

10/85

Memorandum of Agreement Between the Department of the Army
Corps of Engineers and the Environmental Protection Agency
Regarding Coordination of Permitting for Log Transfer Facilities

I. Purpose:

The purpose of this Memorandum of Agreement ("MOA") is to establish coordination procedures between the Department of the Army, Corps of Engineers ("COE"), and the Environmental Protection Agency ("EPA") in the processing and issuance of permits for log transfer facilities ("LTFs"). It is the intent of COE and EPA to assure through implementation of this MOA, to the maximum extent practicable, that duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, are eliminated.

II. Authority:

- A. Clean Water Act Amendments of 1985;
- B. Section 402 of the Clean Water Act;
- C. Section 404 of the Clean Water Act;
- D. Section 10 of the Rivers and Harbors Act of 1899;
- E. Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

III. Scope:

This Agreement applies only to LTFs that require both an EPA National Pollutant Discharge Elimination System ("NPDES") permit under section 402 ("402 permit") and a Department of the Army permit, under authorities administered by the COE ("COE permit").

D. EPA will provide an opportunity for public comments and a hearing under 40 CFR §§ 124.11 and 124.12 on the proposed section 402 modifications and on any findings that no section 402 modifications to the COE permits are necessary. EPA, at the discretion of the Regional Administrator (or designee), may group consideration of more than one set of modifications or findings at a single hearing.

E. After review of any public comments and the transcript of any public hearing, EPA will issue to the Corps a copy of the 402 modifications, or the finding that no 402 modifications are needed, signed by the Regional Administrator (or designee). The Corps will include the modifications or the finding in the COE permits and will clearly identify them as 402 modifications or a finding issued and enforceable by EPA to satisfy the requirements of the NPDES program.

F. Any appeal of the final decision of the EPA regarding the 402 modifications will be through the procedures established at 40 CFR Part 124.

V. Procedures For New Facilities

A. The COE will be the lead agency for processing new applications for LTFs which must be authorized under the NPDES program and the COE authorities, and will be the principal point of contact for the applicant. (The typical procedure is diagrammed in Attachment A.)

B. The COE will notify the appropriate EPA Regional

the application.

5. EPA and COE will develop a list of normal conditions to be considered in determining siting or discharge conditions for LTFs. In developing the list for Alaska the EPA and COE will utilize the Alaska Timber Task Force guidelines (in the development of which they have participated), and related studies and information. The list may be supplemented or modified by guidelines developed by the Alaska Timber Task Force as the result of new studies and information. In other States, this list will be based, where possible, on the Alaska Timber Task Force guidelines and any pertinent studies or information. EPA will provide this list to approved NPDES States for coordination of their permitting activities with COE. Using this list of normal conditions, and specific information available for a proposed LTF, EPA, using its authority under section 402(a)(1), will prepare draft NPDES permit terms and conditions for the proposed LTF and will transmit those draft permit terms and conditions and fact sheet to the COE within 10 days of the date that the completeness determination under V(D)(1) is made. In using the list of normal conditions, a permit writer is not required to use the entire list in establishing appropriate terms and conditions.

D. Public Notice

1. Within 15 days of a joint COE/EPA determination that the application is complete, COE will mail a public notice of the application for COE permit, and the draft 402 permit terms and conditions and fact sheet, following COE regulations at 33 CFR Part 325. The notice will be mailed to parties on a

the EPA and COE will begin development of terms and conditions for the final 402/COE permit.

2. If a State provides conditions with a valid certification under Section 401 of the Clean Water Act, each condition will be placed in either the COE section of the permit or in the 402 section, whichever is appropriate.

a) In general, conditions that relate to placement of dredged or fill materials in conjunction with building the facility will be placed in the COE section, and conditions that relate to discharge due to operation of the facility will be placed in the 402 section.

b) If the COE is processing an application for an LTF which does not involve Section 404 of the Clean Water Act, then all conditions that come with a Section 401 certification will be placed in the 402 section.

c) The COE and EPA will consult with one another regarding any condition of a Section 401 certification which is not readily identified as belonging in either the COE or 402 section. In such a case, the COE and EPA will determine whether it is appropriate to place the condition in one section, or in both sections.

3. When substantial issues remain to be resolved, or substantial changes have been made in a COE application or 402 draft permit terms and conditions, or denial of a permit may occur, the COE and EPA will consult to determine what

previous authorization to discharge, the operator may so certify on the letter, sign and return it to EPA; or

(2) If changes have occurred, the operator must submit information on those changes to EPA, or cite information that has already been provided to EPA or COE.

VII. Compliance:

A. Inspections

1. In general, the COE will be responsible for inspections through completion of construction of permitted LTFs, and will be responsible for compliance and enforcement which relate to the physical features of an LTF that is constructed in waters regulated by the COE.

2. In general, the EPA will be responsible for inspections after construction and during operation of an LTF, and will be responsible for compliance and enforcement which relate to operation of an LTF.

B. Consultation.

1. EPA and the COE will coordinate on all inspections to reduce duplication of inspections, especially when overlap between construction and operation of an LTF might occur.

2. The COE and EPA will share, whenever appropriate, information obtained from inspection and monitoring reports required by conditions in permits for LTFs issued by either

X. Effective Date of this Memorandum of Agreement

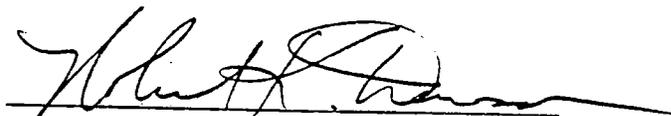
A. As it pertains to new LTFs, this MOA shall take effect immediately upon signature.

B. As it pertains to existing LTFs, this MOA shall take effect upon enactment of the Clean Water Act Amendments of 1985.

C. EPA and the Army agree to modify this MOA, if necessary, to conform to the Clean Water Act Amendments of 1985.

D. This MOA may be terminated only after 60 days written notice given by either party to the other party, and to the Public Works Committees of both Houses of Congress.

For the Department of the Army



Date 22 OCT 1985

Robert K. Dawson

Acting Assistant Secretary
of the Army (Civil Works)

For the Environmental Protection Agency



Date 21 October 85

Acting Assistant Administrator
for Water