**DEPARTMENT OF THE ARMY**
**CORPS OF ENGINEERS, NORTHWESTERN DIVISION**
**PO BOX 2870**
**PORTLAND OR 97208-2870**

JUL 5 2011

Program Support Division

Mr. David A. Shorr
Lathrop & Gage LLP
314 East High Street
Jefferson City, Missouri 65101

Dear Mr. Shorr:

The initial review of your Request for Appeal (RFA) of permit actions by the Kansas City District and St. Louis District involving commercial sand dredging in the Missouri River has been completed. Those actions include NWK-2011-361 (Capital Sand Company, Inc), NWK-2011-362 (Hermann Sand & Gravel), NWK-2011-363 (Holliday Sand & Gravel, LLC), NWK-2011-364 (Con-Agg of Missouri, LLC), MVS-2008-193 (Capital Sand Company, Inc.), MVS-2011-177 (Limited Leasing Company), and MVS-2011-178 (J.T.R., Inc.). The District's decisions are currently not appealable actions.

The Districts identified their actions as "proffered" permits in the Notification of Administrative Appeals Options and Process and Request for Appeal form (NAO/NAP). However, per the appeal regulation at 33 C.F.R. 331.2, the first time a permit is sent to the applicant, it is an "initial proffered" permit. By regulation, initial proffered permits are not appealable actions. Regulations allow the opportunity to object to the terms and conditions of the initial proffered permit, but require the District to reconsider its decision. If the District then decides a second reconsidered permit is appropriate, it is then defined by regulation as a "proffered" permit and may be appealed to the Division Office.

Your alternatives are to submit a revised RFA(s) based only on reasons related to permit denials, or to pursue the objections to the terms and conditions of the initial proffered permits with the District. The RFA has been forwarded to the appropriate District. Please contact Mark Frazier, the Kansas City Regulatory Chief, at (816) 389-3664, or Danny McClendon, the St. Louis District Regulatory Chief, at (314) 331-8574 to discuss reconsideration of the initial proffered permits.

The District indicated that on April 19, 2011, one of the co-appellants associated with your RFA, Con-Agg, accepted and signed their permit. Per 33 C.F.R. 331.5(b)(1), the Con-Agg action is not appealable. Therefore, any reason for appeal solely associated with the Con-Agg permit action cannot be included in an RFA.

If you have any questions, please contact my Appeals Review Officer, Mr. David Gesl, at (503) 808-3825.

Sincerely,

Lorelynn M. Rux

Lorelynn M. Rux
Chief, Program Support Division

cf: CENWK-OD-R (Frazier)
CEMVS-OD-F (McClendon)
CEMVD-PD-KM (Wiseman)