



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Update on Current
Regulations and Guidance Affecting Wetlands
Management and Regulatory Compliance Procedures

Date JAN 24 1996

From: Chief, Environmental Analysis Division

Reply to
Att: of HEP-40

To: Regional Administrators
Federal Lands Highway Program Administrator

As you know, the FY 1996 FHWA National Strategic Plan (NSP) includes a goal to be an environmentally conscious organization. One of the milestones in the NSP for gauging our progress toward achieving this goal is to implement at least one additional wetland bank, special wetland management and conservation measure, or water quality action plan per FHWA Region by September 1996. This milestone has also been included in Administrator Slater's Performance Agreement with Secretary Peña; consequently, we will be required to periodically report on our progress on meeting this objective throughout the fiscal year.

To assist you in achieving the wetland element of this objective we are attaching an information package containing current regulations and guidance important to wetlands management in the highway environment and the regulatory compliance process. Your Environmental Coordinator may already have some of these items on file. Others pertain to current developments in Federal wetlands programs and regulations. Major elements are described below. A list of the attachments follows.

U. S. Army Corps of Engineers (COE) 404 Regulatory Program

Included is the COE 404 regulatory program as published in the *Federal Register*, the current 404(b) (1) guidelines with associated documentation, Regulatory Guidance Letters and other guidance published by the COE and the EPA. (Attachments 1-7)

National Academy of Science Wetlands Committee Report

This is a summary of major objectives and results of the National Academy of Science Wetlands Characterization Committee final report. (Attachment 8)



Federal Interagency Wetland Banking Guidelines

The Interagency Federal Guidelines for Wetland Banking were published in the *Federal Register* on November 28. These guidelines represent the policy of the Federal regulatory and resource management Agencies relative to the development, permitting, and use of wetland mitigation banks in the 404 regulatory program. A copy of the final guidelines is attached. **According to discussions with the COE and the EPA, these guidelines are not intended to be retroactive. Change or modification of interagency wetland banking agreements that were previously approved or negotiated is not required.** (Attachment 9)

Functional Assessment of Wetlands in the 404 Regulatory Program

The COE continues in development of the Hydrogeomorphic (HGM) Method for Functional Assessment of Wetlands. The COE has proposed this method as mandatory in the 404 regulatory program. This means that permit applications (and preferably, environmental documents) will be required to assess wetlands impacts using the HGM methodology. The COE's goal is to have the method operational and applicable to 80 percent of the individual 404 permit applications by the end of calendar year 1997. The HGM approach is designed to reduce inconsistency and arbitrariness in evaluating wetlands under regulatory requirements, and to reduce the time needed to evaluate wetlands impacts. Technical guidance and an outline of the National Implementation Plan are attached. (Attachments 10-13)

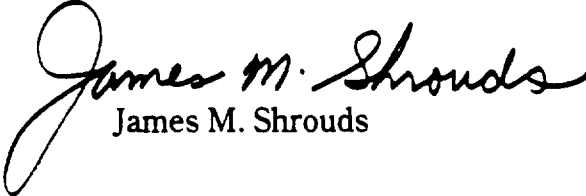
Wetland Delineator Training and Certification

The Wetland Delineator Training and Certification Program has not been fully implemented. A background and current status report is attached. (Attachment 14)

404 Permit Administrative Appeals Process

As part of the Administration's Wetlands Plan of 1993, the COE was directed to develop an Administrative Appeals process for the 404 process. An outline of the process is attached. The COE has not published a firm deadline for implementing the Administrative Appeals process, but has indicated that a final rule might be published by the end of the third quarter of FY 96. (Attachment 15)

If you have any questions regarding this material or other current issues relating to wetlands compliance and management in the Federal-aid highway program, please contact Mr. Paul Garrett at (202) 366-2067 (E-mail: "PGARRETT@intergate.dot.gov") or Mr. Fred Bank at (202) 366-5004.


James M. Shrouds

15 Attachments

FHWA:HEP-40:PGarrett:nb:x62067:12/19/95
Rewritten:1/22/96, Revised:1/24/96
Disk:Paul's, File name:wet_guid.mem
cc: HEP-40, HEP-41, HEP-30, HEP-31, HEP-32,
NCRT(PGarrett), NCRT(FBank),
NCRT(2Files)

LIST OF ATTACHMENTS

1. 33 CFR 320-330; COE 404 regulatory program, final rule; November 13, 1986.
2. 40 CFR 230; 404 (b) (1) guidelines; July 1, 1993.
3. Memorandum of Agreement, between the COE, the EPA, and the FHWA, on Implementation of (b) (1) Guidelines on Highway Projects; February 6, 1990.
4. 33 CFR 330; Amendment to 404 Final Rule, Nationwide Permit Program; November 22, 1991.
5. 33 CFR 323 and 328; Amendment to 404 Final Rule, Clean Water Act Regulatory Program; August 25, 1993.
6. 7 CFR 12; Changes to Hydric Soils of the United States, February 24, 1995.
7. The COE Regulatory Guidance Letter 92-1; Federal Agency Roles and Responsibilities; May 13, 1992.
8. Briefing: National Academy of Science Wetlands Characterization Report; October 30, 1995.
9. Federal Guidance for the Establishment, Operation and Use of Wetland Mitigation Banks; November 28, 1995.
10. National Plan for the Implementation of the Hydrogeomorphic (HGM) Wetland Functional Assessment Methodology; January 5, 1996.
11. Hydrogeomorphic Functional Classification and Assessment of Wetlands; January 3, 1996.
12. Results of Wetland Mitigation Associated with Highway Projects; November 7, 1995.
13. Assessment of Wetlands: Functions and Impacts; December 1, 1995.
14. The COE Wetland Delineator Certification Program; January 5, 1996.
15. The 404 Administrative Appeals Process Outline; January 5, 1996.