

Regulatory Guidance Letter 87-08

SUBJECT: Testing Requirements for Dredged Material Evaluations

DATE: August 19, 1987 EXPIRES: December 31, 1989

1. Corps regulations at 33 CFR 323.6(a) state in part that "The district engineer will review applications for permits for the discharge of dredged or fill material into waters of the U. S. in accordance with guidelines promulgated by the administrator, the Environmental Protection Agency (EPA) under authority of Section 404(b)(1) of the Clean Water Act (CWA)." The guidelines at 40 CFR 230.10(c) state in part that ".. no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the U. S. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations and tests ..."
2. Corps regulations at 33 CFR 324.4(b) state in part that "Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities."
3. This letter restates the longstanding policy that Corps testing and evaluation procedures for discharges of dredged material will be substantively the same for permit applicants as for civil works (CW) projects. For both regulatory and CW projects, test and evaluation procedures are mandated by the 404(b)(1) Guidelines or the ocean dumping regulations as appropriate and described in Management Strategies for Disposal of Dredged Material: Contaminants Testing and Controls (MPD-85-1). We will not impose more stringent requirements on the private applicant than we require of ourselves.
4. The CWA Section 401 water quality certification, on the other hand, involves a state decision. It is the responsibility of the person desiring to do the work to obtain certification. While the Corps often serves as the vehicle for getting the certification request of a non-Federal applicant to the state, the applicant ultimately must deal with the state. Ideally, the Section 401 requirements should be similar for similar activities regardless of whether they are Federal or private projects. Beyond these requirements it remains the state's prerogative to determine any additional requirements necessary for a Section 401 water quality certification. Districts are encouraged to work with state agencies to develop a unified and consistent testing protocol.
5. Some states have tried to require pre-discharge testing beyond what is deemed necessary by the Corps. Predictive testing can be a reasonable prerequisite to reaching a

sound decision on whether to allow a discharge. If a state deems that certain tests are necessary before it reaches a decision on water quality certification, it must do so through its own procedures. Insofar as a state's 401 certification testing requirements coincide with the Corps testing requirements, one set of results should satisfy both. The Corps does not believe that the intent of Section 401 of the CWA would be met by the states issuing a certification before evaluating all tests that they deemed necessary to protect their state water quality standards. Therefore, district engineers should not consider as a final Section 401 action, any certification which contains conditions specifying pre-discharge requirements. Rather, they should notify the appropriate state agency of their determination and the reasons for it so the state can take a final action if it so chooses. Conditions requiring post-discharge monitoring are subject to adoption consistent with 33 CFR 325.4.

6. In formulating regional general permits, districts may develop in agreement with the state certifying agency, a testing protocol, the results of which will automatically satisfy predefined certification requirements. The testing protocol, however, cannot be more rigorous than the one to which our own Federal projects are subjected.

7. Districts which are experiencing repeated problems with state agencies that are reaching inaccurate conclusions based on their lack of knowledge of the effects of dredged material discharges, should consider sponsoring a generic briefing for the state agencies through the Dredging Operations Technical Support (DOTS) program. While generic presentations to state agencies may be appropriate, DOTS assistance to state agencies on individual permit applications is not. DOTS is intended to support our field elements on all respects of dredging and disposal. To make the program available to individual state agencies or applicants would strain the available time and resources of our experts and be in direct competition with those private consultants who stay current with the state-of-knowledge on dredged material research and are capable of providing this service. DOTS assistance can be obtained through CC,ES-EP-D (FTS 542-3624).

8. This guidance expires 31 December 1989 unless sooner revised or rescinded.

FOR THE CHIEF OF ENGINEERS: