

*Kirk - I made a copy for Dave
& am having the faxed
to Doug S*



**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY**

WASHINGTON, DC 20310



27 APR 1988

Ms. Rebecca Hanmer
Acting Assistant Administrator
for Water
Environmental Protection Agency
401 M Street, S.W.
Washington, D. C. 20460

Dear Ms. Hanmer:

Thank you for your letter of April 8, 1988, which was submitted pursuant to our 404(q) Memorandum of Agreement (MOA) and which requested that I elevate the decision of the New England Division Engineer (DE) to issue a permit to the Maine Department of Transportation to construct a marine terminal at Sears Island. After careful review of your request and pertinent portions of the case file, I have concluded that the DE conducted a thorough and impartial review and has given full consideration to all the available information, including that provided by your regional administrator (RA). Your request portrays a basic disagreement between the DE and RA concerning the practicability on the Mack Point alternative.

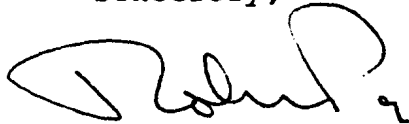
In your letter you requested elevation based on "a failure to resolve stated EPA concerns regarding compliance with the section 404(b)(1) Guidelines" (section 5.b.1 of the MOA). Our position on this criteria remains as it has on previous cases in that resolution does not require that the DE adopt the views of the RA but, rather, that he give them full consideration. The record of decision contains detailed and reasonable responses to each of the issues raised by the RA, and clearly indicates to me that the DE gave full consideration to his concerns.

The primary issue raised by the RA is the practicability of the Mack Point alternative. The EPA consultant stated that, "Although relatively crowded, not optimally laid out, and with distinct operational limitations; Mack Point could be expanded to provide services for all of the BAH forecasted flows of containerized, breakbulk, and drybulk cargoes at Searsport to the year 2000, except for the lowest probability commodity -- clay." The DE on the other hand accepted the equally creditable statements that cargo volumes are conservative and that there is a

reasonable probability of future expansion, and concluded that resource impacts at Sears Island are acceptable, and that the Mack Point alternative simply does not provide a practicable location for a modern and expandable port. In the DE's judgement "It is not unreasonable for a State planning a multi-million dollar investment to be concerned about efficiency and expansion potential."

The facts show that both the DE and RA relied upon equally valid but differing projections of current and future conditions and reached opposite conclusions. Since the final determination on compliance with the guidelines rests with the Corps, I find no reason to elevate this case. I have instructed the Corps to wait 10 working days from the date of this letter before issuing this permit to allow you time to consider action under section 404(c).

Sincerely,



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