US Army Corps of Engineers®

REGULATORY GUIDANCE LETTER

No. 05-06 **Date: 7 December 2005**

SUBJECT: Expired Regulatory Guidance Letters

1. **Purpose and Applicability**

a. **Purpose.** To provide guidance regarding the status and use of Regulatory Guidance Letters issued prior to 2002.

b. **Applicability.** This applies to all aspects of the Corps' Regulatory Program.

2. **General Considerations**

a. **Background.** Regulatory Guidance Letters (RGLs) were developed by the Corps Headquarters (HQUSACE) to organize and track written guidance issued to field offices. Over the last 25 years, RGLs have been issued as a result of evolving policy, judicial decisions, and changes to Corps regulations or another agency's regulations that affect our permit program. To date, about 135 RGLs have been issued by HQUSACE. When new or revised permit regulations have been issued, HQUACE has incorporated into those regulations much of the guidance provided in earlier RGLs, thereby rendering those RGLs unnecessary. In addition, some of the guidance provided in the RGLs became obsolete as a result of new policy or court decisions. For several years, a current list of RGLs was published in the Federal Register (FR) under the Notice Section. In 2000, the Corps ceased publication of the RGLs in the FR and has since maintained a list of RGLs, both current and expired, on its website.

b. **Practice.** While RGLs are used by the Corps only to interpret or clarify Regulatory Program policy or procedures, they provide useful guidance to field offices. RGLs are intended to promote program consistency and efficiency across the nation. RGLs issued prior to 2002 included specific dates on which they expired. However, HQUSACE, in both the FR and on its website, has indicated that the guidance provided in expired RGLs generally remains valid after the expiration date, unless superseded by regulations or another RGL. This advisory language has in recent years caused some confusion with field offices and the regulated public. In particular, HQUSACE has not explained what it meant by "valid" nor has HQUSACE clearly communicated which of the expired RGLs have become obsolete as a result of subsequent regulation, policy or guidance. Since 2002, RGLs have been issued without specific expiration dates; those more recent RGLs remain valid until revised or rescinded.

3. **Guidance**

a. RGLs that have expired fall into one of two categories. The first category consists of those RGLs that provide useful information and that, although outdated, are still generally applicable to current program execution. For instance, an expired RGL may reference an old regulation or initiative but continues to provide important direction on a particular matter. HQUSACE plans to update and reissue many of these RGLs or to integrate them into our Standard Operating Procedures. The second category consists of expired RGLs that contain guidance no longer needed or appropriate for the Corps current Regulatory Program. These RGLs have been superseded, replaced or otherwise made obsolete by regulations, court decisions, or other developments. While these RGLs are helpful in understanding the historical context of our program, they are no longer valid and are not to be utilized by Corps field offices as guidance.

b. The expired RGLs that continue to be generally applicable to the Corps Regulatory Program are listed in the two-page attachment. Any expired RGL not listed is considered inappropriate for current program execution. As RGLs are updated and reissued, this list will be revised periodically to show the current set of expired RGLs that continue to apply to the program.

4. **Duration.** This guidance remains in effect unless revised or rescinded.

for DON T. RILEY
Major General, US Army
Director of Civil Works

ATTACHMENT

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Expired RGLs Generally Applicable to the Corps Regulatory Program

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95-01	Guidance on Individual Permit Flexibility for Small Landowners
93-01	Provisional Permits
92-04	Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits
92-02	Water Dependency and Cranberry Production
92-01	Federal Agencies Roles and Responsibilities
91-01	Extensions of Time for Individual Permit Authorizations
90-04	Water Quality Considerations (33 CFR 320.4 (d))
90-02	Permits for Structures and Fills Which Affect the Territorial Seas
89-04	Mandatory Public Notice Language
89-03	Activities Within Superfund Sites
88-13	National Environmental Policy Act (NEPA) Scope of Analysis and Alternatives
88-12	Processing Time; Regulatory Thresholds
88-11	NEPA Scope of Analysis; *Mall Properties, Inc. vs. Marsh*
88-09	Permit Coordination; Corps Civil Works Projects
88-08	Regulation of Artificial Islands, Installations, and Structures on the U.S. Outer Continental Shelf
88-05	Applicant Responsibility for Providing Information
88-04	Enforcement Limitations
88-03	Wetland Jurisdictional Determinations
88-02	Accounting: Charges to Projects
88-01	Length of Public Notices
87-09	Section 404 (f)(1)(c) Exemption for Construction or Maintenance of Farm or Stock Ponds
87-08	Testing Requirements for Dredged Material Evaluations
87-07	Section 404 (f)(1)(c) Statutory Exemption for Drainage Ditch Maintenance
87-04	Use of Alternative Dispute Resolution in Regulatory Actions
87-03	Section 401 Water Quality Certification
87-02	Use of the Word "Significant" in Permit Documentation
87-01	Streamlining the NEPA Process
86-11	Acknowledging Public Notice Comments
86-09	Clarification of "Normal Circumstances" in the Wetland Definition (33 CFR 323.2(c))
86-08	Summary of Decision in River Road Alliance vs Corps of Engineers
86-03	Section 404(f)(1)(e) Exemption of Farm and Forest Roads (33 CFR Part 323.4(a)(6))
85-08	Implementation of Fish and Wildlife Mitigation in the Corps of Engineers Regulatory Program
85-07	Superfund Projects
85-06	Permit Conditioning for Minimum In-Stream Flows
85-05	Referral Provisions of 33 CFR 325.8
85-03	Contractor Reports
85-02	Permit for Bridges and Causeways in the Navigable Waters of the U.S.
85-01	State Transfer Authority

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Expired RGLs Generally Applicable to the Corps Regulatory Program

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84-17	Permits for Activities Which May Modify or Encroach on Constructed Congressionally Authorized Work
84-13	Permitting Activities Associated with Corps Planning and O&M Projects
84-09	Permit Decision Documentation
83-11	Modification to Proposed Activities During the Processing of Corps Permits
83-07	General Permits for Reducing Duplication (State Program General Permits)