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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

CIVIL DIVISION

72-0002

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Dear Mr. Secretary:

We have reviewed the actions taken by the Corps of Engineers (Civil Functions), Department of the Army, on the recommendations in our report to the Congress (B-118634, December 29, 1966). In that report we proposed that the Corps establish uniform procedures requiring industrial companies to stop depositing waste solids into navigable waters or to obtain a permit authorizing such deposits subject to the condition that plants participate in the cost of dredging the deposits.

Since the issuance of the report, the Corps has negotiated only a few cost-sharing agreements. Corps officials told us that they had not been more successful because they had been unable to identify all companies depositing solids and the extent to which those deposits form shoals which obstruct navigation. They indicated, however, that their new permit program, established pursuant to Executive Order No. 11574, dated December 23, 1970, would correct this problem. We agree, but we are recommending in this report that the Corps take additional action to develop procedures for negotiating cost-sharing agreements before permits are issued.

We made our review at the Office of the Chief of Engineers, Washington, D.C.; the North Central Division, Chicago, Illinois; and the district offices in that Division--at Buffalo, New York; Chicago; and Detroit, Michigan.

BACKGROUND

The Corps is responsible for enforcing sections 10 and 13 of the River and Harbor Act of 1899 (33 U.S.C. 403, 407) which makes it illegal to deposit industrial waste solids into navigable waters or to create obstructions to the navigable capacity of these waters. Under section 13, however, the Corps can issue permits allowing industries to deposit solids within certain limitations and under conditions defined in the permits.

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In 1953 three steel companies which had been participating in maintenance dredging on the Calumet River navigation project--Chicago District--refused to participate in the removal of industrial waste solids they had deposited. Also three other steel companies refused to begin participating in the cost of removing industrial waste solids from the Cleveland Harbor navigation project--Buffalo District. These six companies were of the opinion that they were under no legal obligation to participate in the removal of their waste solid deposits.

The Government initiated a suit in November 1954 to prevent the three steel companies on the Calumet River from depositing waste solids into the river and to require them to participate in the cost of removing the shoals caused by the deposits. After much litigation, the Supreme Court ruled in May 1960 that the industrial deposits created an obstruction to navigation within the meaning of the 1899 act and remanded the case to a lower court for determination of the cost-sharing agreements between the three companies and the Corps.

In 1963 the companies and the Corps finally negotiated an out-of-court settlement which resulted in a lump-sum payment of \$620,000 by the steel companies. Also the Corps issued permits to the companies authorizing the continued deposit of waste solids on the condition that the companies pay a total of \$25,000 annually for future dredging.

Despite the successful litigation and negotiation of agreements with the three Calumet River steel companies, the Corps took no action against the three Cleveland Harbor steel companies. The Corps had no uniform procedures for ensuring that other companies in the country were participating in the removal of their waste deposits or were required to stop depositing waste solids.

We therefore recommended in our 1966 report that the Corps (1) identify companies depositing waste solids, (2) develop methods to measure the quantity of solids being deposited and to determine each company's responsibility for removing the solids, (3) require companies to stop depositing solids

or to obtain permits and share in the costs of dredging the resulting shoals, and (4) take legal action against companies which refused to obtain permits or to stop depositing wastes.

ACTION TAKEN BY THE CORPS

The Corps subsequently established a program requiring its districts to identify companies depositing waste solids which formed shoals and to notify those companies either to cease depositing solids or to obtain permits and share in the Corps' cost of removing the resulting shoals. The Corps, however, did not issue guidelines setting forth the procedures that the districts should follow when they were unable to obtain a company's agreement to share in the dredging costs. Although some cost-sharing agreements have been negotiated, the program has been only partially effective.

The Buffalo District initially identified 36 companies that were depositing solids into waterways and notified 12 of these companies to cease depositing solids or to obtain permits and share in the dredging costs. The District intended to settle with these 12 companies and then, on the basis of its experience, settle with the remaining companies. For the 1968, 1969, and 1970 dredging seasons, the District collected \$96,000 from only two of the 12 companies.

The District has delayed negotiations with nine of the remaining 10 companies because it has been negotiating for 3 years with one of the Cleveland Harbor steel companies. An impasse apparently has been reached: the District has requested \$243,000 for 1968 and 1969 dredging costs; the company has offered \$140,000. The District has not referred this case to the Division or to the Office of the Chief of Engineers for resolution and possible legal action. Meanwhile other companies in the District continue to deposit solids without permits and without sharing in dredging costs.

The Chicago District also has had difficulty. In December 1963 the Chief of Engineers directed the District to undertake a study for developing techniques to identify companies discharging solids into waterways and the quantities and kinds

of solids deposited that had formed shoals. Personnel constraints prevented the District from completing the study. Therefore in June 1968 the District contracted with the Illinois Institute of Technology Research Institute for this study. The institute determined that the amount of solids discharged into waterways could be measured, but it was unable to develop a method for measuring the discharged solids which form shoals.

The Director of the Operations Division of the Office of the Chief of Engineers informed us that the Corps had abandoned its efforts to develop a method for measuring the amount of shoaling caused by discharged solids.

Since they do not have these measurements, both parties-- a Corps district and a company--must be willing to negotiate the company's share of dredging costs on the basis of imprecise data. Using this method, the Chicago District has saved \$1.4 million since 1966 because six of the companies depositing waste solids in navigable waters have been sharing the Corps' dredging cost or have been providing the dredging themselves.

The Detroit District also used the negotiation method in reaching agreements with companies for sharing dredging costs. The Michigan Water Resources Commission furnished the District with the amount of solids being discharged by various companies. Using this data, the District and the companies agreed on bases for sharing dredging costs. In 1967, 14 companies participated in the cost of the District's dredging projects; however, negotiations have not been completed with all of these companies for dredging seasons 1968, 1969, and 1970. The District has collected a total of \$319,000 since 1966.

NEW PERMIT PROCEDURES

On December 23, 1970, the President directed the Corps (Executive Order No. 11574) to implement a revised permit program under the 1899 act. Under the program companies discharging waste into navigable waters were required to apply for permits by July 1, 1971.

The Corps extended the filing date for permit applications to October 1, 1971, to give industries additional time to accumulate critical, detailed data on their waste discharges that was required to be submitted with the applications. The data required included the chemical content of the discharges, amount and frequency of the discharges, and type and quantity of solids in the discharges. As of November 30, 1971, the Corps had received 19,888 permit applications.

A Corps official has told us that some permits will be issued within months after the applications are received but that most will take from 2 to 3 years. As of November 30, 1971, the Corps had issued only 14 permits. The delay in issuing the permits occurs because of the numerous applications received and because the Corps must obtain certifications from the States in which the discharges occur and opinions from the Environmental Protection Agency that water standards will not be violated.

Corps officials told us the data provided under the new permit program should be useful in identifying and negotiating with companies discharging waste solids. Also the proposed permit contains a condition that the company is responsible for removing shoals caused by its discharged waste solids or that it must agree to share in the dredging costs. Although these actions will help the Corps, as discussed below, we believe that more needs to be done.

CONCLUSIONS

Although many years have elapsed since the discharge of industrial waste deposits in navigable waters was identified as a problem, the Corps has not been successful in having companies stop depositing waste solids or share in dredging costs. The Corps has not identified all the companies discharging waste solids nor has it developed a method for measuring the quantity of a company's discharged solids which form shoals.

The new permit program should enable the Corps to identify those companies depositing solids, and the permits will provide

that the companies share in the dredging costs. The Corps' procedures, however, do not require that the method for computing the companies' share of the dredging costs be negotiated before the permits are issued nor specify what actions should be taken by the districts when they cannot reach an agreement on the basis for sharing the costs. We believe that further guidance on these points would prevent extended, after-the-fact negotiations similar to the one in the Buffalo District.

RECOMMENDATIONS

We recommend that the Chief of Engineers be directed:

- To develop uniform procedures for negotiating, before permits are issued, the basis for cost-sharing agreements with companies depositing significant amounts of waste solids.
- To establish time limitations for negotiating this basis at the district level, after which cases should be referred to the division or Office of the Chief of Engineers for resolution.
- To deny permits when companies fail to agree on the basis for computing cost-sharing agreements and to refer cases to the Department of Justice when companies continue to deposit solids.

2 We are aware of pending legislation which could transfer the permit program to the States or, where a State has no authority to issue such permits, to the Environmental Protection Agency. The Corps has informed us that, if administration of the program is transferred to the States, the Corps will have no authority to require companies to share in the dredging costs prior to the issuance of permits. In such an event, the Corps will have to rely on negotiation which, to date, generally has been unsuccessful. If the permit program is transferred to the Environmental Protection Agency, however, we recommend that the Corps coordinate its efforts with the Environmental Protection Agency to ensure that, prior

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to the issuance of permits, companies depositing waste solids into navigable waters agree to share in the costs of dredging the shoals caused by the discharges.

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Copies of this report are being sent today to the Director, Office of Management and Budget; the Chairmen of the House and Senate Committees on Appropriations; the Chairmen of the House and Senate Committees on Government Operations; and the Chairman of the Subcommittee on Public Works, Senate Committee on Appropriations. 3-2-53
3-1-53
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We shall be glad to discuss this letter with you or your representatives should you desire.

Sincerely yours,

A. T. Samuelson

Director, Civil Division

The Honorable
The Secretary of the Army

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