Regulatory Guidance Letter 92-05
SUBJECT: Alternatives Analysis Under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Water Act

DATE: October 29, 1992 EXPIRES: December 31, 1997

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and the EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

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EPA/CORPS JOINT MEMORANDUM FOR THE FIELD

SUBJECT: Alternatives Analysis under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act

1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The Congressional endorsement of the industry's ability to select the most effective compliance method (e.g. sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act Section 404 permits for certain proposed activities.

2. The analysis and regulation under Section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the Section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the Section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the Section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities

retain flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the Section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight timeframes under which the industry must meet these new air quality standards.

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