

Regulatory Guidance Letter 88-09

SUBJECT: Permit Coordination; Corps Civil Works Projects

DATE: July 21, 1988

EXPIRES: December 31, 1990

As a matter of policy the Corps does not issue itself Permits under any of the regulatory authorities it administers (Sections 9 and 10 of the 1899 Rivers and Harbors Act, Section 404 of the Clean Water Act and Section 103 of the Ocean Dumping Act). Unless otherwise exempted (e.g., Section 404(r)), the Corps complies with the same laws that apply to applications for Corps permits (NEPA, Endangered Species, Section 401 water quality certification, CZM consistency, Section 404(a) notice and opportunity for hearing, Section 404(b)(1) compliance, Historic Preservation, Fish and Wildlife Coordination, compliance with ocean dumping criteria, etc.). The planning element within the district is normally responsible for ensuring such compliance (see also paragraph 6. e. of ER 1165-2-120, 15 June 1988).

If a party other than the Corps, usually the local sponsor, opts to construct the project in lieu of the Corps, that party needs a permit. If the general design memorandum for the project is complete, the planning element has complied with the applicable legal requirements as in 1 above, and the district engineer has determined that the project is economically justified and environmentally acceptable, the regulatory element may write a permit to the party that will be responsible for the construction based on the information developed by the planning element. Permit compliance will be monitored and enforcement actions taken in the same manner as for any other permit. Regulatory costs associated with monitoring requirements for determining compliance with a local cooperation agreement will be charged to the Federal Project Costs. An application is not required.

If the party enlarges or modifies the Corps project (e.g., extends a beach replenishment fill one mile further than the authorized project) normal permit evaluation procedures will apply to the portions of the project not included in the Corps planning evaluation.

Where local sponsors perform ancillary work to the Corps-constructed project (e.g., a berthing facility) or perform work required as part of the local cooperation agreement (e.g., a diked disposal area), the sponsor needs a permit. If these related features were included in the Corps planning evaluation as provided for in 33 CFR 322.5(c) and 325.2(b)(4) and paragraph 2-4 of ER 1105-2-20, the regulatory element will execute a permit as in 2 above. If not, the sponsor must submit an application which will be evaluated in the normal manner.

The thrust of the above, guidance is:

The planning process needs to be thorough in terms of compliance with applicable laws and as broad as practicable in terms of covering related projects, so that regardless of who eventually constructs the project and related features they will not be unduly delayed by a regulatory process and;

The regulatory process should not duplicate evaluation steps performed as part of the planning process.

This guidance is also applicable to Corps operation and maintenance activities, consistent with 33 CFR336.1(b)7.

This guidance expires 31 December 1990 unless sooner revised or rescinded.