

Regulatory Guidance Letter 85-07

SUBJECT: Superfund Projects

DATE: 05 July 1985

EXPIRES: 31 December 1987

1. Recently, the Chief Counsel, Mr. Lester Edelman, responded to a letter from Mr. William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response, Environmental Protection Agency (EPA) Which dealt with the need for Department of Army authorizations for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions. This letter summarizes Mr. Edelman's opinion and provides operating guidance for field interaction with the EPA.

2. The EPA's basic position is that Congress did not intend for CERCLA response actions to be subject to other environmental laws. Rather, as a matter of sound practice, CERCLA response actions generally should meet the standards established by those laws. Consequently, it is the EPA's position that neither it nor the states, in pursuing response actions at the location of the release or threatened release under the authority of CERCLA, are required to obtain permits under [Section 404 of the Clean Water Act](#) or [Section 10 of the Rivers and Harbors Act](#) for those actions.

3. Mr. Edelman stated in part that he has some reservations about the position that the EPA has taken. Nevertheless, he recognizes that the EPA has the primary authority for the interpretation and application of CERCLA, and therefore would defer to the EPA's reading of its own statutory authorities, at least for the time being.

4. In light of this legal opinion, FOAs should not require applications for the EPA or state response actions at the location of the release or threatened release pursued under the authority of CERCLA. Any permit applications in process should be terminated.

5. Both the EPA and OCE believe that the FOAs' expertise in assessing the public interest factors for dredging and filling operations can contribute to the overall quality of the CEROLA response action. The Director of Civil Works will be establishing a group from his staff to work with the EPA staff to develop a framework for integrating the Corps Section 10, Section 404 and, if appropriate, Section 103 concerns into the EPA's substantive Superfund reviews.

6. Until specific guidance is provided from OCE, FOAs should provide technical support to the EPA regions and/or the states on matters within their field of expertise.

FOR THE CHIEF OF ENGINEERS:

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