

REGULATED'S PERSPECTIVE — PORT OF OAKLAND

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The following is a quote from *World Dredging Mining & Construction* (November 1993):

Ninety-five percent of U.S. overseas trade moves in and out of U.S. ports. Over 25,000 miles of navigation channels link American communities to each other and foreign ports. Maintenance of a safe, efficient and cost-effective water transportation system is vital to the economic well-being of our nation.

It is vital also to carry out world trade in order to provide jobs in the U.S. that the President is working so hard to provide. Yet, in my opinion, the present regulatory process for permitting dredging—a necessary part of this transportation system—does not work. If there is any particular problem at all with the permit, the system completely falls apart as a result of two major reasons:

- A complete lack of management of the process.
- Permitting agencies have not kept up with the changes in environmental testing and, therefore, do not have procedures to handle contaminated material.

The entire process has taken on the appearance of being unmanageable. I believe that our challenge is to understand the management problems and make the necessary changes in the processes to manage them. I believe that there are three overwhelming problems that need to be addressed to manage dredging. First, we need to establish accountability in the system. Presently, there is no accountability for delays in making decisions, but regulatory agencies are criticized for issuing permits. This leads to an overly cautious approach that undervalues the damage done, both to the economy and to the environment, by delay. This lack of accountability is a serious problem; it took over 18 months for the Corps to issue a public notice for the last routine renewal of the Port's maintenance dredging permit.

Second, there is a serious lack of professional expertise in the regulatory process. The high rate of staff turnover at EPA and the Corps adds to this problem and contributes to the first problem: new staff are extremely cautious in a complicated technical area where they are just learning the ropes.

Finally, the regulatory system lacks a context for dealing with contaminated sediments, and lacks a mission to try to improve the present situation. The most contaminated sediments in our nation's waters are found usually far from navigational channels, and are associated often with the manufacture of chemicals that have been outlawed. If those sediments are potential problems at trace levels that they are found in dredged material, they are a much more serious problem near the source. Yet the regulatory efforts seem to be directed toward the symptom—dredging—rather than at the source of the problem, the original discharge. This misdirection of efforts does not benefit the environment, although it does hurt the economy.

What should we do about these problems? First, I think there needs to be a clear mandate in the Clean Water Act to complete regulatory actions within an established time, and a penalty if the Corps fails to comply. Second, we need to attract and maintain qualified staff, and management in the Corps and EPA needs to oversee the work of their staff and see that they get the necessary professional and on-the-job training. Those managers need to be held accountable for the timing and quality of their staff's work. Finally, both the Corps and EPA need to redirect their regulatory concerns to preventing sediment problems by source control and by remediation of hot spots, as directed in the Water Resources Development Act of 1992.

How should we determine if the manager is doing the job? In most cases, the manager works for a commission, a board, a State, or a Federal agency. These organizations depend upon their staff and they are very much influenced by the political situation. The objective way is to bring balanced, political pressure to assure that the existing laws and regulations are carried out. The ports would ask that we all take the time to see what is happening inside our regulatory organizations and to make an effort to try to bring about fair management.

The problem of regulatory agencies keeping up with the state-of-the-art environmental testing and developing procedures to make determinations based on this information is difficult, complicated, and certainly may involve some subjective determinations.

However, the lack of any such procedures has placed the whole permit system in gridlock. One such situation

is the Corps of Engineers' present determination that if dredged material in a Federal channel cannot be placed in its historical disposal site, then they are not going to dredge it. That certainly is not carrying out the Corps' mission of maintaining authorized federal channels. The Corps should recognize that under the new testing protocol they are going to have to arrange for new types of disposal for dredged material. The excuse that the local sponsor has to supply upland sites is not solving the problem. The Corps has over \$300 million in the dredge maintenance fund to maintain the channels, so money is not the problem. The problem is the need to develop new procedures that protect our environment and get the dredging job done.

I guess I can sum up by saying that the real problem is the lack of determination on the part of the regulatory agencies to solve the problem. Until such a determination is developed, the permit system is going to stay in gridlock. We need to support our economy by increasing our trading, which should not be "hamstrung" by the constant silting up of our vital port channels. Somebody at a high level has got to say "Get on with it" in relation to developing an environmentally sound and predictable permit system.