Chapter 8

EPA's Role in Permitting and EPA's Veto Authority

I. EPA's Role in the Section 404 Permitting Process

As a result of Congressional compromises, the Clean Water Act vests significant authority for administering and enforcing the Section 404 permit program in the U.S. Army Corps of Engineers *and* the U.S. Environmental Protection Agency. In general, the two agencies have significantly different missions, so it is not surprising that they have adopted conflicting positions, at times, in interpreting and administering the Section 404 program.

While the Corps administers the permitting program on a day to day basis and has the ultimate authority to issue or deny Section 404 permits, Congress gave EPA several important duties and responsibilities with respect to the program. ***First***, Congress gave EPA the authority, in conjunction with the Corps, to write the ***404(b)(1) Guidelines***, which are the rules that the Corps uses to review permit applications when determining whether to issue or deny permits and when determining the conditions to include in those permits. *See* 33 U.S.C. § 1344(b)(1). The Guidelines were described in detail in Chapters 6 and 7 of this book. ***Second***, EPA provides ***comments*** to the Corps of Engineers during the permit review process regarding the agency's views on the application of the Guidelines to the permit application, whether the permit should be issued or denied, and any conditions that should be included in the permit, if issued. EPA's role in the permitting process was outlined in detail in Chapter 6 of this book. ***Third,*** while the Corps may have the ultimate authority to issue or deny Section 404 permits, EPA is authorized to ***veto*** permits and ***prohibit discharges*** of dredged or fill material in specific areas regardless of whether the Corps determines a discharge is appropriate. *See* 33 U.S.C. § 1344(c). Not surprisingly, in light of this authority, the Corps must give significant weight to the comments that EPA provides during the Section 404 permit review process. EPA's veto authority is discussed in the next section of this Chapter. ***Fourth,*** the Clean Water Act authorizes both the Corps, *see* 33 U.S.C. § 1344(s), *and* EPA, *see* 33 U.S.C. § 1319, to bring administrative actions and to refer judicial actions to the Department of Justice to enforce the Section 404 permitting program. Those authorities, and the manner in which the agencies have divided those responsibilities, are discussed in Chapter 10 of this book. In addition to the powers outlined above, EPA also has authority, with the Corps, to determine whether a site is within federal jurisdiction as "waters of the United States." Chapter 4 of this book outlined the manner in which the Corps and EPA have divided that responsibility.

In order to facilitate efficient and timely processing of Section 404 permits by the Corps,

Congress directed EPA and the other agencies routinely involved in review of those permits to enter into agreements with the Corps to "minimize ... duplication, needless paperwork, and delays in the issuance of [Section 404] permits." *See* 33 U.S.C. § 1344(q). The agreement that EPA entered into with the Corps also includes dispute resolution provisions to address the inevitable disagreements between the agencies in the permit review process. The Section 404(q) MOA and dispute resolution processes are discussed in the next section of this Chapter.

II. EPA's Veto Authority

A. Authority and Procedures

Although Section 404(c) is often referred to as EPA's "veto" authority, that provision grants EPA broader authority to limit discharges of dredged of fill material than simply the authority to "veto" a Section 404 permit. Section 404(c) provides:

> The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

33 U.S.C. § 1344(c). Thus, while EPA usually uses its Section 404(c) authority to veto permits issued by the Corps, the agency has the authority to ***prohibit, deny, restrict,*** or ***withdraw*** the specification of an area as a disposal site in a variety of contexts. EPA retains that authority even if a State takes over administration of the Section 404 permit program. *See* 40 C.F.R. § 231.1.

1. Section 404(q) and Elevation of Permit Disputes

Resources
EPA/Corps 404(q) MOA
EPA 404(q) fact sheet
Chronology of 404(q) elevations
EPA web page of 404(q) resources

Although EPA has only exercised its Section 404(c) authority 13 times in the history of the Section 404 program, *see* U.S. Environmental Protection Agency, *Chronology of 404(c) Actions*, it usually exercises it to "veto" a permit that the Corps is about to issue or has issued. In most cases, EPA has raised concerns about the permitted activity during the comment period, before the Corps has decided to issue the permit.

EPA permit vetoes are rare. In the vast majority of cases, EPA and the Corps work out any disagreements that they have regarding the issuance or denial of a permit, and the

conditions to be included in a permit, at the field level. However, when disputes arise between the agencies at the field level, the disputes can be "elevated" to higher levels within the agencies for resolution pursuant to a Memorandum of Agreement that EPA and the Corps signed in 1992 to comply with Section 404(q) of the Clean Water Act. *See* U.S. Environmental Protection Agency & U.S. Army Corps of Engineers, *Memorandum of Agreement: Clean Water Act Section 404(q) [hereinafter "1992 MOA"]*.

Under the MOA, if EPA is concerned that a project ***may*** result in "substantial and unacceptable impacts to "aquatic resources of national importance" (ARNI), regional representatives of the agency must notify the Corps' District Engineer about those concerns during the comment period for the permit for the project. *Id.* ¶ IV.3.(a). In determining whether a site is an ARNI," EPA examines the economic importance of the resource, its rarity or uniqueness, and/or the importance of the resource to the protection, maintenance or enhancement of the quality of the nation's waters. *See* U.S. Environmental Protection Agency, *Section 404(q) Dispute Resolution Process*. If EPA and the Corps cannot work out their differences, the EPA Regional Administrator can send a letter to the Corps District Engineer (within 25 days after the comment period ends), indicating that the project ***will*** have substantial and unacceptable impacts to an ARNI. *See 1992 MOA* ¶ IV.3.(b).

If the Corps plans to issue the permit for the project regardless of EPA's concerns, the District Engineer must notify the EPA Regional Administrator, and the Regional Administrator can ask EPA headquarters (EPA Assistant Administrator) to request review (elevation) of the dispute by the Corps' headquarters (Assistant Secretary of the Army (Civil Works)). *Id.* ¶ IV.3. Although the Corps will not issue the permit during the elevation review process, the Assistant Secretary of the Army (Civil Works) can ultimately decide that the permit should be issued after reviewing the dispute. *Id.* The Assistant Secretary might also decide that the permit should not be issued, or that it should be issued with specific conditions, and might provide case specific guidance for the agency. *Id.* When the Assistant Secretary makes a decision, the Assistant Secretary should immediately notify EPA's Assistant Administrator. *Id.* If the Corps determines that it will issue the section 404 permit regardless of EPA's concerns, EPA must then decide whether to begin the Section 404(c) veto process.

Just as it is unusual for EPA to veto a Corps permit, it is unusual for EPA and the Corps to be unable to resolve their differences regarding a permit application at the regional level. While the Corps processes approximately 60,000 permits per year, EPA has only sought elevation of Corps permits 11 times in the 20 years since the agencies entered into the Section 404(q) MOA, and 8 times before they signed the MOA. *See* U.S. Environmental Protection Agency, *Section 404(q) Dispute Resolution Process*.

Research Problems

EPA posts the permit elevation requests from regional offices to headquarters and the subsequent correspondence between EPA headquarters, the region and the Army on its website. Based on the information posted there, please answer the following questions:

1. How many times, after the EPA and Corps of Engineers entered into the 1992 MOA to implement Section 404(q), has EPA headquarters declined to pursue the request of a Regional Office of EPA to elevate a permit dispute? Please identify the permits at issue in those cases.

2. Did the Corps ultimately issue or deny a permit for the Breckenridge Ski Area in Colorado when EPA's Assistant Administrator for Water requested review of the permit?

3. According to EPA, how many acres of wetlands would be adversely impacted by the project authorized by the permit for the Florida Power Corporation near Tampa, Florida?

Resources

EPA Section 404(c) regulations
EPA Section 404(c) fact sheet
Chronology of EPA Section 404(c) actions

2. Section 404(c) Procedures

Section 404(c) requires EPA, before making a decision to prohibit, deny, restrict, or withdraw specification of an area as a disposal site, to consult with the Corps. *See* 33 U.S.C. § 1344(c). The statute also requires EPA to "set forth in writing and make public [the] ... findings and reasons" for making those decisions. *Id*. EPA has adopted regulations to implement those requirements. *See* 40 C.F.R. Part 231. The regulations outline a three step process that applies regardless of whether EPA is vetoing a permit or prohibiting, denying, restricting, or withdrawing specification of a disposal area in other contexts. *See* 40 C.F.R. § 231.1. Normally, though, EPA uses its 404 (c) authority when the agency and the Corps have not been able to work out disagreements regarding a Section 404 permit application and the Corps has issued a notice that it intends to issue the permit. The elevation process and the 404(c) process are separate processes, and there is no requirement that EPA attempt to resolve disagreements with the Corps through formal elevation before commencing the 404(c) process.

Section 404(c) Process

Notice of Proposed Determination

↓

Recommended Determination

↓

Final Determination

The Section 404(c) process begins at the regional level of EPA. If a Regional Administrator of EPA finds that a discharge of dredged or fill material will have "unacceptable adverse effects" on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas, the Administrator notifies the Corps that the Administrator intends to issue a public notice of a proposed determination to withdraw, prohibit, deny or restrict the specification of the area as a disposal site. *See* 40 C.F.R. §231.3(a)(1). If EPA is beginning the process because someone is seeking a permit from the Corps to discharge in the area, the Regional Administrator notifies the permit applicant as well. *Id.* Unless it is demonstrated to the Regional Administrator that the discharge ***won't*** have unacceptable adverse effects, within 15 days after notifying the Corps and any permit applicant that it intends to issue a notice, the Administrator publishes, in the Federal Register, a ***Notice of Proposed Determination*** to withdraw, prohibit, deny, or restrict the area as a disposal site. *Id.* § 231.3(a)(2). If EPA begins the process while the Corps is reviewing a permit application for the site, the Corps will not issue the permit until EPA finishes the 404(c) process. *Id. See also* 33 C.F.R. § 323.6(b).

After EPA publishes the notice of proposed determination, the agency provides an opportunity for public comment on the notice and may hold a public hearing. *See* 40 C.F.R. § 231.4. At the end of the comment period, the Regional Administrator either withdraws the proposed determination ***or*** forwards a ***Recommended Determination*** (and administrative record for the determination) to EPA headquarters (the EPA Assistant Administrator for Water). *See* 40 C.F.R. § 231.5. Within 30 days after the EPA Assistant Administrator receives the recommended determination, the Assistant Administrator contacts the Corps, the property owner, and the permit applicant (if there is a permit application), so that they can take "corrective action" to prevent unacceptable adverse effects. *See* 40 C.F.R. § 231.6. Within 60 days after the Assistant Administrator receives the recommended determination from the Regional Administrator, the Assistant Administrator must issue, and publish in the Federal Register, a ***Final Determination*** affirming, modifying, or rescinding the recommended determination. *Id.*

Questions and Comments

1. **Judicial Review:** Which of the following actions are reviewable final agency

actions?: (1) a Regional Administrator's Proposed Determination; (2) a Regional Administrator's Withdrawal of a Proposed Determination; (3) a Regional Administrator's Recommended Determination; (4) a Final Determination of the Assistant Administrator. *See* 40 C.F.R. part 231. What if EPA never initiates the 404(c) process at all? Is the agency's failure to veto a permit or failure to initiate the 404(c) process with respect to a disposal site reviewable? *Compare Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers,* 87 F.3d 1242 (11th Cr. 1996) (EPA's decision whether to exercise its 404 (c) authority is discretionary and can't be challenged in a citizen suit) *with National Wildlife Federation v. Hanson,* 859 F.2d 313 (4th Cir. 1988) (EPA has a non-discretionary duty to exercise its 404(c) authority when the Corps has made an erroneous wetland determination) and *Alliance to Save Mattaponi v. United States Army Corps of Engineers*, 515 F. Supp. 2d 1 (D.D.C. 2007) (EPA's failure to exercise its 404(c) authority cannot be challenged in a citizen suit, but can be challenged under the Administrative Procedures Act).

2. **Nature of hearings:** Section 404(c) requires EPA to make determinations "after notice and opportunity for public hearings." Does that language require the agency to hold formal trial-type hearings before an administrative law judge? How has the agency interpreted the language? *See* 40 C.F.R. § 231.4. How does that impact the standard of review that applies to the factual determinations made by EPA in a final determination under section 404 (c)? *See James City County v. Environmental Protection Agency,* 12 F.3d 1330 (4th Cir. 1993) (relying on the arbitrary and capricious standard after previously applying the substantial evidence standard).

3. **Frequency:** EPA exercises its 404(c) authority sparingly. It has only issued 13 vetoes since 1972, and did not issue *any* veto decisions over an 18 year period between 1990 and 2008. *See* U.S. Environmental Protection Agency, *Chronology of 404(c) Actions*. While EPA vetoed 11 projects between 1981 and 1990, the decline in permit vetoes was likely influenced by two factors. First, several bills were introduced in Congress in the early 1990s that would have eliminated EPA's Section 404(c) authority. *See, e.g.,* Wetlands Regulatory Reform Act of 1995, 104th Cong., 1st Sess. (1995); Wetlands Protection and Regulatory Reform Act of 1991, H.R. 404, 102d Cong., 1st Sess (1991). Second, and perhaps more importantly, in 1992, EPA entered into the MOA with the Corps establishing the elevation procedures, which provide a process to resolve inter-agency disputes which might otherwise lead to permit vetoes. *See* 1992 MOA.

Research Problems

EPA posts the proposed and final determinations in the 404(c) process on its website. Based on the information posted there, please answer the following questions:

1. When EPA vetoed the Lake Alma Impoundment permit in Georgia, was it concerned about the impacts of the project on (a) municipal water supplies; (b) recreational areas; or (c) wildlife?

2. When EPA vetoed the Two Forks Water Supply Impoundments permit in Colorado, was it concerned about the impacts of the project on (a) fisheries; (b) municipal water supplies; or (c) wildlife?

3. In how many 404(c) proceedings has EPA modified a final determination after the agency issued a determination? Please identify the proceedings.

B. Timing of the "Veto"

As noted above, while EPA normally uses its authority under Section 404(c) to veto a permit that the Corps ***plans to issue*** or ***has already issued***, the statutory language does not limit EPA's exercise of authority to those situations. The statute does not refer to a "veto" at all. Instead, it authorizes EPA to ***prohibit, deny, restrict*** or ***withdraw*** the specification of a defined area as a disposal site. *See* 33 U.S.C. § 1344(c). EPA has interpreted that language, through regulation, to mean that the agency can exercise its authority ***before*** anyone applies for a permit, ***while*** the Corps is processing a permit application, and ***after*** the Corps issues a permit. *See* U.S. Environmental Protection Agency, Clean Water Act Section 404 (c) "Veto Authority". Below are EPA's regulatory definitions that support that broad exercise of authority.

Statutory Term	**Regulatory Definition**
Prohibit Specification	Prevent the designation of an area as a present or future disposal site - 40 C.F.R. § 231.2(b).
Deny or Restrict the Use of Any Defined Area for Specification	Deny or restrict the use of any area for the present or future discharge of any dredged or fill material - 40 C.F.R. § 231.2(c).
Withdraw Specification	Remove from designation an area already specified as a disposal site by the U.S. Army Corps of Engineers or

	by a state which has assumed the Section 404 program, or any portion of such area - 40 C.F.R. § 231.2(a).

While the agency's regulations authorize EPA to exercise its Section 404(c) powers in a broad range of situations, in most cases, EPA exercises its authority ***when the Corps is reviewing a Section 404 permit application*** and is likely to issue the permit, but has not yet issued the permit. 10 of the 13 EPA "vetoes" arose in that context. *See* Brief for the Respondent in Opposition to Petition for Writ of Certiorari at 14, *Mingo Logan Coal Company v. Environmental Protection Agency*, No. 13-599 (U.S. Feb. 14, 2014). In the other 3 cases, EPA acted to limit the use of an area as a disposal site ***after the Corps had issued a permit*** authorizing the discharge. *Id.* at 5. In 2 of those cases, EPA acted shortly after the permit was issued or when a permit modification was being sought. *Id.* In one case, however, EPA exercised its Section 404(c) authority ***four years*** after the Corps issued a Section 404 permit for a mountaintop removal mining project. That was EPA's most recent exercise of its authority and was challenged in the following case.

Mingo Logan Coal Company v. U.S. Environmental Protection Agency
714 F.3d 608
(D.C. Cir. 2013),
cert. denied 134 S.Ct. 1540 (2014)

Resources for the Case

Unedited opinion (From court's website)
Google Map of all the cases in the coursebook
D.C. Circuit Oral Argument Audio
EPA letter initiating 404(c) process
Arch Coal Company website

KAREN LECRAFT HENDERSON, Circuit Judge:

The Mingo Logan Coal Company (Mingo Logan) applied to the United States Army Corps of Engineers (Corps) for a permit under section 404 of the Clean Water Act (CWA), 33 U.S.C. § 1344, to discharge dredged or fill material from a mountain-top coal mine in West Virginia into three streams and their tributaries. The Corps—acting on behalf of the Secretary of the Army (Secretary) and without objection from the Administrator of the United States Environmental Protection Agency (Administrator, EPA), who has "veto" authority over discharge site selection under CWA subsection 404(c), * * * issued the permit to Mingo Logan, approving the requested disposal sites for the discharged material. Four years later, EPA invoked its subsection 404(c) authority to "withdraw" the specifications of two of the streams as disposal sites, thereby prohibiting Mingo Logan from discharging into them. Mingo Logan filed this action challenging EPA's withdrawal of the specified sites on the grounds that (1) EPA lacks statutory authority to withdraw site specification after a permit has issued and (2) EPA's decision to do so was arbitrary and capricious in violation of the Administrative

Procedure Act (APA), 5 U.S.C. §§ 701 *et seq*. The district court granted summary judgment to Mingo Logan on the first ground without reaching the second. We reverse the district court, concluding that EPA has post-permit withdrawal authority, and remand for further proceedings.

I.

The CWA provides that "the discharge of any pollutant by any person shall be unlawful" except as in compliance with specifically enumerated CWA provisions, including section 404. * * * Subsection 404(a) authorizes the Secretary to issue permits allowing discharge of dredged or fill material "at specified disposal sites," which are to be "specified for each such permit by the Secretary . . . through the application of guidelines developed by the Administrator, in conjunction with the Secretary." * * * The Secretary's authority to specify a disposal site is expressly made "[s]ubject to subsection (c) of [section 404]." * * * Subsection 404(c) authorizes the Administrator, after consultation with the Corps, to veto the Corps's disposal site specification—that is, the Administrator "is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and . . . to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site"—"whenever he determines" the discharge will have an "unacceptable adverse effect" on identified environmental resources. * * *

In June 1999, Hobet Mining, Inc., Mingo Logan's predecessor, applied for a section 404 permit to discharge material from the Spruce No. 1 Mine into four West Virginia streams and their tributaries. In 2002, after the Corps prepared a draft Environmental Impact Statement, EPA expressed its concern that "even with the best practices, mountaintop mining yields significant and unavoidable environmental impacts that had not been adequately described in the document." * * * In the end, however, EPA declined to pursue a subsection 404(c) objection. * * * On January 22, 2007, the Corps issued Mingo Logan a section 404 permit, effective through December 31, 2031, which authorized Mingo Logan to dispose of material into three streams—Pigeonroost Branch, Oldhouse Branch and Seng Camp Creek—and certain tributaries thereto. * * * The permit expressly advised that the Corps "may reevaluate its decision on the permit at any time the circumstances warrant" and that "[s]uch a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7." * * * The permit made no mention of any future EPA action.

On September 3, 2009, EPA wrote the Corps requesting it "use its discretionary authority provided by 33 CFR 325.7 to suspend, revoke or modify the permit issued authorizing Mingo Logan Coal Company to discharge dredged and/or fill material into waters of the United States in conjunction with the construction, operation, and reclamation of the Spruce Fork No. 1 Surface Mine," based on "new information and circumstances . . . which justif[ied] reconsideration of the permit." * * * EPA noted in particular its "concern[] about the project's potential to degrade downstream water

quality." * * * The Corps responded that there were "no factors that currently compell[ed it] to consider permit suspension, modification or revocation." * * * EPA wrote back: "We intend to issue a public notice of a proposed determination to restrict or prohibit the discharge of dredged and/or fill material at the Spruce No. 1 Mine project site consistent with our authority under Section 404(c) of the Clean Water Act and our regulations at 40 C.F.R. Part 231." * * *

EPA's Regional Director published the promised notice of proposed determination on April 2, 2010, requesting public comments "[p]ursuant to Section 404(c) . . . on its proposal to withdraw or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and certain tributaries to those waters in Logan County, West Virginia to receive dredged and/or fill material in connection with construction of the Spruce No. 1 Surface Mine." * * * The Regional Director followed up with a Recommended Determination on September 24, 2010, limited to withdrawal of the specification of Pigeonroost Branch and Oldhouse Branch and their tributaries. On January 13, 2011, EPA published its Final Determination, which, adopting the Regional Director's recommendation, formally "withdraws the specification of Pigeonroost Branch, Oldhouse Branch, and their tributaries, as described in [the Spruce Mine Permit] . . . as a disposal site for the discharge of dredged or fill material for the purpose of construction, operation, and reclamation of the Spruce No. 1 Surface Mine" and "prohibits the specification of the defined area . . . for use as a disposal site associated with future surface coal mining that would be expected to result in a nature and scale of adverse chemical, physical, and biological effects similar to the Spruce No. 1 mine." * * *

Mingo Logan filed this action in district court immediately following the Proposed Determination, challenging EPA's authority to "revoke" the three-year-old permit, * * * and amended its complaint in February 2011 to challenge the Final Determination, asserting it is both ultra vires and arbitrary and capricious. * * * On cross-motions for summary judgment, the district court granted judgment to Mingo Logan on March 23, 2012. * * * The court concluded EPA "exceeded its authority under section 404(c) of the Clean Water Act when it attempted to invalidate an existing permit by withdrawing the specification of certain areas as disposal sites after a permit had been issued by the Corps under section 404(a)." * * * The United States filed a timely notice of appeal on behalf of EPA. The Corps joined EPA on brief. * * *

II.

In granting summary judgment, the district court agreed with Mingo Logan's interpretation of subsection 404 to preclude EPA from withdrawing a site specification once the Corps has issued a permit. "We review a grant of summary judgment de novo applying the same standards as those that govern the district court's determination." *Troy Corp. v. Browner*, 120 F.3d 277, 283 (D.C. Cir. 1997). "Moreover, insofar as the agency's determination amounts to or involves its interpretation of . . . a statute entrusted to its administration, we review that interpretation under the deferential standard *of Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc*., 467 U.S.

837 (1984)." *Id.* Under *Chevron*:

> We first ask "whether Congress has directly spoken to the precise question at issue," in which case we "must give effect to the unambiguously expressed intent of Congress." If the "statute is silent or ambiguous with respect to the specific issue," however, we move to the second step and defer to the agency's interpretation as long as it is "based on a permissible construction of the statute."

Natural Res. Def. Council v. EPA, 706 F.3d 428, 431 (D.C. Cir. 2013) (quoting *Chevron*, 467 U.S. at 842–43). We construe subsection 404(c) under Chevron step 1 because we believe the language unambiguously expresses the intent of the Congress.

As noted earlier, * * * section 404 vests the Corps, rather than EPA, with the authority to issue permits to discharge fill and dredged material into navigable waters and to specify the disposal sites therefor. * * * Nonetheless, the Congress granted EPA a broad environmental "backstop" authority over the Secretary's discharge site selection in subsection 404(c), which provides in full:

> (c) Denial or restriction of use of defined areas as disposal sites
>
> The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

33 U.S.C. § 1344(c); see Legislative History at 177 ("[T]he Conferees agreed that the Administrator . . . should have the veto over the selection of the site for dredged spoil disposal and over any specific spoil to be disposed of in any selected site.").[2] Section

[2] Thus, subsection 404(c) affords EPA two distinct (if overlapping) powers to veto the Corps's specification: EPA may (1) "prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site" or (2) "deny or restrict the use of any defined area for specification (including the withdrawal of specification)." In withdrawing the specifications here, EPA did not clearly distinguish between the two powers. *See* Final Determination, 76 Fed. Reg. at 3127 ("EPA Region III published in the Federal Register a Proposed Determination to prohibit, restrict, or deny the specification or the use for specification (including withdrawal of specification) of certain waters at the project site as disposal sites for the discharge of dredged or fill material for

404 imposes no temporal limit on the Administrator's authority to withdraw the Corps's specification but instead expressly empowers him to prohibit, restrict or withdraw the specification "*whenever*" he makes a determination that the statutory "unacceptable adverse effect" will result. 33 U.S.C. § 1344(c) (emphasis added). Using the expansive conjunction "whenever," the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at *any* time. *See* 20 Oxford English Dictionary 210 (2d ed.1989) (defining "whenever," used in "a qualifying (conditional) clause," as: "At whatever time, no matter when."). Thus, the unambiguous language of subsection 404(c) manifests the Congress's intent to confer on EPA a broad veto power extending beyond the permit issuance.[3]

This construction is further buttressed by subsection 404(c)'s authorization of a "withdrawal" which, as EPA notes, is "a term of retrospective application." * * * EPA can *withdraw* a specification only after it has been made. *See* 20 Oxford English Dictionary 449 (2d ed.1989) (defining "withdraw" as "[t]o take back or away (something that has been given, granted, allowed, possessed, enjoyed, or experienced)"). Moreover, because the Corps often specifies final disposal sites in the permit itself—at least it did here, * * * —EPA's power to withdraw can *only* be exercised post-permit. Mingo Logan's reading of the statute would eliminate EPA's express statutory right to withdraw a specification and thereby render subsection 404(c)'s parenthetical "withdrawal"

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the construction of the Spruce No. 1 Surface Mine."). It appears, however, that EPA exercised the first authority—"to prohibit"/"withdraw[]"—given the post-permit timing. *See id.* at 3128 ("EPA's Final Determination withdraws the specification of Pigeonroost Branch, Oldhouse Branch, and their tributaries, as described in DA Permit No. 199800436-3 (Section 10: Coal River), as a disposal site for the discharge of dredged or fill material for the purpose of construction, operation, and reclamation of the Spruce No. 1 Surface Mine. This Final Determination also prohibits the specification of the defined area constituting Pigeonroost Branch, Oldhouse Branch, and their tributaries for use as a disposal site associated with future surface coal mining that would be expected to result in a nature and scale of adverse chemical, physical, and biological effects similar to the Spruce No. 1 mine.").

[3] Based on the plain meaning of the statutory language, EPA has consistently maintained this interpretation for over thirty years. *See* Section 404(c) Procedures, 44 Fed. Reg. 58,076, 58,077 (Oct. 9, 1979) ("The statute on its face clearly allows EPA to act after the Corps has issued a permit; it refers twice to the 'withdrawal of specification,' which clearly refers to action by EPA after the Corps has specified a site (e.g. issued a permit or authorized its own work)."); Final Determination of the Administrator Concerning the North Miami Landfill Site Pursuant to Section 404(c) of the Clean Water Act at 1-2 (Jan. 26, 1981) (JA 239-40) (exercising 404(c) authority "to restrict the use of [of the North Miami Landfill] for specification (including the withdrawal of specification) as a disposal site" almost five years after Corps issued permit therefor). The Corps has made clear by joining EPA in this litigation that it agrees with EPA's interpretation. *See supra* * * *.

language superfluous—a result to be avoided. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (applying "one of the most basic interpretative canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant") (brackets and quotation marks omitted).

Notwithstanding the unambiguous statutory language, Mingo Logan presses its own view of the language, the statutory structure and section 404's legislative history to maintain that the Congress intended to preclude post-permit withdrawal. We find none of its arguments persuasive.

First, Mingo Logan argues that the statutory language itself contemplates that specification occurs before (rather than when) the permit issues and therefore can (and must) be withdrawn pre-permit. We find no such intent in the statutory directive Mingo Logan quotes—that "each such disposal site shall be specified for each such permit by the Secretary . . . through the application of guidelines developed by the Administrator, in conjunction with the Secretary." 33 U.S.C. § 1344(b). This language is at least as consistent with specification by the Corps at the time the permit issues as it is with pre-permit specification. Moreover, as noted earlier, * * * the Corps expressly "specified" the final sites in the Spruce Mine Permit itself. Nor does the permitting process—including the "extensive coordination process during which EPA can review the Corps's statement of findings/record of decision," * * * require that the specification be made before the permit issues. During the permitting process, the disposal sites are proposed, reviewed—perhaps even "specified," as Mingo Logan contends—but the final specifications are included in the permit itself.

Second, Mingo Logan asserts EPA's interpretation conflicts with section 404 "as a whole." * * * Mingo Logan claims, for example, that "EPA's reading obliterates the choice Congress made to give the permitting authority with all of its attributes to the Corps, not EPA." * * * While it is true that subsections 404(a)-(b) unambiguously authorize the Secretary to issue a discharge permit—and to specify the disposal site(s) therefor—section 404(b) makes equally clear * * * that the Administrator has, in effect, the final say on the specified disposal sites "whenever" he makes the statutorily required "unacceptable adverse effect" determination. Thus, insofar as site specification may be considered, as Mingo Logan asserts, an "attribute[]" of the permitting authority, the statute expressly vests final authority over this particular attribute in the Administrator.

Mingo Logan also contends that EPA's interpretation "tramples on provisions like sections 404(p) and 404(q) that are intended to give permits certainty and finality." * * * Subsection 404(p) provides: "Compliance with a permit issued pursuant to [section 404], including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of [enforcement actions brought under] sections 1319 and 1365 of [title 33] . . . ."[4] According to Mingo Logan, "absent . . .

[4] Sections 1319 and 1365 of title 33 authorize an action by, respectively, (1) EPA

permit violations or public interest considerations, the permittee can rely on the permit shield of section 404(p)." * * * But again, section 404(c)'s language is plain with regard to its enumerated "unacceptable adverse effects": the Administrator retains authority to withdraw a specified disposal site "whenever" he determines such effects will result from discharges at the sites. And when he withdraws a disposal site specification, as he did here, the disposal site's "terms and conditions specified" in the permit * * * are in effect amended so that discharges at the previously specified disposal sites are no longer in "[c]ompliance with" the permit—although the permit itself remains otherwise in effect to the extent it is usable.[5] Moreover, as EPA notes, subsection 404(c) was enacted in 1972 and its plain meaning did not change when 404(p) was enacted five years later. * * * As Mingo Logan acknowledges, if "the text of section 404(c) clearly and unambiguously gave EPA the power to act post-permit"—a reading it rejects—then section 404(p) "cannot be read to implicitly overturn section 404(c)." * * * As we have repeatedly stated throughout this opinion, the text of section 404(c) does indeed clearly and unambiguously give EPA the power to act post-permit. Thus, subsection 404(p) does not implicitly limit section 404(c)'s scope. Nor does EPA's express statutory authority to act *post*-permit interfere with subsection 404(q)'s directive that the Secretary enter into agreements with other agency heads "to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays *in the issuance of permits* under this section" and "to assure that, to the maximum extent practicable, a decision *with respect to an application for a permit* under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section." 33 U.S.C. § 1344(q) (emphases added). The enumerated obligations apply only *pre*-permit and are therefore unaffected by EPA's post-permit actions.

Finally, Mingo Logan argues that the legislative history "confirms that Congress intended EPA to act under section 404(c), if at all, prior to permit issuance." * * * In particular, it relies on the statement of then-Senator Edmund Muskie that

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against a violator of, inter alia, the terms of a section 404 permit; and (2) a citizen against a violator of a CWA effluent limitation or against EPA for failure to perform a non-discretionary "act or duty" under the CWA. 33 U.S.C. §§ 1319, 1365.

[5] In this case for example, EPA left intact the specification as disposal site of "the Right Fork of Seng Camp Creek and its tributaries . . . in part because some of those discharges have already occurred and because the stream resources in Right Fork of Seng Camp Creek were subject to a higher level of historic and ongoing human disturbance than those found in Pigeonroost Branch or Oldhouse Branch." Final Determination, 76 Fed. Reg. at 3127 n.1.

In addition, EPA has made clear that a permittee may not be penalized for discharges that occurred in compliance with the permit before the effective date of the withdrawal of the specification.

> *prior* to the issuance of any permit to dispose of spoil, the Administrator must determine that the material to be disposed of will not adversely affect municipal water supplies, shellfish beds, and fishery areas (including spawning and breeding areas), wildlife or recreational areas in the specified site. Should the Administrator so determine, no permit may issue.

118 Cong. Rec. at 33,699, *reprinted in* Legislative History at 177 (emphasis added). "Assuming legislative history could override the plain, unambiguous directive" of section 404(c) and "putting to one side the fact that this was the statement of a single member of Congress," the quoted language is "not necessarily inconsistent with" EPA's interpretation. *See Natural Res. Def. Council v. EPA*, 706 F.3d 428, 437 (D.C. Cir. 2013) (quotation marks and brackets omitted); *see also Mims v. Arrow Fin. Servs*., LLC, 132 S. Ct. 740, 752 (2012) ("[T]he views of a single legislator, even a bill's sponsor, are not controlling."). That EPA should review the preliminary specifications pre-permit to determine whether discharges will have the required "unacceptable adverse effect"—as EPA in fact did here—does not mean it is foreclosed from doing so post-permit as well—as it also did here.[6] "Thus, 'this case does not present the very rare situation where the legislative history of a statute is more probative of congressional intent than the plain text.' " *Va. Dep't of Med. Assistance Servs. v. U.S. Dep't of Health & Human Servs*., 678 F.3d 918, 923 (D.C. Cir. 2012) (quoting *Consumer Elecs. Ass'n v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003)) (brackets omitted).

For the foregoing reasons, we reverse the district court insofar as it held that EPA lacks statutory authority under CWA section 404(c) to withdraw a disposal site specification post-permit. Because the district court did not address the merits of Mingo Logan's APA challenge to the Final Determination and resolution of the issue is not clear on the present record, we follow our usual practice and remand the issue to the district court to address in the first instance. *See Friends of Blackwater v. Salazar*, 691 F.3d 428, 434 n.* (D.C. Cir. 2012) (citing *Piersall v. Winter*, 435 F.3d 319, 325 (D.C. Cir. 2006)).

Questions and comments

1. **Deference:** The Corps and EPA both play a role in administering the Section 404 permit program. If EPA and the Corps disagree about the interpretation of Section 404(c), which agency's interpretation is entitled to deference? Did the court have to resolve that issue in this case?

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[6] Similarly, post-permit withdrawal is not precluded by 33 C.F.R. § 323.6(b) ("The Corps will not issue a permit where the regional administrator of EPA has notified the district engineer and applicant in writing pursuant to 40 CFR 231.3(a)(1) that he intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, of any defined area as a disposal site in accordance with section 404(c) of the Clean Water Act.").

2. **Consistent interpretation:** Why is it significant that EPA interpreted its authority under Section 404(c) consistently over thirty years? Is there evidence that Congress was aware of that interpretation? Is that relevant?

3. On a cert petition to the Supreme Court, Mingo Logan argued that the appellate court's decision would chill investment in development because it calls into question the finality of Corps' permits. However, is there another way that the government could have prevented the Mingo Logan Coal Company from continuing to discharge fill material besides EPA's exercise of its 404(c) authority? How "final" are the Corps' permits?

4. A familiar statutory interpretation canon provides that when two statutes conflict, the statute enacted last prevails. Another canon provides that repeals by implication are disfavored. Yet another canon provides that when two statutes conflict, the specific controls over the general. Were any of those canons relevant to Mingo Logan's argument that Section 404(p) demonstrated Congress' intent that EPA should not have the authority to veto a permit after the Corps has issued it?

5. **Projects vetoed:** The project in the Mingo Logan case would have been the largest surface coal mine in West Virginia. However, many of the cases where EPA has exercised its 404(c) authority involve infrastructure development projects, such as dams, water supply impoundments, flood control projects and landfills or recycling plants. *See* U.S. Environmental Protection Agency, Clean Water Act Section 404 (c) "Veto Authority". Consequently, when Mingo Logan file a petition for writ of certiorari to the Supreme Court seeking review of the D.C. Circuit's decision, amicus briefs were filed by 27 States and the U.S. Conference of Mayors, as well as the National Mining Association, National Association of Home Builders, American Petroleum Institute, and the Chamber of Commerce. *See* SCOTUSblog, *Mingo Logan Coal Company v. Environmental Protection Agency*. The Court denied the petition on March 24, 2014.

6. **Remand:** On remand, the District Court of the District of Columbia held that EPA's decision to exercise its 404(c) authority "was reasonable, supported by the record, and based on considerations within the agency's purview." *See Mingo Logan Coal Company, Inc. v. U.S. Environmental Protection Agency,* Case No. 10-0541 (D.D.C. 2014).

7. **Pre-emptive vetoes:** Although EPA's regulations authorize the agency to prohibit the specification of an area as a disposal site even before anyone has applied to the Corps for a permit, EPA rarely exercises that authority. In 1987, when the agency was vetoing Corps permits that would have authorized the developer to discharge into two sites, the agency prohibited discharges into a third site nearby, even though the developer had not yet sought a permit to

discharge there. *See* 52 Fed. Reg. 38519, 38520 (Oct. 16, 1987). While that project involved a relatively small parcel of land (60 acres of wetlands), in 2014, EPA began Section 404(c) proceedings to address impacts from an open pit mining project in Alaska that would cover almost 70 square kilometers and could destroy between 1200 and 4900 acres of wetlands. *See* Environmental Protection Agency, EPA 910-R-14-001ES, *An Assessment of the Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* 11,13 (Jan. 2014). Several tribes asked EPA to begin the Section 404(c) proceedings before developers applied to the Corps for a permit for the Pebble Mine project. *See* Environmental Protection Agency, *Why We Studied the Bristol Bay Watershed*. When the agency received those requests, it decided to conduct a scientific assessment of the Bristol Bay watershed to understand how large scale mining could impact water quality and the ecosystem, which is home to one of the largest sockeye salmon populations in the world. *Id.* After completing the assessment, EPA decided to begin the 404(c) process even though a developer had not yet sought a Seciton 404 permit from the Corps. *See* U.S. Environmental Protection Agency, *Proposed Determination Of The U.S. Environmental Protection Agency Region 10 Pursuant To Section 404(C) Of The Clean Water Act Pebble Deposit Area, Southwest Alaska,* July 2014.. The developer immediately sued EPA, but the Ninth Circuit rejected the challenge, concluding that EPA's initiation of the 404(c) process was not a "final agency action." *See Pebble Limited Partnership v. EPA,* 9th Cir., No. 3:14-cv-00097-HRH, *ruling* 5/28/15 (unpublished opinion). In July, 2019, however, EPA reversed course and withdrew its proposed Section 404(c) veto of the project after the developer applied to the Corps for a 404 permit. *See* 84 Fed. Reg. 45749 (Aug. 30, 2019). Several groups sued to challenge the agency's decision, but the federal district court for Alaska dismissed the lawsuit, finding that EPA's decision was not reviewable because it was "committed to agency discretion" under the APA. *See Bristol Bay Economic Development Corporation et al v. Hladick et al,* 454 F.Supp.3d 892 (D.Alaska 2020). The Ninth Circuit disagreed, though, and held that EPA's regulations (40 C.F.R. § 231.5(a)) limit the agency's discretion and establish a standard for judicial review, because they allow the agency to withdraw a veto "only if [the agency determines] that an unacceptable adverse effect is not likely." *See Trout Unlimited v. Pirzadeh,* No. 20-35504, (9th Cir., June 20, 2021). Thus, the court held that EPA's decision was reviewable and remanded the case to the district court. *Id.* (The Ninth Circuit's oral arguments on the case are available here.) Meanwhile, the Corps of Engineers denied the developer a 404 permit in November, 2020, but the Corps agreed, in April 2021, to hear the developer's administrative appeal of the permit denial.

8 **End Run Around a Veto:** In 2008, EPA issued a veto of the Yazoo Backwater Area Pumps project, a Corps of Engineers' flood control project on the Mississippi River. *See* 73 Fed. Reg. 54398 (Sept. 19, 2008). The agency has never revoked that veto. However, twelve years later, the Corps made some minor changes to the development proposal and EPA concluded that the Corps'

new proposal would not be covered by the veto. *See* Emily Waggster Pettus, *Yazoo Backwater flood control project approved: But will it ever get built?*, A.P., Jan. 15, 2021. Several environmental groups sued EPA, claiming that the agency had, in effect, revoked its veto in a manner that is arbitrary and capricious and did not follow procedures required by the APA to revoke the veto. *See American Rivers v. Environmental Protection Agency,* No. 1-21-cv-00097, (D.D.C., Jan. 12, 2021).

C. Standards for the Veto

Section 404(c) empowers EPA to exercise its authority whenever the Administrator determines that a discharge will have an ***unacceptable adverse effect*** on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. *See* 33 U.S.C. § 1344(c). The statute does not further define "***unacceptable adverse effect***", but EPA's regulations define it as an "impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas." *See* 40 C.F.R. § 231.2(e). More importantly, perhaps, the regulations provide that "In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines." *Id.*

Since neither the statute nor the regulations provide a clear substantive standard for EPA's exercise of authority, the agency frequently commences Section 404(c) proceedings when it concludes that the Corps is planning to issue, or has issued, a permit in violation of the 404(b)(1) guidelines. For instance, in *James City County v. U.S. Environmental Protection Agency*, 955 F.2d 254 (4th Cir. 1992), EPA initially vetoed a Corps permit because the agency determined that the Corps incorrectly determined that there were no practicable alternatives for the proposed project. Similarly, in *Bersani v. Robichaud,* 850 F.2d 36 (2d Cir. 1988), the Second Circuit upheld EPA's veto of a mall development project based on the agency's determination that the Corps incorrectly applied the alternatives analysis.

Since many of the projects that EPA has vetoed have been public works projects, developers and local governments have argued that EPA should weigh and balance the "public interest" of a project against any environmental harms when determining whether a discharge would have an ***unacceptable*** adverse effect. However, courts have generally rejected that argument. As the Fourth Circuit wrote in *James City County v. Environmental Protection Agency,* 12 F.3d 1330 (4th Cir. 1993), in response to an argument that EPA should weigh the necessity of an enlarged water supply for the community against the environmental harms of the project:

> "Congress obviously intended the Corps ... in the initial permitting process to consider the total range of factors bearing on the necessity or desirability of building a dam in the Nation's waters, including whether the project was in the public interest. ... Ultimately, however, recognizing the EPA's expertise and

concentrated concern with environmental matters, Congress gave the final decision whether to permit a project to that agency. Its authority to veto to protect the environment is practically unadorned. ... In our view, the EPA's only function relating to the quantities of available water is limited to assuring purity in whatever quantities the state and local agencies provide. For those reasons, we think its veto based solely on environmental harms was proper."

Questions and comments

1. **Basis for decision**: Although EPA frequently exercises its Section 404(c) authority when it determines that the Corps has misapplied the 404(b)(1) guidelines, the agency also exercises its authority by making a more general determination that a discharge is likely to cause a significant degradation of water supplies or significant loss of, or damage to, fisheries, shellfishing, or wildlife habitat or recreation areas. When the agency exercises its authority in advance of a permit application, as in the Pebble Mine case, it cannot rely on the 404(b)(1) guidelines, as there is no project proposal to evaluate against the guidelines.

2. **Standard of Review:** What standard of review will courts apply to EPA's determination that a discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas? *See* *James City County v. Environmental Protection Agency,* 12 F.3d 1330 (4th Cir. 1993). To the extent that EPA's decision is based on the 404(b)(1) guidelines, does EPA owe any deference to the Corps' interpretation of, or application of, the guidelines? *See* in *Bersani v. Robichaud,* 850 F.2d 36 (2d Cir. 1988).

Drafting Exercise

The Freedom of Information Act, 5 U.S.C. § 552, allows any person to request and obtain agency records on any topic, although it exempts nine categories of records from the disclosure requirement. *Id.* § 552(b). The statute requires agencies to respond to requests within specific time periods and authorizes agencies to charge reasonable fees to find, duplicate and review documents that will be disclosed. *Id.* § 552(a). The statute also authorizes agencies to disclose the documents without charging fees "if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* § 552(a)(4)(A)(iii). Federal agencies adopt their own regulations to implement FOIA and EPA's regulations are codified at 40 C.F.R. § 2.100, *et. seq*. The agency also maintains a FOIA reference guide that outlines the process for making a FOIA request at https://www.epa.gov/foia

For this drafting exercise, you will be drafting a FOIA request to EPA, but ***DO NOT USE EPA'S ONLINE FOIA REQUEST FORM***. Instead, you should model your request on sample letters like those provided by the National Freedom of Information Coalition, George Washington University, or the Department of the Treasury. EPA's regulations will identify the appropriate person to whom your request should be directed.

For purposes of this drafting exercise, you are an attorney with Defenders of the Canadian River, a non-profit environmental advocacy group. Several years ago, the Corps of Engineers issued a Clean Water Act Section 404 permit to the Mammoth Quarry Company, authorizing mining activities that impact wetlands adjacent to the Canadian River. Your organization believes that the discharges authorized by the permit are having a much greater impact on those wetlands than the Corps anticipated when it issued the permit. Recently, EPA has been considering initiating Section 404(c) proceedings to "withdraw the specification" of the site of Mammoth's discharge as a disposal site. You have heard that sometime in the last two months, Senator Letitia Fen, a supporter of the quarry, met with EPA to express her opposition to Section 404(c) proceedings. You have also heard that representatives of the Mammoth Quarry Company met with EPA, within the last month, to provide the agency with studies that indicate that the discharge of dredged or fill material from the quarry is not harming the wetlands adjacent to the Canadian River. After those meetings, EPA announced that it had decided that it would not take any further action under Section 404(c) at this time.

You don't know whether Senator Fen provided EPA with any documents at her meeting with the agency or whether the agency kept any minutes regarding the meetings with Senator Fen or the Mammoth Quarry Company, but you would like to see ***any documents that the Senator or the Quarry Company provided to EPA, any documents that EPA provided to the Senator or the Quarry Company, any minutes of the meetings, and any communications between Senator Fen and EPA or the Quarry Company and EPA relating to those meetings***. In order to obtain those records, you need to make a request to EPA under the Freedom of Information Act.

A.

Prepare a FOIA request for the documents, minutes and communications described above. In preparing your request, please be sure to direct the request to the appropriate contact person. Assume that you would like the agency to waive any fees for locating or reproducing these records and include, in your letter, a request for a waiver of those fees. Include any information that is necessary to obtain the fee waiver.

B.

In two weeks, you are scheduled to meet with several other non-profit environmental groups to develop an advocacy strategy regarding the Mammoth Quarry permit and you would like to have the EPA records by that time. Is EPA required to provide you the records within that time frame? If not, can you ask EPA to expedite your request and is it likely that they will grant your request to expedite if the reason for the request is as described above?

Chapter Quiz

Now that you've finished Chapter 8, why not try a CALI lesson on the material at http://www.cali.org/aplesson/10749 It should only take about 15 minutes.