

M60050.001612
MCAS EL TORO
SSIC # 5090.3REPLY TO
ATTENTION OF:Office of the Chief
Regulatory Branch**DEPARTMENT OF THE ARMY**
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
300 NORTH LOS ANGELES STREET
LOS ANGELES, CALIFORNIA 90012

April 22, 1996

United States Marine Corps
Attn: Joseph Joyce
P.O. Box 95001
El Toro Marine Corps Air, California 92709-5001

Gentlemen:

This letter is in regard to your request (File No. 96-204-LTM) dated March 4, 1995, for a Section 404 authorization for actions to be performed at IRP Site 17 (Communication Station Landfill) and IRP Site 12 (Magazine Road Landfill) at Marine Air Corps Station El Toro, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed actions include bank stabilization, removal of potentially hazardous landfill debris from stream channels, installation of fencing, repairs to channel crossings and existing access roads, and construction of a new drainage channel to divert surface runoff from the landfill area.

Pursuant to Regulatory Guidance Letters No.s 85-7, 89-2, and 94-2 (enclosed), response actions pursued under the authority of CERCLA are not subject to permitting requirements under Section 404 of the Clean Water Act. However, CERCLA response actions must incorporate best management practices and consideration of public interest factors. Activities impacting waters of the U.S. which occur outside the scope or geographic boundaries specified under a CERCLA order are still subject to Section 404 permitting requirements.

If you wish to receive technical support for future CERCLA response actions which may impact waters of the U.S. or have any further questions, please contact Lisa T. Morales of my staff at (213) 894-3935. Please refer to this letter in your reply.

Sincerely,

for Mark Durham
Chief, South Coast Section
Regulatory Branch

Enclosure(s)

cf: USFWS; Attn: Jack Fancher
CDPG; Attn: Terry Dickerson
USEPA; Attn: Harriet Hill

Reference: RGL 85-07

Subject: SUPERFUND PROJECTS

Title: SUPERFUND PROJECTS

Issued: 07/05/85

Expires: ~ 12/31/87

Originator: DAEN-CWO-N

Description: PROVIDES GUIDANCE ON EXEMPTION OF EPA CERCLA (SUPERFUND) PROJECTS FROM SEC 404. EXTENDED BY RGL 89-02.

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

12-11-74 200000 APR 30 50 8:00 AM 002 P.04

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:

ENVIRONMENT & ORDER 10-1147230000 APR 30 90 8:05 NO.002 P.05

Reference: RGL 89-02

Subject: SUPERFUND PROJECTS

Title: EXTENSION OF REGULATORY GUIDANCE LETTER (RGL 85-07)

Issued: 06/10/89

Expires: ~ 12/31/91

Originator: CECW-OR

Description: SUPERFUND PROJECTS

RGL 85-07, subject; "Superfund Projects" is extended until 31 December 1991 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

B. N. GOODE
Acting Chief, Operations and Readiness
Division
Directorate of Civil Works

Reference: RGL 94-02
Subject: SUPERFUND PROJECTS
Title: SUPERFUND PROJECTS
Issued: 08/17/94
Expires: 12/31/99
Originator: DAEN-OR
Description: SUPERFUND PROJECTS - REGULATORY GUIDANCE LETTER
(RGL) 85-07 IS REISSUED

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:

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

Reference: RGL 85-07
Subject: SUPERFUND PROJECTS
Title: SUPERFUND PROJECTS
Issued: 07/05/85
Expires: ~ 12/31/87
Originator: DAEN-CWO-N

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(SUPERFUND) PROJECTS FROM SEC 404. EXTENDED BY RGL 89-02.

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ENVIRONMENT & SAFETY 12-11-72 200000 APR 30 90 010 NO.002 P.00

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FOR THE CHIEF OF ENGINEERS:

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