



May 92



DEPARTMENT OF TRANSPORTATION  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF THE ARMY



MEMORANDUM FOR REGIONAL ADMINISTRATORS AND DISTRICT/DIVISION ENGINEERS

SUBJECT: Implementation of the Intermodal Surface Transportation Act

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is landmark legislation. It sets new directions for the Nation's highway and transit programs in a post-interstate highway era.

Important provisions of the ISTEA include a new emphasis on comprehensive intermodal planning at the state and metropolitan area levels; greater flexibility in funding for both transit and highways, based on local needs and preferences; and increased attention to compatibility between transportation and environmental protection. Booklets summarizing key overall provisions of ISTEA and summarizing its environmental features are enclosed.

The rapid and successful implementation of ISTEA is a top priority for President Bush and for each one of us. The additional funding available under the Act is an important resource both for the renovation of our transportation infrastructure and as a vital stimulus to our economy. The Department of Transportation has taken steps to assure that the ISTEA funds are immediately made available to state and local agencies so the money can be put to work creating jobs and helping to jump-start the economy.

But making the funds available is only half the job. They have to be put to use on actual construction projects. All three of our agencies are firmly committed to removing any unnecessary impediments to such projects. Recognizing the importance of environmental protection and the necessity to comply with legal requirements, we believe that we can help accomplish the President's objective by, among other measures, streamlining and improving the efficiency of the environmental review and clearance process and taking prompt action on Section 404 permit applications. This is consistent with the President's comprehensive plan announced on August 9, 1991, to improve the protection of the Nation's wetlands and streamline the regulatory process.

In 1988, the Federal Highway Administration (FHWA), Army Corps of Engineers (COE), Environmental Protection Agency (EPA), Fish and Wildlife Service, and National Marine Fisheries Service

jointly published as guidance the document "Applying the Section 404 Permit Process to Federal-aid Highway Projects." Better known as the "Red Book," this document provides numerous measures to improve coordination, emphasize innovative and cost-effective approaches, and integrate the NEPA and Section 404 permit processes. Effective immediately, it will be the official policy of FHWA, the Corps, and EPA to fully implement the intent of the "Red Book."

Where there are interagency issues or problems delaying issuance of Section 404 permits, we urge you to become personally involved in settling disputes, assuring due protection of aquatic resources, and getting the projects moving. Please pass this message, with your personal endorsement, to each member of your staff who is working on transportation projects and permitting.

Even as we seek expedited treatment of Section 404 permit applications, we do not expect to see reduced protection of aquatic resources, including wetlands. Costs of avoiding, minimizing and compensating for wetland impacts are an eligible expense under ISTEA for projects and should be included wherever appropriate.

If there are issues on important projects which cannot be promptly resolved at the state or regional levels, please involve appropriate headquarters contacts promptly. They will arrange for review at headquarters level and, if appropriate, on site meetings with all appropriate participants to facilitate a permit decision. Headquarters contacts on this are:

Gene Cleckley (FHWA)

(202) 366-0106

Greg Peck (EPA)

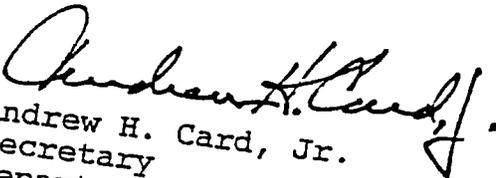
(202) 260-8794

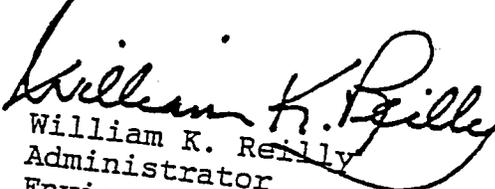
Michael Davis (OASA(CW))

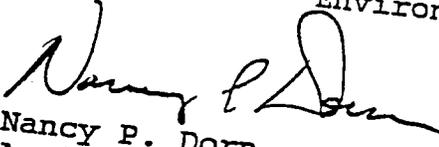
(703) 695-1376

We appreciate your cooperation and assistance on this important initiative.

Sincerely,

  
Andrew H. Card, Jr.  
Secretary  
Department of Transportation

  
William K. Reilly  
Administrator  
Environmental Protection Agency

  
Nancy P. Dorn  
Assistant Secretary of the Army  
(Civil Works)

5/1/92

Enclosure

5. The Corps will establish, where appropriate, additional general permits for the repair or replacement of roads and other projects which have only minimal impacts on wetlands.
6. The Corps, FHWA, EPA and other Federal agencies will work to establish wetlands mitigation banks for Federal and state highway projects.
7. The Corps and EPA will coordinate with FHWA and state DOTs to provide additional wetlands delineation training opportunities. The FHWA and state DOTs will request training and subsequently assist the Corps in conducting wetlands jurisdictional determinations.
8. The DA/Corps, FHWA, and EPA will convene, as necessary, a headquarters level team to assist in resolving controversies over NEPA and Section 404 issues. Other agencies such as the President's Council on Environmental Quality, the Fish and Wildlife Service and the National Marine Fisheries Service will be invited to participate as appropriate.
9. The Corps, FHWA and EPA will form regional interagency teams to identify the principal causes of delay during environmental review of transportation projects. Consistent with applicable law and regulation, the teams will propose specific measures to reduce identified delays.
10. The Corps, EPA, and FHWA will evaluate the need for guidance that clarifies that alternatives that would result in significant delays in project initiation will not be considered "practicable."

*Components of the President's Wetlands Plan that will Benefit Transportation Projects*

1. By mid-May 1992, the Corps will issue a regulatory guidance letter which clearly articulates the role of the Corps as "project manager" and decision maker on Section 404 permits. The guidance letter will also emphasize the need for effective and efficient coordination among prospective permittees, the Corps and Federal resource agencies. The need for project-related comments from the resource agencies will be emphasized.

2. By early summer 1992, the Section 404(a) Memoranda of Agreement between the Army and the Federal resource agencies will be revised to significantly streamline the agency appeal process. This will directly reduce applicant delays associated with interagency disagreements.
3. The Corps and EPA will issue guidance to their field personnel to use flexibility in requiring alternatives analysis when resource values are low (e.g., don't require a detailed alternatives analysis for a project proposed in low value wetlands).

In addition to the 13 items mentioned above, the Corps will complete in Fiscal Year 1993 a 25 percent increase in regulatory personnel. This will result in reduced permit evaluation times for highway projects. Implementation of all of the items noted will significantly streamline the permit evaluation process by minimizing delays and ensuring more timely decisions, while allowing for meaningful opportunity for substantive evaluation by the Corps and other Federal agencies. These streamlining measures are designed to maximize efficiency and are not inconsistent with reasonable environmental protection.



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

11 MAY 1992

CECW-OR

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND  
DISTRICT COMMANDS

SUBJECT: Regulatory Initiatives Associated with the Intermodal  
Surface Transportation Efficiency Act (ISTEA)

1. The Assistant Secretary of the Army (Civil Works), Ms. Nancy Dorn, has worked with the Secretary of Transportation and the Administrator of the Environmental Protection Agency in developing the enclosed agreement regarding implementation of the subject statute. As indicated in the agreement, implementation of ISTEA is a priority of the President and all of us in the Executive Branch. Effective and efficient implementation of ISTEA will require enhanced coordination on FHWA highway projects among the Corps, FHWA, and EPA as well as other resource agencies. As indicated in the enclosed agreement, we believe that the most effective method of ensuring such enhanced coordination is through full implementation of the "Red Book", developed in 1988 by the Corps, FHWA, EPA and other agencies. I want each of you to ensure that the enclosed interagency agreement is fully implemented in your area of responsibility.
2. The enclosed agreement is generally self-explanatory, however, I want to clarify one point in the agreement and emphasize several points in the list of action items accompanying the agreement. The agreement identifies Mr. Michael Davis of Ms. Dorn's staff as the headquarters point of contact for the Army should problems in resolution of issues on important projects arise. If such problems arise, your staff should first contact Mr. John Studt of the HQUSACE Regulatory Branch, CECW-OR at 202-272-0199. We will involve Mr. Davis to the extent necessary wherever appropriate.
3. Although most of the action items in the enclosed paper titled "Implementation of the Intermodal Surface Transportation Efficiency Act" are self explanatory and should be advocated by each of you in your area of responsibility, I want to emphasize several points as follows:
  - a. You should ensure that the "Red Book" is implemented. This will advance both action items 1 and 2.

CECW-OR

SUBJECT: Regulatory Initiatives Associated with ISTEA

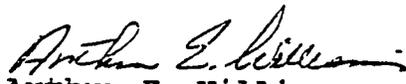
b. Action item 3 indicates that HQUSACE will issue guidance that transportation projects will be given priority. I am with this memorandum directing each of you to take reasonable steps to ensure that transportation projects receive expeditious review and timely decisions. This may involve prioritizing transportation projects in your district's regulatory workload. The beneficiaries of such prioritization of transportation projects will not only be the state and Federal DOTs, but also the general public. The benefits of expeditious review and decisionmaking on these projects are improved infrastructure for public use and substantial economic benefits to the Nation from the placement of the Federal highway funds.

c. Regarding action item 5, each district should examine the potential transportation projects and identify regional general permits based on the generally unavoidable nature of roadway repair and replacement projects and even some new construction projects. An additional consideration is the ability of states to fund project mitigation, which should ensure that all appropriate and practicable compensatory mitigation will be available through the states.

d. In accordance with action items 6 and 9, MSCs and DCs should develop active and positive relationships with your FHWA and EPA regional representatives. Mitigation banks are already relatively common among state DOTs and additional mitigation bank development will enhance the ability of state DOTs to comply with Corps regulatory requirements and enhance the protection of the aquatic environment through active mitigation bank planning.

4. Please ensure that these important steps are taken in an effort to be responsive to the need to expeditiously evaluate transportation projects. As indicated in the enclosed agreement, we do not expect a reduction in the protection provided for the aquatic environment. But we do expect that the protection will be provided in a timely manner utilizing all appropriate flexibility in the Corps decisionmaking process. Should you have any questions regarding this memorandum or the enclosures please contact John Studt or Kirk Stark in my Regulatory Branch at 202-272-0199.

Encls

  
Arthur E. Williams  
Major General, USA  
Director of Civil Works



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-3103



REPLY TO  
ATTENTION OF

4 MAY 1992

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Regulatory Initiatives Associated with the  
Intermodal Surface Transportation Efficiency  
Act (ISTEA)

On December 18, 1991, President Bush signed the ISTEA which establishes a new vision for surface transportation in America. This Act embodies the President's vision and direction as stated in his National Transportation Policy (NTP) to promote safety, protect the environment and improve the quality of life. This Act provides funding authorizations of \$155 billion for highways, highway safety, and mass transportation for the next 6 years.

The rapid and successful implementation of ISTEA is a top priority for President Bush and for each one of us. The additional funding available under the Act is an important resource both for the renovation of our transportation infrastructure and as a vital stimulus to our economy. Recognizing the role of the Department of the Army regulatory program in the regulation of transportation projects, I have worked with the Secretary of Transportation and the Administrator of the Environmental Protection Agency to identify ways to eliminate unnecessary regulatory burdens and delays. In this regard, On May 1, 1992, I signed the attached memorandum with Secretary Card and Administrator Reilly. In addition, we have prepared the attached list of important action items that should be accomplished to meet our objectives in this area. I ask that you immediately provide a copy of both of these documents to all Division and District Engineers.

While we are firmly committed to removing any unnecessary impediments to transportation projects, we must continue to recognize the importance of environmental protection and the necessity to comply with legal requirements. In doing so, we believe that we can assist in accomplishing the President's objectives to fully implement ISTEA and maintain reasonable environmental protection.

I would be happy to discuss this with you and provide any needed clarification. In the mean time, Mr. Michael Davis, my Assistant for Regulatory Affairs, will be contacting Mr. John Studt of your regulatory office to coordinate and discuss in more detail the implementation of the enclosed information.



Nancy P. Dorn  
Assistant Secretary of the Army  
(Civil Works)

Attachments