

Reference: RGL 84-06

Subject: GUIDELINES COMPLIANCE

Title: EPA'S ROLE IN DETERMINING COMPLIANCE WITH SEC 404(B)(1) GUIDELINES

Issued: 03/26/84 Expires: 12/31/86 Originator: DAEN-CWO-N

**Description: DIRECTS CORPS NOT EPA TO MAKE COMPLIANCE
DETERMINATION & SPECIFIES THAT EPA DISAGREEMENT OVER
404(B)(1) ISSUES WILL NOT BE PROCESSED IN ACCORDANCE WITH
INTERAGENCY MOA**

The Clean Water Act clearly assigns responsibility and authority to the Corps of Engineers for determining compliance with the Section 404(b)(1) guidelines. It has been brought to the attention of the Assistant Secretary of the Army that EPA has been asserting a separate and independent authority to determine 404(b)(1) guidelines compliance. The Assistant Secretary has directed that district engineers solicit and give full consideration to the views of EPA officials with respect to environmental effects of Corps permit actions. However, any EPA determinations of compliance with the Section 404 (b)(1) guidelines are to be considered advisory only. In addition, since application of the guidelines involves technical and factual determinations and does not involve unresolved issues requiring national policy review, district engineers will consider invalid any recommendation for permit denials and requests for elevations under the Section 404(q) MOA based on EPA or any other agency determination of non-compliance with the Section 404(b)(1) guidelines. Elevation requests must be based on the provisions of the MOA.

FOR THE CHIEF OF ENGINEERS: