



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

JUL 11 1977

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Enforcement Division Director, Region X

FROM: Deputy Assistant Administrator for Water Enforcement (EN-335)

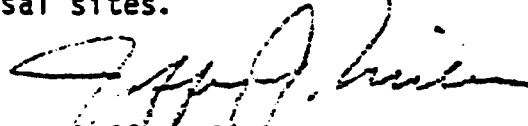
SUBJECT: NPDES Permits in Wetlands Areas

This memorandum is in response to your request for guidance concerning whether the creation of a sanitary landfill in a wetlands area would be subject to a section 402 or a section 404 permit.

As you have indicated, the 402/404 relationship is described briefly in a March 7, 1977, letter from Drake Wilson, Brigadier General with the Army Corps of Engineers, and in a February 9, 1977, letter from William Frick, General Counsel, EPA. To summarize those statements, the disposal of solid waste such as garbage into wetlands or other waters of the United States is an unlawful discharge of pollutants unless permitted under section 402 of the Federal Water Pollution Control Act by either EPA or an NPDES State. However, if the actual discharge of waste material has the primary purpose of altering the elevation of land beneath water or of impounding waters, that activity may constitute a discharge of fill material and be subject to section 404. Where a permit for the discharge of waste materials such as garbage is sought, there is a presumption that section 402 will be applicable. Thus, a sanitary landfill would probably require a section 402 permit for the discharge of garbage and a section 404 permit for the preparation of the disposal site and the construction of dikes for containing the garbage.

Where a permit application for a sanitary landfill is submitted to EPA, that permit will most likely be denied in view of EPA's policy on the protection of wetlands (38 F.R. 10834, May 2, 1973), section 404 guidelines (40 C.F.R. 230), and concern for any contamination of surrounding waters by leachate. Where an application for a permit is submitted to an NPDES State, the result will be the same; otherwise, an EPA veto under section 402(d)(2) would be appropriate.

Ongoing landfill operations in wetlands areas which do not have an NPDES permit are in violation of the Federal Water Pollution Control Act, as long as they remain under the jurisdiction of that Act as discharges into "waters of the United States." As such landfills are discovered (perhaps as the result of surveys under the Resource Conservation and Recovery Act or notification by private parties), appropriate enforcement actions should be taken by EPA or the NPDES States. In most, if not all instances, that enforcement action will involve the termination of disposal activities due to the severe environmental impact involved and the possibility of alternate disposal sites.



Jeffrey G. Miller