CONTRACT REPORT D-74-7

LEGAL, POLICY, AND INSTITUTIONAL
CONSTRAINTS ASSOCIATED WITH DREDGED
MATERIAL MARKETING AND LAND
ENHANCEMENT

by

Ronald C. Wakeford, Donald Macdonald

American Technical Assistance Corporation
7655 Old Springhouse Road
McLean, Virginia 22101

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U. S. Army Engineer Waterways Experiment Station
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SUBJECT: Transmittal of Contract Report D-74-7

TO: All Report Recipients

1. The contract report transmitted herewith represents the results of one of five research efforts (work units) initiated to date as part of Task 5C (Disposal Area Reuse Research) of the Corps of Engineers' Dredged Material Research Program (DMRP). Task 5C is included as part of the Disposal Operations Research Project of the DMRP, which, among other considerations, includes the development of methods of extending the useful life of confined disposal areas.

2. Confining dredged material on land is a disposal alternative to which practically no specific design or construction improvement investigations, much less applied research, have been addressed. Being a form of waste-product disposal, dredged material placement on land seldom has been evaluated on other than purely economic grounds with emphasis nearly always on lowest possible cost. There has been a dramatic increase in the last several years in the amount of land disposal necessitated by confining dredged material classified as polluted. Attention necessarily is directed more and more toward the environmental consequences of this disposal alternative as well as to sociopolitical issues.

3. DMRP work units are in progress or have been completed developing concepts for improving facility design and construction, as well as guidelines and methodology for improving facility operation and management. These can be of significant value in reducing the environmental impact of confined disposal facilities and reducing the land requirements for them; however, these same objectives can be achieved in other ways. One of the most attractive alternatives is to remove dredged material for acceptable disposal or productive use elsewhere, thereby increasing the active life of the facilities. But, in order to do this, it is necessary to consider the legal, policy, institutional, and other constraints associated with marketing or donating dredged material, since these procedures often would be involved. To this end, the investigation reported herein was accomplished under contract with the American Technical Assistance
Corporation. The principal areas of investigation were those legal constraints that limit the possible uses of dredged material, the laws and regulations that control its sale or donation, and the official and public attitudes that can affect such actions. These areas are discussed in Section I of the report. Section II enumerates Federal statutes, regulations, treaties; CE regulations; and State laws and codes as they apply to the disposition of dredged material.

4. The study shows that the most restrictive laws are those controlling the disposal of polluted dredged material. In essence, dredged material can be sold or donated with least restriction if it is not classified as polluted. However, prior to sale or donation, clear title to or right to dispose of dredged material must be established. The authority for a given disposal action will depend on whether the dredged material is classified as personal or real property or as a valuable mineral. There is adequate authority for the sale or donation of dredged material unless it finds its way into commerce. The main public reactions to disposal of dredged sediments, particularly those classified as polluted, are the real and imagined threats to water quality, destruction of wetlands, and use of scarce land areas. State constraints and attitudes toward specific uses of dredged material varied from strong policies to protect wetlands to a wait-and-see reaction.

5. The results of this study provide the DMRP, CE offices, and potential users with a general tool for identifying and determining the feasibility of various schemes for donating or selling dredged material. It is recognized that additional constraints may exist for specific cases; therefore, any scheme should be considered on a case-by-case basis recognizing that new constraints may have been enacted since the conclusion of this study or that constraints unique to a particular case may exist.

G. H. Hilt
Colonel, Corps of Engineers
Director
The principal areas of investigation were those legal constraints that limit the range of possible uses of dredged material, the laws and regulations that control its sale or donation, and the official and public attitudes that can affect such actions. These areas are discussed in Section I of the report. Section II enumerates Federal statues, regulations, and treaties; CE regulations; and State laws and codes as they apply to the disposition of dredged (Continued)
20. ABSTRACT (Continued)

material. The most restrictive laws are those controlling disposal of pol-
luted dredged material; clean dredged material may be sold or donated if the
regulatory agencies are satisfied that in each particular case, the environ-
ment will not be degraded. Prior to sale or donation, clear title to or right
to dispose of dredged material must be established. An inventory should be
made to determine the quantity of material that is stockpiled and available
for some beneficial use and to identify the material as to ownership. Selection
of authority for a given disposal action will depend on classification of
dredged material as personal or real property or as a special category of
property reserved for valuable minerals. Existing laws and regulations pro-
vide adequate authority for sale of dredged material or for its donation as
long as the material does not subsequently find its way into commerce. The
main public reactions to disposal of both clean and polluted dredged material
are to real or imagined threats to water quality, destruction of wetlands, and
use of scarce land areas. The National Wildlife Federation opposes any filling
or altering of wetlands and would accept other alternatives only after each
project was demonstrated to be environmentally sound both for the particular
site and for the surrounding environment. State constraints and attitudes
toward specific uses of dredged material were found to be varied. Responses
ranged from strong policies to protect wetlands to undecided, wait-and-see
reactions to other disposal alternatives. Attitude changes will depend on
results of research. A wide spectrum of recommended Corps actions included
revision of regulations dealing with disposal of real and personal property to
cover dredged material and adoption of a new regulation to permit sale or
donation of dredged material deposited on public lands; development of a pack-
age contract where the contractor would dredge, process, and market sediments;
and negotiation with states for state-owned or controlled disposal sites with
reclamation and donation or sale by the state.