UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUL 17 1990

Dr. H. Wayne Beam
Executive Director
South Carolina Coastal Council
4280 Executive Place North
Charleston, SC 29405

Dear Dr. Beam:

I have considered the threshold legal issue of whether, pursuant to section § 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, the South Carolina Coastal Council's (SCCC) December 22, 1988, objection to International Paper Realty Corporation's permit application to modify an existing facility to create a multi-use marine terminal facility in the Savannah River is timely. Based upon a review of case law applicable to the requirements of notice, I have concluded that the SCCC has not rebutted a presumption of notice to the SCCC through a notice sent to J.M. Waddell, Jr., the Chairman of the SCCC.

In general, proof of a properly sent piece of mail creates a rebuttable presumption that the mail was received. That presumption can be rebutted by an uncontradicted affidavit that the notice was not received. The trier of fact must then weigh the evidence.

A computer printout of the Savannah District Corps of Engineers' (Corps) mailing list for "Joint Public Notice International Paper 4 May '87" includes the "SC Coastal Council" (in Charleston), and the "Hon. J.M. Waddell, Jr., SC Coastal Council" (in Beaufort). As evidence that this mailing list was used, International Paper submitted a letter to the Corps from another organization listed on the mailing list, the South Carolina Institute of Archaeology and Anthropology, dated June 2, 1987, responding to the notice mailed on May 4, 1987. Based on this evidence, the Corps is entitled to a rebuttable presumption that the SCCC received the notice at two addresses.

To rebut that presumption, the SCCC has submitted affidavits of employees at the Charleston address stating that they received actual notice of the permit application on November 29, 1988, through a telephone conversation, and that they did not receive the Corps' written notice of May 4, 1987. However, there remains a rebuttable presumption of notice to the Chairman of the SCCC at the time the notice was sent. The SCCC affidavits do not claim that this notice was not received, they only deny that a notice was received at the Charleston address of the

SCCC. Because Mr. Waddell was the Chairman of the SCCC at the time, notice to him can be imputed to the SCCC. See Restatement (Second) of Agency § 268 (1957). The SCCC has not rebutted this evidence of notice.

Based on the evidence in the record, I find that the SCCC had actual notice of the permit application in May 1987. On December 22, 1988, the SCCC indicated that the proposed International Paper project was inconsistent with the South Carolina Coastal Zone Management Program. I find that the SCCC's consistency objection was not timely because it failed to respond to the notice within thirty days of receipt as required.[1] 15 C.F.R. § 930.54(a). Accordingly, concurrence by the State agency is conclusively presumed.

Sincerely,

John A. Knauss

cc: Steven Osvald
Savannah District
Corps of Engineers
Spencer Harper, III
International Paper

[1] Even if the permit had been determined to be a listed permit under South Carolina's coastal management program, South Carolina's objection would still have been untimely under the applicable regulations. 15 C.F.R. § 930.63(a)