Proposed Rule Making

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[33 CFR Part 209]

PERMITS FOR DISCHARGES OR DEPOSITS INTO NAVIGABLE WATERS

Proposed Policy, Practice and Procedure

Proposed regulations prescribing the policy, practice and procedure to be followed by all Corps of Engineers' installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407) were published in the FEDERAL REGISTER of December 31, 1970 (35 F.R. 20005). Public comment on the proposed regulations was invited within a period of 45 days from December 31, 1970.

The proposed Memorandum of Understanding set forth below relates to the proposed regulations and to Executive Order 11574 which deals with the administration of the Refuse Act Permit Program (35 F.R. 19627). If executed, the proposed Memorandum of Understanding will be an additional paragraph to the proposed regulations 33 CFR 209.131(p).

Comments, suggestions, or objections to the proposed Memorandum of Understanding should be submitted in writing to the Office of Chief of Engineers, Washington, D.C. 20314, Attention: ENGCW-ON, within 30 days of publication of this notice in the FEDERAL REGISTER.

Dated: January 18, 1971.

F. P. KOISCH,
Major General, U.S. Army,
Director of Civil Works.

§ 209.131 Permits for discharges or deposits into navigable waters.

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(p) *Memorandum of understanding between the Administrator of the Environmental Protection Agency and the Secretary of the Army.*

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 23, 1970) we hereby adopt the following policies and procedures:

POLICIES

1. 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 organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers (hereinafter "the Corps") shall coordinate the review of applications for permits under the Refuse Act for discharges or deposits into navigable waters of the United States or tributaries thereof with Regional Representatives designated by the Environmental Protection Agency (hereinafter "EPA").

2. EPA shall advise the Corps with respect to the meaning, content and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which the proposed discharge or deposit may or is likely to have on water quality standards and related water quality considerations. The Corps shall accept such advice on matters pertaining to water quality standards and related water quality considerations as conclusive and no permit shall be issued which is inconsistent with any finding, determination or interpretation of a Regional Representative with respect to such standards or considerations.

3. In acting upon applications for permits, the Corps shall be responsible for considering the impact which the proposed discharge or deposit may have on navigation and anchorage and, in cases where the Fish and Wildlife Coordination Act is applicable, on fish and wildlife resources.

PROCEDURES

1. Applicants for permits pursuant to section 13 of the Rivers and Harbors Act of 1899 shall be required by District Engineers to supply data identified by EPA and the Department of the Army. A uniform format for supplying such data will be developed by the Corps and EPA.

2. 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.

3. 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 of the Federal Water Pollution Control Act where no water quality standards are applicable;

(v) The interstate water quality effect of the proposed discharge or deposit.

4. Regional Representatives of EPA shall provide advice as to the effect, if any, of the proposed discharge or deposit on the quality of the waters of any other State not later than 30 days after receipt of copies of both the completed permit application and the State certification or other State action from the District Engineer. The other information and advice identified above shall be provided not later than 45 days after such receipt. If, however, additional time is required to respond, the Regional Representative shall so notify the District Engineer and shall advise him as to the additional period of time which will be required to provide a report. In cases where a Regional Representative does not provide such information and advice to a District Engineer within the time periods specified herein (including any extensions of time requested by the Regional Representative), the advice furnished by a State or other certifying authority shall be considered by the District Engineer to be the advice of the Regional Representative.

5. In any case, where a District Engineer of the Corps has received notice that a State or other certifying agency has denied a certification prescribed by section 21(b) of the Federal Water Pollution Control Act, or, except as provided in a subsection G below, where a Regional Representative has recommended that a permit be denied because its issuance would be inconsistent with his determination or interpretation with respect to applicable water quality standards and related water quality considerations the 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.

6. 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.

7. In any case where the District Engineer believes that following the advice of the Re-

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