

 **PEER**

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***“You Can Count
On the Corps”***

**An Environmental Profile
of the Army Corps of Engineers
Alaska District**

April 1999

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Monitor** land management and environmental protection agencies;
3. **Inform** policymakers and the public about substantive issues of concern to PEER members; and
4. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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About This Report

This new employee-authored report describes the daily David and Goliath struggle between the Army Corps of Engineers' missions as both environmental regulator and developer in America's "Last Frontier." The cases profiled here report and catalog the costs of this internal conflict in terms of environmental destruction, wasted public funds, and the ruined careers of responsible professionals.

You Can Count on the Corps documents cases from 1991 to 1998 in which Alaska District officials have circumvented or obstructed their agency's own regulatory process to violate the Clean Water Act in furtherance of its own projects and those of others.

The employee authors of this report, who represent decades of regulatory experience within the Corps, have chosen to stay anonymous not only to avoid retaliation but also to prevent the Corps from diverting attention away from the message by attacking the messenger. The case profiles in this white paper are drawn from the public record and the characterizations contained herein are verifiable from examination of that record.

While this white paper will do little to further their careers, the authors of this report, and PEER, hope that exposure of these abuses will lead to balanced and impartial development decisions in the interests of the citizens and the natural resources of Alaska.

This report would not have been possible without the organizational support, editorial guidance and professional perspective of Magi Shapiro, a PEER board member and a former long-time Corps project manager. Her career within the Corps epitomized the ethic that is the reason for PEER's existence.

PEER is proud to serve conscientious public employees who have dedicated their careers to the faithful execution of environmental law.

Jeffrey Ruch
PEER Executive Director



I. Executive Summary

The U. S. Army Corps of Engineers national web site suggests "you can count on the Corps" if you are "concerned about the environment" (www.usace.army.mil/whatwedo). But when it comes to the agency's own civil works and military construction projects, as illustrated in this account of events in the Corps' Alaska District, you can, more accurately, count on Corps Districts to routinely violate the Clean Water Act as if federal law does not apply to them.

The Regulatory Program of the Corps of Engineers (COE) for the Alaska District is among the largest and most challenging in the country. It oversees development in the waters of America's "last frontier" and is charged with the overwhelming task of regulating 174 million acres of wetlands, more than one million lakes, 33,000 miles of coastline, and tens of thousands of river miles. Alaska Corps regulators are responsible for rendering permit decisions on some 1,000 development proposals each year. These projects commonly involve community infrastructure, transportation systems, timber harvesting, mining, fisheries, and oil and gas development, all of which present both profound engineering and environmental challenges.

In Alaska, as in all districts throughout the nation, the Regulatory Program has the responsibility of implementing and enforcing Section 404 of the Clean Water Act (CWA), the federal law providing for regulation of the discharge of dredged and fill material into waters of the United States, including wetlands.

Yet the Corps Regulatory Program is like the tail wagging the dog. Traditionally, Corps funding, political power and bureaucratic muscle flow more from its construction activities rather than from its regulatory responsibilities. In this developer role, the Alaska District builds civil works projects and military construction projects, including harbor development. In its operations role, the District carries out maintenance of its own federal projects, including the dredging of navigable waterways needed to maintain water-borne interstate commerce.

This inherent conflict in roles, the implementing regulations for the Regulatory Program state that the Corps can be "neither a proponent nor opponent" of any construction proposal under environmental review. In further recognition of the need to provide fair and balanced decisions in all cases, even those the regulations call for a "public interest review" so that the importance of clean water to the American people, in theory, be the guiding principle. In practice, however, the public interest review process often faces hostility from executive elements inside the agency who have never had to consider other than their own needs when designing and building a project and have every political reason to get out of the way of "important" project proponents.

In return, Corps proposed federal projects enjoy strong political and fiscal support from the Alaskan members of Congress who hold key positions on resources and appropriations committees directly affecting the Corps. The Alaska District's involvement in these politically-favored construction projects also creates cooperative, mutually beneficial business relationships with other big developers, such as the Alaska Department of Transportation (ADOT), the Alaska Association of General Contractors, and local "sponsors" of Corps projects, such as municipalities.

Unhappily for the Alaska District and its contractual "partners," civil and military construction projects are subject to the provisions of the Clean Water Act and are answerable to the law. However, Corps regulatory professionals are often in the

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uncomfortable position of reviewing federal projects undertaken with non-federal and military “partners,” and taking enforcement actions on violations perpetrated by their organizational superiors.

Tellingly, but typically, the Alaska District Regulatory Branch is placed organizationally subordinate to its powerful Construction/Operations Division, an alignment of factors that means one thing: “you can count on the Corps” to ignore ecological destruction, no matter how large, occasioned by its own activities. Consider a few examples:

- When Corps regulators discovered that Alaska District’s Construction-Operations Division had improperly authorized the placement of large quantities of fill in a prime King Crab breeding ground in Kodiak Harbor, the Construction-Operations Chief ignored the Regulatory Office investigative report, which cited eight CWA violations, and shifted the investigation to its Engineering Division. This maneuver substantially delayed and diluted the eventual enforcement action.
- The City of Nome placed dredged material on winter ice during a harbor maintenance project and allowed it to sink back to the bottom of the harbor in the spring. When the Regulatory Office issued a Notice of Alleged Violation, top District officials intervened and, inexplicably, stopped the enforcement action. Further investigation revealed that the Corps’ construction division, which does periodic maintenance dredging in Nome Harbor, had agreed to pay a private contractor nearly \$700,000 to remove the illegal fill. This dredging shell game was a colossal waste of funds as well as an environmental debacle but Regulatory’s superiors believed that maintaining good relations with the contractor community was a higher priority than enforcing CWA violations.
- The Construction-Operations Division damaged the bed of Ship Creek and filled wetlands without authorization during a sewer pipeline project for the Air Force. Upon discovery, the District Engineer prohibited the Regulatory Office from issuing a Notice of Violation to the Air Force because it would be a “career ender” for a fellow colonel. He, then, ordered Construction-Operations to investigate itself.

The case summaries presented in this white paper do not reflect innocent mistakes by an otherwise well-intentioned agency. They are not isolated instances of incompetence. Rather, they are sobering examples of the largely hidden and corrupt inner workings of the Corps of Engineers in Alaska. Until this writing, the Alaska District’s inherent conflicts of interest and abuses of authority have been effectively shielded from outside scrutiny. In the meantime, the Corps has wasted incalculable taxpayer dollars to cover up the truth associated with its maladministration of civil works and military construction projects.

II. Lay of the Land

The U.S. Army Corps of Engineers, as the agency's name indicates, is best known as the nation's engineers and builders. The agency's focus has historically been to design, plan and build major civil works and military construction projects. As the demand and funding for major federal infrastructural projects has diminished, the Corps has looked increasingly to state and local government "sponsors" to contract out its engineering, building and technical support services. Indeed the Corps's primary mission, according to the agency's web site, is to "provide comprehensive engineering, management and technical support to the Department of Defense, other agencies, and to State and Local governments." The agency's "Pledge" to its "customers" is to provide "quality, responsive engineering and technical services."

However, as far back as 1899 Congress tasked the COE with the mission to regulate activities that could affect the course, condition or capacity of the nation's navigable waterways. As the agency most knowledgeable of our waterways, the COE was the logical choice, and as the principal developer of such waters, the Corps was in a unique position to evaluate projects proposed from the private sector that could affect interstate commerce.

For the same reasons, the Corps was given the responsibility, in 1972, of carrying out and enforcing Section 404 of the Clean Water Act (CWA), the national regulatory program for evaluation of the discharge of dredged and fill material into waters of the United States. As a result, the COE was reluctantly catapulted to the front lines of environmental protection, annually reviewing thousands of private sector developments, some of which were high-profile cases involving prolonged litigation.

The Permit Process

Briefly, the permit process begins with submittal of a project proposal which, depending on its complexity and scope, is plugged into the appropriate level of review. Ideally, projects of more than minimal individual and cumulative impact are earmarked for the Individual Permit Process, and those of minimal impact are considered for a Nationwide Permit.

The Individual Permit Process gathers all the information needed to characterize and evaluate the project, publishes all that information in a public notice, coordinates all the comments, resolves issues of dispute, and concludes with a decision to issue or deny the permit. When a project qualifies for a particular Nationwide Permit, the path to a decision is generally shorter because such permits have already been issued at the national level to cover general categories of activities and levels of impacts that have been pre-evaluated and determined to be minimal.

According to agency regulations at 33 C.F.R. Part 320.1(a)(4), "The Corps is neither a proponent nor opponent of any permit proposal." This requirement to be impartial applies irrespective of the organization or individual identity of a permit applicant and regardless of who may own or manage the lands being proposed for development.

Over the years, this "honest broker" role of the Corps regulators has generally served to provide a level playing field among permit applicants from the public sector, but the Corps' own development projects have proceeded without internal checks for conflicts of interest and virtually beyond the reach of public accountability.

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The U. S. Army Corps of Engineers national web site (www.usace.army.mil/whatwedo) assures us, that “You can count on the Corps...” if you are “...concerned with the environment.” The Corps further pledges to the American people that it will “identify environmental issues during the planning process for military and civil projects, or before we issue a permit for work in a waterway or wetland.”

This sounds like a solid commitment until we notice that the Corps does not say it will go beyond merely identifying environmental issues to eliminating them, nor that it will maintain credibility with the public by enforcing its permits, nor that it will demonstrate environmental and transactional integrity in its own projects. Assurance of accountability, even though required by law, is not found in the Corps web site.

Accountability is not compatible with the Corps interpretation of “customer service,” particularly when there is a conflict between accountability and Corps development plans, and the requirement for all developers, including the Corps, to abide by federal environmental laws.

Unfortunately, and perhaps intentionally, the Regulatory Program is often organizationally subordinate to the Corps’ Construction and Operations Division. As a result, the Regulatory Program is in the position of rendering permit decisions and taking enforcement action on violations in connection with development projects advocated and carried out by another branch of its own agency to which it is subordinate.

Alaska's Program

The Regulatory Program of the Corps' Alaska Engineering District is among the largest and most challenging in the country. Regulatory Branch oversees development in the waters of America's "last frontier," a legacy of millions of years of evolution and thousands of years of conservative occupation by Native Americans.

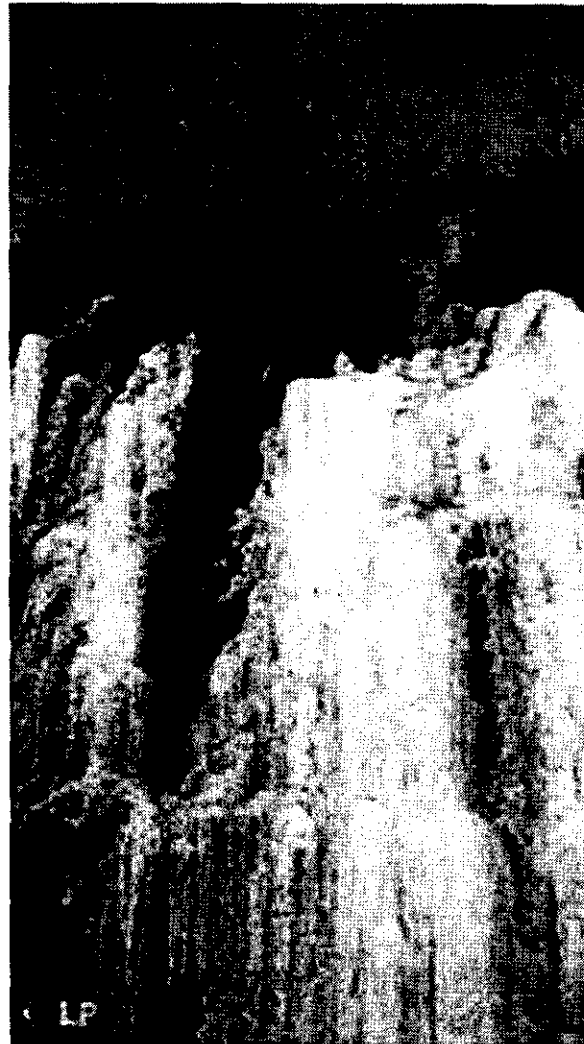
During the last 26 years, the Alaska District has dealt with the overwhelming task of regulating 174 million acres of wetlands, more than one million lakes, 33,000 miles of coastline, and tens of thousands of river miles. Corps regulators are responsible for rendering permit decisions for some 1,000 development proposals each year. These projects commonly involve community infrastructure, transportation systems, timber harvesting, mining, fisheries, and oil and gas development.

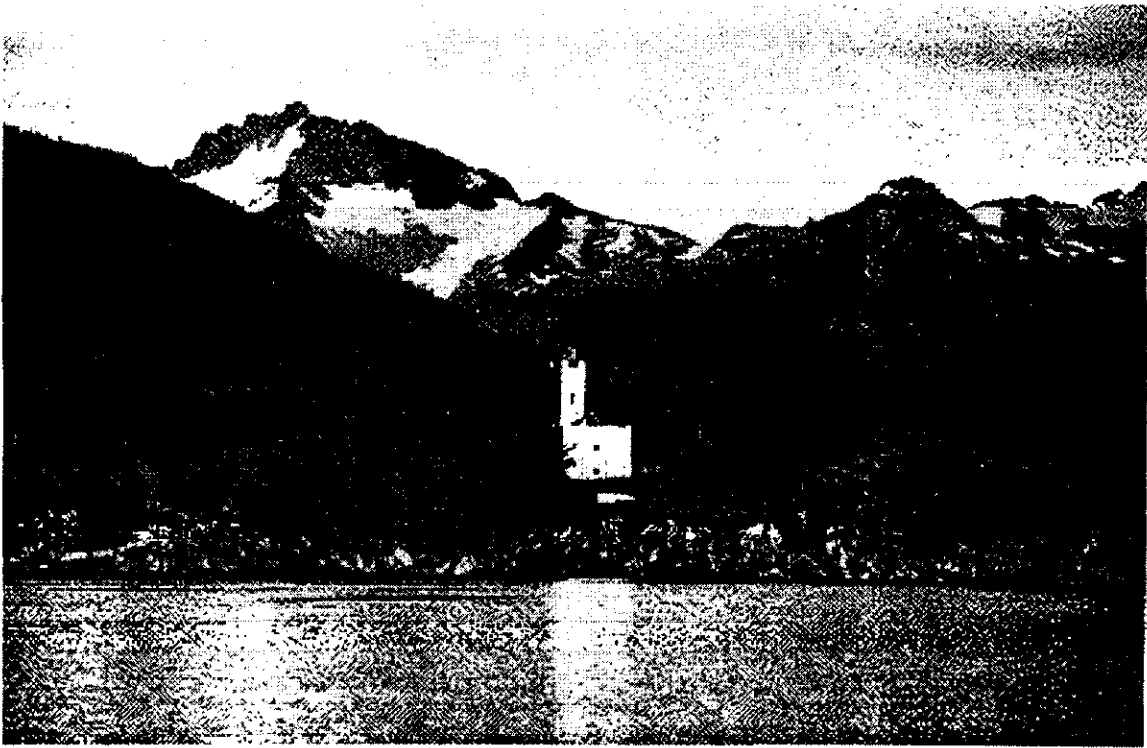
World-class mineral and resource extraction facilities with the potential to influence regional and national employment figures, balances of trade, international relations, and the overall U.S. economy are not unusual for Alaska District.

Despite the agency's lofty-sounding commitments and mandated public interest responsibility, on receiving the Corps regulatory program, the Alaska District dumped its regulatory role into a dark alley and walked away. Immediately and for nearly five years after implementation of the Section 404 regulations, Alaska District responded to strong political pressure from the oil industry and the Alaskan Congressional delegation by refusing to acknowledge authority over the environmentally sensitive and oil-rich North Slope region. Only in 1979, under threat of litigation, was the agency forced to assert jurisdiction over the 37 million acres of wetlands north of the Brooks Range.

Having to be forced, over and over again, by litigation or threat of litigation to do the right thing threads through the entire, checkered history of Corps compliance with its own regulatory program and Clean Water Act responsibilities.

As developer, the Alaska District constructs military projects and public works such as harbor development, maintenance dredging, and military infrastructure, all of which enjoy strong political support from the powerful Alaskan Congressional delegation, which holds key positions on resources and appropriations committees directly affecting the Corps. Alaska District's promotion of such construction projects creates mutually beneficial business relationships between the Corps and its many "customers," and "partners," such as the Alaska Department of Transportation (ADOT) and the Alaska Association of General Contractors.





III. Environmental Adventures on the Final Frontier

The following case studies illustrate what actually happens when Alaska District officials, the gatekeepers of the public trust, freely dispense "pass keys" for their own projects. Corps military and senior civilian leaders have expended untold tax dollars, Regulatory Program credibility, and the careers of concerned regulators to maintain an illusion of propriety in Alaska. Fiscal mismanagement, obstruction, cover-ups, and obfuscation have facilitated the Alaska District's own development appetite, while satisfying similar desires for corporate developers, political office holders, and like-minded development agencies. These longstanding practices of gratification and appeasement, have been made possible by the Corps' willingness to subordinate the public trust.

A Celebration of Crab Habitat—Kodiak, Alaska

In 1993, the Alaska District began work, in conjunction with a private contractor, and Corps "customer," the City of Kodiak, on a Congressionally authorized \$25 million project to build breakwaters and channelize Kodiak harbor. In June 1993, in connection with an ancillary component of the project, the City of Kodiak, submitted a permit application to Regulatory Branch to place fill at a quarry site dock. Because the site was located in prime King Crab mating and rearing habitat, the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service recommended denial of the permit. Facing imminent denial, the City withdrew its request and in October submitted a modified request.

While the Alaska District Regulatory Office was reviewing the modified plan, regulatory staff learned that the fill "proposed" in the City's permit request had already been completed by a Corps' "partner/contractor" at the direction of the Corps' on-site construction representative. Regulatory immediately initiated an investigation and obtained assurances from the District's Construction-Operations Chief at the time, George Zeiler, that Regulatory would not be obstructed from conducting a full and impartial enforcement investigation.

In early 1994, Regulatory Branch completed its initial investigation and submitted a report citing at least eight substantive Clean Water Act and Rivers and Harbors Act violations by the Corps. Despite Chief Zeiler's assurances against obstruction, he immediately attacked the investigative report, saying it was inaccurate and had overstated the environmental impacts of the violations. Although Corps regulations do not permit the agency to provide a violator an opportunity to critique an investigative report before an enforcement strategy is established, Regulatory enforcement staff were ordered to participate in a meeting with all District offices that had contributed to the violation.

The Chief of the Regulatory Office protested this order to Zeiler, his direct supervisor, but to no avail. Zeiler, rather than forwarding the investigative report to the District Engineer (DE), wrote a memo for the DE's signature directing Engineering Division to reinvestigate the violation. Ironically, Engineering did a comprehensive dive survey and produced a report that not only corroborated the presence of violations previously discovered, but also determined that the amount of illegal fill in the waterway far exceeded initial estimates.

Faced with this outcome, the District Engineer suddenly professed his outrage that such violations were occurring under his leadership. But in spite of these protestations of concern, and sending down written instructions that not even the appearance of impropriety should ever occur again, policy did not change.

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After extensive coordination with State and Federal resource agencies, a plan to mitigate the damage caused by the violations was developed which resulted in approval of the City of Kodiak's permit. And although serious environmental damage had been caused by the violations, Alaska District's management publicly boasted that the agency's unauthorized burial of King Crab habitat had in fact created new habitat for the species.

In the end, the cost to Regulatory Office to resolve this case approximated \$300,000 which represented only a portion of the Corps' overall contractual and internal expenditures. In 1994, the new District Engineer, Peter Topp, was briefed on the total cost and the damage to Regulatory Office credibility. The DE's response was: "So?"

Blue Light Special: Walden Point Road

On the extreme southern tip of Southeast Alaska lies the Annette Island Reserve, a native Alaskan reservation. Metlakatla, the only community on the island, has a population of less than 2,000 residents who are isolated by miles of open sea from Ketchikan, the nearest town of any size.

Twice a week in good weather, an Alaska State Ferry runs between these two towns, and a small commercial floatplane flies on a regular basis. Metlakatla is located on the sea side of the island, making it vulnerable to the whip of winter storms and virtually marooning the residents, an unhappy situation of year-round isolation that the residents have for decades wanted to change. Not unreasonably, they wanted all-year, all-weather access to city life, medical care, banking, and entertainment.

The obvious solution for better access for the islanders without causing environmental harm was a larger and sturdier all-weather ferry. In 1996, Metlakatla's chance came in the form of pork barrel military spending at its worst.

Enter the seasoned dynamic duo of Alaskan special interest politics, the United States Military and Senator Ted Stevens, powerful Chairman of the Senate Appropriations Committee. For the people of Metlakatla, this was a match made in heaven.

With the stated purpose of providing a training opportunity for the military's road builders, Stevens and the military proposed that the military build a 15 mile road across the island's thousands of acres of pristine wetlands from Metlakatla to Walden Point on the north end of the island. A new terminal for a smaller ferry would be built at Walden Point to make the shorter, calmer crossing to Saxman, where islanders could drive a short distance by road to Ketchikan.

In addition to this well-oiled tag team of the U.S. military and its patron Senator, a dizzying array of other government players promoted this project: the Bureau of Indian Affairs (BIA) served as the permit applicant; the Alaska Department of Transportation and Public Facilities became the agent for the applicant; and the Federal Highway Administration contributed design work and partial funding.

The Metlakatla Indian Community and the Annette Island Reserve were, of course, in favor of any relief from any quarter. Federal resource agencies, such as the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as well as the conservation community, would, normally, be expected to raise concerns about a project certain to directly impact so many acres of wetlands for the purpose of a training exercise. But with Senator Stevens providing the political clout and pushing for federal funding, and with the added volatility of taking on a project designed to benefit Native Americans, otherwise responsible, federal resource agencies and conservation groups took a look at the hand they were dealt, and decided to fold.

“You Can Count on the Corps”

Although the Corps was legally required to undertake a bona fide public interest review of the environmental impacts of the proposed project under the Clean Water Act and the National Environmental Policy Act, Alaska District regulators also saw the writing on the wall. A September, 1996 email message from District Engineer Col. Peter Topp to a Division Headquarters official notes: “Regarding the Metlakatla/Ketchikan road project...I’ll have my regulators look into it with an eye to required permits so they don’t disrupt the planned project schedule.”

In the summer of 1997, Senator Stevens made a visit to Metlakatla to conduct a groundbreaking ceremony for the road project. The Corps of Engineers project manager, who had been directed by his superiors to be present, was singled out by the Senator for a surprise public questioning about the Corps position on the project. All of this occurred before a Clean Water Act permit application had been submitted to the Corps for the project.

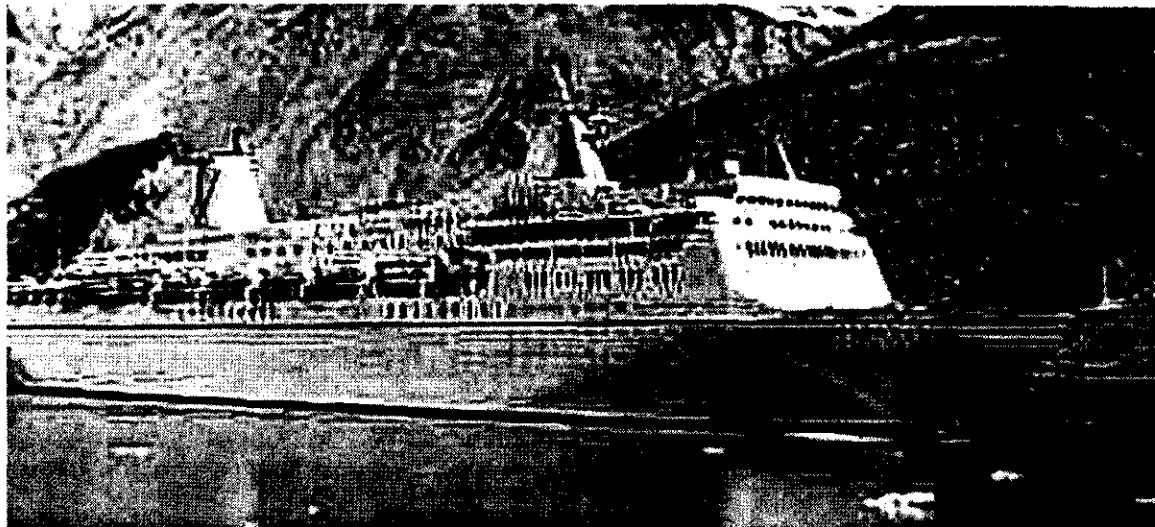
To please the Senator by assuring him that the Corps was a dedicated player on the military team and to further cement the team bond, in an extraordinary series of meetings and communications, Alaska District’s top military executives hastened to assure their counterparts at Alaskan Command that every effort was being made to conduct a speedy and favorable review of the, as yet, unseen proposal expected from the BIA.

Then, just in case the District had not gotten the message, the Corps’s regulatory headquarters on Capitol Hill added its own weight to permit issuance by virtually ordering their subordinates in Alaska to reach a decision within 120 days following receipt of the application. This additional spur to undue haste was given solely in order to meet the military’s timetable for beginning construction during the 1998 construction season.

Of course, despite the serious concerns of Corps regulators regarding environmental issues such as the existence of less damaging alternatives, the likelihood of significant secondary and cumulative impacts and the illegal piecemealing of the project to avoid certain environmental requirements, the permit was issued and road construction is currently under way.

Two Scoops of Spoil in Every Box: Nome Harbor

The City of Nome is a small village of about 3,500 people, located on the edge of Norton Sound and the Bering Sea. Its boat harbor is periodically maintenance-dredged by the Construction-Operations Division. Nome had an existing Corps permit to conduct work ancillary to the Alaska District’s normal maintenance dredging schedule. But in the summer of 1997, the Regulatory Office issued a Notice of Alleged Violation (NOAV) to the City of Nome.



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The NOAV raised questions about the implementation of several components of Nome's permit including the dredging of a portion of the harbor outside the area to be dredged by the Corps' Construction-Operations Division. Regulatory's immediate concern was the manner in which Nome had disposed of its dredged material. The possibly contaminated material had been used for fill behind a bulkhead and for the backfilling of a utility line.

When Corps regulators investigated further, they learned that during the previous winter, a Nome dredging contractor had dumped substantial quantities of dredged material on the ice directly above the area of the harbor where the Corps was scheduled to be dredging after spring break-up. Not surprisingly, as the ice melted, the material settled to the bottom, and regulators discovered that the Corps' Construction-Operations Division had agreed to pay its own dredging contractor approximately 60 percent more than the authorized limit to remove the dredged material that had been illegally placed on the ice by Nome's dredging contractor the previous winter.

When the news media published Alaska District's Notice of Alleged Violation, the Mayor of Nome placed a direct call of protest to District Engineer, Colonel Sheldon Jahn and soon after, Regulatory Branch enforcement action was stopped cold. Attorneys from the Corps' Office of Counsel instructed Regulatory that the previously issued Notice of Alleged Violation to the City of Nome had been rendered moot. The Corps' contractor was paid approximately \$700,000 in public money by the Alaska District, quite a leap compared to the originally negotiated price of \$537,750.

Corps regulators were informed by superiors in Construction-Operations and the District Executive Office that it was more important for the Alaska District to maintain good business relations with the dredging contractor community than hold Nome accountable for its Section 10/404 violations. Once again, Corps "customers" flourished in the wake of an illegal incident and good relations were maintained.

Never Mind, Come Back Later: Douglas Harbor

Some years ago, the Alaska District constructed part of a small boat harbor on Douglas Island across the Gastineau Channel from Juneau, Alaska. In the spring of 1997, the District selected a contractor to dredge the harbor for \$274,500. As the contractor began bringing the dredging equipment to the site, Regulatory started to receive telephone calls from the Alaska Department of Fish and Game, wanting to know why the dredging was commencing without State permit approval.

Although the Corps was not obligated to issue itself a Section 10/404 permit, it is required to obtain Section 401 certification of compliance with the Clean Water Act and determination of consistency with the Coastal Zone Management Act, both from the State of Alaska. In addition, the Corps is required to complete an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA). The completion of NEPA documentation and State approvals for federal projects are not ordinarily within the Regulatory Office's organizational authority.

Nevertheless, the State's natural resource agency contacted Regulatory to begin inquiries and expected answers to their questions. Regulatory immediately initiated internal communications and learned that the Alaska District had failed to obtain the necessary State authorizations, and had never completed the required NEPA Environmental Assessment.

The Alaska District's solution was to ask its dredging contractor to stop work, accept an additional Corps maintenance contract in Anchorage, then sail back to Douglas Harbor after the Corps completed its environmental review and obtained the necessary State of Alaska permits.

During the summer of 1997, when the contractors' for-profit busywork assignment was completed, he returned to finish his Douglas Harbor job. This fiasco not only gave the Corps (and by association its Regulatory Office) a black eye, but the taxpayers footed the extra bill; contract costs ballooned to nearly \$500,000.

The Copper River Highway, or, Wally's Road Warriors

In 1990, Walter Hickel was elected governor on the Alaskan Independence Party ticket. In concert with other daring points of view, the Party called for Alaska to secede from the United States, and form an independent country. Hickel's visions and opinions arise from an inside voice he refers to as the, "little man," who tells him what to do. (*Business Week*, page 68, April 13, 1992.)

During a prior term some three decades ago, and while public debate over the Trans-Alaska Pipeline raged unresolved, Hickel ordered that a road be cut through the North Slope tundra to reach the Prudhoe Bay oil field. Although the pipeline was eventually constructed and oil began to flow, "Hickel's Highway" as it came to be known was never usable. Its knee-jerk construction failed to account for unlawful penetration into the permafrost. Those deep-rutted scars are still there.

Under his most recent administration, the Copper River Highway was conceived to connect Cordova, Alaska at the state's main highway system. The Copper River, the waterway it would parallel, is one of the state's largest producers of Pacific salmon. Long before construction was to begin, a regular Corps "customer," the Alaska Department of Transportation (ADOT), acknowledged its need to obtain Corps permit approval for this project.

As a matter of general information, "customer" ADOT often combines efforts with the engineering and construction elements within the Alaska District; those relationships are deeply established. It is also noteworthy, that ADOT is the number one violator of the Clean Water Act within the State of Alaska.

It was not surprising to District regulators, therefore, when, in the early summer of 1991, reports of unpermitted highway construction along the Copper River flooded into the Alaska District Regulatory Office. Concerned citizens were reporting the unexpected activity and had also video-taped ADOT's operation. The Corps confirmed the eyewitness accounts and tapes of the scope of ADOT's violations and began an enforcement investigation. But instead of properly supporting the action, the Alaska District leadership informed the regulators that enforcement would not be applied to this case. Sentiments on the order of "How dare you sue the Governor?" were frequently expressed.

The highly doubtful and central argument raised against enforcement by non-regulatory Corps officials went as follows: since a state government agency was responsible for the Copper River Highway violation, it would be robbing the taxpayers if a Federal agency were to cite the State. This rather laid back notion of federalism ignored the dozens of investigations, lawsuits, and enforcement actions that occur each year between and among numerous Federal, State, and local governmental entities.

Corps officials at Division Headquarters raised even odder arguments against enforcement, such as,

"What's wrong with having a road to connect Chitina and Cordova?"

"The Copper River is loaded with silt and dirt anyway. What's the difference if the State pushed some more in without a permit?"

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Despite these frivolous arguments from superior officials, Corps regulators were eventually allowed to communicate their concerns about this project to the U.S. Attorney's Office in Anchorage. Once engaged, that office immediately recognized the import and consulted with the U.S. Department of Justice, Natural Resources Division, which ultimately represented the government during litigation.

Evidence presented to the court, revealed that ADOT had placed illegal fill and caused other unauthorized environmental impacts to occur at over 130 sites regulated under the Clean Water Act. Clear streams necessary for spawning were adversely impacted, incalculable amounts of fill were placed directly into Copper River during salmon migration, and adjacent wetlands were filled. In addition, "customer" ADOT had disturbed several cultural resource sites without regard for their significance.

After years of wrangling, the State of Alaska accepted responsibility for these violations and the U.S. District Court issued a consent decree, which was signed by the Attorney General for the State of Alaska. The consent decree committed the State to mitigate the damage and fund public service announcements about the importance of complying with environmental statutes. The State also agreed to sweeping institutional changes within ADOT, and an aggressive and on-going training program for its employees.

Since that signing and without regard for the authority of the consent degree, ADOT has resumed its practice of leading the charge to commit more CWA violations in Alaska than any other developer, equaled in numbers and enthusiasm only by the Corps, itself, which ranks a close second.

Following the consent decree, every subsequent District Engineer for the Alaska District has made it his business to stall, block or bully away any new reports to the U.S. Attorney's Office that ADOT has violated the court order. Every breach of that document has been hidden by a Corps leadership that finds such matters to be a disruptive influence upon the Corps construction relationship with "customer" ADOT.

Fort Richardson: A Bridge Too Far

During the fall of 1995, the Route Bravo Bridge, which spans the Eagle River within the Fort Richardson Army Post in Anchorage, was washed out when the river flooded its banks. The flood altered the contours of the river, creating two separate channels where the bridge had been, precluding reconstruction of the bridge at the same location.

The next spring, as part of a military training exercise, Fort Richardson officials had illegally placed substantial quantities of unauthorized fill material for a new bridge and large access road directly into the river and associated streamside wetlands. Because the Eagle River contains important salmon habitat and other environmental values, the violations prompted strong concerns from State and Federal resource agencies. Nonetheless, Fort Richardson had not only failed to secure Clean Water Act permit approval, but had neglected to even contact the Corps Regulatory Branch before beginning construction of the replacement bridge.

Soon after work began on the bridge in the spring of 1996, the Alaska District Engineering Division became aware of the violations, and notified a particular Regulatory Branch official. That official, Larry Reeder, failed to inform the Regulatory Branch Chief of the information he had received about the Fort Richardson violations for the better part of a year. Reeder has since been installed by District leadership as the new Regulatory Branch Chief.

Finally, in January 1997, Regulatory formally requested an action plan from Fort Richardson covering both restoration of the environmental impacts caused by the illegal fill and information regarding the design plans for the unauthorized bridge. Fort Richardson failed to respond

sufficiently, and the Regulatory Branch issued a Notice of Violation and Restoration Order in March 1997.

However, Regulatory was subsequently informed that Fort Richardson had hired the Corps' Alaska Engineering Division to design and construct a new, permanent Route Bravo bridge. Thus, at the same time the agency's Regulatory Branch was actively pursuing an enforcement action against an environmental violator, the District had accepted a six figure contract to accommodate that violator's interests — creating an inherent conflict of interest.

Throughout 1997, attempts by Regulatory Branch to resolve the Fort Richardson violations were undermined and met with resistance from within the Corps, as the District's engineers proceeded in their cooperative, economically beneficial relationship with the violator. Indeed, when Fort Richardson ultimately submitted its permit application to Regulatory for public interest review in 1998, the Corps simultaneously signed a construction contract to build the new bridge according to the very design under review by the Regulatory Branch. Needless to say, the permit seeking approval of the Corps' preordained design was issued, over the signature of Branch Chief Reeder.

Fort Greely Junction — The Levee Was Not Dry

The U.S. Army's Fort Greely, in Delta Junction, Alaska, is located on the Delta River. On October 18, 1996, the Corps' Alaska Regulatory Branch issued an emergency Section 404 permit to Fort Greely for a diversion berm to direct the flow of the Delta River away from an adjacent Army firing range in order to protect the facility from an imminent high water event. The Corps' emergency 404 permit allowed Fort Greely to temporarily fill 3.2 acres of river and wetlands, but also required the Army to submit project plans after the emergency conditions had subsided, in order to allow for full public interest review and Section 404(b)(1) analysis of long-term plans to protect the firing range from future floods.

In July 1997, Fort Greely submitted its permit application to the Regulatory Branch. The application revealed that the Army had significantly exceeded the conditions specified in the emergency permit. In fact, Fort Greely had actually constructed a 4,200 foot levee and excavated and placed 20,000 cubic yards of fill in the river — impacting a total of 20 acres of waters of the United States.



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In September, Regulatory issued Fort Greely a Notice of Non-Compliance. However, like in the Fort Richardson case, as Regulatory began enforcement action it was discovered that Fort Greely had hired the Corps Alaska District to design their long-term flood control plans. Thus, again the engineering/design/construction offices within the Alaska District had established a vested interest in satisfying a customer who was, at the same time, a Clean Water Act violator subject to enforcement action by the Corps' own Regulatory Branch. And, Regulatory's ability and duty to objectively resolve the violations were, again, inherently in conflict with the interests of superior elements in the District. The Fort Greely permit for the Corps-designed project was, of course, approved.

Homer Spit in the Ocean

Homer Spit, a narrow point of land extending into Kachemak Bay, Alaska, experiences natural erosion due to high wave energy. Therefore, the Corps obtained Congressional authorization to build revetments — or reinforcements for the coastline — along Homer Spit. In 1997, the Corps hired a commercial construction company to perform the work, and that contract was managed by the Alaska District's Construction-Operations Division.

In the summer of 1997, the Regulatory Branch learned that the Corps' contractor on the Homer Spit project had placed government-owned revetment (rock) material as riprap so as to protect tracts of private property along Homer Spit. These private lands were beyond the scope of the Congressionally authorized project — no tax dollars had been appropriated for these private interests. In addition, neither the Corps' contractor nor the private interests who benefited had sought Section 10/404 approval from the Corps' Regulatory office before the riprap had been illegally placed.

The Corps' Construction-Operations Division, Quality Assurance Branch then ordered the contractor to remove the government-owned rock from along the shoreline of those private lands. Two of the three landowners complied by allowing the contractor to reenter their properties and remove the material. However, the third land owner refused...and a stalemate ensued.

In the meantime, the Regulatory Branch had launched its own enforcement investigation of the illegally placed riprap. Soon afterwards the District's acting Construction Operations Chief, Thomas Johnson, and the acting Regulatory Chief, Larry Reeder, held a closed-door private meeting. Immediately after this meeting, Reeder ordered his Regulatory staff to terminate any enforcement investigation of the Homer Spit case. What is more, the recalcitrant landowner ultimately won out when the Corps granted him an after-the-fact Nationwide Permit for the riprap illegally placed on his land.

Although the environmental impacts of the Homer Spit debacle were minimal, the impacts on Regulatory program credibility may have been severe, as the Corps communicated a clear message to developers that they could cut a deal with a Corps contractor and entirely bypass the Clean Water Act regulatory process. Moreover, this case again illustrates how Corps managers manufacture ways to squelch investigations of their own environmental violations.

IV. "Get a Life" – Environmental Coordination Within Alaska District

In 1991, the Alaska District's distaste for compliance with the Clean Water Act, National Environmental Policy Act, and Rivers and Harbors Act, took a dramatic turn for the worse. At that time, George Zeiler became the new Chief of the Alaska District's Construction-Operations Division. At around the same time, Colonel John Pierce began his three-year tour as District Engineer and Zeiler's immediate supervisor.

From the outset, both individuals consistently derided the Regulatory Program as well as the regulatory employees under their thumbs. During Pierce's first meeting with all District employees (500+), he announced that everyone in the District worked for a living, except the regulators.

Zeiler's aversion to any information about Clean Water Act violations bordered on phobic. In briefings about questionable activities, Zeiler was incapable of even saying the word "violation." Instead he would insist upon using a euphemism such as "apparent inconsistency with environmental requirements." Almost on schedule, the frequency and volume of CWA violations escalated under Pierce/Zeiler leadership. Several of the case studies presented in this white paper, were the direct result of the influence of these senior officials and their blatant disregard for the Federal laws administered through the Alaska District's Regulatory Program.

During Pierce's tour (as well as his successor's), regulators made several serious attempts, through channels, to direct attention to unethical construction practices. For example, one regulator brought formal notice of these matters to the Alaska District's, Chief Ethics Officer, who after expressing appropriate interest and concern, buried the matter for the next two years. It did not resurface until well after Pierce's tour as District Engineer had ended, and Zeiler retired as Chief of Construction-Operations Division.

In another attempt to resolve these issues in-house, a regulator requested an investigation by the Department of the Army's Office of Inspector General (IG). For one exhilarating moment, it appeared that something might be done to hold the responsible individuals accountable for their continual abuse and violations of law.



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Pierce subverted an unbiased investigation by arranging for IG investigators to concurrently survey non-regulatory employees, who were culpable along with Pierce and Zeiler. And not surprisingly, that survey adversely targeted the same regulatory employees who had consistently refused to bow to intimidation and coercion. To further dilute the facts and distance himself from the problems he had caused, Pierce arranged for the IG to defer the investigation until after he had moved on to his next military assignment. Pierce's successor obligingly ensured that the skewed survey results were circulated.

Another ray of hope did emerge during these years, but it was snuffed out quickly. In late 1995, Zeiler acknowledged to his Regulatory Chief that there were legitimate problems associated with his construction activities. As deeply as he had resented even the mention of violations, Zeiler expressed a sudden desire to expunge those unmentionables from projects being designed, built, or contracted by the Alaska District.

High-level meetings were held, commitments were made, and a methodology for changing institutional attitudes were identified. Then, shortly after, Zeiler, and other senior Corps officials that had pledged their support for change, dodged every commitment they had made. Through dogged determination, however, the Regulatory Office eventually persuaded Zeiler to live up to his commitments.

Consequently, in June 1996, a memorandum, that honestly described the long-standing violations, was prepared for presentation to Zeiler and his organizational counterparts for endorsement. The authors of the memorandum could not use the term "violation" (still too painful for Zeiler), so they titled it District-wide Environmental Coordination. Nevertheless, it pulled no punches in describing the devastating effects of the Corps' chronic violations.

Rather than serving only as a critique, the memo prescribed a new approach to resolving these issues, stating in pertinent part:

"In many cases these project irregularities have prompted polarization among the involved district elements, when cooperation and objectivity were most needed. These conflicts have led to residual misperceptions, damaged interpersonal and intradistrict organizational relationships, and unresolved professional, procedural, and ethical differences.... The tools and policies necessary for this, or any other district, to smoothly implement an environmental coordination process already exist.... The district workforce has a wealth of first-hand experience associated with insuring projects comply with all environmental requirements. That knowledge base represents an untapped resource of ideas which could lead to solutions."

Immediately after Zeiler's receipt of this memo, he told one of the authors that it was being reviewed by the Chief of Counsel. Chief of Counsel was the same person who, as Chief Ethics Officer, had buried the earlier ethics complaint. For the next six months, the authors' inquiries for the memorandum and the signed endorsements proved fruitless.

Within days of Zeiler's retirement in January, 1997, the memorandum suddenly returned to life and was signed by Zeiler's temporary replacement. However encouraging that knowledge was to the Regulatory Office, it was short-lived, as Zeiler's replacement endorsed an entirely different process already underway in the Engineering Division. Although a regulator was allowed to attend planning meetings of this new group, he was quickly informed that a new agenda had overtaken the "endorsed" version, and that any protest would be a waste of time.

Pierce's replacement, Colonel Peter Topp, kept the Regulatory office on a short leash throughout his own three-year tour as District Engineer. Motivated chiefly by his desire to

“You Can Count on the Corps”

please U.S. Senator Ted Stevens, Topp bristled when informed by regulators of Corps violations “on his watch.”

One such case involved a Corps’ project at Elmendorf Air Force Base to place a sewer line under a salmon stream. As this project was developing, the pipe broke through the stream bed, heavy equipment was driven into the stream, and fill was placed into an adjacent wetland. Topp immediately directed his Regulatory Office not to issue a Notice of Violation to the Air Force, as it would be “a career-ender” for a fellow Colonel. Topp also empowered Zeiler, the Corps’ building contractor for the project, to direct the investigation of this violation.

In the Spring of 1997, as Topp’s tour as District Engineer was coming to a close and a new construction season was about to begin, the Regulatory Office requested a private meeting with Topp to discuss and correct the Alaska District’s penchant for CWA violations. In that meeting, Regulatory outlined exactly how such misconduct undermined their credibility, and revealed that the double-standards for federal projects versus non-federal projects was no secret to the public, nor to State and Federal resource agencies. Instead of honoring the confidentiality of that request, Topp unexpectedly raised it as an issue during a meeting attended by Zeiler’s temporary replacement. When the Regulatory Office representative asked how the staff could overcome their loss of credibility, Colonel Topp delivered the following advice:

“If the regulators worry about such matters [as loss of credibility], tell them to get a life.”



