

Reference: RGL 83-03

Subject: TERRITORIAL SEAS

Title: SECTION 103 vs SECTION 404 IN THE TERRITORIAL SEAS

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Originator: DAEN-CWO-N

Description: SPECIFIES DIFFERENCES BETWEEN PERMITS UNDER SEC 103 OF THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT AND SEC 404 OF THE CLEAN WATER ACT.

1. The purpose of this guidance is to clarify which discharges into the territorial seas as defined in Section 502(8) of the Clean Water Act (CWA) require a permit under Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) and which require a permit under Section 404 of the Clean Water Act.

2. Section 404. A Section 404 permit is required for the discharge of dredged or fill material in navigable waters of the United States seaward to the three-mile limit.

3. Section 103. A Section 103 permit is required for the transportation of material dredged from navigable waters of the U.S. for the purpose of dumping into ocean waters (including the territorial seas). Section 3(f) of the MPRSA defines dumping to mean a disposition of material except 1) from an outfall when regulated by the CWA; 2) Routine discharges of effluent from operating a vessel; 3) for a purpose other than disposal when regulated by Federal or state law; or 4) for harvesting fisheries resources when regulated by Federal or state law. Thus, if a discharge qualifies for one of the above four exceptions, then a Section 103 permit is not required. For example: Beach nourishment with fill material obtained from off-shore, since it would be for a purpose other than disposal and would require a Section 404 permit, does not require a Section 103 permit.

4. Section 404 and Section 103. In some cases, a discharge of dredged material may require both a Section 103 and Section 404 permit. To reduce administrative burdens in such cases, the district commander will apply the more restrictive ocean dumping criteria and not the 404(b)(1) guidelines. (See 40 CFR 230.2(b)).

5. Recently, the question has been raised: Does material dredged from beyond the territorial seas require a Section 103 permit for transportation for the purpose of dumping into ocean waters? The answer to this question is not completely clear. In cases where dredging occurs in harbor projects with approach channels which extend beyond the territorial seas, it does not seem appropriate to treat the material dredged from beyond the

territorial seas differently from material dredged inside the territorial seas. Therefore, until we resolve this question, district commanders will require a Section 103 permit for transportation of material dredged from entrance channels to United States' ports for the purpose of dumping into ocean waters regardless of the distance of the dredging seaward of the base line.

6. To comply with the intent of Section 103(e) of the MPRSA, WRSC-D (in coordination with DAEN-CWO) will revise 33 CFR 209.145 this year to include non-Corps Federal projects involving the transportation of dredged materials.

FOR THE COMMANDER: