

REGULATED'S PERSPECTIVE — ALABAMA STATE DOCKS

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This morning you have or will hear a number of speakers as to whether or not the federal regulatory process works. Each of the speakers will talk with great intensity and a high level of emotion on their perception of the success of the process.

We are in a time of environmental activism. All too frequently commercial, or even personal, activities which are perceived to have any negative impact on the environment are automatically bad. As a result laws, rules, and regulations are passed to prevent those activities. The Corps of Engineers has identified over sixty that may come into play on projects for which they have regulatory responsibility.

Councils, committees, and advisory groups are formed to challenge and/or prevent the perceived abuses to the environment. In the two coastal counties of Alabama, there are eight federal and 27 state and local government agencies who have the potential of becoming involved in a water resource-based project. It is impossible to place a number on the private organizations who may surface on any given issue.

Our industry is all too frequently the victim of the challenges of clean air, clean water, endangered species, hazardous material, storm water runoff, and wetlands permitting laws. All impact on daily port operations. If port managers violate these laws, we are subject to severe personal financial liability and incarceration for our indiscretions. No provisions exist for accountability of those who abuse the same laws to the detriment of the economy.

If I were to give you my summary statement at this point, it would be: If the objective of the regulatory process is to stifle the economy by closing down the transportation of domestic and international goods via the waters of the United States, it is a great success. If the objective of the process is to achieve environmentally sustainable development, then the process is an abject failure. Each of my co-panelists could give you dozens of examples off the top of their heads of abuses by the implementors of the process which would support the above summary.

With such a summary, you are probably thinking if that is not an overstatement, I have never heard one. With the limited time available, I will address four examples. Great detail is available for each of these areas if you desire.

In addition to being the state agency that operates the Port of Mobile, the Alabama State Docks manages ten inland dock facilities on the commercially active navigation waterways throughout the State of Alabama.

On the eastern border of the State of Alabama is the Appalachian/Chattahoochee/Flint System. It, for a variety of reasons, operates by navigation windows. These windows may be as little as a few days or up to several weeks in length. This past year, without consultation with the navigation industry or operating industries on this system, federal and state regulatory agencies in Georgia and Alabama developed and implemented a draw down plan of the water levels in this system designed to eradicate an undesirable fish population. The result of this plan was that industries on this system effectively were left high and dry for several months. In that this plan did not require a permit, the agencies involved felt there was no need to seek input or to accommodate the purpose of the system, i.e., navigation. When a high-ranking official in one of the regulatory agencies was confronted on the lack of coordination, his response was: "What do you expect me to do, go out and contact everybody who uses this waterway to determine the impact of the plan?" This response can only be characterized as one of bureaucratic arrogance and a unwillingness to be accountable for the actions perpetrated upon the economy of the region.

The next example deals with the Tennessee River System. It crosses the entire northern width of the State of Alabama. Approximately two years ago, three applications were filed seeking permits to construct barge loading facilities on the Tennessee River. As a result of controversy, an Environmental Impact Study (EIS) was conducted. The study acknowledged that the Tennessee Valley Authority had no authority to regulate chip mills constructed on private property. Yet, the EIS that was conducted focused on the impact of wood chip mills on the Tennessee River watershed. Two of the three barge facilities were to handle chips produced through chip mills located on private property. The results of the study were predicated on an assessment of the cumulative impacts of harvesting of wood in the vicinity of these barge loading facilities. The TVA elected to deny all permits.

Subsequently, there have been numerous applications for construction of facilities on the Tennessee river to handle wood logs. These permit applications have been approved. My assessment in this case is that the regulatory process is being utilized, not to manage the waterway transportation system, but to control and stifle a crop grown for profit on private lands because of its final form when presented for transportation. What is the difference between harvesting and transporting logs versus harvesting and transporting chips?

It is also very interesting that the Port of Beaumont has just announced the opening of a facility to do the exact same thing as addressed in this EIS. Wood harvested from the states of Louisiana and Texas will be chipped and exported from the Port of Beaumont. Where is the consistency of the process? Who is accountable for denying economic benefit to private timber growers in Southern Tennessee and Northern Alabama?

The third area I wish to address is an on-going action on the part of the Fish & Wildlife Service as it attempts to list a supposed unique species of fish, the Alabama sturgeon. The Fish & Wildlife Service has proposed this fish be designated as endangered. The Service has identified a critical habitat for this supposed unique species. It has identified actions which must be taken to enable this fish to recover.

The industries in Alabama are greatly concerned over this action. Why? There are a multitude of reasons. It would take hours to go through them. Let me highlight a few.

The Service has elected to ignore testimony by nationally recognized ichthyologists (Ph.D.s) challenging the scientific work upon which this listing is based.

The Service has elected to designate as critical habitat an area which the Service acknowledges has no history of the presence of the fish.

The Service has elected to ignore strong statements on the part of the Corps of Engineers and the U.S. Coast Guard that the listing proposal would result in the shoaling of the system to such a degree that navigation would not be possible.

The Service has and continues to attempt to prevent open, public input in the review of this proposed listing through manipulative scheduling of administrative reviews and public hearings.

The Service conducted an evaluation of public comments and developed an advisory report in an

illegally closed session consisting of hand picked panel members in violation of the Federal Meetings Act. This was confirmed in Federal Court last week.

Why is Alabama industry scared? The habitat designated for this fish includes the confluence of the Alabama and Tombigbee Rivers. If you are not familiar with the area, it is the terminus of the Tennessee—Tombigbee River System and all inland waterways of Alabama, save the Appalachian System mentioned previously. It is the geographical point by which all commercial waterborne traffic must transit going to and from the Port of Mobile. This listing has a high potential of preventing the movement of any waterborne commodities between the Port of Mobile and the inland waterway system.

Finally, the Port of Mobile has experienced the same frustrations, delays and cost that the previous speakers addressed. We were lucky; however, in that our project was approved through the Water Resource Development Act of 1986. Lucky only from the aspect that our project was approved. Last minute legislative language changes to the Act required the disposal of all dredged material in the Gulf of Mexico. The project immediately experienced a seven fold increase in the cost of new construction dredging. In addition, the Federal Government continues to experience a five fold increase in the cost of maintenance dredging. The Corps of Engineers is constantly demanding that the Local Sponsor, the Alabama State Docks, find a way to reduce the cost of dredging.

The cost increase for the new construction dredging drove the project to a phased construction procedure. The first phase of the project is an engineering design of marginal capacity. The economic benefits projected for the first phase of this project have been achieved. Initiation of Phase II of the project is imminent. Given the experiences of other ports around the country, we anticipate unless major changes are made in the execution of the regulatory process, it will be years before there is any hope of achieving a usable Phase II of the already authorized project.

I appreciate your time and I hope you now have a little better understanding of why the port community considers the regulatory process a total failure. It is rapidly placing America's waterborne reliant industries at a high level of risk in being able to compete in the global market place.