



US Army Corps
of Engineers
Office, Chief of Engineers

REGULATORY GUIDANCE LETTER

NO. 94-1

DATE 23 May 1994 EXPIRES 31 Dec 1999

CECW-OR

SUBJECT: Expiration of Geographic Jurisdictional Determinations

1. Regulatory Guidance Letter (RGL) 90-6, Subject: "Expiration Dates for Wetlands Jurisdictional Delineations" is extended until 31 December 1999, subject to the following revisions.
2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.
3. To be consistent with paragraph IV.A. of the 6 January 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90-6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.
4. For wetland jurisdictional delineations the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90-6 was and remains 14 August 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90-6 will be the date of this RGL.
5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new information warrants a new jurisdictional determination.

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SUBJECT: Expiration of Geographic Jurisdictional Determinations

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on 31 December 1999 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

A handwritten signature in black ink, appearing to read 'John P. Elmore', written over a horizontal line.

JOHN P. ELMORE, P.E.
Chief, Operations, Construction
and Readiness Division
Directorate of Civil Works



US Army Corps
of Engineers
Office, Chief of Engineers

REGULATORY GUIDANCE LETTER

NO. 94-2

DATE 17 August 94 EXPIRES 31 Dec 99

CECW-OR

SUBJECT: Superfund Projects

1. Regulatory Guidance Letter (RGL) 85-07, subject: "Superfund Projects" is hereby reissued (copy enclosed).
2. This RGL was previously extended by RGL 89-2. Although the extension expired, RGL 85-07 has continued to be U.S. Army Corps of Engineers policy.
3. This guidance expires 31 December 1999 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

Encl

A handwritten signature in black ink, appearing to read "John R. Elmore", with a large flourish extending to the right.

JOHN R. ELMORE, P.E.
Chief, Operations, Construction
and Readiness Division
Directorate of Civil Works



U.S. Army Corps
of Engineers
Office, Chief of Engineers

Regulatory Guidance Letter

No. 85-7

Date 5 July 85

Expires 31 Dec 87

DAEN-CWO-N

SUBJECT: Superfund Projects

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 CERCLA 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:



C. E. EDGAR III
Brigadier General, USA
Acting Director of Civil Works