

# Regulatory Guidance Letter 90-02

## **SUBJECT: Permits for Structures and Fills Which Affect the Territorial Seas**

**DATE: January 24, 1990**

**EXPIRES: December 31, 1992**

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1. The construction of solid fill structures and fills along the coasts may extend a State's seaward boundary under the Submerged Lands Act, 43 U.S.C. Sect. 1301-1315. Accordingly, the regulations in 33 CFR 320.4(f) require that if it is determined that such a structure or work could extend the coastline or baseline from which the territorial sea is measured, the Solicitor of the Department of the Interior (DOI) must be contacted prior to the district issuing a permit for such structure.

2. Effective immediately, the Minerals Management Service (MMS), Outer Continental Shelf (OCS) Survey Group is to be added permanently to the public notice mailing lists of all coastal districts for all applications within coastal and ocean waters. The public notices must be sent to the MMS, OCS Survey Group, Mail Stop 625, Denver Federal Center, Building 41, Room 297B, Post Office Box 25165, Lakewood, Colorado 80225. (This requirement will be added to 33 CFR 325.3 the next time the regulations are revised.) The Solicitor of the DOI will coordinate with the district engineer if the Solicitor believes that the baseline will be affected.

3. If the Solicitor informs the district engineer that the proposed project may affect the baseline from which the territorial sea is measured, the district engineer will request a waiver from the affected state which would waive the state's interest in any increase in submerged lands caused by a change in the baseline. In the event the state refuses to grant the requested waiver and the district engineer believes that the permit should be issued, the final decision on the permit will be made by the Assistant Secretary of the Army (Civil Works) (ASA(CW)). For example, a permit for a solid fill at a naval base for national security reasons may not be contrary to the public interest even though the requested waiver is not issued by the state. In such cases, the district will complete all permit documentation including his recommendation on the permit and forward the documentation to HQUSACE, ATTN: CECW-OR.

4. This guidance expires 31 December 1991 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

JOHN ELMORE

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