

Reference: RGL 85-05

Subject: INTERFERENCE WITH FEDERAL PROJ

Title: REFERRAL PROVISIONS OF 33 CFR 325.8

Issued: 04/22/85 Expires: 12/31/87

Originator: DAEN-CWO-N

Description: GUIDANCE ON REFERRING PERMIT DECISIONS WHEN ANOTHER FEDERAL AGENCY ADVISES THAT ITS MISSION OR PROJECT WILL BE ADVERSELY AFFECTED.

1. A recent 404(q) elevation has brought attention to the referral requirements of 33 CFR 325.8. A regional level official of another agency objected to a proposed permit, stating that the activity would adversely affect a Federal project for which that agency was responsible. The district engineer did not agree and the agency asked for an MOA elevation of the decision to issue a permit. The elevation was granted based on a policy review of how the Corps of Engineers should treat a situation where another Federal agency has determined that a proposed permit action will adversely affect that agency's ability to carry out the purposes of its Federal project.
2. District engineers should normally consider another Federal agency's well-documented and supported determination of adverse impacts on that agency's ability to carry out its project purposes as strong evidence of such impacts. Should a district engineer decide that issuance of a permit is not contrary to the public interest, where another Federal agency has made such a determination of adverse impacts, he should be particularly mindful of the provisions of 325.8 regarding authority, law, regulations, or policy.
3. In the absence of a well-documented and supported determination, district engineers should normally be able to decide the question of authority, law, regulations, or policy.

FOR THE CHIEF OF ENGINEERS: