

Natural Resources Defense Council • National Wildlife Federation • Earthjustice •
Sierra Club

July 3, 2002

By Facsimile and First Class Mail

Linda Selinger
Army Corps of Engineers
Humphries Engineer Center
ATTN: FOIA
7701 Telegraph Road
Alexandria, VA 22315-3860

Re: Freedom of Information Act Request

Dear Ms. Selinger:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I hereby request the following records¹ relating to the Environmental Protection Agency's development of agency guidance² (or inter-agency guidance with the Army Corps of Engineers), policies or new regulations for interpreting and applying the Clean Water Act and its regulations in light of the U.S. Supreme Court's ruling in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps*, (hereafter "SWANCC Guidance" or "Guidance"). This request is made on behalf of the Natural Resources Defense Council (NRDC), National Wildlife Federation (NWF), Earthjustice and Sierra Club.

Please produce all:

- (1) Letters, memos, e-mails, telefaxes or other records of communications between Army Corps employees or agents, or any other executive branch employees or agents, and anyone outside the executive branch regarding the development of SWANCC Guidance;
- (2) Letters, memos, e-mails, telefaxes or other records of communications between Army Corps employees or agents and any other executive branch employee or agent regarding the development of SWANCC Guidance;
- (3) Calendars, visitor logs, daily entries, telephone logs or other records of meetings or visits between Army Corps employees or agents, or any other executive branch

¹ As used throughout this letter, the terms "record" and "records" shall mean all writings (handwritten, typed, electronic or otherwise produced, reproduced or stored) in the agency's possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, calendars, agendas, notices and telefaxes.

² As used throughout this letter, the term "Guidance" shall mean not only documents officially titled "Guidance" but any record of agency position related to the jurisdiction of the Clean Water Act after the SWANCC decision including, but not limited to Guidance documents, policy statements or proposed rulemakings.

employees or agents, and anyone outside the executive branch regarding the development of SWANCC Guidance;

(4) Calendars, visitor logs, daily entries, telephone logs or other records of meetings or visits between Army Corps employees or agents and any other executive branch employees or agents regarding the development of SWANCC Guidance;

(5) Minutes, notes or other records of meetings attended by Army Corps employees or agents, or any other executive branch employees or agents, and anyone outside the executive branch, or telephone conversations between Army Corps employees or agents, or any other executive branch employees or agents, and anyone outside the executive branch regarding the SWANCC Guidance;

(6) Minutes, notes or other records of meetings attended by Army Corps employees or agents and any other executive branch employees agents, or telephone conversations between Army Corps employees or agents and any other executive branch employees or agents, regarding the SWANCC Guidance;

(7) Any drafts of the Guidance or related records that have been shared by Army Corps employees or agents, or any other executive branch employees or agents, with anyone outside the executive branch, either in oral or written form;

(8) Any drafts of the Guidance or related records that have been shared by Army Corps employees or agents and other executive branch employees or agents either in oral or written form; and

(9) Records relating to solicitation of advice from non-agency individuals or entities regarding the SWANCC Guidance not already included in response to any of the categories above.

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. 1303.70. NRDC, NWF, Earthjustice and Sierra Club are all national, non-profit, environmental organizations with no commercial interest in obtaining the requested information. Instead, our organizations intend to use the requested information to better understand the operations and activities of the Army Corps of Engineers in regards to the development of the Guidance, and to educate the public regarding these activities.

Our environmental organizations have spent years promoting the public interest through the development of policies that provide enhanced environmental protection, and have routinely received fee waivers under FOIA. This is in large part because our organizations have repeatedly proven their ability to disseminate the information they obtain through FOIA to large segments of the public by means of membership correspondence, multiple publications, websites (www.nrdc.org, www.nwf.org, www.earthjustice.org, www.sierraclub.org), educational programs, media initiatives, and congressional testimony. Our organizations intend to use several of these means to educate the public concerning the information contained in the records requested here. Our organizations plan to disseminate the information at our own expense.

Therefore, our organizations have no commercial interest in the requested disclosure, and the information would be used to educate the public about activities of the government, in satisfaction of 5 U.S.C. § 552 (a)(4)(A)(iii).

Please produce the requested records on a rolling basis. At no time should the Office's search for—or deliberations concerning—any records requested herein delay the production of others that the Office has already elected to produce. Also, in the event that the Office denies a fee waiver, please send a written explanation for the denial, but continue to produce documents until the fee reaches \$100.

If you regard any of the requested records to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens. See 10 C.F.R. § 1004.1 (authorizing disclosure of documents exempt from FOIA disclosure where such disclosure is in the public interest).

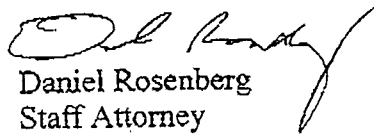
Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. To comport with legal requirements this information must include:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

In addition, should you invoke a FOIA exemption regarding any of the requested records, we request that you release any segregable portions of such records that are left after the exempted material has been redacted from the records we are seeking.

I appreciate your help in obtaining the requested information. As provided in FOIA, we expect a reply within twenty working days. 5 U.S.C. § 552, (a)(6)(A)(iii); 5 C.F.R. § 1303.10(c). If you find that this request is unclear in any way, or that the number of records responsive to this request is relatively large or difficult to copy, please do not hesitate to call us to see if we can clarify the request or otherwise expedite and simplify your efforts to comply with it. Please send the requested records to Daniel Rosenberg, c/o NRDC, 1200 New York Avenue NW, Suite 400, Washington, DC, 20005.

Sincerely,


Daniel Rosenberg
Staff Attorney
Clean Water Project
NRDC
202-289-2389