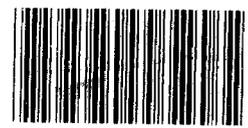


[Handwritten signature]

115875



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED WEDNESDAY MORNING
JULY 22, 1981

STATEMENT OF
HUGH J. WESSINGER, ASSOCIATE DIRECTOR, SENIOR LEVEL
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES
ON
[AGENCY PROCEDURES FOR PROCESSING DREDGING PERMITS]

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

WE ARE PLEASED TO BE HERE TODAY TO DISCUSS OUR JUNE 1980 REPORT ENTITLED "MANAGERIAL CHANGES NEEDED TO SPEED UP PROCESSING PERMITS FOR DREDGING PROJECTS" (CED-80-71) AND TO PROVIDE OUR COMMENTS ON RELEVANT PORTIONS OF YOUR PROPOSED LEGISLATION CITED AS THE PORT DEVELOPMENT AND NAVIGATION IMPROVEMENT ACT OF 1981 (THE JUNE 29, 1981, COMMITTEE PRINT).

IN OUR REVIEW, WHICH WAS MADE AT YOUR COMMITTEE'S REQUEST, WE IDENTIFIED COMMON DELAYS AND PROBLEMS IN THE CORPS OF ENGINEERS' DREDGING PERMIT PROGRAM AND RECOMMENDED WAYS TO IMPROVE THE PROCESS.

OF 402 DREDGING PERMIT APPLICATIONS REVIEWED AT THREE CORPS DISTRICTS--BALTIMORE, NEW ORLEANS, AND PHILADELPHIA--LESS THAN 54 PERCENT WERE PROCESSED WITHIN THE CORPS' GOAL OF 105 DAYS OR ABOUT 3-1/2 MONTHS. THE AVERAGE PROCESSING TIME AT THE THREE CORPS DISTRICTS WE REVIEWED RANGED FROM 4 TO 10 MONTHS. NO ONE FACTOR ACCOUNTED FOR THE PROBLEM. INSTEAD, A SERIES OF PROBLEMS DURING EACH STEP OF THE PERMIT PROCESS CAUSED DELAYS.

115875

017632

AN UNDERLYING REASON FOR PROCESSING DELAYS IS THE SHARP INCREASE DURING THE LAST DECADE IN THE NUMBER OF LAWS AND FEDERAL AGENCIES INVOLVED WITH THE DREDGING PERMIT PROCESS. WHILE THE LAWS ARE DESIGNED TO PROTECT IMPORTANT NATURAL RESOURCES, COMPLIANCE WITH THE LAWS REQUIRES ADDITIONAL STUDY AND AGENCY COMMENT TIME. THUS, ALTHOUGH CURRENT LAWS UNDERSTANDABLY EMPHASIZE THE NEED TO PROTECT VALUABLE RESOURCES, THEY DO AFFECT TIMELY PERMIT PROCESSING.

I WOULD NOW LIKE TO EXPAND ON OUR FINDINGS AND DISCUSS AGENCY ACTIONS TO IMPLEMENT OUR RECOMMENDATIONS.

SEVERAL FACTORS CAUSE
LENGTHY PERMIT PROCESSING

THE LENGTHY PERMIT PROCESS IS CAUSED BY SEVERAL FACTORS, INCLUDING:

- DELAYS IN ISSUING PUBLIC NOTICES.
- EXTENSIONS TO THE COMMENTING PERIODS.
- DELAYS IN FINAL PROCESSING.

ONCE THE APPLICANTS SUBMIT COMPLETE PERMIT APPLICATION PACKAGES, THE LAW REQUIRES THE CORPS TO ISSUE PUBLIC NOTICES FOR COMMENT WITHIN 15 DAYS. THE THREE CORPS DISTRICTS WE REVIEWED AVERAGED FROM 32 TO 76 DAYS FOR THIS STEP. THE DISTRICTS DID NOT SUMMARIZE STATISTICS FOR THIS PHASE AND HAD BEEN UNAWARE OF HOW LONG IT WAS TAKING. OFFICIALS CITED INTRADEPARTMENTAL PROCESSING PROBLEMS, LIMITED STAFFING, AND THE COMPLEX NATURE OF DREDGING PROJECTS AS REASONS FOR THE LENGTHY PROCESSING TIME.

THE COMMENT PERIODS WERE USUALLY EXTENDED EVEN THOUGH CORPS REGULATIONS REQUIRE THE CORPS, UNDER NORMAL CIRCUMSTANCES, TO LIMIT PUBLIC COMMENTS ON PROPOSED PROJECTS TO 30 DAYS. OUR REVIEW OF 48 ARBITRARILY SELECTED APPLICATIONS THAT REQUIRED 90 DAYS OR MORE TO APPROVE SHOWED THAT, ON THE AVERAGE, AGENCIES TOOK ABOUT 3 TO 6 MONTHS TO SUPPLY FINAL COMMENTS ON PROJECTS. THE AGENCIES ROUTINELY ASKED FOR AND RECEIVED TIME EXTENSIONS FROM THE CORPS WITHOUT PROVIDING PROPER JUSTIFICATION. AT OTHER TIMES, THE COMMENT PERIODS WERE EXTENDED TO ALLOW THE APPLICANT TO SUBMIT ADDITIONAL SUPPORTING INFORMATION OR TO DISCUSS AGENCY SUGGESTIONS FOR MODIFYING THE PROJECTS.

IN MARCH 1980 THE ENVIRONMENTAL PROTECTION AGENCY (EPA), THE FISH AND WILDLIFE SERVICE (DEPARTMENT OF THE INTERIOR) AND THE NATIONAL MARINE FISHERIES SERVICE (DEPARTMENT OF COMMERCE) FINALIZED MEMORANDUMS OF AGREEMENT WITH THE SECRETARY OF THE ARMY TO HELP REDUCE COMMENTING TIME AND FORMALIZE REFERRAL PROCEDURES FOR RESOLVING AGENCY DIFFERENCES. HOWEVER, THE SUCCESS OF THESE AGREEMENTS WILL DEPEND UPON THE SPIRIT OF COOPERATION AMONG THE AGENCIES AND THE EASE WITH WHICH TIME EXTENSIONS AND REFERRALS ARE OBTAINED. FOR EXAMPLE, REFERRALS THROUGH ALL LEVELS TO THE SECRETARY COULD REQUIRE OVER A YEAR.

THE CORPS ALSO ENCOUNTERED CONSIDERABLE DELAY DURING FINAL PROCESSING. FOR EXAMPLE, CORPS REGULATIONS REQUIRE THE DISTRICT ENGINEER TO EITHER DENY AN APPLICATION OR ISSUE THE PERMIT WITHIN 30 DAYS AFTER ALL ISSUES AND OBJECTIONS HAVE BEEN RESOLVED. HOWEVER, WE FOUND THAT THIS LIMIT WAS NOT BEING ADHERED TO. THE

THREE CORPS DISTRICTS WE VISITED AVERAGED 168 DAYS OR MORE FROM THE DATE OF FINAL FEDERAL COMMENTS TO PERMIT ISSUANCE FOR THE 48 SELECTED APPLICATIONS REVIEWED.

PROBLEMS CREATED BY EXCESSIVE PROCESSING TIME CAN BE SIGNIFICANT. FOR EXAMPLE, A NEW YORK MARINE TERMINAL WHICH HAD PLANNED TO DREDGE 19,000 CUBIC YARDS OF ACCUMULATED SILT (ENOUGH TO FILL ABOUT 115 50-FOOT BOXCARS) FROM ITS BERTHING AREA FOUND THAT OBTAINING A DREDGE AND DISPOSAL PERMIT REQUIRED ALMOST 15 MONTHS-- OVER A YEAR LONGER THAN ANTICIPATED. DURING THIS PERIOD, THE UNDREDGED SILT CAUSED SEVERAL SHIPS TO RUN AGROUND WHEN DOCKING, INCONVENIENCING BOTH THE APPLICANT AND CUSTOMERS.

A MAJOR KEY TO REDUCING PERMIT PROCESSING TIME IS PROMPTLY COMPLETING EACH STEP OF THE PROCESS. THE INVOLVEMENT OF NUMEROUS AGENCIES WITH DIFFERENT GOALS AND RESPONSIBILITIES, HOWEVER, MAKES THE PROCESS TOO COMPLEX TO REALISTICALLY EXPECT A LARGE DECREASE IN PERMIT PROCESSING TIME WITHOUT A MAJOR CHANGE IN THE PERMITTING PROCESS.

AGENCIES' ACTIONS TO IMPLEMENT OUR RECOMMENDATIONS

TO HELP SHORTEN PERMIT PROCESSING TIME, WE RECOMMENDED THAT THE CORPS (1) ADHERE TO THE TIME FRAMES SPECIFIED FOR ACTION ON PERMITS, (2) PERIODICALLY SUMMARIZE ITS PERFORMANCE IN MEETING THE TIME FRAMES, AND (3) ESTABLISH SPECIFIC CRITERIA FOR APPROVING EXTENSIONS TO THE 30-DAY COMMENT PERIOD. WE ALSO RECOMMENDED THAT THE FISH AND WILDLIFE SERVICE AND THE NATIONAL MARINE FISHERIES

SERVICE MORE CLEARLY DELINEATE SPECIFIC AREAS OF REVIEW AND THAT THESE SERVICES AND EPA ADEQUATELY JUSTIFY ALL REQUESTS FOR EXTENDING THE 30-DAY COMMENT PERIOD.

CORPS OFFICIALS REPORTED TAKING SEVERAL STEPS TO INCREASE TIMELINESS IN PROCESSING PERMIT APPLICATIONS. HOWEVER, SINCE THE CORPS HAS NOT ESTABLISHED UNIFORM PROCEDURES FOR PERIODICALLY SUMMARIZING ITS PERFORMANCE IN MEETING PRESCRIBED TIME FRAMES, ITS OVERALL SUCCESS IN THIS AREA IS DIFFICULT TO DETERMINE.

CORPS OFFICIALS TOLD US THAT THEY ARE NOW MORE TIGHTLY CONTROLLING EXTENSIONS TO THE 30-DAY COMMENT PERIOD. HOWEVER, THE CORPS LETS ITS DIVISIONS ESTABLISH THEIR OWN CRITERIA FOR GRANTING SUCH EXTENSIONS. AS A RESULT, THE TYPE AND AMOUNT OF JUSTIFICATION REQUIRED FOR EXTENSIONS VARIES.

OFFICIALS FROM BOTH SERVICES SAID THAT THEY HAD ACTED ON OUR RECOMMENDATION BY MORE CLEARLY DELINEATING SPECIFIC AREAS OF REVIEW. BOTH SERVICES TOLD US THAT INTERAGENCY COORDINATION IN THIS AREA HAD BEEN HIGHLY SUCCESSFUL.

OFFICIALS FROM EPA AND BOTH SERVICES SAID THAT THEY ARE CURRENTLY JUSTIFYING ALL REQUESTS FOR EXTENSION OF THE 30-DAY COMMENT PERIOD ON THE BASIS OF THE COMPLEXITY OR SIGNIFICANCE OF THE ISSUES INVOLVED AND THE COMPLETENESS OF THE APPLICATIONS. THESE OFFICIALS TOLD US THEY NOW ALMOST ALWAYS MEET THE 30-DAY TIME LIMIT FOR COMMENTS.

TURNING NOW TO THE PROPOSED LEGISLATION BEFORE THIS COMMITTEE, I WOULD LIKE TO PROVIDE SOME COMMENTS AND OBSERVATIONS.

COMMENTS ON THE PROPOSED
LEGISLATION

THE PROPOSED LEGISLATION WOULD AUTHORIZE THE SECRETARY OF THE ARMY, ACTING THROUGH THE CHIEF OF ENGINEERS, TO DECIDE ON THE DREDGED MATERIAL DISPOSAL SITES FOR MAINTENANCE OPERATIONS, SUBJECT TO CONGRESSIONAL APPROVAL. ONCE CONGRESSIONAL APPROVAL IS OBTAINED, ALL PROCEDURAL AND SUBSTANTIVE REQUIREMENTS FOR SECTION 404 PERMITS ARE DEEMED COMPLIED WITH. THIS APPARENTLY ATTEMPTS TO LIMIT THE EPA ADMINISTRATOR'S AUTHORITY TO PROHIBIT DISPOSAL OF DREDGED MATERIAL BASED UPON A DETERMINATION THAT SUCH DISPOSAL WOULD HAVE AN UNACCEPTABLE ADVERSE EFFECT ON THE ENVIRONMENT. ALSO, IF THE CORPS DISTRICT ENGINEER DETERMINES THAT THE INCREMENTAL BENEFITS OF MITIGATING CONDITIONS CLEARLY DO NOT JUSTIFY THE RELATED COST, THESE CONDITIONS MAY BE OMITTED FROM ENVIRONMENTAL IMPACT STATEMENTS (EIS'S) FOR NAVIGATION IMPROVEMENT PROJECTS.

ALTHOUGH THESE CHANGES MAY HELP THE GOVERNMENT CARRY OUT MAINTENANCE AND NAVIGATION IMPROVEMENT PROJECTS, THEY COULD ALSO REDUCE THE AMOUNT OF CONSIDERATION GIVEN TO ENVIRONMENTAL ISSUES. THUS, THESE CHANGES SHOULD BE CAREFULLY WEIGHED FOR THEIR POTENTIAL EFFECT ON THE ENVIRONMENT. FURTHERMORE, AT A MINIMUM, WE BELIEVE ALL MAJOR DIFFERENCES BETWEEN THE CORPS AND EPA SHOULD BE HIGHLIGHTED IN THE SECRETARY'S SUBMISSION TO THE CONGRESS FOR APPROVAL. ALSO, RATHER THAN EXCLUDING FROM EIS'S INCREMENTAL BENEFITS WHICH DO NOT JUSTIFY THE COSTS, THE SECRETARY SHOULD INCLUDE THESE FEATURES ALONG WITH A STATEMENT CONCERNING HIS POSITION.

WE UNDERSTAND THAT THE PROPOSED LEGISLATION WILL ALSO AUTHORIZE THE SECRETARY TO PROPOSE A "PROGRAMMATIC" EIS WHICH, IF APPROVED BY THE CONGRESS, WILL SATISFY THE EIS REQUIREMENTS FOR THE CORPS' 5-YEAR CHANNEL MAINTENANCE PROGRAM. THIS FEATURE WILL REQUIRE THE CORPS TO COMPLETE IN 1 YEAR THE EIS WORK NECESSARY FOR ALL PROJECTS SCHEDULED IN THE 5-YEAR PROGRAM. THIS PROVISION ATTEMPTS TO SHORTEN THE TOTAL TIME FRAMES REQUIRED FOR EIS PREPARATION AND TO COMPLETE THE PAPERWORK NECESSARY FOR MAINTAINING THESE IMPROVEMENT PROJECTS.

CORPS OFFICIALS TOLD US THAT EIS'S ALREADY EXIST FOR MANY CORPS DREDGING PROJECTS. IF THE PROGRAMMATIC EIS CAN BE PREPARED BY SIMPLY REFINING OR UPDATING EXISTING STATEMENTS, THE 1-YEAR TIME FRAME MAY BE ADEQUATE. HOWEVER, IF EIS'S HAVE NEVER BEEN DEVELOPED FOR INDIVIDUAL PROJECTS INCLUDED IN THE PLAN, THE 1-YEAR LIMIT PROBABLY WILL NOT PROVIDE TIME TO ADEQUATELY CONSIDER THE ENVIRONMENTAL EFFECTS OF THESE PROJECTS.

THE PROPOSED LEGISLATION ALSO DEFINES "MAINTENANCE PROJECT" TO INCLUDE DREDGING FOR ACCESS CHANNELS AND BERTHING AREAS ASSOCIATED WITH EXISTING CHANNELS THAT WILL BE DREDGED BY THE STATE PORT AUTHORITY. HENCE, TO THE EXTENT THAT ANY OF THESE CHANNELS OR BERTHING AREAS ARE INCLUDED IN THE CORPS' APPROVED MAINTENANCE PROGRAM, THEY WOULD LIKEWISE BE APPROVED, MAKING THEM EXEMPT FROM SEPARATE PERMIT REQUIREMENTS. A SIMILAR PROVISION IS CURRENTLY INCLUDED IN CORPS REGULATORY PROGRAM PROCEDURES, BUT CORPS

OFFICIALS TOLD US THAT THIS PROVISION HAS RARELY BEEN USED. WE BELIEVE THE PROPOSED LEGISLATION PROPERLY ENCOURAGES USE OF THIS PROVISION.

FINALLY, THE PROPOSED LEGISLATION WOULD REQUIRE THE AGENCIES TO ESTABLISH MEMORANDUMS OF AGREEMENT FOR INTERAGENCY REVIEW, AND COMMENT, ON PROPOSED MAINTENANCE PROJECTS WITHIN 90 DAYS AND ON NAVIGATION IMPROVEMENT PROJECTS WITHIN 270 DAYS. WE ENDORSE SUCH SPECIFIED TIME FRAMES. AS MENTIONED EARLIER, WE FOUND THAT THE MEMORANDUMS OF AGREEMENT WHICH THE ARMY, EPA, AND BOTH SERVICES HAD DEVELOPED WOULD ALLOW AS MUCH AS 1 YEAR FOR REVIEW AND REFERRAL TO HIGHER AUTHORITY--A TIME FRAME WHICH IN OUR OPINION, WOULD BE EXCESSIVE IN MOST CASES. THE AGENCIES SHOULD BE REQUIRED TO ESTABLISH MEMORANDUMS OF AGREEMENT WHICH LIMIT THEIR REVIEWS TO REASONABLE TIME FRAMES BASED UPON THE COMPLEXITY OF THE TYPES OF PROJECTS BEING REVIEWED.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. WE WILL BE PLEASED TO RESPOND TO YOUR QUESTIONS.