MEMORANDUM

TO: Richard E. Marland
FROM: Doak C. Cox
RE: Review of 4 Alternatives proposed by the Army Corps of Engineers with regard to Procedures and guidelines for disposal of dredged or fill material in navigable waters and the proposed guidelines for the discharge of dredged or fill material in navigable waters prepared by the Environmental Protection Agency.

The above cited proposed regulations have been reviewed by Doak Cox and Jacquelin Miller of the Environmental Center. Center staff members, Blaise Caldeira and Claire Shinsato, under the direction of Winifred Miura, measurably assisted in the compilation of the data for our review. With the exception of the general discussion and definition of wetlands, the two documents cited above deal basically with different aspects of dredge and fill disposal. Thus our comments on each document will be treated individually. To facilitate evaluation of our comments we will outline our response in accordance with the alternatives and sections proposed.

Arm
corps of Engineers, Permits for Activities - Navigable Waters or Ocean Waters

[d](2) Navigable waters (i)

We note that each of the 4 proposed regulations define the term, "navigable waters" to mean waters of the United States including the territorial seas with respect to the disposal of fill material and excluding the territorial seas with respect to the disposal of dredged material. What is the basis for the distinction between the disposal of dredged or fill material? Are not similar environmental concerns applicable to both?

(a) The term "headwaters" is used in all four alternatives to define the inland extent of jurisdiction of this section. Does the term "headwaters" include such water sources as intermittent streams, and irrigation ditches?
(a), (b). Alternatives I and III modify the "shoreward" extent of jurisdiction to include the aquatic vegetation line where it extends further shoreward. The use of vegetation lines, either aquatic (alternatives I, III) or salt water (alternatives II, IV) in the definition of jurisdictional extent seems to be inconsistent with the existing shoreward jurisdictional limit of the Army Corps of Engineers as defined in 209.260, k(ii). Furthermore the seasonal fluctuation of a vegetation line creates a non-stationary boundary. Perhaps the addition of the term "perennial" as applied to both marine and fresh water vegetation lines would lend some additional stability to the shoreward boundary. In any case, consistency of shoreward jurisdiction in the definitions as they apply to the Corps of Engineers seems desirable.

[d](2)(i), (c), (d), (e), (f), (g) Alternatives I and III. The inclusion of these 5 paragraphs dealing with intra and interstate commerce activities seems unnecessary and burdensome. We are not sufficiently familiar with the intent of these paragraphs to comment on their merits.

[d](2)ii(c). We suggest the consideration of the addition of the word "perennial" in the definitions of both aquatic and salt water vegetation lines.

[e](2). Alternatives I and III would require Army authorizations for all discharges of dredged or fill material. Clearly some extremely minor discharges could be exempt from the permit system. Alternatives II and IV on the other hand exempt permits for the discharge of dredged or fill material up to 100 cubic yards. We note in paragraph ii(4) and (5), the term "dredged" or "fill" "material" means any material. We seriously question the disposal of up to 100 cubic yards of dredged material without consideration as to the quality of the material. We strongly recommend the inclusion of specific quality criteria for dredged or fill material to be disposed of without Army authorization. Units should be given in meters.

[f](1)(2),i,ii,iii,iv, Alternative IV. These paragraphs are printed twice.

[f](3)i Initial processing of an application for a Department of the Army permit [for work or structures - alternatives III & IV] in navigable waters of the United States will proceed until definitive action has been taken by the States. In each alternative State denial will result in Army denial of a permit.

It would appear that delay in the Army's processing until after State approval would assure the most efficient use of the Army's processing time and effort. What is the rationale behind requiring the Army to proceed with the initial permit processing prior to State approval? What is the expected time requirement for permit processing?

[f](3)ii Alternatives II and IV stipulate that processing of the Army permits for disposal of dredged or fill material in navigable waters
other than navigable waters of the United States will not proceed until State approval is received. What is the rationale for the difference between processing regulations in "navigable waters" as compared to "navigable waters of the United States"?

In general with the modifications suggested, we find alternative IV to most closely reflect the procedures which should be adequate to protect the environment and regulate the disposal of dredged or fill material.

Environmental Protection Agency, Discharge of Dredged or Fill Material, Navigable Waters

230.4-1(a)

(1) We seriously question the advisability of the provision to allow discharge of dredged or fill material without laboratory analysis [i.e. quality determinations] for volumes up to 500 cubic yards. Quality of the dredged or fill material may easily be of far more significance to the environment than quantity. Consistency in units, in any case [230.2(d)] would be preferred and we would suggest all units be in the metric system.

(2) This paragraph would permit the discharge of up to 100 cubic yards (20% of the 500 cubic yards cited in (1)) above of extremely fine sediments without laboratory analysis. Such fine sediments may remain in suspension for extended periods and have the potential for dispersal beyond the actual dredge spoil disposal site. Heavy metal and pesticide pollutants may cohere to these fine particles and create serious environmental hazards.

(3) In addition to the particle grain size compatibility requirement for beach nourishment material, compatibility of the quality, (physical constituents), of sediments with existing material on the receiving shores should be required unless it can be demonstrated that the proposed nourishment materials will be in the best interests of the environment.

We appreciate the opportunity to have reviewed these proposed regulations and will look forward to receiving comments on the questions and concerns we have presented.

Doak C. Cox, Director