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MEMORANDUM OF AGREEMENT BETWEEN  
THE DEPARTMENT OF THE ARMY AND  
THE DEPARTMENT OF AGRICULTURE

1. Authority: Section 404 (q) of the Clean Water Act. (33 USC 1344(q)).
2. Purpose: The purpose of this agreement is to establish policies and procedures to implement Section 404(q) of the Clean Water Act to "minimize to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits."
3. Applicability: Review of Department of the Army permit applications under:
  - a. Section 10 of the River and Harbor Act of 1899.
  - b. Section 404 of the Clean Water Act.
  - c. Section 103 of the Ocean Dumping Act, except as pertains to compliance with EPA established ocean dumping criteria.
4. General rules: Department of the Army policy and procedures for review of permit applications are established in 33 CFR parts 320 through 330. Procedures for preparation of environmental documentation, including responsibilities of lead and cooperating agencies, are in 40 CFR parts 1500 - 1508 and in implementation procedures issued by agencies in each Department.
5. Policy for interagency coordination:
  - a. Agencies in the Department of the Army (DOA) and the Department of Agriculture (USDA) will cooperate fully in early and continuing coordination during development of projects, environmental documentation, review of permit applications, and public involvement process, including joint public notices, and when appropriate, joint hearings.
  - b. The final permit decision will be made by the district engineer (DE) in the vast majority of cases.

- c. The necessity for reopening the record of a case developed by the DE will be minimized.
- d. The USDA Assistant Secretary of Natural Resources and the Environment (AS(NRE)) will request review of a DE's decision only when the case involves insufficient interagency coordination at the district level, the development of significant new information, or the necessity for policy-level review of issues of national importance. In these instances the AS(NRE) will clearly state how the matters of concern involve USDA authorities and responsibilities.
- e. Where USDA agencies will be the lead agencies for planning and environmental documentation for projects and other activities to be implemented or assisted by USDA agencies, DOA will accept to the maximum degree legally possible, the environmental documentation and findings of the USDA agencies.
- f. For activities of other Federal agencies, which involve DOA permits, USDA and DOA will accept, to the maximum extent legally possible the environmental documentation and findings of those agencies.
- g. DEs will seek assistance from USDA officials (AOs) in cases where proposed activities will significantly change local conditions related to agriculture, forestry, or inland aquaculture, particularly when needed in coordination with EPA regarding technical aspects of Section 404(f) of the Clean Water Act.
- h. Agencies in both departments will cooperate in the further development of general permits for USDA actions or USDA assisted activities and in increasing the use of alternative procedures where appropriate.

#### 6. General Procedures:

- a. The AS(NRE) will represent the USDA in general coordination with the DOA at the national level. For coordination at the field level, the appropriate AO for activities involving any land and water areas administered by the Forest Service will be the appropriate Regional Forester. The AO for activities involving the responsibilities of the Rural Electrification Administration (REA) will be the Assistant Administrator-Electric of REA. The appropriate State Conservationist of the Soil Conservation Service (SCS) will be the AO for activities which involve the responsibilities of SCS and other USDA agencies.

- b. The DE will take reasonable steps to assure that public notices are promptly transmitted directly to the AO. The AO will respond with or without comment during the basic comment period. The AO will comment only on matters clearly within USDA authorities and responsibilities. Extensions of the basic comment period will not exceed 30 calendar days and will be authorized only upon written request to the DE from the AO. The request must be received during the basic comment period and must demonstrate the need for the extension and for any additional data which would not be collected during the basic comment period. The DE will respond in writing to the request within five calendar days of the date of the letter of request. Transmittal provisions of paragraph 7.f. will apply to this response.
  - c. The agencies agree to develop management techniques at the field level, such as periodic meetings, to provide an opportunity for informal consultation prior to USDA's submitting formal comments. When such consultations take place in connection with a specific case, they shall occur within the specified comment period and will not affect the time requirements specified in other parts of this MOA or in 33 CFR 320-330.
  - d. The agencies agree to cooperate fully in the transfer of information necessary for the agencies to carry out their respective responsibilities.
  - e. Both parties will take the internal measures necessary to assure that the letter and spirit of this agreement are understood at all levels within their agency.
7. Procedures for review by higher authority (elevation):
- a. In the vast majority of cases, the entire elevation process, when activated, should be completed within 90 calendar days of the DE's notice of intent to issue or deny a permit; in no cases should the elevation process exceed 120 calendar days.
  - b. The elevation process may be activated by USDA when one of the following events occur:

- (1) The DE intends to deny or condition a permit for a proposed USDA action or USDA assisted activity.
- (2) For other permit actions when, during the comment period the AO recommends that a permit be denied or that the activity be modified as a condition of the permit and the DE subsequently finds the original proposal is in the public interest and intends to issue the permit without implementing recommendations of the AO.

In either event, the DE will so notify the AO by letter and will defer final action until the elevation process is terminated. The DE's letter to the AO will include a brief summary of how USDA's comments were considered and a copy of the DE's findings.

- c. When an event described in 7.b.(1) occurs, the AO may within 10 days request a negotiation conference with the DE. If the issues of USDA concern are not resolved within 20 days, the AO may decide to begin the elevation process within USDA and to so notify the DE by letter. Within 20 days after such a letter from the AO to the DE, the AS(NRE) may request of the Assistant Secretary of the Army (Civil Works) (ASA(CW)) that the case be reviewed by a higher authority in DOA and USDA. The request will be written and will cite the issues involved as provided in paragraph 5.d. The AS(NRE) and the ASA(CW) will jointly determine at which level the final decision will be made and will notify in writing the agency officials involved.
- d. When an event described in 7.b.(2) occurs, the AO may decide within 10 days to begin the elevation process within USDA and to so notify the DE by letter. Within 20 days after the DE's letter to the AO, the AS(NRE) may request of the ASA(CW) that the case be reviewed by a higher authority. The request will be written and will describe the issues involved as stated in paragraph 5.d. The ASA(CW) will decide whether or not the case will be reviewed at a higher level and if so, at which level the final decision will be made. The ASA(CW) will notify in writing the agency officials involved.

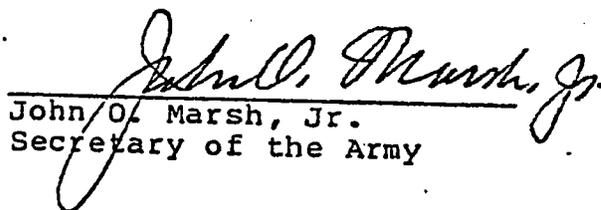
- e. The Corps or Army official designated by the ASA(CW) or jointly by the ASA(CW) and the AS(NRE) to decide an elevated case will reach a decision within the time specified in paragraph 7.a. above and will immediately notify the applicant and appropriate officials of both agencies.
- f. Each agency will ensure that all letters to the other agency, as required by this paragraph, will be delivered within one working day using messenger, electronic transmittal or other appropriate means.
8. This agreement is effective immediately upon the last signature date below and will continue in effect for five years unless sooner modified or revoked by agreement of both parties.
9. The Memorandum of Agreement between the Secretary of Agriculture and the Secretary of the Army on permit processing dated March 24, 1980, is hereby terminated.

Date 1-7-83

Date 18 Dec. 1982



John R. Block  
Secretary of Agriculture



John O. Marsh, Jr.  
Secretary of the Army