

CC: Dr. John Graham, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
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Pursuant to the Data Quality Act of 2000's Section (b)2(B), the U.S. Office of Management and Budget (OMB) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, and Section 3.3.4 of Attachment 1 of the Deputy Secretary of Defense's Memorandum dated February 10, 2003, *Ensuring Quality of Information Disseminated to the Public by the Department of Defense*, Public Employees for Environmental Responsibility (PEER) hereby challenges the information, data, analyses, and conclusions drawn in the document entitled *Monthly Status Report, July 2003, Upper Mississippi River and Illinois Waterway System Navigation Study*, published August 7, 2003 by the Rock Island District, U.S. Army Corps of Engineers, on the World Wide Web at <http://www2.mvr.usace.army.mil/umar-iwwsns>.

PEER requests that, until the Army Corps of Engineers complies with the provisions of the DQA and the OMB Guidelines by completing an independent peer review of the information, data, analyses, and conclusions of the subject document "before it is disseminated", that the Department of Defense immediately disavow and withdraw from distribution the published *Monthly Status Report, July 2003, Upper Mississippi River and Illinois Waterway System Navigation Study*.

STANDING

Public Employees for Environmental Responsibility (PEER) is a non-profit organization in the District of Columbia chartered to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity, and upholding professional ethics in the workplace. PEER has thousands of employee and citizen members nationwide, including employees both within the U.S. Army Corps of

Engineers and in other public agencies, whose work with the Upper Mississippi River – Illinois Waterway System is adversely affected by the illegal public dissemination of this information.

PEER also provides legal representation to current and former Army Corps of Engineers public employees who previously disclosed to the Office of Special Counsel (OSC) that the subject of the illegally disseminated *Monthly Status Report, July 2003, Upper Mississippi River and Illinois Waterway System Navigation Study*, the “restructured” Upper Mississippi River – Illinois Waterway System Navigation Feasibility Study, is itself an ongoing work of intellectual dishonesty. The Department of Defense’s subsequent investigation of the disclosure to the OSC concluded that the economic evaluation of the study was originally corrupted by three (3) U.S. Corps of Engineers commanding officers in their attempt to alter data to justify a large and expensive civil works construction project. The study has since been “restructured” by succeeding Corps commanding officers as the result of political pressure in a manner such that the “restructured” studies still fail to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by Federal agencies.

Past attempts sponsored by the Department of Defense to rectify this intentional data quality failure such as seeking the National Research Council’s (NRC) evaluation of the original corrupted study and recommendations to restore credibility to the economic analysis of these potential costly civil works projects have been ignored by Corps of Engineers commanders. Ignoring these explicit NRC recommendations for restoring scientific credibility to the economic analysis of the study demeans all professional economists working in private and public service on the subject study. The unlawful public dissemination of this preliminary “restructured” information — which was circulated internationally via the World Wide Web through the *Monthly Status Report, July 2003, Upper Mississippi River and Illinois Waterway System Navigation Study* and was not the subject of independent review of any kind — substantially and negatively affects the ability of any reputable scientific study to address any issues concerning the economic or environmental analyses of the potential navigation system infrastructure

investments which are the subject of the "restructured" Upper Mississippi River - Illinois Waterway System Navigation Feasibility Study.

FACTS

On August 7th, 2003, the Rock Island District of the U.S. Army Corps of Engineers published the *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study* on the following website: <http://www2.mvr.usace.army.mil/umr-iwrwsns>. In this *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study*, the Corps of Engineers reveals, for the first time since the original discredited study was "restructured", the preliminary National Economic Development evaluations of six (6) potential navigation infrastructure plans under consideration as part of their ultimate recommendations for the Upper Mississippi River and Illinois Waterway Navigation System.

LEGAL STANDARD

The United States Congress recognized a need to improve the quality of information disseminated to the public by the Federal Government. Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106-554, section 515, codified at 44 U.S.C. 3516 historical and statutory note) (Dec. 21, 2002), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model.

Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35) were directed by OMB to (A) issue their own guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency; (B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency; (C) report periodically to the Director of OMB: (i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and; (ii) how such complaints were handled by the agency.

Office of Management and Budget DQA Guidelines § III.2 state, "As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated." and § III.4 states, "The agency's pre-dissemination review, under paragraph III.2, shall apply to information that the agency first disseminates on or after October 1, 2002." See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*, 67 F.R. 8452, 8452 (Feb. 22, 2002).

The U.S. Army Corps of Engineers has yet to publish their guidelines for implementing the Office of Management and Budget's rules enabling the Data Quality Act as required by October 1, 2002 in OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 F.R. 8452, 8452 (Feb. 22, 2002). But on March 26, 2003, the Deputy Secretary of Defense promulgated a "policy memorandum" entitled *Ensuring Quality of Information Disseminated to the Public by the Department of Defense* to comply with the OMB DQA requirement.

The Deputy Secretary of Defense's *Memorandum* states, "Components should not disseminate substantive information that does not meet a basic level of quality. An additional level of quality is warranted in those situations involving influential scientific, financial, or statistical analytical results that are 'capable of being substantially

reproduced". See Memorandum at 3.1.1.2. As with the OMB DQA Guidelines, component information releases are to be marked by utility, objectivity and integrity. See Memorandum at 3.2.2.

Even more important to the present case, scientific material not subject to independent peer review is not presumptively objective. See Memorandum at 3.2.3. In addition, the material in question is highly influential, and therefore subject to a higher standard of quality review. See Memorandum at 3.2.3.1.

ARGUMENT

The data, model, and economic parameters upon which the information disseminated in the *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study* fails to ensure and maximize the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency as mandated in the DQA.

The information contained in the *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study* was first publicly disseminated by the U.S. Army Corps of Engineers via the World Wide Web on August 7, 2003 by the Rock Island District of the U.S. Army Corps of Engineers at URL <http://www2.mvr.usace.army.mil/umr-iwwsus>. The primary information source for the preliminary National Economic Development benefit analysis of the six (6) alternative infrastructure investments described in the monthly status report is the product of the output of two proprietary, non-peer-reviewed, economic models operated and maintained solely by the U.S. Army Corps of Engineers. See the Monthly Status Report at pages 14-16.

The first of these economic models is generally referred to as the Tow Cost Model, which in this study is a recent adaptation of an older Ohio River Navigation System economic model to the Upper Mississippi River and Illinois Waterway

Navigation System. The second model is generally referred to as the "ESSENCE" model and was originally produced for use in the Upper Mississippi River and Illinois Waterway Navigation System Feasibility Study. See the Monthly Status Report at pages 8 and 9. These economic models and the data developed for these models have not been subjected to a peer review of any kind prior to the dissemination of information regarding their results in the monthly status report.

In fact, the Army Corps of Engineers has contracted with the National Research Council for a review of these models and their potential use in the Upper Mississippi River and Illinois Waterway Navigation System Feasibility Study, however this review has not yet commenced. See Monthly Status Report at page 20. Disseminating information based upon these models prior to the completion of this review is a direct violation of the DQA, the OMB guidelines and the Deputy Secretary of Defense's policy memorandum.

By relying on newly created, non-transparent, non-reviewed, proprietary economic models that themselves use non-reviewed, proprietary economic data, arbitrarily created economic model parameters, uncorrected and biased navigation traffic future forecasts as evidenced in independent peer review comments solicited for those forecasts, the *Monthly Status Report, July 2003, Upper Mississippi River - Illinois Waterway System Navigation Study* is not compliant with OMB DQA Guidelines or the Deputy Secretary of Defense's policy memorandum, and, consequently, the U.S. Army Corps of Engineers has violated the DQA.

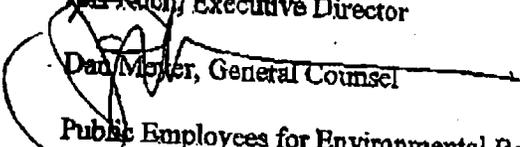
Requested Action

There is a high probability that the U.S. Army Corps of Engineers has released this information in order to achieve some prejudicial result in its component processes. Accordingly, the U.S. Department of Defense must take affirmative steps to remove this disseminated information from public circulation and disavow its content until such time that a formal peer review is completed before its dissemination.

PEER requests that DOD direct that until such time that the the Army Corps of Engineers complies with the provisions of the DQA and the OMB guidelines that the Army Corps of Engineers immediately disavow and withdraw from distribution the previously published Monthly Status Report, July 2003, Upper Mississippi River and Illinois Waterway System Navigation Study. PEER also requests that the Army Corps of Engineers be directed to not disseminate any further substantive information regarding the Upper Mississippi River and Illinois Waterway System Navigation Study until the conclusion of the independent review to be conducted by the National Research Council.



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