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Permit Program

Memorandum of Understanding

Between

The Administrator of the Environmental Protection Agency

and

The Secretary of the Army

In recognition of the responsibilities of the Secretary of the Army under section 13 of the Act of March 3, 1899, "the Refuse Act," (33 U.S.C. 407) relating to the control of discharges and deposits in navigable waters of the United States and tributaries thereof, and the interrelationship of those responsibilities with the responsibilities of the Administrator of the Environmental Protection Agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq) in recognition of our joint responsibilities under Executive Order No. 11574 (dated December 28, 1970) we hereby adopt the following policies and procedures:

I. POLICIES

A. It is our policy that there shall be full coordination and cooperation between our respective organizations on the above responsibilities at all organizational levels, and it is our view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field

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supplying such data will be developed by the Corps and EPA.

B. District Engineers shall provide Regional Representatives of EPA at the earliest practicable time with copies of an applicant's request for a permit, request for certification from a State pursuant to Section 21(b) of the Federal Water Pollution Control Act, other requests for State approval, and State or interstate agency certifications or other actions relating to such permit applications.

C. In reaching determinations as to compliance with water quality standards, including determinations and interpretations arising from its review of State or interstate agency water quality certifications under Section 21(b) of the Federal Water Pollution Control Act, Regional Representatives of EPA will determine and advise District Engineers with respect to the following:

(i) The meaning and content of water quality standards, which under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health and welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses."

(ii) The application of water quality standards to the proposed discharge or deposit, including the impact of the proposed discharge or deposit on such water quality standards and related water quality considerations;

(iii) The permit conditions required to comply with water quality standards;

(iv) The permit conditions required to carry out the purposes

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District Engineer, within 30 days of receipt of such notice, shall deny the permit and provide notice of such denial to the Regional Representative of EPA.

F. In the absence of any objection by the Regional Representative to the issuance of a permit for a proposed discharge or deposit, District Engineers may take action denying a permit only if:

(i) anchorage and navigation will be impaired; or

(ii) the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made, and, after the consultations required by the Fish and Wildlife Coordination Act, the District Engineer determines that the proposed discharge or deposit will have significant adverse impact on fish or wildlife resources.

G. In any case where the District Engineer believes that following the advice of the Regional Representative with respect to the issuance or denial of a permit would not be consistent with the purposes of the Refuse Act permit program, he shall, within ten days of receiving such advice, forward the matter through channels to the Secretary of the Army to provide the Secretary with the opportunity to consult with the Administrator. Such consultation shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

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- including implementing schedules adopted in connection with such standards;
- (2) Include provisions incorporating into the permit changes in water quality standards subsequent to the date of the permit, and requiring compliance with such changed standards;
 - (3) Provide for possible suspension or revocation in the event that the permittee breaches any condition of the permit.
 - (4) Provide for possible suspension, modification or revocation if, subsequent to the issuance of a permit, it is discovered that the discharge or deposit contains hazardous materials which may pose a danger to health or safety.

B. Permits shall also be subject to conditions, as determined by EPA, to be necessary for purposes of insuring compliance with water quality standards or the purposes of the Federal Water Pollution Control Act. Such conditions may include, but are not necessarily limited to:

- (1) Requirements for periodic demonstrations of compliance with water quality criteria, established implementation schedules, or prescribed levels of treatment;
- (2) Site and sampling accessibility;
- (3) Requirements for periodic reports as to the nature and quantity of discharges or deposits.

C. Regional Representatives of EPA may also provide District Engineers with advice as to the duration for which permits should be issued. Relevant considerations shall include the nature of the discharge, basin plans, and changing treatment technology.