



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 27 2003

OFFICE OF  
WATER

The Honorable R. Les Brownlee  
Acting Assistant Secretary (Civil Works)  
U.S. Department of the Army  
The Pentagon  
Washington, D.C. 20310

Dear Mr. Brownlee:

I am writing with regard to a recent decision by the U.S. Army Corps of Engineers Norfolk District (Corps) to issue a Clean Water Act (CWA) Section 404 permit to the Virginia Seafood Council (VSC) for the trial placement of one million non-native oysters into waters of the Chesapeake Bay and the Atlantic Ocean associated with research on aquaculture grow-out methods. On March 7, 2003, the Regional Administrator for the Environmental Protection Agency (EPA) Region III requested that, pursuant to our 1992 CWA Section 404(q) Memorandum of Agreement, I elevate their concerns with this permit decision to you for your consideration. Since Region III received the Norfolk District's notification of intent to issue this permit, EPA and the District, in coordination with other Federal and State agencies and the permit applicant, have been working to identify improvements to the permit intended to address the agencies' concerns. Consistent with those discussions and commitments by the Norfolk District Engineer elaborated below, this letter is to inform you that EPA will not request further review of this permit.

I want to recognize the personal efforts of the District Engineer, Colonel David L. Hansen, in coordinating with us to address this important issue. The Norfolk District, working in coordination with EPA, other Federal and State agencies, and the permit applicant, has agreed to incorporate several important conditions into the proposed permit that ensure sound monitoring, quality assurance/quality control, and effective emergency/contingency planning. These monitoring and data collection plans, to be developed by the Corps in consultation with the agencies, will help to reduce the risk of unintended spawning by the test oysters. In addition, the permit will now make plain that all oysters deployed for this trial must be removed from the water no later than June 30, 2004, unless an extension is granted following further public notice.

While the improved terms and conditions address our concerns with the permit for this trial deployment, we continue to believe strongly that any decision to proceed with a large scale or long-term deployment of such oysters should be preceded by a thorough analysis and consideration of a full range of alternatives through the preparation of an Environmental Impact Statement (EIS). Discussions of the past several days resulted in agreement among the Federal

and State resource agencies to cooperate in the preparation of a Corps-led EIS that will evaluate the environmental effects of a full-scale commercial deployment of non-native oysters. Coupled with successful resolution of our concerns with the pending permit, such an EIS will help address outstanding issues related to the release, and possible establishment, of a reproducing population of non-native oysters in the Chesapeake Bay, its tributaries, and coastal Atlantic waters, which is of tremendous import to the ecology of these waters.

In recognizing the importance of working together in interpreting the upcoming National Academy of Sciences report and assuring applicable findings are incorporated into the existing permit conditions, there was a good-faith commitment to work together over the coming weeks at the regional level to develop local operating procedures and establish a dispute resolution process. The conditions and agreements reached address our immediate environmental concerns, while allowing the VSC to examine potential alternatives to reviving the oyster industry in the Chesapeake Bay. Let me reiterate EPA's appreciation for the constructive relationship Colonel Hansen is promoting, an atmosphere that will certainly contribute to working together more effectively as we address this and other challenging issues within the Chesapeake Bay watershed.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Tracy Mehan, III". The signature is written in a cursive style with a large, sweeping initial "G" and a long horizontal stroke at the end.

G. Tracy Mehan, III  
Assistant Administrator

cc: Donald Welsh, EPA Region III Administrator  
Rebecca Hanmer, Chesapeake Bay Program Office  
Kathy Hodgkiss, EPA Region III  
George Dunlop, Deputy Assistant Secretary of the Army (Civil Works)