



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

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



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Report Contributors:

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Abbreviations

CWA	Clean Water Act
DARTER	Data on Aquatic Resources Tracking for Effective Regulation
EPA	U.S. Environmental Protection Agency
FY	Fiscal year
OIG	Office of Inspector General
OW	Office of Water

Cover photo: Valley fill and impoundment in West Virginia. (U.S. Department of the Interior Office of Surface Mining Reclamation and Enforcement photo)

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At a Glance

Why We Did This Review

In an Office of Inspector General report issued on November 21, 2011, we addressed a congressional request on Clean Water Act (CWA) Section 404 permit applications. While reviewing files in U.S. Environmental Protection Agency (EPA) Regions 3, 4, and 5, we encountered recordkeeping issues that warranted this review.

Background

The U.S. Army Corps of Engineers issues permits for surface coal mining under CWA Section 404 and is the official agency of record. EPA reviews permit notifications for water quality and provides the Corps with comment letters on some permit notifications. EPA also attends meetings and site visits with Corps project managers and applicants. The Federal Records Act states that “records” include all documentary materials in connection with the transaction of public business.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2012/20120202-12-P-0249.pdf

EPA Should Strengthen Records Management on Clean Water Act Section 404 Permit Notification Reviews for Surface Coal Mining

What We Found

EPA staff in Regions 3, 4, and 5 should better document their records of review activities on CWA Section 404 surface mining permit notifications. EPA regional staff believe that Agency comment letters are the only official records that they should maintain related to notification reviews. Because of the limited documentation, information we needed to complete our congressional review was not available, and we could not discern whether EPA had reviewed some notifications. Without knowledge of permit status and the resolution of comments, EPA may not be able to determine whether its reviews have desired environmental impacts. Also, without properly maintaining evidence of CWA Section 404 permit notification reviews, EPA risks being out of compliance with the Federal Records Act.

EPA has recently taken actions that should improve documentation of the Agency’s CWA Section 404 activities nationwide—not just those related to surface mining activities in Regions 3, 4, and 5. EPA’s Office of Water developed the Data on Aquatic Resources Tracking for Effective Regulation (DARTER) system to alert staff of permit notifications and to track information on the Agency’s CWA Section 404 regulatory activities. However, EPA currently limits DARTER implementation to standard permits only, and the use of DARTER is not mandatory. In addition, Region 5 developed the Coal Tracker system to keep track of mining permit notifications and to help complete its reviews.

What We Recommend

We recommend that the Office of Water coordinate with headquarters and regions to identify DARTER as an official recordkeeping system and develop a full implementation plan, identify as official records certain basic information entered in DARTER, and indicate when DARTER will incorporate additional permit actions. We also recommend that the Office of Water reconcile any data duplication between DARTER and Region 5’s Coal Tracker system. Lastly, we recommend that the Office of Water clarify the requirements of certain EPA records schedules. The Office of Water concurred with our recommendations and described planned actions to address our recommendations. Our recommendations remain unresolved pending the Office of Water’s corrective action plan with milestone dates.



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

THE INSPECTOR GENERAL

February 2, 2012

MEMORANDUM

SUBJECT: EPA Should Strengthen Records Management on Clean Water Act Section 404 Permit Notification Reviews for Surface Coal Mining Report No. 12-P-0249

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name and title.

TO: Nancy K. Stoner
Acting Assistant Administrator for Water

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. We will post your response on the OIG's public website, along with our memorandum commenting on your response. Please provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist at (202) 566-0899 or heist.melissa@epa.gov, or Patrick Gilbride at (303) 312-6969 or gilbride.patrick@epa.gov.

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Purpose

The Office of Inspector General (OIG) issued Report No. 12-P-0083, *Congressionally Requested Information on the Status and Length of Review for Appalachian Surface Mining Permit Applications*, on November 21, 2011.¹ That report responded to a congressional request² on the status of 237 mountaintop mining permit applications. During the course of that review, we conducted site visits to U.S. Environmental Protection Agency (EPA) Regions 3, 4, and 5 to review documents and determine the status of the 237 permit applications. We observed recordkeeping deficiencies during those site visits that warranted this review.

The purpose of this review 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.

Background

Congress passed the Federal Water Pollution Control Act (hereafter the Clean Water Act, or CWA) in 1972 as the principal federal statute protecting navigable waters from pollution. CWA Section 404 regulates the placement of dredged or fill material into waters of the United States,³ including wetlands. Surface coal mining that impacts waters of the United States requires a U.S. Army Corps of Engineers-issued CWA Section 404 permit. Although the Corps is responsible for issuing CWA Section 404 permits, the EPA Administrator, in conjunction with the Corps, is responsible for developing and executing guidelines for environmental evaluation of applications. EPA and the Corps jointly developed CWA Section 404(b)(1), *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*, to outline environmental criteria used to evaluate permit applications. Under CWA Section 404(b)(1), EPA may review and comment on permit notifications for water quality compliance. In addition, EPA may conduct site visits and attend meetings with the Corps, applicants, and other stakeholders on particular permit notifications.

EPA has two records schedules that pertain to CWA Section 404 actions:

- Records Schedule 205 applies Agency-wide to permit files, including records relating to permits issued or terminated pursuant to CWA Section

¹ This report is available at <http://www.epa.gov/oig/reports/2012/20111121-12-P-0083.pdf>.

² On October 15, 2010, we received a congressional request that asked for the status of a list of 237 mountaintop mining permit applications and the length of time to review each permit; the reasons for the length of review for each permit; and the number of permits from the list of 237 that EPA has processed according to the “enhanced review” and “conductivity” procedures, as well as the average length of time to process a permit under these procedures.

³ Waters of the United States are defined in the Code of Federal Regulations (CFR) at 40 CFR 230.3(s), and include tributaries and wetlands.

404(c).⁴ This schedule requires staff to destroy CWA Section 404 records 5 years after file closure.

- Records Schedule 514 applies to EPA headquarters. It addresses records relating to the programmatic review of CWA Section 404 permits, including correspondence with federal and state officials and private companies on pollution prevention issues, coordination with the Corps, and policy and regulations pertaining to the management of the 404 program. This schedule requires closing inactive records at the end of 2 years and eventually transferring these records to the National Archives after file closure. This schedule also cross-references Records Schedule 205 for maintenance of 404 permit records in regional offices.

In 2006, EPA began developing the Data on Aquatic Resources Tracking for Effective Regulation (DARTER) system, a data tracking and alert system for CWA Section 404 permit notifications. From fiscal year (FY) 2006 through FY 2010, the Office of Water (OW) invested approximately \$880,000 developing DARTER. EPA intended that the DARTER system would increase the Agency's awareness of permit notification activity through the daily update of specific data from the Corps system. In addition, DARTER is intended to:

- Collect and provide information needed to report on performance measures
- Generate data for national reporting
- Provide data that can be analyzed for trends, such as examining issues raised in comment letters and identifying recurring problem areas
- Retain project information to provide continuity for managers and staff as project managers retire or turn over

According to OW staff, Records Schedule 514 covers DARTER. OW and EPA regions agreed that FY 2011 would be the first full year of implementation for DARTER, and that regions would enter certain basic information on standard permit⁵ notifications into DARTER. The lead DARTER staff member said that standard permits represent the majority of EPA's CWA Section 404 activity.

Scope and Methodology

We performed our field work from August to December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our

⁴ Under CWA Section 404(c), EPA has the authority to withdraw or restrict the use of a disposal site if it determines that a discharge of dredged or fill material is having or will have an unacceptable adverse effect on, among other things, municipal water supplies, wildlife, or recreational areas. EPA has issued 13 final veto actions since 1972.

⁵ A standard permit, which is a type of individual permit, is one that has been processed through the public interest review procedures, including public notice and receipt of comments.

objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

We reviewed relevant laws, regulations, policies, procedures, and guidance governing records management. We gathered and analyzed information from OW and the U.S. Government Accountability Office. We conducted interviews with EPA staff in OW and Regions 3, 4, and 5, as well as EPA's Agency Records Officer, to understand and document CWA Section 404 records management. We also participated in a demonstration on DARTER and reviewed portions of another database utilized by Region 5 called Coal Tracker.

Results of Review

Recordkeeping in Regions 3, 4, and 5 for CWA Section 404 Permit Notification Reviews for Surface Coal Mining Is Limited

While conducting site visits during our congressionally requested audit, we found that EPA staff in Regions 3, 4, and 5 should better document their records of review activities on CWA Section 404 surface mining permit notifications. Documentation related to these reviews varied depending on regional personnel involved because individual project managers determined what documentation to retain in files. Prior to our site visits to Regions 3, 4, and 5 to review permit documentation, the Corps provided us information on 127 permit applications, and OW provided us what information it had on the 237 applications listed in the congressional request. We were unable to obtain any information on 17 permit applications during our site visits and were missing some information on several others; however, subsequent to our site visits we were able to work with the Corps and EPA to obtain the additional information we needed. Because staff does not consistently maintain records of reviews that did not result in EPA comment letters, it is difficult to discern whether regional staff reviewed a notification and did not comment on it, or did not review it at all. In an earlier, similar review, the Government Accountability Office noted that it, too, was unable to evaluate the extent to which EPA Region 3 and the Corps coordinated on 28 permit applications because of limited and varied documentation.⁶

The Federal Records Act regulations define "records" as including all documentary materials, regardless of physical form, made or received by an agency in connection with the transaction of public business and preserved as evidence of decisions, procedures, operations, or other activities of the government.⁷ EPA's *Information Policy on Records Management*⁸ states that all EPA employees are responsible for creating and managing the records necessary

⁶ U.S. Government Accountability Office briefing report, *EPA and the Corps' CWA Section 404 Permit Reviews Under Enhanced Coordination Procedures*, GAO-11-101R, was issued on October 19, 2010; the briefing was given on September 16, 2010.

⁷ 44 U.S.C. 3301.

⁸ EPA Classification No. CIO 2155.1.

to document the Agency's official activities and actions, as well as filing them for efficient retrieval. EPA created this policy to establish principles, responsibilities, and requirements for managing EPA's records to ensure that the Agency complies with federal laws and regulations and best practices for managing records.

Staff in Regions 3, 4, and 5 believe that EPA comment letters are the only official records that they should maintain related to EPA's CWA Section 404 permit notification reviews. Regional staff explained that the Corps is the permitting agency and, as such, is responsible for the administrative record.

As a result of the limited regional documentation, information needed to complete our congressional review was not available, and we could not discern whether EPA had reviewed some notifications. Without knowing permit status (i.e., issued, withdrawn) and the resolution of EPA's comments, it would be difficult for EPA to determine whether its review activities have the environmental impact envisioned by CWA Section 404(b)(1). Further, by not properly maintaining records that document EPA's activities on CWA Section 404 surface mining permit notification reviews, EPA risks not being in compliance with the Federal Records Act and EPA policy.

During our review we also noted confusion over which records schedule applied to EPA's review of CWA Section 404 permit notifications. EPA headquarters believes that Records Schedule 514 is the appropriate schedule for capturing information related to CWA Section 404 permit notification reviews entered by EPA in DARTER. However, Schedule 514 applies to EPA headquarters only and refers to Records Schedule 205 for records related to CWA Section 404 permits maintained in the EPA regional offices. EPA Regions 3, 4, and 5 may be using the agency-wide Records Schedule 205 for CWA section 404 records management guidance. While Schedule 205 states it should be used in the issuance or denial of a permit issued by EPA offices, it also recognizes that the Corps and states are the CWA Section 404 permitting authorities. Schedule 205 also provides EPA records retention and disposal requirements for CWA Section 404. Both EPA headquarters and regional staff need clarity as to when each schedule applies.

Recent Noteworthy Agency Actions to Improve Recordkeeping Should Be Expanded

Beginning in FY 2011, OW and all 10 EPA regions agreed to include certain basic information on standard permits in DARTER. This basic information includes:

- Preapplication coordination
- Public notices (including public notification review, comment letters, site visits, meetings, and notifications of withdrawn applications and issued permits)
- Postpermit review

The implementation of DARTER should improve documentation of the Agency's CWA Section 404 activities nationwide—not just those related to surface mining activities in Regions 3, 4, and 5—by standardizing the information EPA maintains for all standard permits and documenting activities staff perform in executing CWA Section 404 permit notification reviews, as required by the Federal Records Act and EPA policy. EPA staff said DARTER allows them to include copies of public notices and comment letters in the system and indicate where a public notice is in the EPA review process.

However, regional use of DARTER is not mandatory, and DARTER has not been designated an official recordkeeping system. In addition, staff currently use DARTER only for standard permit notifications rather than for all permit notifications EPA reviews (e.g., nationwide permits, jurisdictional determinations). Without entering certain basic information in DARTER on all permit notification reviews, it would be difficult for EPA to create reports on the effect of its comments. Region 4 staff said that they were not able to enter all basic information for standard permits they reviewed into DARTER by the end of FY 2011, and recently hired a staff person to assist with DARTER data entry.

EPA developed DARTER to be an Agency-wide system to track permit notification information and EPA's CWA Section 404 regulatory activities. DARTER may also help track the percentage of CWA Section 404 permits on which EPA coordinated with the Corps that resulted in greater environmental protection than originally proposed. OW's *National Water Program Guidance* includes as a performance measure the percentage of permits on which EPA and the Corps coordinate with the permitting authority.

Independent of DARTER, Region 5 staff developed a Microsoft Access database called Coal Tracker to track all coal mining permit notifications in the region and began using it in 2009. According to Region 5 staff, Coal Tracker provides detailed information that is not included in DARTER. Region 5 staff also use Coal Tracker to help complete their reviews and provide managers easy access to information. We think Region 5 showed initiative in developing this database. Although Region 5 shared its database with Regions 3 and 4, at the time of our review, only Region 5 used it. However, Region 5 uses both DARTER and Coal Tracker, and the two systems do not interact. OW plans to address the current inefficiency of duplicated Region 5 data entry.

Recommendations

We recommend that the Assistant Administrator for Water:

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 preapplication coordination, public notice review, and postpermit review) as official records documenting EPA's role in CWA Section 404 permit notification reviews.
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).
3. Work with Region 5 to reconcile any data duplication between DARTER and Region 5's Coal Tracker system.
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.

Agency Comments and OIG Evaluation

OW concurred with recommendations 1 through 3 and believes these recommendations will help the Agency achieve the important goal to provide maximum transparency in the administration of EPA's role under the CWA Section 404 regulatory program. OW's response outlined the Agency's planned actions to address recommendations 1 through 3, and we believe these planned actions address the intent of our recommendations. Appendix A contains OW's full response to our draft report.

During our exit briefing with OW on January 17, 2012, we discussed staff confusion on when to use Records Schedules 205 and 514, and OW staff agreed that headquarters and regional staff need clarity as to when each schedule applies. As such, we worked with OW to develop recommendation 4, and OW staff agreed to revise Records Schedules 205 and/or 514 to clarify applicability and retention requirements.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	6	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 preapplication coordination, public notice review, and postpermit review) as official records documenting EPA's role in CWA Section 404 permit notification reviews.	U	Assistant Administrator for Water			
2	6	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).	U	Assistant Administrator for Water			
3	6	Work with Region 5 to reconcile any data duplication between DARTER and Region 5's Coal Tracker system.	U	Assistant Administrator for Water			
4	6	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.	U	Assistant Administrator for Water			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Office of Water's Response to Draft Report

January 10, 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", Project No. OA-FY11-0014 (December 7, 2011)

FROM: Nancy K. Stoner /s/
Acting Assistant Administrator
Office of Water

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 December 7, 2011 draft audit report, "EPA Should Strengthen Records Management on Clean Water Act Section 404 Permit Notification Reviews for Surface Coal Mining," Project Number OA-FY11-0014 (Draft Report). This response has been coordinated with EPA Regions 3, 4, and 5. The purpose of the Draft 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.

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 Section 404 reviews of projects seeking authorization from the U.S. Army Corps of Engineers 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.

We believe that your Draft Report is factually accurate, with one exception regarding the relevant records schedule for data entered into our permit review tracking system. The Draft Report states that Records Schedule 205 addresses Section 404 records retention. However, the description of Records Schedule 205 states that it "contains records used in the issuance or denial of a permit issued by the EPA offices or authorized states, federal facilities, interstate or local agencies." As the U.S. Army Corps of Engineers (Corps) or an assumed state program is the permitting authority under CWA Section 404, the EPA is not responsible for the issuance or denial of Section 404 permits. We have consulted with the Record Management Program within

my office, and believe the Records Schedule referenced in the Draft Report is incorrect. We believe Records Schedule 514 is more appropriate for capturing information entered by the EPA in DARTER. As described further below, this records schedule addresses CWA Section 404 program file records.

With regards to your recommendations, the EPA generally concurs with the essence of recommendations 1, 2, and 3. The following is a more detailed discussion of the EPA's response to each recommendation. My staff is pleased to further discuss the alternative actions we have recommended in response to the findings of your draft report.

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 comment in Recommendation 1. We agree that 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 coordinate with Headquarters and Regional Section 404 staff to ensure that they recognize that DARTER contains records that should be maintained consistent with the applicable EPA records schedules, as outlined below.

The EPA Office of Water's Records Management Program follows a strategic plan which advocates that all recorded information created or received by the Agency, regardless of record status, be managed according to EPA records schedules. The Office of Water's records management guidance, training, and tools are available on its Intranet site and contain examples of best practices that can be adapted by the Regions.

In 2005, the Office of Water embarked on a strategic plan to establish and maintain compliance with EPA records schedules and EPA records management policy. Elements of the plan speak directly to compliance with the Federal Records Act requirement for adequate and proper documentation: (1) All personnel are accountable for an annually updated file structure that identifies the records schedules governing all recorded information in the individual's custody; and (2) No work product or other documentation of Agency business activity may be designated a nonrecord unless it meets the criteria specifically stated in the Nonrecords schedule (EPA Records Schedule 008). The Office of Water provides records management guidance, training, and tools that are maintained by the Office of Water Records Liaison Officer and disseminated via an Intranet site and a network of Records Management Contacts.

Data on Aquatic Resources Tracking for Effective Regulation (DARTER) is the EPA's system to manage its workflow in the Clean Water Act Section 404 permit program. Section 404 requires a permit from the Corps, or EPA-approved State, for the discharge of dredged or fill material into waters of the United States. As your draft report recognizes, the EPA plays a number of roles in the Section 404 permit program, such as developing and interpreting policy, guidance, and environmental criteria used in evaluating permit applications; determining the scope of

geographic jurisdiction; and reviewing and commenting on Section 404 public notices. DARTER allows EPA staff to track agency involvement in pre-application coordination, review of public notices for proposed permits, and proposed jurisdictional determinations; prepare and share EPA-generated jurisdictional determinations; and access shared data from the Corps' national regulatory program data management system known as OMBIL Regulatory Module (ORM2).

To inform this response, we have coordinated with the Office of Water's Record Management Program, and these conversations have further clarified that under this Program DARTER is considered to be a data and workflow tracking system that contains records, or copies of records, relating to the EPA's permit application review actions and coordination. EPA's 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. 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 EPA's entries into DARTER are covered under Records Schedule 514, and we will coordinate with Headquarters and Regional staff to help ensure that these records are appropriately maintained and archived.

Recommendation 2 – Coordinate with the regions to develop a full implementation plan for DARTER identifying when DARTER will incorporate additional permit actions.

Response: We concur in Recommendation 2. We recognize that DARTER implementation remains in progress and can be improved and commit to developing an implementation plan 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, but we will work to prioritize significant actions on which OIG expressed documentation concerns in its review, which include EPA coordination on Corps' Nationwide Permits (NWP) associated with coal mining.

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 the fact 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 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 do not include 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 this new system, 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 has the ability to track any coordination events or relevant files for 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.

The Office of Water plans to focus its energies in FY 2012 on ensuring that all Regions complete the basic DARTER data entry as agreed to in January 2010 and will develop an implementation plan in coordination with the Regions for improving entries, beginning in FY2013. 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 in 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 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.

We agree there is the potential for some duplication of data entry to occur between the two systems, mainly with regard to the basic project information such as project name, location, and identification of impacts. In order to minimize the possibility for data duplication and/or errors

between DARTER and Region 5's Coal Tracker system, we will coordinate with Region 5 and DARTER contractors to develop and implement actions that will eliminate the need for duplication of data entry for these duplicate fields and/or reduce the staff time needed to accomplish data entry between the two systems. We plan to complete this action in FY 2012.

We appreciate the opportunity to review and comment on the Draft Report. Should you have any questions or concerns regarding this response, please contact David Evans, Director of the Wetlands Division, at 202-566-0535.

Distribution

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