regional staff.

Response: We concur with Recommendation 4. The Office of Water has worked with the Regions to identify our needs for records retention and management. Through this process we have developed a common records management plan for use by CWA Section 404 program staff across the Regions and Headquarters. The records management plan matches the types of records generated in the CWA Section 404 program with their corresponding records schedule and also clearly identifies when a file is closed. We have attached the details of the records management plan.

Once the records management plan is adopted by the Office of Water and the Regions, we will work with the EPA's National Records Management Program to match our records management plan to the existing / potential future records schedules. If necessary to accommodate programmatic needs, changes in the official records schedule will be made by the National Records Management Program by September 30, 2012. Changes may include removing duplicate or misleading records descriptions and schedules.

The Office of Water, in coordination with the Regions, has identified Regional program needs for access to and retention of records, developed a draft national records management plan for the 404 program, and engaged the National Records Management Program in the review of existing records schedules.

Future Actions: By September 30, 2012 the Office of Water, in coordination with the Regions, will adopt a national records management plan and make any necessary recommendations to the Records Management Program for changes to existing records schedules to remove duplicate or misleading descriptions.

Attachment