

DMMP/SMS ISSUE PAPER FUTURE OF THE “SMARM” PROCESS: REDUCING LEVELS OF EFFORT

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Introduction

The Puget Sound Dredged Disposal Analysis (PSDDA) agencies recognized early that “the state-of-the-art of dredged material testing and test interpretation is rapidly changing” and so also the need for annual program assessment (1). A general description of annual reviews and plan updates was described in the Phase I Management Plan (MPR) and more details were provided in the Management Plan Technical Appendix (MPTA), e.g., “...an annual review of the PSDDA plan will be undertaken by the Corps EPA, DNR and Ecology to assess impacts and the need for plan revisions ...” (2,3). In summary, the agencies agreed to a) evaluate overall program impacts, b) assess how effective and efficient the program was at meeting its goals and objectives, and c) determine if there was need for plan revisions based on both environmental and economic considerations.

MPTA also listed types of issues that “annual reviews may include” and a “typical sequence of events” leading up to an annual review meeting. The latter was intended to be an open exchange of information potentially resulting in revisions to the program. The Annual Review Meeting (ARM), at its inception, was considered fundamental to the success of the new and untested regulatory program, in part because it would help establish and maintain public trust.

Early ARMs provided an open, predictable and lively public forum for the agencies to a) summarize the overall status of the dredging activities, dredged material disposal and disposal site monitoring, b) present other technical and policy information, and c) recommend major and/or minor changes to program guidelines. They also were opportunities for the public to provide the agencies with important information and/or recommend their own program changes. However, this annual review process and meeting evolved over 17 years into a broader Sediment Management Annual Review Meeting (SMARM) that is now coordinated with Ecology’s Sediment Management Standards (SMS) and EPA’s Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA) programs (4). The meetings now include papers and presentations associated with these two programs as well. Other aspects of the SMARM that also evolved include timing, public notification, associated written documentation (e.g., reports, papers, minutes, and decisions) and process for adopting program changes. It is widely believed that the review process remains predictable, the written documentation is effective and the annual meetings are well attended.

Problem Identification

All of the regional agencies involved in sediment management have long acknowledged the problem posed by ever-increasing regulatory demands having to be met using limited resources.

For example, navigation dredging projects have increased in number¹ and complexity, the latter because projects are more frequently located in contaminated areas. Another example is that maturing contaminated sediment cleanup/source control programs, as reflected by greater staff expertise and more programmatic guidance, has led to a far greater number of active sediment cleanup and discharge sites of concern². Finally, there are a growing number of projects that require either navigation dredging in an active cleanup area or remediation where navigational needs also exist (see companion Clarification Paper). “Hybrid” projects such as these sometimes require substantial effort for staff using multiple authorities to agree on the best approach to evaluating sediment quality and management options. But these increased demands have not been met by similar increases in agency resources. In reality, program resources have declined in some years and remained stable in other years.

The increased regulatory demands described above, coupled with stable or even diminished agency resources, have precipitated “different ways of doing business”, including some that are not beneficial. Regulatory processes have been streamlined by more than one agency and on more than one occasion. Staff has prioritized activities better and worked more efficiently. Non-essential tasks have been eliminated. Important reports have been delayed and the time required to complete other tasks has also increased. Some examples follow.

- Streamlining and improved efficiency
 - Data transfer capabilities reduced duplication of sediment quality data entry
 - Annual reports summarizing sediment evaluations and regulatory processing (Corps), describing disposal site use and monitoring activities (DNR) and assessing the status of management plans (Ecology) were eliminated or combined into the DMMP Biennial Report (5)
 - New communication/coordination tools, e.g., email, meeting schedulers, Internet web sites, have all improved efficiency
 - The Cooperative Sediment Management Program linked sediment management programs together to address several high-priority issues (6)
 - Biennial Reports/SMARM Meeting Minutes, once printed and mailed at substantial cost, were replaced by documents on the Corps/Dredged Material Management Office (DMMO) web site (7)
 - Many projects previously issued individual Section 10/404 permits now qualified for one of several nationwide permits that require less effort and time to prepare
 - Access to technical information, sediment guidance documents and national expertise, for both agency staff and the public, improved greatly
 - Ecology developed guidance to reduce the time required to issue 401 water quality certifications
 - Evaluation of Superfund sediment cleanup sites involving EPA, Ecology and other agencies was coordinated to reduce conflict and redundancy
 - Ecology’s Sediment Cleanup Status Report preparation was streamlined (8)
- Negative impacts
 - The time required to review and approve Sampling and Analysis Plans (SAPs) for navigation projects remained relatively unchanged, while the time required to

¹ The three-year running mean for the number of navigation projects has nearly doubled during the past 17 years

² The number of known or suspected contaminated sediment cleanup sites has tripled from 49 in 1996 to nearly 150 in 2005.

review data and prepare the final Suitability Determination Memorandum increased (9)

- o Time required to review and approve SAPs for cleanup projects likely increased
- o Ecology's attempt to amend the SMS rule during the late 1990's was postponed indefinitely, due in part to inadequate resources (10)
- o Long-outdated sediment guidance has not been revised (11)
- o Proposed new guidance manuals remain incomplete (12)

The DMMP agencies also proposed in 1991 to make the ARM a biennial event, but this was not adopted because commenters strongly asserted that the public still needed to participate in program reviews on an annual basis (13).

While efforts to adapt to increasing regulatory demands continue, the DMMP agencies nonetheless believe that resource constraints have reached a level that dictates re-examination of some major elements of the various programs. One potential change that would allow continued prioritization of routine activities over certain program updates, especially now that sediment management programs are more mature and trusted, is to reduce the level of effort associated with conducting the SMARM - the subject of this Issue Paper.

Proposed Changes

- *Option 1. No Change.* The SMARM process would not visibly change. This option could result in the following:
 - o increased time required to complete multi-agency reviews of Sampling and Analysis Plans, sediment quality data reports, feasibility reports, dredge plans, water quality and post-dredge monitoring plans
 - o increased time required for making suitability determinations and/or issuance of permits
 - o reduced effort and time spent reviewing the aforementioned documents
 - o reduced time available for routine staff communication/coordination
 - o limited capacity to make adaptive management decisions, incorporate latest science or conduct regional planning; etc
- *Option 2. Biennial SMARM, version A.* This option would maintain most features of the current process, but with the agencies planning and conducting an 'agency-sponsored' SMARM every two years. During alternate years, a 'publicly-sponsored' SMARM could be planned and conducted by one or more external entities, e.g., a consulting firm or a member of the regulated community. The focus of the latter SMARM would be to have external parties present information and/or recommend changes to sediment management programs with agency staff in attendance. The agencies would only propose changes during alternate years if they were deemed critical to meeting program goals, probably using a process similar to the one described in Option 3 below. *Results.* Regulatory staff efforts spent preparing for the SMARM would be reduced by roughly one-half.
- *Option 3. Biennial SMARM, version B.* The agencies would plan and conduct a typical SMARM every two years, as in Option 2. In alternate years, the agencies would prepare only time-critical issue papers, along with minor program clarifications and status reports. These would be published on the Internet and/or disseminated to interested parties by mail, followed by a brief public meeting/hearing held to answer questions and receive brief comments. *Result.* This option would likely result in a substantial reduction in level of staff

effort, but not as much of a reduction as would Option 2. It might also result in somewhat less effective coordination between agencies and public participants.

- *Option 4. Web-based SMARM Process.* This option would replace the current annual sediment management program review process, including major annual meetings, with an almost entirely web-based program update process. Infrequent and irregular public meetings could be held to receive public comment/testimony regarding only “major” proposed program changes. *Result.* A substantial reduction in the level of staff effort associated with program review and updates is likely. It is also quite possible that coordination between regulatory agencies and the public would be less effective.
- *Option 5. Additional Resources.* This option would involve jointly requesting and receiving additional staff and/or financial resources to conduct normal program functions and continue the SMARM process. “New” resources might include one or more of the following:
 - o greater participation by EPA CERCLA program staff
 - o additional Corps, DNR, Ecology and/or EPA contract resources, potentially including some of those associated with the Regional Sediment Evaluation Team (RSET)
 - o reprioritization of existing state resources to better support sediment management programs
 - o state legislation providing new staff/funding for DNR/Ecology sediment programs
 - o additional DMMP staff funded externally*Result.* This option would lessen burden on existing staff and allow the current SMARM process and meeting to continue or even be developed further.

The agencies are committed to changing the SMARM process in a way that balances our need to reduce current staff levels of effort with the continued need to provide meaningful public participation in sediment management programs. We believe the feasibility of implementing Option 3, Option 5 or some combination thereof deserves further consideration. However, we have not identified a preferred SMARM alternative. Therefore, atypically, this Issue Paper does not propose a specific change but instead requests public comment on the alternatives described. Which is preferred? Are there other options not identified by the agencies and, if so, might they be preferred? All public comments will be carefully weighed and a decision made about how to reshape the SMARM process, e.g., public notification of program status and proposed changes, meetings, etc. by late summer or fall of this year.

References

1. PSDDA, 1988. Final Environmental Impact Statement.
2. PSDDA, 1989. Management Plan Report, Phase I, Section 9.4.
3. PSDDA, 1989. Management Plan Technical Appendix, Section 7.4.
4. DMMP, 1995. Sediment Management Annual Review Meeting (first multi-program event).
5. DMMP, 1992/1993. (First) Biennial Report.
6. CSMP, 1994. Interagency Agreement.
7. USACE, 2005. Dredged Material Management Office web site address/URL:
<http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=dmmo&pagename=home>
8. Ecology, 2004. Personal Communication with Pete Adolphson, Toxics Cleanup Program.
9. USACE, 2005. Personal Communication with Dr. David Kendall (DMMO).
10. Ecology, 2000. Memorandum from Tom Fitzsimmons, Director.

11. Ecology, 1991. Source Control User's Manual and Sediment Cleanup User's Manual.
12. DMMP, 2003. Beneficial Uses of Dredged Material. Note: although EPA staff completed this manual, a planned companion manual that was intended to provide more detail has not been drafted.
13. PSDDA, 1991. Minutes to the 3rd Annual Review Meeting.