APPENDIX A
EMERGENCY CORRESPONDENCE

THE WHITE HOUSE
WASHINGTON

August 29, 2005

The Honorable Michael D. Brown
Under Secretary
Emergency Preparedness and Response
Washington, D.C. 20472

Dear Mr. Brown:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Sincerely,

George W. Bush

08/29/2005 07:01PM

THE WHITE HOUSE

WASHINGTON

September 24, 2005

The Honorable Kathleen Babineaux Blanco
Governor of Louisiana
Post Office Box 94004
Baton Rouge, Louisiana 70804-9004

Dear Governor Blanco:

I have declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act), for the State of Louisiana due to damage resulting from Hurricane Rita, beginning on September 23, 2005, and continuing. I have authorized Federal relief and recovery assistance in the affected area.

Individual Assistance, and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance, and Hazard Mitigation will be provided.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs in the designated areas. For a 34-day period, assistance for debris removal and emergency protective measures, including direct Federal assistance, will be funded at 100 percent of the total eligible costs.

The Department of Homeland Security, Federal Emergency Management Agency (FEMA), will coordinate Federal assistance efforts and designate specific areas eligible for such assistance. The Federal Coordinating Officer will be Vice Admiral Thad Allen of the United States Coast Guard. He will consult with you and assist in the execution of the FEMA-State Agreement for disaster assistance governing the expenditure of Federal funds.

Sincerely,

George W. Bush

09/24/2005 05:43PM

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

ORDER NUMBER 101-805

COMMANDER'S EVACUATION ORDER

Pursuant to the authority delegated to me as District Commander, U.S. Army Corps of Engineers, New Orleans District, I order the evacuation of designated members of the New Orleans District's Emergency Operations Center (EOC), Crisis Management Team (CMT), Crisis Action Team (CAT), Emergency Response and Recovery Office (ERRO), District Reconstitution Team (DRT) which includes the District Reconstitution Survey Team (DRST), and Louisiana Office of Emergency Preparedness (LOEP) Liaison Team, who are required to perform official duty in designated locations in response to an emergency and who are ordered to evacuate their permanent duty stations, because of circumstances associated with the impending threat of Hurricane Katrina which creates imminent danger to their lives. (USD Personnel and Readiness Memo, Subject: Evacuation of Civilian Employees, dated 29 July 1994).

Travel expenses and per diem are authorized for the designated team members, including their dependents who evacuate pursuant to this order, as well as dependents of designated team members who operate from the New Orleans District Bunker. (Joint Travel Regulations, Volume II, Appendix I, Part B).

Names of team members and dependents will be listed separately.

This Evacuation Order is effective at 1900 on August 27, 2005.

Richard P. Wagenaar
COL, EN
Commanding

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

AUG 30 2005

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Col. Richard Wagnaar
Chief Engineer
U.S. Army Engineer District, New Orleans
P.O. Box 6026
New Orleans, LA 70160-0267

Re: Enforcement Discretion Concerning Drainage Activities Performed by the Army Corps of Engineers in the Aftermath of Hurricane Katrina

The United States Environmental Protection Agency (EPA) recognizes the great tragedy and harm caused yesterday by Hurricane Katrina. In particular, the extensive flooding to the City of New Orleans and surrounding area requires the need for a rapid response by the Army Corps of Engineers (Corps) to adequately drain the impacted areas of flood water.

The Clean Water Act, 33 U.S.C. 1251 et. seq. requires a permit for the discharge of pollutants to waters of the United States. Because of the need for the Corps to address the situation immediately to ameliorate the situation and potential risk to human health and the environment, EPA will exercise its enforcement discretion to allow the Corps to discharge as necessary to waters of the United States. This exercise of enforcement discretion is effective immediately and will continue until midnight on September 30, 2005. If additional time proves to be necessary, we will work with you on an appropriate extension.

To the extent practicable, the Corps should take all reasonable steps to minimize potential impacts of such discharges on the quality of the waters of the United States.

If you have any questions regarding this letter, please contact Mr. Mark Pollins, Director, Water Enforcement Division, at (202) 564-2240.

Sincerely,

Granta Y. Nakayama

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

SEP 7 2005

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Availability of Permit Exclusion for the Evacuation of Flood Waters by the U.S. Army Corps of Engineers Relating to Hurricane Katrina Recovery Efforts

FROM: Ann R. Klee
General Counsel

TO: Richard E. Greene
Regional Administrator
EPA Region 6

I am responding to a question that has arisen regarding whether permits are required under the Clean Water Act for the evacuation of water by the U.S. Army Corps of Engineers from the City of New Orleans and other communities flooded by Hurricane Katrina. We recognize that the immediate removal of this flood water is essential to protect public health. We also recognize that the flood water may contain oil as well as pathogens and other hazardous substances resulting from the inundation of urban and industrial areas.

This memorandum does not address the issue of whether the movement of pollutants in these waters from one location to another constitutes a "discharge of a pollutant" as that term is defined in the Clean Water Act. However, under the Clean Water Act and EPA's implementing regulations, the discharge of pollutants to waters of the United States by point sources is typically regulated by permits issued by States (or in some cases EPA) under the National Pollutant Discharge Elimination System (NPDES) program. Both the statute and regulations, however, establish exceptions. Of these exceptions, at least one is applicable here. Under the circumstances presented here, no NPDES permit is required for the evacuation of these flood waters by the U.S. Army Corps of Engineers.

ANALYSIS

EPA's regulations at 40 C.F.R. § 122.3(d) provide an exclusion for "any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan)." These regulations

implement Clean Water Act Section 311(c), which authorizes the President to "ensure immediate and effective removal" of discharges from onshore facilities of oil and hazardous substances that pose substantial threats to public health or welfare. Section 311(c) applies, for example, to oil and hazardous substances in the water flooding the City of New Orleans that present a threat of discharge to a navigable water or to shorelines adjoining a navigable water. In the case of New Orleans and other communities, oil and hazardous substances have been discharged from motor vehicles, industrial plants, and sewer systems, any of which constitute an "onshore facility" for purposes of Section 311. See Section 311(a)(10). Section 311 applies to *any* discharges of oil, even if the oil discharges are mixed with other wastes (excluding dredged spoil). See Section 311(a)(1); 40 C.F.R. § 300.5.

Section 311(c) requires that the removal of oil and hazardous substances – and actions to minimize damage from oil and hazardous substance discharges – shall be in accordance with the National Contingency Plan "to the greatest extent possible." Section 311(d)(4); see Section 311(c)(1)(A). The National Contingency Plan is codified at 40 C.F.R. part 300. It is implemented by an On-Scene Coordinator, who is defined in 40 C.F.R. § 300.5 as "the federal official predesignated by EPA or the [U.S. Coast Guard] to coordinate and direct responses . . . under the NCP [pursuant to Section 311]." Section 311(d)(4) gives the On-Scene Coordinator the authority to apply the provisions of the National Contingency Plan in a flexible manner and to issue instructions accordingly.

In New Orleans and other communities, Hurricane Katrina flood waters contain oil and hazardous substances. We understand that an EPA On-Scene Coordinator is in place and is conducting a Section 311(c) removal action pursuant to the provisions of the National Contingency Plan in 40 C.F.R. part 300. This removal action includes the evacuation of Hurricane Katrina flood waters by the U.S. Army Corps of Engineers. Under EPA's NPDES permitting regulations at 40 C.F.R. § 122.3(d), therefore, no NPDES permit is required for this flood water evacuation.

If you have any questions, please call me or ask your staff to call Carol Ann Siciliano (202-564-5489) or Scott Sherman (202-564-1789).

cc: Benjamin Grumbles
Tom Dunne
Debbie Dietrich
Charles Sheehan
Carol Ann Siciliano
Scott Sherman

DEPARTMENT OF ENVIRONMENTAL QUALITY

KATHLEEN BABINEAUX BLANCO
GOVERNOR

MIKE D. McDANIEL, Ph.D.
SECRETARY

September 7, 2005

Ms. Susan Hampton
Chief, Regulatory CEMVD-PD-K
U.S. Army Corps of Engineers
P.O. Box 80
Vicksburg, MS 39181-0080

RE: Emergency Response following Hurricane Katrina AI #130531

Dear Ms. Hampton:

The Louisiana Department of Environmental Quality (LDEQ) recognizes that the state of Louisiana is in a state of emergency as a result of the widespread damage caused by Hurricane Katrina. Finding that the hurricane created conditions requiring immediate action to prevent serious threats to life or safety and irreparable damage to the environment, a Declaration of Emergency and Administrative Order was issued by the LDEQ on August 30, 2005.

Section 401 of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* requires a water quality certification from the state to conduct any activity which may result in any discharge into navigable waters. Because of the immediate need to drain and pump out the flood waters in affected areas to protect public safety and the necessity to repair, replace, or restore public infrastructure damaged or destroyed by Hurricane Katrina, the LDEQ by this letter states that it has no objection to the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency waiving or otherwise dispensing with the requirement of a water quality certification from the state prior to authorizing or performing such work needed to abate the present emergency that will result in discharges into navigable waters.

To the extent practicable, the performance of the work referenced herein should be done in a manner which will minimize potential impacts on water quality.

If you have any questions regarding this letter, please contact Tom Griggs in the Office of Environmental Services, at (225) 219-3469.

Sincerely,

Mike D. McDaniel

Mike D. McDaniel, Ph.D.
Secretary

OFFICE OF **THE SECRETARY**
: PO BOX 4301, BATON ROUGE, LA 70821-4301
P:225-219-3953 F:225-219-3971
WWW.DEQ.LOUISIANA.GOV

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF:

Planning, Programs and Project
Management Division
Environmental Planning and
Compliance Branch

MEMORANDUM FOR New Orleans District Staff and All Interested Parties

SUBJECT: Imminent Threat of Flooding Due to Damaged Hurricane Protection Works

1. On August 29, 2005, Hurricane Katrina caused major damage to the hurricane protection system in Orleans, St. Bernard, Plaquemines, and Jefferson Parishes, Louisiana. Since the storm, the U.S. Army Corps of Engineers has been working to restore the hurricane protection system to the level of protection provided prior to the 2005 hurricane season. These efforts have been conducted mainly under the authority provided by Public Law 84-99, Rehabilitation of Damaged Flood Control Works.

2. While significant progress is being made in restoring the hurricane protection system to its pre-storm conditions, the system remains vulnerable to tropical weather systems. It is imperative that all hurricane protection works are restored to their pre-storm conditions as soon as possible to protect life, health, property, and economic losses.

3. Engineering Regulation 200-2-2, Environmental Quality, Procedures for Implementing the National Environmental Policy Act (NEPA) provides for District commanders to respond to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses without first preparing specific documentation and following the procedural requirements of the NEPA. Engineering Regulation 500-1-1, Emergency Employment of Army and Other Resources - Civil Emergency Management Program, provides that emergency flood control activities performed under Public Law 84-99 are not subject to the NEPA documentation requirements if risk to life, health, property, or severe economic losses is imminent. This regulation defines imminent risk as a subjective, statistically supported evaluation of how quickly a threat scenario can develop, how likely that threat is to develop in a given geographical location, and how likely the threat will produce catastrophic consequences to life and improved property. Implicit in the timing aspect can be considerations of time or season or of known cyclical activities.

4. Several words in the above definition are important in determining if there is an imminent threat to flooding within the four parishes listed above. The first is "subjective" which allows a decision to be based on sound reasoning. The second and third are "statistically supported evaluation" and "how likely that threat is to develop in a given geographical location." During the past four hurricane seasons, New Orleans has had 13 tropical storms or hurricanes pass within 300 miles of the city (three in 2002, two in 2003, three in 2004, and five in 2005), an average of over three storms per hurricane season. The National Hurricane Center has been reporting for the past several years that we have entered a period of more active hurricane seasons. The next key phrase is "how likely the threat will produce catastrophic consequences to life and improved property." Nothing demonstrates this better than Hurricane Rita in 2005. Hurricane Rita came ashore along the Louisiana/Texas state line, approximately 250 miles from New Orleans, yet the impacts of the storm in the Metropolitan New Orleans area were significant. Without a complete rehabilitation of the hurricane protection system to pre-storm levels, the New Orleans area could again be faced with the potential for catastrophic damages from a storm making landfall hundreds of miles away. The last phrase of significance is "known cyclical activities." As every day passes, the 2006 hurricane season gets closer, and the threat to life and property increases without adequate storm surge protection.

5. Based upon applicable regulations and guidance, I consider the Metropolitan New Orleans Area to be under an imminent threat from flooding due to the damaged hurricane protection system. I consider this threat to remain in effect until the hurricane protection system is restored to its pre-storm condition. The District will continue preparing an environmental assessment of the impacts associated with restoration of the hurricane protection system, and release the document for public and agency review and comment as soon as possible after all features of the restoration work are determined.

1/5/06
Date

Richard P. Wagenaar
Colonel, U.S. Army
District Engineer