Reference: RGL 82-08

Subject: STATE AND LOCAL DECISIONS

Title: STATE AND LOCAL PRIMACY

Issued: 06/18/82 Expires: 12/31/84

Originator: DAEN-CWO-N

Description: POLICY REQUIRING PERMIT TO REFLECT STATE AND LOCAL DECISIONS EXCEPT IN CASES OF OVERRIDING NATIONAL CONCERN.

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1. The purpose of this letter is to emphasize our policy that the Regulatory Program is not to be used to "second guess" decisions made by state and local governments on such matters as zoning or land use unless there are significant issues of overriding national importance. Such issues would include national security, navigation, national economic development, water quality, and national energy needs.

2. The importance of state and local decisions in the regulatory process is recognized in the Clean Water Act, the Environmental Quality Improvement Act of 1970, and our regulations. The policy of Congress as expressed in Section 101(b) of the Clean Water Act is to "recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources ... It is the policy of Congress that the states ... implement the permit program under Sections 402 and 404 of this act." In the Environmental Quality Improvement Act of 1970, Section 202(b), Congress expressed the policy that the primary responsibility for enhancement of environmental quality rests with state and local government. In the public interest review criteria at 33 CFR 320.4(a)(2)(i), district commanders are required to consider the public and private need for a project. Section 320.4 (j)(2) states, "where officially adopted state, regional, or local land use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest...," and Section 320.4(j)(4) states, "In the absence of overriding nationa1 factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable state determination ..."

3. The district commander is responsible to determine when a public interest factor is of national significance and when it becomes an overriding factor in the public interest balancing process. If a district commander proposes to make a decision on a permit application which is contrary to state or local decisions,

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TO: Mr. Mitch Isoe - North Central Division

FROM: Sam Collinson, DAEN-CWO-N 20199 21 June 1982

the district commander must clearly document the significant national issues and explain how they are overriding in importance.

4. This guidance expires 31 December 1984 unless sooner revised or rescinded.

FOR THE COMMANDER: