

Dear Mr. Heisel:

Thank you for your remarks before the Mississippi River Commission during our public meeting held on August 17, 2001, in St. Louis, Missouri. In your statement you discussed the responsibility of the Corps of Engineers under the Clean Water Act, the Corps' compliance with the National Environmental Policy Act in regard to the proposed Holnam Cement Plant, and the Freedom of Information Act.

Section 404 of the Clean Water Act gives the Corps of Engineers the authority to regulate discharges of fill material in waters of the United States, including wetlands. The Corps' regulatory program considers the public interest in both the protection and use of water resources and also considers the full range of environmental and socio-economic factors during permit evaluation. The Corps solicits public comments and considers them in its decisions. Other laws, regulations, Executive Orders, guidance letters, and memorandums of agreements with other agencies are also considered during the processing of applications for permits. The Corps policy is to provide applicants with a timely and balanced decision that reflects the public interest and application of pertinent laws and regulations.

As part of the St. Louis District's Section 404 review of the Holnam proposed project, the District is obliged to comply with the requirements of the National Environmental Policy Act (NEPA). The preparation of an Environmental Assessment is part of the NEPA process and, in certain instances, leads to the preparation of an Environmental Impact Statement (EIS). The decision to produce an EIS must be made at the appropriate time

and in conformance with NEPA. The Corps does not predetermine the necessity of the preparation of an EIS.

In your statement you indicated that the St. Louis District had failed to comply with NEPA in regard to the application by Holnam, Inc. You also noted that the District had refused to prepare an EIS for the project as required by NEPA. Compliance with NEPA does not mandate the preparation of an EIS for every proposed project. A decision on the necessity for an EIS must be made at the appropriate time and with the benefit of all information relevant to that decision. The Corps is proceeding first with preparation of the Environmental Assessment. At some point, however, the preponderance of information may dictate the preparation of an EIS.

If a person wishes to request information pursuant to the Freedom of Information Act (FOIA), he/she may do so by writing to the office that is the custodian of the records in question. If you wish to obtain records maintained by the Mississippi Valley Division, you may submit a written request to Ms. Barbara Larson, FOIA Officer, Mississippi Valley Division, P.O. Box 80, Vicksburg, Mississippi 39181-0080. If you wish to obtain records maintained specifically by the St. Louis District, you may submit a written request to Mr. Mark Wunsch, FOIA Officer, St. Louis District, 1222 Spruce Street, St. Louis, Missouri 63103-2833. The request must identify the documents that you are seeking. The more specificity, the easier it is for the FOIA Officer to locate the requested documents. You need to be aware that there are nine exemptions to FOIA which allow an agency to withhold documents. Additionally, the Privacy Act requires the removal and non-release of personal information.

Under FOIA, an agency is allowed 20 days to respond. If the request is large or asks for "any and all documents" pertaining to a subject, an agency may take longer, after providing notice, to obtain the documents and provide them to the requestor. The reason for the longer time is that more personnel are needed to process the request. In the event information is requested concerning a business entity and there is the possibility that proprietary data is contained within the requested information, the Corps must first contact the affected business entity that provided the Corps with the required

information and allow a proper length of time to object to the release by the affected business entity, prior to any release of the information to the requestor. Generally, a 20-day time frame for any objections is allowed. This process generally takes place with regard to environmental analyses, financial statements, and research and development.

Additionally, FOIA requests are processed on a first-in/first-out basis. If a request comes in and is extensive, the requests that are received later may be delayed longer than anticipated. Finally, a FOIA request is not free. A requestor may qualify for a fee waiver, but he/she must request this waiver and meet the established criteria before having the information provided without the assessment of a fee.

Thank you again for your participation in our St. Louis hearing. The Commission appreciates receiving your comments and will be pleased to hear from you at our future public meetings.

Sincerely,

Edwin J. Arnold, Jr.
Brigadier General, U. S. Army
President, Mississippi River
Commission