

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Draft Policy Guidance Letter 60, Water Quality and Water Resources Development Projects

1. Enclosed for your review and comment is a draft Policy Guidance Letter 60, Water Quality and Water Resources Development Projects . It has been prepared in response to a request for guidance on this subject. Your thoughts and constructive comments will help.
2. Please review the draft PGL and provide your comments by 2 July 98. Any questions should be referred to Lloyd Saunders, CECW-AG, (202) 761-8731; and your comments should be provided directly to him via e-mail.

FOR THE COMMANDER:

Encl

/s/
DAVID B. SANFORD, JR.
Chief, Policy Division
Directorate of Civil Works

CECW-AG

SUBJECT: Draft Policy Guidance Letter 60, Water Quality and Water Resources Development Projects

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MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT
COMMANDS

SUBJECT: Draft Policy Guidance Letter 60, Water Quality and Water Resources Development
Projects

1. References:

- a. The Federal Water Pollution Control Act of 1972, as amended (33 U.S.C. 1251, *et seq.*)
- b. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*)
- c. ER 1105-2-100, 28 December 1990, subject: Planning Guidance.
- d. ER 1110-2-8154, 31 May 1995, subject: Water Quality and Environmental Management for Corps Civil Works Projects.
- e. ER 1165-2-119, 20 September 1982, subject: Modification to Completed Projects.
- f. EC 1105-2-206, 27 April 1995, subject: Project Modifications for Improvement of the Environment.
- g. EC 1105-2-210, 1 June 1995, subject: Ecosystem Restoration in the Civil Works Program.
- h. ER 1140-1-211, 22 June 1992, subject: Support for Others: Reimbursable Work

2. Applicability. This policy guidance letter (PGL) is applicable to the planning, design, construction, and operation of water resource projects by the U.S. Army Corps of Engineers (Corps).

3. Legislative Background - Federal Interest.

a. Federal involvement in environmental quality, including water quality as a vital component of ecosystem restoration, is supported in law, Executive Orders, and treaties. A number of these statutes declare, as a national policy, that full consideration be given to the opportunities which projects afford to improve, protect and restore ecological resources. Some of these include, but are not limited to, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Coastal Zone Management Act, the Clean Water Act, the Endangered Species Act, the environmental sections of the Water Resource Development Acts of

1986, 1988, 1990, 1992, 1996 and the Coastal Wetlands Planning, Protection and Restoration Act of 1990.

b. Section 101(a) of the Clean Water Act of 1977, as amended, states that its objective is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective the Act directs Federal agencies to: provide water quality that protects and sustains populations of fish, shellfish and wildlife; prohibit the discharge of toxic pollutants in toxic amounts; and support research and demonstrations of technology necessary to eliminate the discharge of pollutants into navigable waters, waters of the contiguous zone, and the oceans.

c. Section 107 of the Clean Water Act, as amended, calls for the Administrator of EPA in cooperation with the Appalachian Regional Commission and other federal agencies to conduct, ... , projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations.

d. Title IV of the Surface Mining Control and Reclamation Act of 1977 provides for the protection of water quality, in part, through the states' development of reclamation plans for abandoned mine sites. These plans must be federally approved, identify the sites to be reclaimed, the criteria used for establishing priorities among reclamation projects, the legal authorities relied upon, and the program's structure. A Federal Abandoned Mine Reclamation Fund is established to provide funds to approved state reclamation programs. The Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior, was established by this Act to administer these programs. The Statement of Mutual Intent, dated 9 Feb 1995, is a pledge by government agencies and citizens to cooperatively to deal with acid mine drainage in Appalachia.

e. Section 306 of the Water Resources Development Act of 1990 (WRDA 90), designates that environmental protection is to be one of the primary missions of the Corps in planning, designing, constructing, operating and maintaining water resources projects.

f. Section 312 of WRDA 90 allows the Corps, in consultation with EPA, to remove contaminated sediments from outside the boundaries of and adjacent to navigation projects for the purpose of complying with the Federal Water Pollution Act, as amended.

3. Purpose. This PGL states the principles and policy of providing water quality improvement as a means of achieving ecosystem restoration and protection. Within existing authorities, Districts should work with governmental agencies and non-governmental organizations (NGOs) on environmental initiatives of national importance. These initiatives include, but are not limited to, acid mine drainage, abandoned mine reclamation, brownfields, and restoration of contaminated soils and sediments. Improvement in water quality can be the means by which degraded streams and other degraded water bodies are restored to a less degraded condition, e.g., acid mine drainage. Conversely, providing ecosystem restoration can be a means of improving water quality adjacent to degraded ecosystems, e.g. brownfields restoration, abandoned mine land reclamation, and restoration of contaminated soils and sediment.

a. Acid Mine Drainage (AMD). The Statement of Mutual Intent is a pledge by federal and state agencies, citizens groups and/or NGOs to focus a shared concern about mine drainage problems into on-the-ground improvement efforts. The Statement of Mutual Intent was derived from combining the Appalachian Clean Streams Initiative of OSM with the Mine Drainage Initiative of EPA Region III. The Statement of Mutual Intent's Strategic Plan (SMISP), developed by OSM and EPA Region III, provides a framework for all signatories to collectively direct their attention to the AMD problem and encourages collaborative restoration efforts. Although water quality problems associated with coal mining activities will not be solved quickly, the Statement of Mutual Intent may be the catalyst to channel energies and forge new partnerships among the many federal, state, and local agencies, the local watershed groups, and the coal industry. All have a common interest in restoring coal lands and impacted streams to a more productive state. Because of the enormous costs of achieving this common goal, it cannot be attained without combining the resources and ideas of all involved partners. Thus, it is in our mutual best interest to endorse the goals of the Statement of Mutual Intent and collaborate in achieving its objectives to the extent consistent with our authorities.

b. Brownfields. The National Brownfields Cleanup and Redevelopment Initiative is designed to focus and give strategic direction to federal agencies to achieve national environmental goals. Brownfields are abandoned or under-utilized properties that are perceived to be contaminated. The initiative directs federal agencies to participate on a partnering basis to aid in the assessment, remediation (as appropriate) and restoration of these properties rather than avoiding them. Brownfields will be included in the preliminary planning phase of water resources development projects. If the assessment determines that there are non-CERCLA types of materials, then these sites can be included in project formulation and any remediation cost shared accordingly. If the assessment determines that a CERCLA level response is required, then the site will be removed from the plan formulation for processing under CERCLA procedures by the responsible party. It is important that no unnecessary liability be incurred when working within a brownfield site.

c. Contaminated Sediments. Section 312 of WRDA 90 authorizes the Corps to remove contaminated sediment outside the bounds of, but adjacent to, navigation channels. This authority serves two functions, environmental restoration and providing a long term solution to the maintenance dredging of contaminated sediments. By removing the contaminated sediments the benthic habitat and adjacent water quality are improved, and the maintenance dredging and disposal are more cost effective if the source of contaminated sediment has been removed. While this broad authority can provide environmental and economic benefits in conjunction with Federal navigation projects, it is underutilized because of the inability to attract cost sharing sponsors and their concerns about potential liability.

4. Corps Responsibilities for Water Quality.

a. Water is perhaps the most important attribute of ecosystem structure. Water plays a significant organizing influence on the other attributes of the ecosystem, i.e., soils, plant and animal species, and communities that characterize the ecosystem itself. Consequently, the quality

of water is vitally important to sustaining the functions and structure of ecosystems. It is the policy of the Federal government, that in the design, construction, management, operation, and maintenance of its facilities, it shall provide leadership in the nationwide effort to protect and enhance the quality of water and land resources and to comply with all Federal, state, interstate, and local requirements in the same manner and extent as other entities. This national policy is based on the overall objective established in the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The thrust of this policy is to protect all existing and future uses including assimilative capacity, aquatic life, water supply, recreation, industrial use, hydropower, etc. Where uses are degraded, it is the national goal to restore those degraded waters to more productive conditions (See EC 1105-2-210).

b. In cases where degradation has occurred, it is Corps policy to restore, to the extent justified, the resource to a biologically productive, diverse, and ecologically less degraded condition. Where justified by the combined monetary and non-monetary benefits, ecosystem restoration will be accomplished in cost sharing partnerships with non-Federal interests. Because project management affects environments distant from our property boundaries and is influenced by actions of others also distant from our properties, the Corps must actively pursue a management philosophy committed to partnerships with a wide range of government resource organizations, interested non-government organizations and individuals. It is Corps policy to develop and implement a holistic, environmentally sound water quality management strategy for each project. This strategy must be developed, however, in concert with other authorized project purposes. The environmental aspects of projects have equal standing with other project aspects, i.e., economics and engineering. The Corps manages its projects in accordance with applicable Federal and state environmental laws and regulations using the four pillars of the Army's environmental strategy (conservation, prevention, restoration, and compliance).

c. Current budget guidance states that the restoration and protection of environmental resources, including fish and wildlife habitat, i.e., inland and coastal wetlands, other aquatic and riparian habitat, and upland habitat are legitimate project purposes. It further states that the extent to which a study, project or activity contributes to restoration or protection of environmental resources will influence the ranking of new start candidates, along with the other criteria of economics, engineering and sponsor support. This guidance gives budget priority to projects that generate environmental benefits in their competition for funding at the national level.

d. EC 1105-2-210, Ecosystem Restoration in the Civil Works Program, states that priority will be given projects for restoration of degraded ecosystem functions and values, including their hydrology, plant and animal communities, and/or portions thereof, to a less degraded ecological condition. It further states that budget priority will be given to cases where Corps projects contributed to the degradation of the ecosystem or where modification of existing Corps projects is the most cost effective means of restoring the ecological resources, again emphasizing the continued importance of ecosystem restoration and protection in the Civil Works Program.

5. Relationship of Water Quality to Ecosystem Restoration and Protection.

a. Good water quality is recognized as an important component of ecosystem structure and a prerequisite to healthy and functioning aquatic ecosystems. The Corps focus in ecosystem restoration and protection activities recognizes the importance of fully functioning ecosystems. The purpose of our restoration and protection activities will be to restore multiple ecosystem functions and values that have been degraded, either by our activities and/or those of others, through a comprehensive examination of the problems and the development of alternative means for their solution. This includes activities that may be undertaken by other governmental agencies where the Corps plays a supporting role. This is one area, however, where distinctions can be made between the role of the Corps versus that of other agencies in ecosystem restoration and protection. The Corps role in rehabilitating water quality will be one of engineering solutions to control various water quality parameters, but not recommending measures only for pollution abatement. Pollution abatement and wastewater treatment are under the purview of other agencies (e.g., EPA and state agencies). Corps restoration and protection initiatives may involve cost effective solutions to improve aeration, temperature, turbidity and other water quality parameters. If the ecosystem restoration and protection opportunity includes other aspects of water quality that are clearly defined in the missions of other agencies (e.g., pollutant regulation or removal) it is appropriate to pursue an interagency ecosystem management approach with these agencies to provide them an opportunity to collaboratively use their respective authorities with those of the Corps to implement a more complete and sustainable approach to the restoration (e.g., cooperating under the Statement of Mutual Intent, National Environmental Policy Act, Interagency Brownfields Initiative, etc.). The Corps will not propose, for Corps implementation, any ecosystem restoration and protection activity that would principally result in treating or otherwise abating pollution problems caused by others where there is, or is likely to be, a legal responsibility for those other parties.

b. The Corps can pursue ecosystem restoration and protection activities under several existing authorities; single purpose ecosystem restoration projects and projects constructed under the authority of Section 1135 of WRDA 86, Section 204 of WRDA 92, and Section 206 of WRDA 96. Section 216 of the River and Harbor and Flood Control Act of 1970, as amended, authorizes the Secretary to review the operation of water resources projects constructed before 17 November 1986 to determine the need for modifications in structures and/or operations of these projects for the purpose of improving the quality of the environment. Finally, the Corps can provide cost shared engineering, economic and environmental planning assistance on to states under Section 22 of WRDA 1974, as amended, or reimbursable services through our Support for Others Program (ER 1140-2-211).

FOR THE COMMANDER:

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