

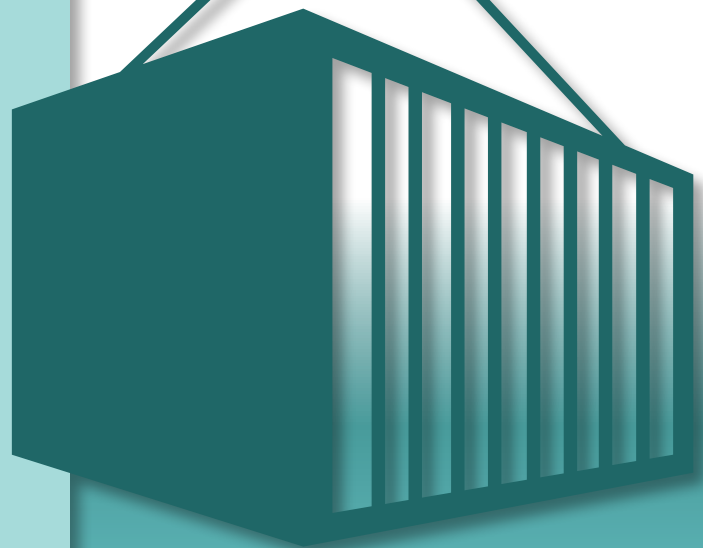
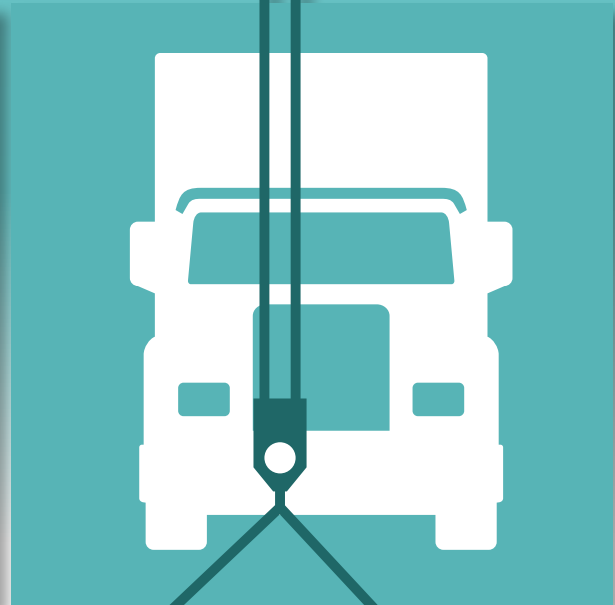
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Dredged Material Disposal: 5 Ways to Expedite Federal Approval



By Gen. (Ret) Richard Capka,
Linda Morrison & Elizabeth Fagot

Without dredging, ports and terminals cannot maintain necessary water depths, which is a problem when trying to accommodate large vessels involved with overseas commerce. Yet for many port officials, the detailed and often complex planning necessary for dredging is too easily ignored, which often leaves too little time to obtain the required permits.

Dredging requires approval from the U.S. Army Corps of Engineers, and the Corps has a complex evaluation procedure. In particular, federal approval usually hinges on the applicant having an adequate disposal plan, including disposal site, for dredged material.

Yet ports are running out of commercially available dredge disposal options and this increasingly requires the use of Federal/Port Placement Sites. Port and terminal users are competing with each other for scarce disposal sites, a competition that has become more acute due to the increased need for disposal capacity resulting from deepening federal navigation channels to accommodate post-Panamax ships.

To take one example, the Corps of Engineers Galveston District recently advised that it had more than 200 applications for real estate easements, which would grant permission to use Federal/Port Dredge Material Placement Sites for dredged material disposal.

“Port and terminal users are competing with each other for scarce disposal sites, a competition that has become more acute.”

However, finding a place to store the dredged material is only one of several challenges. The dredging process itself requires a series of permits. These emerging dynamics demonstrate the importance of handling the federal permitting process effectively and efficiently. Much goes into this, but some rules stand out for their importance:

#1 Be clear about your disposal plan, including the siting and the quality of material to be dredged. Obviously, contaminated material will need special attention and permitting. The process to secure placement site approval is extensive and technical. Many projects face delays due to lack of a current survey of proposed dredge areas, incorrect cross-sections of proposed dredge areas and no estimate of the maximum dredge depth needed.

Other issues: Which available disposal sites have capacity and can be used based on the material you are dredging? Have you identified all the potential disposal sites that could be used so that if one becomes available at a later point, you already have Corps approval? And are you able to link

up with an existing dredging contractor operating in the area?

Finally, the real estate approval process, which can include obtaining an easement to use a federal placement site, normally takes a year or more, as that approval comes from Corps headquarters in Washington, D.C.

#2 Understand the time parameters of a Corps approval. Corps dredging permits normally run for five years, though they may also have a 10-year maintenance dredge period. This is important because, although companies can file for extensions, if their application is submitted after the end of the maintenance period, the Corps is not allowed to approve the extension.

#3 Understand your specific state and federal requirements. Your Corps District office should have a list of what is needed in a federal dredge permit application. This can vary depending on the district; in many states, it involves coordination with state officials. For example, Corps rules require

that dredging projects in Texas “must be applied for through, and approved by, the Texas Commission on Environmental Quality for the discharge of effluent from an upland dredged material placement area.” Other states have similar requirements.

Further, you need to know if your Corps district has made site-specific arrangements affecting your proposed location. In these cases, it may be that the Corps has entered into an agreement which delegated reviews to the state that typically would have been handled by Corps officials.

#4 Be especially cognizant of Clean Water Act requirements.

Many applications are delayed because applicants do not meet the requirements of CWA Section 401 requiring the testing of dredged material. Adequate time to meet CWA requirements must be built into your schedule.

Corps districts have expedited processes used in Nationwide and Regional General Permits, which can be extremely helpful when there is a pressing need for approval. With a Section 10/404 permit, all

“In conclusion, port officials and terminal owners/operators should appreciate the complex permitting decisions required of Corps officials, who are capable professionals contending with difficult federal mandates.”

the “coordinating homework” has already been done, which can make it an attractive option.

#5 Advance planning is crucial. If the Corps has to return a dredging application because it does not adequately provide the information required for a complete application review, the delay could extend 60 days or more.

In conclusion, port officials and terminal owners/operators should appreciate the complex permitting decisions required of Corps officials, who are capable professionals contending with difficult federal mandates. The Corps review process involves a multi-disciplinary team approach, with the participation of regulator, navigation, real estate, and legal team members. The review team may include not just the District office but the Division and Corps headquarters as well, particularly if the use of a federal disposal site is being sought.

There is no silver bullet for success. But by following these suggestions, you will significantly improve your chances of successfully keeping your dredging project on schedule. ●

Brigadier General (Ret) Richard Capka commanded the Corps of Engineers Baltimore District, South Atlantic and South Pacific Divisions. Linda Morrison was Chief of Operations, Savannah District. Elizabeth Fagot was the Corps' Assistant Chief Counsel for Real Estate. All are with Dawson & Associates, a government advocacy and permitting firm in Washington, D.C.



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