Regulatory Guidance Letter 88-03
Subject: Wetland Jurisdictional Determinations
DATE: April 4, 1988 EXPIRES: December 31, 1990

An ever-increasing portion of our workload is the requirement to make wetland jurisdictional determinations related to project boundaries and permit requirements. We understand that there are municipalities in some states that are requiring that anyone applying for a building permit obtain a written statement from the Corps that the activity will not require an Army permit. Combined with the recent economic boom and the dwindling regulatory budget, the result has been an excessive burden on many district's limited staff.

At the same time there has been an increased level of understanding among the agencies, consultants and the public of what is a wetland. In the last two years, the Corps, the Environmental Protection Agency and the Soil Conservation Service have all published (somewhat similar) methods for delineating wetland boundaries. The Corps procedure alone has been so well received that we are about to enter our third printing. Even the general public (especially in the coastal areas) is becoming knowledgeable in the identification of wetlands.

Given all of the above, it is time that we actively encourage (though not require) applicants to provide us with preliminary wetland jurisdictional determinations (PJD) as part of their application. Obviously, the best way to encourage such action is to provide a positive incentive to the public (e.g., reduced delays and processing times). The remainder of this letter provides a stepwise mechanism to increase the active involvement of the public in jurisdictional determinations.

The first step is for the district to determine which method(s) of delineation will be accepted. In making this decision, remember that the idea is to encourage the public. The level of detail required of any applicant should depend upon the magnitude of the impact, the relative value of different types of wetlands and the complexity of the ecosystem (i.e., difficulty in delineating between wetland and non-wetland). Thus a private landowner wishing to place a small amount of fill in a Spartina sp. marsh may be able to delineate the boundary simply by mapping where different plant species occur. A corporation, on the other hand, wishing to develop a 500-acre tract of bottomland forests may need to submit a formal study showing soils, hydrology and vegetation at numerous stations along transects.

The second step is to designate one or more project managers to be responsible for or develop some other means to expedite determinations on those applications which contain a PJD. Verification of PJDs by the project manager may entail a quick site visit to confirm a simple boundary on a map or else to spot check points along transects. As the number of repeat submittals by consultants increases, the project manager should gain a sense of reliability in the individual consultant's determinations. Districts may even consider instituting a certification program for consultants.

Once the FOA has completely formulated its procedure, it should be broadly publicized. Routes of publicity should include public notice mailing lists, newspapers, announcements at public hearings and meetings and inclusion of an addendum to mailings of EP 1145-2-1. FOAs should also consider a special mailing to consulting firms which commonly work within their boundaries.

As the PJDs begin to arrive, the FOA needs to make a special effort to process them expeditiously. RJDs generally should accompany completed applications. FCAs should not direct applicants to submit PJDs in advance of applications. For projects with minor impacts, FOAs should proceed with issuance of public notices within 15 days of receipt of a completed application which includes a PJD, even if the wetland boundary has not been ground-truthed. Minor adjustments to the boundary line which occur after the public notice has been issued are not sufficient to necessitate publication of a revised public notice. The PJD process is the obvious mechanism of choice when individuals are trying to verify that their project will not impact upon wetlands. In the long run this program will reduce both workload and processing times, but only if the FOAs implement it fairly and fully.

The FOA needs to clearly state in all announcements concerning PJDs, that the district engineer retains the authority to make all final jurisdictional determinations (consistent with all agreements with EPA). Prospective applicants should fully understand that they are under no obligation to accept the jurisdictional determination of any other Federal agency. However, if an applicant is willing to accept the wetland boundary determined by either the EPA or the FWS and includes with the PJD a written statement from either of those agencies confirming the boundary, the FOA generally should approve the determination without question.

This guidance expire 31 December 1990 unless sooner revised or rescinded.