

this part which can be used either singly or in combination to implement this policy, while making the most effective use of the enforcement resources available. As EPA has independent enforcement authority under the Clean Water Act for unauthorized discharges, the district engineer should normally coordinate with EPA to determine the most effective and efficient manner by which resolution of a section 404 violation can be achieved.

### § 326.3 Unauthorized activities.

(a) *Surveillance.* To detect unauthorized activities requiring permits, district engineers should make the best use of all available resources. Corps employees; members of the public; and representatives of state, local, and other Federal agencies should be encouraged to report suspected violations. Additionally, district engineers should consider developing joint surveillance procedures with Federal, state, or local agencies having similar regulatory responsibilities, special expertise, or interest.

(b) *Initial investigation.* District engineers should take steps to investigate suspected violations in a timely manner. The scheduling of investigations will reflect the nature and location of the suspected violations, the anticipated impacts, and the most effective use of inspection resources available to the district engineer. These investigations should confirm whether a violation exists, and if so, will identify the extent of the violation and the parties responsible.

(c) *Formal notifications to parties responsible for violations.* Once the district engineer has determined that a violation exists, he should take appropriate steps to notify the responsible parties.

(1) If the violation involves a project that is not complete, the district engineer's notification should be in the form of a cease and desist order prohibiting any further work pending resolution of the violation in accordance with the procedures contained in this part. See paragraph (c)(4) of this section for exception to this procedure.

(2) If the violation involves a completed project, a cease and desist order should not be necessary. However, the

district engineer should still notify the responsible parties of the violation.

(3) All notifications, pursuant to paragraphs (c) (1) and (2) of this section, should identify the relevant statutory authorities, indicate potential enforcement consequences, and direct the responsible parties to submit any additional information that the district engineer may need at that time to determine what course of action he should pursue in resolving the violation; further information may be requested, as needed, in the future.

(4) In situations which would, if a violation were not involved, qualify for emergency procedures pursuant to 33 CFR part 325.2(e)(4), the district engineer may decide it would not be appropriate to direct that the unauthorized work be stopped. Therefore, in such situations, the district engineer may, at his discretion, allow the work to continue, subject to appropriate limitations and conditions as he may prescribe, while the violation is being resolved in accordance with the procedures contained in this part.

(5) When an unauthorized activity requiring a permit has been undertaken by American Indians (including Alaskan natives, Eskimos, and Aleuts, but not including Native Hawaiians) on reservation lands or in pursuit of specific treaty rights, the district engineer should use appropriate means to coordinate proposed directives and orders with the Assistant Chief Counsel for Indian Affairs (DAEN-CCI).

(6) When an unauthorized activity requiring a permit has been undertaken by an official acting on behalf of a foreign government, the district engineer should use appropriate means to coordinate proposed directives and orders with the Office, Chief of Engineers, ATTN: DAEN-CCK.

(d) *Initial corrective measures.* (1) The district engineer should, in appropriate cases, depending upon the nature of the impacts associated with the unauthorized, completed work, solicit the views of the Environmental Protection Agency; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service, and other Federal, state, and local agencies to facilitate his decision on what initial corrective measures are