

Regulatory Guidance Letter 90-06

SUBJECT: Expiration Dates for Wetlands Jurisdictional Delineations

DATE: 14 August 1990

EXPIRES: 31 December 1993

1. Recently, questions have been raised regarding the length of time that wetlands jurisdictional delineations remain valid. In light of the need for national consistency in this area, the guidance in paragraph 4(a) - (d) below is provided. This guidance is subject to the provisions in paragraphs 5., 6., and 7.

2. Since wetlands are affected over time by both natural and man-made activities, we can expect local changes in wetland boundaries. As such, wetlands jurisdictional delineations will not remain valid for an indefinite period of time.

3. The purpose of this guidance is to provide a consistent national approach to reevaluating wetlands delineations. This provides greater certainty to the regulated public and ensures their ability to rely upon wetlands jurisdictional delineations for a definite period of time.

4.

- a. Written wetlands jurisdictional delineations made before the effective date of this guidance, without a specific time limit imposed in the Corps written delineation, will remain valid for a period of two years from the effective date of this Regulatory Guidance Letter (RGL).
- b. Written wetlands jurisdictional delineations made before the effective date of this guidance, with a specified time imposed in the Corps written delineation, will be valid until the date specified.
- c. Oral delineations (i.e., not verified in writing by the Corps) are no longer valid as of the effective date of this RGL.
- d. As specified in the 20 March 1989, Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act (MOA), all wetlands jurisdictional delineations (including those prepared by the project proponent or consultant and verified by the Corps) shall be put in writing. Generally this should be in the form of a letter to the project proponent. The Corps letter shall include a statement that the wetlands jurisdictional delineation is valid for a period of three years from the date of the letter unless new information warrants revision of the delineation before the expiration date. Longer periods, not to exceed five years, may be provided where the nature and duration of a

proposed project so warrant. The delineation should be supported by proper documentation. Generally the project proponent should be given the opportunity to complete the delineation and provide the supporting documentation subject to the Corps verification. However, the Corps will complete the delineation and documentation at the project proponent's request, consistent with other work priorities.

5. The guidance in paragraph 4(a) - (b) above does not apply to completed permit applications [33 CFR 325.1(d)(9)] received before the effective date of this RGL, or where the applicant can fully demonstrate that substantial resources have been expended or committed based on a previous Corps jurisdictional delineation (e.g., final engineering design work, contractual commitments for construction, or purchase or long term leasing of property will, in most cases, be considered a substantial commitment of resources). However, district engineers cannot rely upon the expenditure or commitment of substantial resources to validate an otherwise expired delineation for more than five years from the expiration dates noted in paragraph 4(a) - (b). At the end of the five year period a new delineation would be required. In certain rare cases, it may be appropriate to honor a previous oral wetlands delineation when the applicant can fully demonstrate a substantial expenditure or commitment of resources. However, the presumption is that oral delineations are not valid and acceptance of such must be based on clear evidence and equities of the particular case. This determination is left to the discretion of the district engineer.

6. When making wetlands jurisdictional delineations it is very important to have complete and accurate documentation which substantiates the Corps decision (e.g., data sheets, etc). Documentation must allow a reasonably accurate replication of the delineation at a future date. In this regard, documentation will normally include information such as data sheets, maps, sketches, and in some cases surveys.

7. This guidance does not alter or supercede any provisions of law, regulations, or any interagency agreement between Army and EPA. Further, this guidance does not impair the Corps discretion to revise wetlands jurisdictional delineations where new information so warrants.

8. Each district shall issue a public notice on this guidance no later than 1 September 1990. The public notice shall contain the full text of this RGL.

9. This guidance expires on 31 December 1993 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

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