

Reference: RGL 81-03

Subject: GUIDELINES IMPLEMENTATION

Title: IMPLEMENTATION OF GUIDELINES FOR SEC 404(B)(1) OF THE CLEAN WATER ACT

Issued: 04/06/81 Expires: 12/31/83

Originator: DAEN-CWO-N

**Description: ANNOUNCED IMPLEMENTATION OF EPA'S 404(B)(1)
GUIDELINES EFFECTIVE 30 MAR 1981 AND PROVIDED SAMPLE
SHORTFORM TO DOCUMENT COMPLIANCE.**

1. Final guidelines for specification of disposal sites for dredged or fill material (404(b) Guidelines) were published by the Environmental Protection Agency (EPA) on 24 December 1980. Copies have been provided under separate cover. As a result of President Reagan's temporary freeze on regulations, the original implementation date of 23 March 1981 was postponed to 30 March. Executive Order 12291 of 17 February 1981 requires "major rules" (e.g., those that may have an annual effect on the economy of \$100 million or more, produce major increase in costs on prices, or have significant adverse effects on competition, employment, investment, productivity, etc.) be given a regulatory impact analysis and review. EPA was required to get clarification from the Director of the Office of Management and Budget (OMB) as to whether the 404(b) guidelines were considered a "major rule." On 30 March 1981, OMB notified EPA that the guidelines were not considered major. Thus, the implementation date remains 30 March 1981. Because of the timing of OMB's decision, you are requested to exercise reason in the application of the guidelines for pending applications close to final action.

2. Procedures to be followed in evaluating an activity and discharge site are generally specified at §SM230.5. These include:

a. Initial compliance screening of the factors in §SM230.10 (a)-(d) and 230.70-77.

b. Development of technical supporting information on which to base a decision regarding compliance (§SM230.20-230.77).

c. Factual determination which represents a written determination of potential short-term or long-term effects of the proposed discharge (evaluation of information gathered in 3.b. above, in format of §SM230.11 (a)-(h)).

d. Findings of compliance which represents the decision reached after determination (2.a-c above) on whether the proposed discharge complies, complies with inclusion of conditions, or does not comply with requirements of the guidelines.

3. Proposed testing requirements for dredged or fill material have also been published. Until these testing provisions are finalized, the provisions of the September 5, 1975, interim final guidelines are to be used. Subpart G (§SM230.60-230.61) of the final guidelines provides a condensed, edited version of the 1975 testing requirements. I would encourage districts' trial usage of the proposed testing requirements wherever possible; both to gain familiarity with them and evaluate their workability.

4. Documentation of guideline application is extremely important to provide a clear understanding of the steps taken to evaluate each proposed discharge for compliance with established criteria. The level of documentation should reflect the significance and complexity of the discharge activity (see §SM230.6 Adaptability). It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases. To provide evaluation of such minor activities, a "short form" has been developed (Enclosure 1). The form is designed to provide stepwise guidance through the 404(b)(1) Guidelines. Use of the form does not preclude, and in fact requires, good working knowledge of the guidelines. If you have any questions about the form or suggestions for improvement, contact DAEN-CWO-N, attention: John Hall (telephone 272-0200).

5. Questions have arisen about the relationship of the Section 404 findings to the Corps permit decision-making process. A finding of noncompliance with the guidelines requires either modification of a proposed discharge to achieve compliance or denial. The Section 404 evaluation, however, is not a substitute for, nor a prerequisite of the public interest review; it is an integral part of that review. All relevant factors in the decision process must be evaluated before making a final decision in any permit action.

6. This guidance is effective through 31 December 1983 unless sooner revised or rescinded.

FOR THE CHIEF OF ENGINEERS: