

REGISTER of December 31, 1970 (35 F.R. 20005). Public comment received on the proposed regulations is now being considered.

The draft permit set forth below is being considered for use in the permit program being instituted pursuant to 33 U.S.C. 407 and Executive Order 11574 (35 F.R. 10627).

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

Dated: March 18, 1971.

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

DEPARTMENT OF THE ARMY

PERMIT

(Discharge Only)

Referring to written request dated.....
upon the recommendation of the Chief of Engineers, and under the provisions of section 13 of the Act of Congress approved March 3, 1899 (33 U.S.C. 407), entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army—

to

(Here identify the nature of the discharge or deposit approved, including, if applicable, limitations with respect to chemical content, water temperature differentials, toxins, sewage, type and quantity of solids, amount and frequency of discharge.)

at

(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and 10ths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

In accordance with the plans and drawings attached hereto

(On drawings: give file number or other definite identification marks.)

subject to the following:

I. General conditions. (a) That all discharges or deposits shall be consistent with the terms and conditions of this permit; the discharge or deposit of any material or substance not specifically identified and authorized herein or the discharge or deposit of any material or substance more frequently than or at a level in excess of that identified and authorized herein shall constitute a violation of the terms and conditions of this permit; any violation of the terms and conditions of this permit shall be unlawful and may result in the institution of such legal proceedings as the Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked; a violation of any of the terms and conditions of this permit may also lead to the modification, suspension or revocation of this permit.

(b) That, except as provided in (c), below, the discharge or deposit authorized by this permit shall at all times be consistent with

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

applicable water quality standards (including implementing schedules adopted in connection with water quality standards or abatement proceedings) whether established pursuant to section 10(c) of the Federal Water Pollution Control Act, as amended, or pursuant to State law. In the event that two or more sets of standards are applicable to the discharge or deposit, the discharge or deposit must be consistent with the more stringent standard.

(c) That if applicable water quality standards are upgraded during the term of this permit the discharge or deposit authorized by this permit will, within 6 months of the effective date of any upgrading of water quality standards or within such other period of time as the District Engineer, in consultation with the Regional Representative of EPA, may determine, be given additional treatment or will otherwise be modified, if necessary, to be consistent with such upgraded water quality standards.

(d) That permittee shall promptly comply with any regulations, orders, or other directives affecting the discharge or deposit authorized herein which may be issued by the Administrator of the Environmental Protection Agency and with the recommendations of any enforcement conference held pursuant to the Federal Water Pollution Control Act.

(e) That the permittee shall permit authorized representatives and designees of the Army Corps of Engineers to visit such plants or facilities as may be related to the discharge or deposit authorized by this permit for the purpose of inspecting discharge or deposit records, taking samples of discharges or deposits or conducting such other onsite inspection as they may deem necessary to monitor compliance with the terms and conditions of this permit. Such visits as are contemplated by this provision shall be at reasonable times and within reasonable limits and shall follow the presentation of appropriate credentials to the owner, operator or agent in charge of the plants or facilities. If a sample is taken, the representative making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample obtained. Permittee shall provide such assistance as may be necessary to effectively and safely conduct such sampling or inspection.

(f) That permittee shall maintain detailed records as to the nature and frequency of all discharges or deposits from the plant or other facility identified herein and shall provide the District Engineer and the Regional Representative of the Environmental Protection Agency with periodic reports concerning such discharges or deposits. Such reports shall be provided annually unless the District Engineer, in consultation with the Regional Representative, determines that they should be provided at more frequent intervals.

(g) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information proves to be false or inaccurate this permit may be modified, suspended or revoked and/or the Government may institute such legal proceedings as it considers to be appropriate. Attention is directed to the provisions of 18 U.S.C. 1001 which provides for possible fines and imprisonment in the case of false statements.

(h) Water quality certifications pursuant to section 21(b) of the Federal Water Pollution Control Act, the comments of all governmental agencies on a permit application, and all information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge or

deposit shall be available to the public without restriction. All other information or data which may be submitted by an applicant in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall also be available to the public unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Secretary of the Army or his authorized representative that the disclosure of such information or data to the general public would divulge methods or processes entitled to protection as trade secrets.

(i) That the Federal Government shall not be precluded by the issuance of this permit from imposing in the future such taxes or other charges relating the discharge or deposit authorized herein as may be authorized or required by Federal law or regulation.

(j) That this instrument does not convey any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State or local assent required by law for the discharge or deposit authorized.

(k) That unless specifically provided herein this permit does not authorize or approve the construction of physical structures or facilities or the undertaking of any work in any navigable waters of the United States or tributaries thereof.

(l) That this permit may not be transferred to a third party without the prior written approval of the District Engineer.

(m) That this permit may be modified, suspended or revoked if the Secretary of the Army or his authorized representative, after consultation with the Environmental Protection Agency, determines that discharges or deposits undertaken pursuant to the terms of this permit may pose an imminent hazard to public health or safety. Such modification, suspension, or revocation shall be effective upon receipt by the permittee of a notice indicating the action which has been taken and the permittee shall take immediate steps to comply with directives contained in the notice received. Following receipt of the notice and after complying with its terms, the permittee may submit to the Secretary of the Army or his authorized representative a request for a public hearing at which the permittee and other interested persons shall be afforded an opportunity to present oral and written evidence on the basis for the modification, suspension, or revocation. Following the public hearing to be held before authorized representatives of the Secretary of the Army and the Administrator of the Environmental Protection Agency, the Secretary or his authorized representative shall, after considering the record developed at the public hearing and the recommendations of the presiding officials, and after consulting with the Administrator or his authorized representative, make a final decision either affirming, rescinding, or modifying the action previously taken.

(n) That this permit may be either suspended or revoked if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit. Any such suspension or revocation will become effective 30 days after receipt by the permittee of written notice issued by the Secretary of the Army or his authorized representative unless, within the 30-day period (1) the permittee is able to demonstrate to the satisfaction of the Secretary or his authorized representative either (a) that the alleged violation of permit conditions did not, in fact, occur or that (b) the violation was accidental, that the permittee

has been operating in compliance with the terms and conditions of the permit and provides assurances satisfactory to the Secretary or his authorized representative that future operations will be in full compliance with the terms and conditions of the permit, or (2) the permittee requests the holding of a public hearing at which the permittee and other interested persons will be afforded the opportunity to present oral and written evidence on the basis for suspension or revocation. Following the public hearing to be held before authorized representatives of the Secretary of the Army and the Administrator of the Environmental Protection Agency, the Secretary or his authorized representative shall, after considering the record developed at the public hearing and the recommendations of the presiding officials, and after consulting with the Administrator of his authorized representative, make findings of fact and a final determination as to whether the permit is or is not to be suspended or revoked. If the final determination is made that the permit should be suspended or revoked, such suspension or revocation will be effective upon receipt by the permittee of an appropriate notice signed by the Secretary or his authorized representative.

(o) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

II. Special conditions.

This permit expires _____ years from the date of the permittee's signature unless revalidated or specifically extended.

By authority of the Secretary of the Army.

(District Engineer)

(Date)

Permittee hereby accepts the terms and conditions of this permit.

(Permittee)

(Date)

[FR Doc. 71-3938 Filed 3-22-71; 8:48 am]

Copied by MCA
March 26, 1971

Notices

DEPARTMENT OF DEFENSE

Department of the Army

ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARY OF THE ARMY

Notice of a Memorandum of Understanding Providing for Cooperation in the Investigation of Violations of the Refuse Act

FEBRUARY 10, 1971.

Executive Order 11574 (35 F.R. 19627) announced the establishment of a permit program under the Refuse Act, 33 U.S.C. 407, Proposed Corps of Engineers regulations governing the permit program (35 F.R. 20005) and a proposed memorandum of understanding concerning the implementation of the program (36 F.R. 983) have been previously published in the FEDERAL REGISTER. The following memorandum of understanding which pertains to enforcement of and investigations under the Refuse Act rather than to the permit program itself has been executed by both the Administrator of the Environmental Protection Agency and the Secretary of the Army:

MEMORANDUM OF UNDERSTANDING BETWEEN THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARY OF THE ARMY

The Administrator of the Environmental Protection Agency and the Secretary of the Army, recognizing the interrelationship between section 13 of the Act of March 3, 1899 (33 U.S.C. 407) (the "Refuse Act") administered by the Department of the Army and the statutory responsibilities of the Environmental Protection Agency under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.), and further recognizing their responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and their responsibilities under Executive Order 11574 dated December 23, 1970, which directs the Federal Government to implement a permit program under the Refuse Act to control the discharge of pollutants into navigable waters and their tributaries, have entered into this memorandum of understanding to delineate more fully the respective responsibilities of said Agency and Department for water pollution abatement and control, and to establish policies and procedures for interagency cooperation in the enforcement of the Refuse Act.

I. Responsibilities for water pollution abatement and control. A. At the Federal level, the Environmental Protection Agency has primary responsibility, pursuant to the Federal Water Pollution Control Act, for the abatement and control of pollution of interstate and navigable waters of the United States.

B. The Department of the Army has primary responsibility for the enforcement of the Refuse Act.

C. Under Executive Order 11574, the Secretary is directed to develop regulations and procedures in consultation with the Adminis-

trator governing the issuance of discharge permits under the Refuse Act, and, in connection with the grant, denial, conditioning, revocation and suspension of such permits, to adopt determinations and interpretations of the Administrator respecting water quality standards and compliance therewith.

D. The Department of the Army and the Environmental Protection Agency have in cooperation undertaken to implement the permit authority of the Refuse Act pursuant to a memorandum of understanding dated January, the terms of which are incorporated herein and made a part hereof.

II. The Refuse Act. A. The Refuse Act, 33 U.S.C. 407, provides that:

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of the navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the U.S. officers supervising such improvement or public work: *And, provided further*, That the Secretary of the Army whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. March 3, 1899, c. 425.

B. Criminal sanctions may be imposed against persons or corporations found guilty of violating provisions of the Refuse Act. As prescribed in 33 U.S.C. 411, the penalty upon conviction is "a fine not exceeding \$2,500 nor less than \$500, or * * * imprisonment (in the case of a natural person) for not less than 30 days nor more than 1 year, or both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction."

C. Civil proceedings may also be instituted to enjoin conduct which would violate provisions of the Refuse Act. *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960) and *Wyandotte Transportation Co. v. United States*, 389 U.S. 191 (1967).

III. Policy with respect to enforcement of Refuse Act. The policy of the Environmental Protection Agency and the Department of the Army is to utilize the Refuse Act and

the authorities contained therein to the fullest extent possible and in a manner consistent with the provisions of the Federal Water Pollution Control Act to insure compliance with applicable water quality standards and otherwise to carry out the purposes of the Federal Water Pollution Control Act. Persons wishing to discharge into or place deposits in navigable waters or tributaries thereof will be required to apply for and obtain a permit from the Department of the Army. Persons without an appropriate permit who discharge into navigable waters or tributaries thereof or who discharge into such waters in violation of the terms of a valid permit may be subjected to legal proceedings under the Refuse Act.

IV. Inter-agency cooperation. A. In recognition of the expertise of the Department of the Army and the Corps of Engineers in matters pertaining to the navigability of a waterway, it is agreed that the Department of the Army, acting through the Corps of Engineers, has primary Federal responsibility for identifying and investigating violations of the Refuse Act which have an adverse impact on the navigable capacity of a waterway. Whenever a District Engineer has reason to believe that a discharge has or may have occurred having an adverse impact on water quality, he shall so notify the appropriate Regional Representative of the Environmental Protection Agency and shall provide him with all information, including, if the discharger is the holder of a Refuse Act permit, a copy of said permit and all of the conditions attached thereto. The said Regional Representative shall make such investigation as he deems appropriate and shall advise the District Engineer in a timely manner whether in his opinion a violation of the Refuse Act having an adverse impact on water quality has or may have occurred. If the Regional Representative is of such opinion, he shall make a report to the District Engineer as to the following:

1. The nature and seriousness of the apparent violation (including, if the discharger is the holder of a Refuse Act permit, information as to the conditions of such permit which appear to have been violated).

2. The nature and seriousness of the impact on water quality.

3. The measures, if any, taken or being taken by the discharger to comply with applicable water quality standards or the conditions of a Refuse Act permit, if any.

4. The existence and adequacy of State or local pollution abatement proceedings.

5. The applicability of the Federal Water Pollution Control Act, whether any administrative or judicial proceedings are being taken or contemplated thereunder, and the status of any such proceedings.

6. His recommendations as to the action, if any, which should be taken under the Refuse Act and his reasons therefor. If the discharger is the holder of a Refuse Act permit, such recommended action may include in addition to or in lieu of prosecution under the Refuse Act for one or more of the remedies available thereunder, the suspension or revocation of the permit. A recommendation to suspend shall include a recommendation as to the period and conditions of the suspension.

B. In recognition of the expertise of the Environmental Protection Agency in matters pertaining to water quality, it is agreed that

said Agency has primary Federal responsibility for identifying and investigating cases involving discharges into interstate or navigable waters which have an adverse impact on water quality. District Engineers shall assist Regional Representatives of the Environmental Protection Agency by providing them with such information as may become available concerning known or suspected discharges which may adversely affect water quality (including, if the discharger is the holder of a Refuse Act permit, a copy of said permit and all of the conditions attached thereto), and, to the extent of available resources, shall assist in the conduct of investigations concerning such discharges. Regional Representatives shall be responsible for notifying District Engineers of known or suspected violations of the Refuse Act and for providing District Engineers with timely reports of investigations conducted. Whenever in the opinion of the Regional Representative a violation of the Refuse Act having an adverse impact on water quality has or may have occurred, such report shall include all of the same information and recommendations called for in subparagraphs 1 through 6 of paragraph A with respect to reports submitted under that paragraph.

C. In connection with any remedial action recommended or taken pursuant to this memorandum of understanding, due regard shall be given to the provisions of section 21(b) of the Federal Water Pollution Control Act, and in particular the provisions of sections 21(b)(4), 21(b)(5), and 21(b)(9)(B) relating to the revocation or suspension of permits.

D. In any case in which a Refuse Act permit is suspended, if the District Engineer has reason to believe that the permittee has or may have violated the terms of the suspension, he shall notify the appropriate Regional Representative of the Environmental Protection Agency and provide him with all available information. The Regional Representative shall make such investigation as he deems appropriate and shall make a report to the District Engineer, such report to include, to the extent relevant, the information and recommendations called for in subparagraphs 1 through 6 of paragraph A with respect to reports submitted under that paragraph.

E. If upon review of all reports and information prepared pursuant to this memorandum of understanding and any other available evidence, it is determined by the District Engineer of the Corps or the Regional Representative of EPA to request legal proceedings under the Refuse Act, such District Engineer or Regional Representative shall, in consultation with each other, forward all available evidence and information, including recommendations, if any, of both the Regional Representative and the District Engineer, to the appropriate U.S. attorney. A copy of any covering letter forwarding information and evidence to the appropriate U.S. attorney should be mailed, together with a brief summary of the factual background of the case, to the Assistant Attorney General for Lands and Natural Resources, Department of Justice, Washington, D.C. 20530.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

STANLEY R. RISON,
Secretary of the Army.

Dated: January 12, 1971.

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc. 71-2134 Filed 2-16-71; 8:49 am]

DSW 329394

STLCOPCB4076102