

MEMORANDUM

Memoranda of Agreement (MOAs) Between
the Corps of Engineers and Federal
Environmental Resource Agencies

JUN 10 1986

HEV-11

Director, Office of Environmental Policy
Washington, D.C. 20590

Regional Federal Highway Administrators
Regions 1-10
Direct Federal Program Administrator

In the fall of 1985 and spring of 1986, the U.S. Army Corps of Engineers (COE) executed MOAs with the Department of the Interior, Fish and Wildlife Service (FWS); Environmental Protection Agency (EPA); and the Department of Commerce, National Marine Fisheries Service (NMFS). These MOAs govern how the COE will coordinate with these agencies on Section 404 permit issues and supersede similar MOAs executed in 1982. Copies of the MOAs are attached. We suggest that you place them in the Environmental Guidebook under Tab 4.

The MOAs are similar to the 1982 MOAs in that they focus on mechanisms for elevating Section 404 permit decisions from the COE District Engineer to some higher level. As with the 1982 MOAs, such elevations continue to be at the discretion of the Assistant Secretary of the Army/Civil Works based on a request from his or her counterpart at EPA, FWS, or NMFS. The new MOAs retain the same basis for elevation contained in the 1982 MOAs: (1) development of significantly new information, (2) issues of national significance, or (3) insufficient interagency coordination at the district level. The major points of difference between the new MOAs and the 1982 MOAs are: (1) amplification of what constitutes "insufficient interagency coordination," (2) a specification of who in EPA or FWS must sign the comment letter on the permit in order to preserve that agency's right to request a permit elevation, and (3) provision of additional coordination mechanisms between the COE Division Engineer and the EPA, FWS, or NMFS Regional Director.

Our contacts at the COE have indicated to us that it is too early to say what operational impact the new MOAs will have. Certainly, the changes fall far short of a return to the pre-1982 situation where permit decisions would be automatically elevated at EPA'S, FWS'S, or NMFS'S request. To give you a flavor of some of the discussions leading up to the new MOAs, we have attached a copy of the Senate Oversight Hearings on Section 404 of the Clean Water Act. During the Hearings, the Subcommittee Chairman, Senator John Chafee, was very aggressive in pushing the COE to execute new MOAs more favorable to the resource agencies. Pertinent sections of the Hearings have been indexed for your convenience.

As time goes by we would appreciate any feedback you could give us on what effect the new MOAs are having on the Federal-aid highway program. If you need additional information, please contact Fred Skaer at 426-0106.

/s/

Ali F. Sevin

4 Attachments