Wheeler, Cody S NWK

From: Frazier, Mark D NWK
Sent: Wednesday, July 13, 2011 8:13 AM
To: 'David Shorr (dshorr@lathropgage.com)'; 'accourtney@stoel.com'
Cc: 'Tony Giardano (email)'; 'Brian J. Viehmann (email)'; 'Ray Bohlken (rbohlken@capitalsandcompany.com)'; 'Steve Engemann (steve@hermannsand.com)'; 'Mike Odell'; 'trwood@stoel.com'; Jeppson, Matthew P NWK; Hibbs, David R NWK; Frerker, Charles F MVS; Mcclendon, Danny D MVS; Wheeler, Cody S NWK
Subject: Missouri River Dredging Administrative Appeals Clarification
Attachments: 2011-07-05 Shorr Combined.pdf; 2011-07-05 Holiday.pdf

Mr. Shorr and Mr. Courtney, you recently received a letter (PDF attached) from Lorelynn M. Rux, Chief, Program Support Division of the Northwestern Division (NWD) of the USACE. We want to clarify the Kansas City and St. Louis Districts' unified position on the status of the appeals.

First, there were no procedural failings on the part of the dredgers or their agents. You responded to proffered permits as described in our letters of March 31, 2011, which we determined to be appropriate given the District Commanders' integral role in their issuance. Your response to the proffered permits with Requests For Appeal was in line with the regulations. As stated in NWD's July 5, 2011 letters, we are now considering the permits we sent you as initial proffered permits, which require the first step to be a reconsideration of stated objections by the District Commander. We will accept and evaluate your previously submitted Requests for Appeal in the Commander's reconsideration of the Initial Proffered Permits as stated by Ms. Rux, and send you our Final Proffered Permits as soon as possible. As the Districts have already been assessing the reasons for appeal, this reconsideration may take approximately 4 weeks or less. At that point, you will still be able to have your Requests for Appeal handled as an appeal to NWD if no satisfactory change occurs during our reconsideration at the District level. You do not need to submit any additional information for the reconsideration as you have already provided your Requests for Appeal.

Since the appeal process for initial proffered permits and denied applications are slightly different, Ms. Rux's letter explained that should Capital Sand Company wish to proceed at this time with the appeal for the denial of the application to dredge in the lower 50 miles, a revised Request for Appeal based only on reasons related to that permit denial must be resubmitted. Mr. David W. Gesl, NWD Appeals Review Officer, has confirmed that should you wish to wait until the results of the reconsideration are presented in the proffered permits and then appeal those along with the denial, that will be acceptable as well.

Last, the permit extensions issued on March 31, 2011 are still in effect and will continue while we evaluate your objections to our permit decision, and later during the appeal to NWD.

Mark D. Frazier
Chief, Regulatory Branch
Kansas City District Corps of Engineers
816-389-3664 (Voice)
816-896-5657 (Cell)
816-389-2032 (FAX)
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