

DREDGED MATERIAL RESEARCH PROGRAM



CONTRACT REPORT D-74-7

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

by

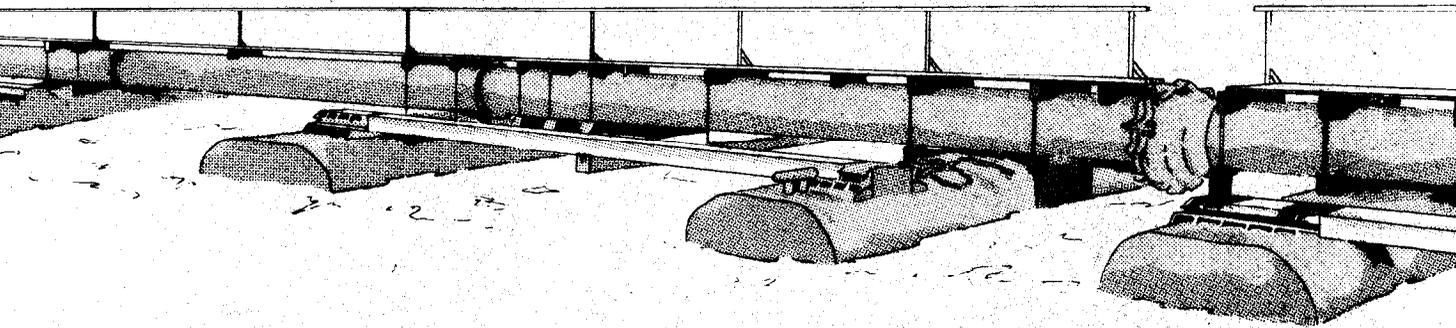
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U. S. Army Engineer Waterways Experiment Station
P. O. Box 631, Vicksburg, Miss. 39180

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IN REPLY REFER TO: WESYV

31 January 1975

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

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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

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20. ABSTRACT (Continue on reverse side if necessary and identify by block number) 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 polluted dredged material; clean dredged material may be sold or donated if the regulatory agencies are satisfied that in each particular case, the environment 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 provide 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 package 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.