

Industry Response Panel

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COASTAL OCEAN PORTS PERSPECTIVE

Lillian Borrone

I was heartened not only to see the National Research Council (NRC) report on contaminated sediments, but also to participate in this session, because this is a very important step forward from a port community perspective. It gives us the opportunity to see and understand what is happening nationally and to talk through, with every sector of stakeholders, how we might better work together to accomplish changes that we perceive as necessary.

Tom Wakeman, who works with me, previously discussed how ports are forced to deal with contaminated sediment. This is not our choice, obviously. Our business is to provide the economic foundation and facilities that allow commerce to flow in and out of this country. But to do that, we have to assure that we have safe, navigable waterways, and that our berths can accommodate the vessels that come in and out of our harbors.

Although we generally are not responsible for the contamination, clearly we have ended up being responsible by default or, in some cases, by a lack of aggressive pursuit of the potentially responsible parties or of other funding sources. At least we stimulate the removal of this dredged material, which has contamination in it.

In New York Harbor, widespread areas of sediment have been contaminated by a variety of sources. Some sources are far upstream, and many were shut down years ago. Ports have to dredge to keep their channels open and their berths free, but we do this in a regulatory environment that, in our view, has been plagued by procedural uncertainty and technical complexity. Both factors have led to enormous increases in the cost of managing dredging projects, and both have placed significant constraints on accomplishing harbor improvement programs in the time frame and manner that we require. In many cases, these programs have been under way for quite a few years.

The NRC report is an important step forward, because it gives us the opportunity to reach resolution on strategies that we have talked about for a while in a piecemeal fashion. The first two key areas are regulatory reform and partnerships to achieve reuse. From our point of view, the logical solution—as many of you have said over the last two days—is to treat dredged material as a resource, create the markets that would enable the material to be seen as acceptable for use, and not only lower our costs of disposal but also perhaps create a viable economic product for other users. The NRC study clearly and thoughtfully explains that this can occur only when we address regulatory uncertainties and develop adequate public/private partnerships that allow vital, sustained markets to develop.

My port and others around the country have been working through federal efforts, particularly Environmental Protection Agency (EPA) demonstration activities, as well as using our own resources and sometimes the resources of state programs, to create market opportunities and experiences that we can share. We want to demonstrate to our local constituents—particularly the everyday citizen—that this product approach is reasonable and responsible.

Regulatory reform is a crucial aspect of creating partnerships. We can learn a great deal from two fairly recent regulatory reform initiatives that have sought to create beneficial reuse opportunities for resources that historically were viewed as waste. One resource is sewage sludge and the other is contaminated industrial properties, or brownfields. Both programs have succeeded in increasing beneficial uses by providing clear, risk-based regulatory frameworks tailored specifically to the end use. In addition, both programs have addressed potential legal and financial liabilities that were keeping the private sector from embracing beneficial uses.

It is clear to us in the port community that similar reforms are needed desperately to allow the demonstration of new technologies or applications that will help us overcome barriers to innovation, enable us to reconcile differences between regulatory entities at the federal and state levels (and also regional levels), and to offer incentives to the private sector. These changes are needed to allow dredged material to evolve into a beneficial-use material and to create the markets that we believe are available.

How do we do that? Regulatory reform is only half of the equation. The other half is partnerships with the private sector, allowing it to develop products and markets that use dredged material. The public sector—whether the port authority or local, state, or federal government—cannot raise the capital to establish these markets on its own. It might control the supply, although not fully, because clearly there are private owners who also control some of the dredged material. In those cases, we still might be influencing the supply in terms of how we allow the material to be removed and managed.

We have heard from private entities over and over again that they are willing to step forward, but only if they have some assurance that we can meet the demand for dredged material if markets are found. My point is that we—and in particular the U.S. Army Corps of Engineers (USACE)—need to find a way to create the opportunity for a more reasonable supply process to evolve. We cannot have the process that exists today, which is project-by-project decision making that takes time and moves in fits and starts and stops.

In our harbor, we are talking about a “mud bank,” for which we might pool the resources of USACE, the private sector, and public agencies, to create a flow with reasonable predictability. The applications will go through all of the appropriate and rigorous regulatory processes necessary to incorporate those projects into the bank. We take the challenge seriously, so we also need to look further at ways to moderate contracting procedures so that we do not inhibit the creation of new markets.

We also strongly support something that was mentioned previously—tracking down the parties responsible for contaminating the sediment in the first place, so that they can share in the cost of cleanup. Finally, we have to work together to demonstrate that dredged material is marketable by assuring the public that this is a safe proposition. Larry Miller and Roberta Weisbrod talked about some of the tools we might use.

It was appropriate in our decision-making breakout session to focus on how to array the alternatives and help local constituencies to understand that there are choices, depending on the values we bring to the table. We can choose how to proceed, whether to sequester this material, use it to create new land or do other useful things with it, or amend it and make some other product. As raw material, sediment may have the potential to be a very reasonably priced supply, perhaps supplanting something like clean sand from the ocean that we would rather preserve to maintain the ecosystem.

What are our next steps in terms of a reuse market? We think the research so far, supported by demonstration projects, shows that there are beneficial uses of dredged material, even contaminated material; that many of these uses should generate some economic return; that the economic return is crucial to lowering the costs of dredged material disposal at ports; and that we can expect these markets to develop if we can tackle the obstacles presented by the current regulatory process to spur market-driven partnerships.

Using the information already in hand—and, if possible, new demonstration projects to help us develop additional credible evidence—we should be able to help the public accept the idea of these products. As we undertake some of these demonstration projects and continue to build our databases, we will develop the ability to lay out the case that this is not harmful, these are viable products, and this is an approach that can work. Both the report and the breakout sessions mentioned many things that require all of us to join together to build strategies for public understanding of risk-based approaches and tools for working with the public to find a strategy to deal with this material.