

Reference: RGL 82-12

Subject: ENFORCEMENT

Title: PHASE IN OF CHANGE TO 33 CFR 326 (ENFORCEMENT)

Issued: 09/22/82 Expires: 12/31/84

Originator: DAEN-CWO-N

Description: SPECIFIES INTERIM PROCEDURES IMPLEMENTING 22 JULY 1982 REGULATIONS CONCERNING CASE REFERRAL TO THE US ATTORNEY.

1. On 22 July 1982, changes made in 33 C.F.R. 326 became effective immediately. In many cases violations of the Clean Water Act, the River and Harbor Act, or the Ocean Dumping Act that would have been sent to the U. S. Attorney for judicial enforcement are now to be processed as after-the-fact permit applications. In order to assure a smooth phase-in of this change, the following schedule will be followed:
 - a. Cases referred to the U. S. Attorney or the Department of Justice before 22 July 1982 (or up to 29 July 1982, if the District Counsel certifies that actual notice of the 22 July 1982 regulation was not received in the District until that date), shall be handled pursuant to the former regulations promulgated on 19 July 1977.
 - b. Cases not forwarded for enforcement action by the date established in subparagraph (a) above shall be processed under the procedures of the 22 July 1982 regulation.
 - c. For cases which may have been forwarded after the date established in subparagraph (a) above, contact should be made with the local U. S. Attorney. If no action has been filed the District shall request that the referral be returned for processing pursuant to the 22 July 1982 regulation. If a complaint has been filed, contact DAEN-CCK (Mr. Cohen) at 272-0027 for further guidance.
2. Although the 22 July 1982 interim final regulations were effective on the date of their publication, this phase-in schedule in paragraph 1 is legally justified. 33 C.F.R. 326 sets forth the criteria for recommending judicial enforcement of violations of the Clean Water Act. Once a matter has been referred to the Department of Justice or the U. S. Attorney's Office, the ultimate prosecutorial decision rests with them. Thus if a case was referred by 21 July 1982, the fact that a complaint may have been brought after that date does not affect the propriety of the referral by the Corps District under the previous regulation, nor would that fact require that an after-the-fact permit be accepted in lieu of judicial action.

FOR THE COMMANDER: