DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-OR

17 DEC 1997

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Guidance on Environmental Impact Statement Preparation, Corps Regulatory Program

1. Appendix B, 33 CFR Part 325, provides policy guidance on preparation of National Environmental Policy Act documents for the U.S. Army Corps of Engineers Regulatory Program. This regulation provides that the district engineer may prepare an Environmental Impact Statement (EIS) or may obtain information to prepare an EIS, either with his/her own staff or by choosing a contractor, either at the expense of the Corps or the expense of the applicant, who reports directly to the district engineer (see paragraph (3), 8b, 8c, and 8f). Due to budgetary constraints, preparing a project specific EIS at the expense of the Corps can no longer be funded.

2. Effective immediately, any Corps district preparing an EIS on a permit action will use a "third party contractor" as the primary method to prepare all or part of a project specific EIS or to obtain required information (40 CFR 1500-1508). "Third party contract" refers to the preparation of an EIS by a contractor paid by the applicant but who is selected and supervised directly by the district engineer (Corps Regulatory Branch). (See 40 CFR 1506.5(c) and Council on Environmental Quality's (CEQ) Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, #16 and #17) Contractor selection by the Corps for a Regulatory Program EIS will be as follows: The Corps will select from the applicant's list the first contractor that is fully acceptable to the Corps, using the applicant's order of preference. The procedures outlined in 40 CFR 1500-1508 and CEQ's forty questions must be followed. Furthermore, the Corps is responsible for final acceptance of the draft and final EIS.

3. Appendix B, 33 CFR Part 325, provides that the district engineer may require the applicant and/or his/her consultant to furnish information required for an EIS. The applicant and/or his/her consultant will then provide the information for the Corps use in preparing an EIS. This is an option which may be utilized in preparing a project specific EIS; however, to manage Corps resources more efficiently and equitably, this approach will be utilized by a district in preparing a project specific EIS only when for some reason the third party contracting cannot be used. If this method is used, the applicant is responsible for providing required information and data to the Corps. The Corps is responsible for review and acceptance of required information, data, or drafts and must be especially vigilant in identifying and eliminating any bias that could exist in a draft National Environmental Policy Act document prepared by a contractor selected and supervised by an applicant. The district engineer (Corps Regulatory Branch) has the final determination for EISs prepared by the applicant and his/her consultant of whether the data provided is adequate and accurate. The Corps will carefully review the applicant's drafts to ensure they are technically adequate and not biased.

4. Of course, a programmatic EIS will still have a substantial portion of the effort conducted and funded by the Corps. However, even for programmatic EIS's, the Corps can, and should, identify applicant groups, States, and/or local Governments to cost share in the effort. Whenever an agency prepares a programmatic EIS, the requirements of 40 CFR 1506.1(c) present potential legal and practical problems for processing any Corps permit related to the programmatic EIS (especially if the permit would require a project specific EIS). For that reason and due to budget implications, any decision to do a programmatic EIS will be reviewed and approved by CECW-OR before a commitment is entered into for any programmatic EIS.

5. Due to Regulatory Program budget limits, all Regulatory Program EIS's must be managed in the Regulatory Branch and primarily reviewed in the Regulatory Branch. The Regulatory Branch will only contract out work to other Corps elements, other Federal agencies, or private consultants, when additional expertise beyond that available in the Regulatory Branch is necessary or where it makes good business sense for the Regulatory Program.

6. If you have any questions, please contact Ms. Colleen Charles, at (202) 761-1784.

FOR THE COMMANDER:

RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

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