



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-0103



2 FEB 1990

Ms. LaJuana S. Wilcher  
Assistant Administrator for Water  
Environmental Protection Agency  
Washington, D. C. 20460

Dear Ms. Wilcher:

This is in reply to your January 11, 1990, request for higher level review of issues relating to the Meyer Properties, Incorporated, permit case, pursuant to the Section 404(q) Memorandum of Agreement.

The primary issue you raised in your referral request concerned the fact that the Army Corps of Engineers Mobile District considered the State water quality certification conclusive as to water quality considerations and did not, therefore, give adequate consideration to water quality concerns raised by your Region IV office. It appears that this issue is the basis for both of the elevation criteria you cited -- issues of national importance and insufficient interagency coordination. As you noted in your letter, this issue was addressed in the 1984 elevation of the Miami Conservancy case, at which time the Corps determined that the State water quality certification was not conclusive if the Environmental Protection Agency (EPA) raised issues relating to water quality that conflicted with the assumptions serving as a basis for that certification.

We agree that the District did not correctly apply the policy developed in the Miami Conservancy elevation case. In part, this may have resulted from the expiration of policy guidance provided in Regulatory Guidance Letter 86-6 and our subsequent failure to reissue and further clarify that guidance. We will be taking steps to correct this oversight in the near future. Basically, we are in agreement on this policy issue, since the policy developed in 1984 provides for full evaluation of EPA concerns relating to State water quality certifications and other

water quality issues before a permit decision is made. Therefore, we intend to clearly explain this policy to the Division and District and to direct that the Division oversee the District's full and independent evaluation of water quality issues raised by EPA. This evaluation should include an opportunity for EPA, the State, and the applicant to fully explain their positions. We feel this should ensure a thorough and independent review and evaluation of your agency's concerns prior to the District's permit decision.

Sincerely,

*for John Page, Secretary*

Robert W. Page  
Assistant Secretary of the Army  
(Civil Works)

John S. Doyle, Jr  
Deputy Assistant Secretary of the Army  
(Civil Works)