

FILE

REPORT TO
THE CONGRESS OF THE UNITED STATES



NEED FOR IMPROVING PROCEDURES
TO ENSURE COMPLIANCE WITH LAW
REGARDING DEPOSITION OF INDUSTRIAL WASTE SOLIDS
INTO NAVIGABLE WATERS

CORPS OF ENGINEERS (CIVIL FUNCTIONS)
DEPARTMENT OF THE ARMY



BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

DECEMBER 1966

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-118634

December 29, 1966

To the President of the Senate and the
Speaker of the House of Representatives

The accompanying report presents our findings, conclusions, and recommendations regarding the need for the Corps of Engineers (Civil Functions), Department of the Army, to improve its procedures so as to ensure compliance with existing law which prohibits depositing industrial waste solids into navigable waters unless a permit is obtained from the Secretary of the Army authorizing the deposits.

We found that the Chief of Engineers had not established adequate and uniform procedures for determining whether industrial plants were depositing into navigable waters waste solids that reduced the navigable capacity of a navigation project. As a result, the procedures followed by the districts we visited varied substantially, and most of these districts, in our opinion, have not made adequate investigations of industrial waste deposits since 1954.

We found in our review of Corps' records and Public Health Service reports that there are numerous industrial plants that are discharging waste solids into navigable waters and that many of these plants do not have permits and are not participating in the costs of maintenance dredging. Only two of the seven districts reviewed had followed procedures which resulted in some industrial plants being held responsible for the annual dredging of their unauthorized deposits.

Because there are a number of industrial plants which are depositing waste solids into navigable waters, the possibility exists that some of these deposits result in shoaling and that the Corps could realize significant savings in maintenance dredging costs by requiring that industry either stop depositing waste solids into navigable waters or obtain permits which authorize deposits and require participation in the costs of maintenance dredging of shoals resulting from such deposits. It was not practicable for us to determine the amount of shoaling that had been caused by companies that were depositing waste solids into navigable waters because of the technical knowledge required to make such a determination.

B-118634

By letter dated May 3, 1966, the Department of the Army, in commenting on the matters presented in this report, stated that the Federal Water Pollution Control Administration indicated that it would strongly object to the Corps' issuing permits which would allow the discharge of solids into navigable waters of the United States and that, consequently, a Corps' study to develop criteria to identify and measure industrial wastes has been held in abeyance.

The Department stated also that enactment of recently proposed legislation relating to the deposition of wastes into navigable waters would affect the position of the Department of the Army with respect to our proposal that the Chief of Engineers establish uniform procedures which would require that industrial plants either not deposit waste solids into navigable waters or obtain a permit authorizing such deposits.

The proposed legislation referred to by the Department of the Army included companion Senate and House bills. The Senate bill provided, in effect, that, before the Secretary of the Army could issue a permit authorizing deposit of industrial waste solids into navigable waters, the Secretary of the Interior would have to determine that the issuance of such a permit would be consistent with the purposes of the Federal Water Pollution Control Act. The House bill, however, did not include this requirement, and in conference the Senate language was deleted. Consequently, the bill which was finally enacted did not so restrict the Secretary of the Army in his issuance of permits.

The water pollution program is a long-range program which at best will require several years' work before pollution of navigable waterways is controlled. Although we recognize the desirability of eliminating the deposition of industrial waste solids into navigable waters, the fact is that industry is presently discharging and depositing waste solids into navigable waters, oftentimes in violation of existing law. Until such time as concentrated action is taken to eliminate the deposition of industrial waste solids into navigable waters, we believe that the responsible industrial plants should bear that portion of the costs of maintenance dredging necessitated by the plants' deposits of waste solids.

Accordingly, we are recommending that the Secretary of the Army direct the Chief of Engineers to establish uniform procedures (1) for identifying industrial plants depositing waste solids into navigable waters, (2) for providing a means by which the deposited waste solids and resulting shoaling will be measured and each industrial plant's proportionate share of the maintenance dredging costs will be identified, and (3) requiring that any plant so identified either stop depositing waste solids into navigable waters or obtain from the Secretary of the Army permits which authorize continued depositing and that the permits require that the plants participate in the costs of maintenance dredging.

We are recommending also that, whenever a plant refuses to obtain a permit or stop depositing waste solids in navigable waters, the Corps take appropriate legal action.

We are reporting the results of this review for the information of the Congress because the review concerns compliance with Federal law and because we believe that the corrective measures we have proposed could significantly reduce Government costs for maintenance dredging.

Copies of this report are being sent to the Director, Bureau of the Budget, the Secretary of Defense, and the Secretary of the Army.



Comptroller General
of the United States

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REPORT ON
NEED FOR IMPROVING PROCEDURES
TO ENSURE COMPLIANCE WITH LAW
REGARDING DEPOSITION OF INDUSTRIAL WASTE SOLIDS
INTO NAVIGABLE WATERS
CORPS OF ENGINEERS (CIVIL FUNCTIONS)
DEPARTMENT OF THE ARMY

INTRODUCTION

The General Accounting Office has made a review of the policies and procedures used by the Corps of Engineers (Civil Functions), Department of the Army, in determining whether industrial plants are making unauthorized deposits of waste solids which result in shoaling in federally maintained navigation projects. This matter came to our attention during an examination of Corps' records for settling the accounts of accountable officers at the Corps' Detroit District. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67) and was undertaken because of the significant amount of funds expended annually for dredging by the Corps of Engineers (Corps).

The objective of our review was to examine into the adequacy and uniformity of the Corps' procedures to determine whether industrial plants are violating sections 10 and 13 of the River and Harbor Act of 1899 (33 U.S.C. 403 and 407) by depositing, from sewer outfalls, industrial waste solids which reduce the navigable capacity of Federal navigation projects and whether these procedures require the divisions and districts to take action to have the industrial plants making unauthorized deposits either stop the illegal deposits or participate in the cost of maintenance dredging.

In performing our review, which was directed to an evaluation of those matters apparently needing attention, we examined applicable legislation, pertinent regulations, records, and correspondence and interviewed appropriate Corps officials. We also reviewed United States Public Health Service water pollution reports which included information on waste disposal activities of industrial plants. Although the water pollution reports did not contain information on the amount of shoaling caused by unauthorized deposits of industrial waste, the reports showed the amount of waste solids that were being deposited by various industrial plants and stated that certain of the deposits contributed to the pollution of waterways. Our review was directed to shoaling caused by the deposit of industrial waste solids, and we did not review the water pollution aspect of such deposits, which is the responsibility of the Department of the Interior and the various States.

Our review was conducted at the Office, Chief of Engineers, Washington, D.C., North Central Division Office, Chicago, Illinois, and district offices located in Buffalo, New York; Chicago, Illinois; Detroit, Michigan; Galveston, Texas; Mobile, Alabama; Philadelphia, Pennsylvania; and New York, N.Y.

BACKGROUND

The Corps of Engineers has the responsibility for improving and maintaining navigation channels throughout the United States. To maintain navigable depths on waterways, the Corps expends substantial funds each year for maintenance dredging. During fiscal years 1964 and 1965, the Corps expended approximately \$62.9 million and \$73.1 million, respectively, and estimated that fiscal year 1966 maintenance dredging costs would amount to about \$74.2 million. Maintenance dredging is required to remove shoals caused by natural conditions, refuse flowing from streets and sewers, and refuse matter deposited by industrial plants.

In conjunction with performing required maintenance dredging, the Corps is responsible for enforcing sections 10 and 13 of the River and Harbor Act of 1899 (33 U.S.C. 403 and 407) which state:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; *** and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same."

* * * * *

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from

which the same shall float or be washed into such navigable water; ***."

Although sections 10 and 13 make it unlawful to deposit industrial waste solids into navigable waters of the United States or to create any obstruction to the navigable capacity of these waters, section 13 gives the Secretary of the Army the authority to issue permits which enable industries to deposit materials into navigable waters within limits defined and under conditions prescribed in the permit. In this respect section 13 states:

"*** And provided further, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

In connection with the use of navigable waters and the violation of laws protecting such navigable waters, the Corps regulation which provides general guidelines to be used by Corps installations and activities, cites the above sections 10 and 13 and further states that:

"It is the duty of each District Engineer to take notice of any violation of the laws for the protection of navigable waters and the works of improvement therein that may occur in his district and to take the necessary steps to secure enforcement of the law. *** He will communicate directly with the responsible parties giving them notice to remove the illegal structure or deposit or to repair the damage by their own labor and at their own expense within a reasonable time to be fixed in the notice. Where there is reasonable doubt as to legal liability or where the facts of the case do not appear to warrant

legal action, the District Engineer will report the case to the Chief of Engineers for decision before communicating with the responsible parties. ***"

The principal officials of the Department of Defense and the Department of the Army responsible for the administration of activities discussed in this report are listed in appendix I.

FINDING AND RECOMMENDATIONS

NEED TO ESTABLISH CORPS-WIDE PROCEDURES FOR IDENTIFYING INDUSTRIES DEPOSITING WASTE SOLIDS INTO NAVIGABLE WATERS

Sections 10 and 13 of the River and Harbor Act of 1899 prohibit the deposit of waste solids into navigable waters of the United States unless a permit is obtained from the Secretary of the Army. We found that the Chief of Engineers has not established adequate and uniform procedures to determine whether industrial plants are depositing into navigable waters waste solids that reduce the navigable capacity of a navigation project.

As a result the procedures followed by the districts we visited varied substantially, and most of these districts, in our opinion, have not made adequate investigations of industrial waste deposits since 1954. Only two of the seven districts reviewed had followed procedures which resulted in some industrial plants being held responsible for the annual dredging of their unauthorized deposits.

Because there are a number of industrial plants depositing waste solids into navigable waters, the possibility exists that some of these deposits result in shoaling and that the Corps could realize significant savings in maintenance dredging costs by requiring that industries either stop depositing waste solids into navigable waters or obtain from the Secretary of the Army a permit which authorizes the deposits and requires the industries' participation in the costs of maintenance dredging. We believe that the Corps should make studies in all districts to determine the full extent of industrial deposits of waste solids into navigable waters and the resultant shoaling.

Actions taken by the Corps
during the period 1948 to 1966
relating to the discharge of industrial
waste solids into navigable waters

Because of recurring shoaling in the various harbors and connecting channels of Lake Michigan, the Chicago District, in 1948, initiated a study to determine the causes of such shoaling. The study showed that unauthorized deposits of industrial waste solids were contributing to the shoaling. As a result of the study, a number of steel companies assumed responsibility for the removal of shoals from harbors and channels formerly maintained solely at the expense of the United States.

As a result of the experience gained in the Chicago District's study, the Chief of Engineers, in a letter dated June 22, 1951, to the various division offices, stated that the possibility existed that additional steel companies and other industrial concerns might be prevailed upon to remove shoals caused by these industries' waste deposits. With a view to fixing pecuniary responsibility for dredging, the Chief of Engineers instructed each district to investigate the possibility of recurring shoaling, which would result from deposits of waste solids by industrial plants, in improved harbors and waters.

Because of the generally negative responses to this request and of the publication by the Public Health Service of the "Water Pollution Series Reports," which contained information on waste being deposited from public and private industrial sewer outfalls, the Chief of Engineers issued another request for investigations on October 29, 1953. Most of the divisions and districts reported that there was no problem in this regard. The Buffalo, Chicago, and Detroit Districts reported, however, that steel mills and other

industrial plants were making significant deposits. Some companies with plants in the Chicago and Detroit Districts were already participating in maintenance dredging.

In 1953 in the Chicago District, three steel companies which had been participating in maintenance dredging refused to participate in the removal of industrial waste solids deposited by them. Also, three steel companies in the Buffalo District refused to begin participation in the removal of industrial waste solids. These six companies were of the opinion that they were under no legal obligation to participate in the removal of their waste deposits.

During hearings on the Department of the Army, Civil Functions, Appropriation Bill for fiscal year 1955 before a subcommittee of the House Committee on Appropriations, there was a discussion on these companies' refusal to participate in the removal of shoals which were caused by these industries' unauthorized deposits into the Calumet River and the Cleveland Harbor projects. The Corps of Engineers advised the subcommittee that, with regard to this matter, it was negotiating with the three steel companies on the Calumet River. The House Committee on Appropriations in a report (H. Rept. 1345, 83d Cong. 2d sess. 10) submitted on March 11, 1954, in explanation of the appropriation bill for the civil functions of the Department of the Army stated that:

"In Calumet River and Harbor, Illinois, and Cleveland Harbor, Ohio, a serious problem exists with reference to illegal deposits by private industries in the navigation channels. These deposits are in violation of Section 13 of the 1899 River and Harbor Act. The deposits have created shoaling conditions to the detriment of the Federally maintained channels. *** The very companies which have refused to cooperate are beneficiaries of both construction and maintenance funds provided in this bill.

Such an attitude on the part of such local interests is inconceivable. It will be expected that the Corps of Engineers will make vigorous efforts to secure proper compliance with the law governing illegal deposits, including action by the Department of Justice if necessary. ***"

In November 1954 the Government initiated a suit in the United States District Court against the three steel companies located on the Calumet River in the Chicago District to compel them to restore the navigation channel to the authorized depth. After extensive litigation, the Supreme Court, in May 1960--United States v. Republic Steel Corp., et al, 362 U.S. 482 (1960)--ruled that the industrial deposits created an obstruction within the meaning of the 1899 act. The case was remanded to the Court of Appeals for proceedings in conformity with this opinion.

After further litigation, an out-of-court settlement was negotiated between the Corps and the steel companies and resulted in a final decree that terminated the litigation in August 1963. The settlement resulted in a lump-sum payment of \$620,000 by the steel companies for the dredging of all deposits made by them through December 31, 1962. Further, the Secretary of the Army issued permits authorizing the continued deposit of industrial waste solids with the condition that the companies would pay the aggregate sum of \$25,000 annually for the future dredging of solids that would be added to the navigable waters. The permits provided for adjustment of the annual payment in the event that a major change in the size, character, or efficiency of the operations of any of the companies would permanently increase or decrease the quantity of the industrial waste solids being deposited.

As a result of problems encountered during the litigation in establishing each company's pecuniary responsibility for dredging, the Chicago District Engineer, in October 1963, recommended a special program to study methods for identification and measurement of industrial waste solids. The District Engineer believed that, since it had been legally determined that, without a permit, the discharge of steel mill wastes into Federal navigable waters is in violation of sections 10 and 13 of the River and Harbor Act of 1899, it appeared mandatory that every industry depositing any solids into navigable waters of the United States should be required to apply for a Federal permit to continue such disposition.

He therefore recommended that the Chief of Engineers establish a Corps-wide policy with respect to requirements that industries apply for Federal permits to discharge and deposit solids into navigable waters. The District Engineer further stated that a uniform Corps-wide policy requiring industries to apply for a permit to continue discharging and depositing solids into navigable waters was necessary to refute repeated accusations of discrimination against local industries because sections 10 and 13 of the 1899 act were not being enforced elsewhere.

In December 1963 the Chief of Engineers instructed the Chicago District Engineer to study ways to identify and measure industrial waste solids and, when such criteria had been developed by this study, Corps-wide policies and procedures were to be prescribed and disseminated. At the time of our review, little progress had been made on the study. Responsible Chicago district officials informed us that the district did not have enough manpower to make the study and do the district's normal work simultaneously and that it would be difficult to determine a completion date.

Procedures followed by Corps
districts for identifying industries
making illegal deposits of waste
solids into navigable waters

We found that the Corps had not established adequate and uniform procedures for determining whether industrial plants are depositing waste solids that reduce the navigable capacity of navigation projects. As a result, the procedures followed by the districts we visited varied substantially, and most of these districts, in our opinion, have not made adequate investigations of industrial waste deposits since 1954.

With the exception of the Chicago and Detroit Districts, we found that none of the districts had identified industrial plants that were depositing waste solids which result in shoaling and none had executed, where appropriate, agreements requiring industrial plants to participate in the costs of maintenance dredging. The procedures followed by the North Central Division and by the various districts reviewed are discussed below.

North Central Division

At the time we began our review, the procedures followed by the districts in the North Central Division for identifying industrial plants that were making illegal deposits of waste solids were not being uniformly applied to all industrial plants.

Chicago District

Chicago District officials informed us that samples of shoal material were analyzed to determine the materials' origin. The officials said that effluents may be sampled at the sewer outfalls if it is suspected that the shoal material originates from industrial deposits. On the basis of these investigations, they found that steel mills were the principal source of illegal deposits of waste solids in the Chicago district.

The Chicago District estimated that it saved about \$7.4 million in the cost of maintenance dredging from 1949 through June 30, 1965, through the participation of steel mills in the cost of dredging shoals which resulted from their deposits of waste solids. These savings resulted from agreements between the companies and the district. The degree of the companies' responsibility for dredging was determined through negotiations.

Detroit District

Detroit District officials informed us that their investigations of shoal material and effluents to determine whether industrial plants were making unauthorized deposits of waste solids had been held in abeyance from 1958 through 1963 pending resolution of the litigation in the Chicago District since the legal basis for action was not certain. Previous investigations had established that certain industrial plants were making unauthorized deposits. On the basis of these investigations, the district was able to obtain the participation of industrial plants on the Rouge River, Monroe Harbor, and Grand Haven Harbor, Michigan, projects.

Industrial plants on the Detroit River, Michigan, project, however, had not been asked to participate, although they were making deposits of waste solids. District officials advised us that the industrial plants on the Detroit River project were not asked to participate because of the problem of determining the portion of dredging costs to be paid by each of the numerous plants involved and the fact that the Detroit River was part of the international boundary between Canada and the United States and had plants on the Canadian side. The officials said that the district was waiting for the Chicago District to complete its study of methods for identifying and measuring industrial waste.

In the Detroit District a steel mill, paper and pulp mills, a chemical plant, a cement plant, and a sand and gravel company have been participating annually in maintenance dredging. This district recovered \$61,891 in dredging costs during fiscal year 1965. Most of these dredging costs have been recovered through informal agreements between the companies and the district. The degree of the companies' responsibility for dredging was determined through negotiations.

After settlement of the suit against the three steel companies in the Chicago District, the Detroit District and one of the companies, which also had a mill on the Toledo Harbor, Ohio, project, negotiated a settlement of \$37,500 for the dredging of deposits through 1964. The Secretary of the Army issued a permit authorizing the continued deposit of industrial waste solids, with the condition that the company pay annually for future dredging of industrial waste solids that would be deposited into the navigable waters during each year.

Buffalo District

Buffalo District officials informed us that except for the Cleveland Harbor project there had been no continuing investigations of effluent or shoal material after 1954 when investigations were suspended pending the outcome of the litigation in the Chicago District. The officials stated that samples of the shoal material were taken from the Cleveland Harbor project until 1963 but that the samples in recent years had not been analyzed and had been destroyed. Division and District officials advised us that, after the completion of the litigation in August 1963, the Buffalo District had been waiting for the Chicago District to complete the study of methods for identifying and measuring industrial waste before it resumed investigations.

In addition to the Cleveland Harbor project, the district reported, in 1954, that steel mills and other industrial plants on the Buffalo Harbor, New York, and Lorain Harbor, Ohio, projects were making unauthorized deposits of waste solids. Buffalo District officials said that no follow-up action had been taken by the district.

New procedure issued by North Central Division

After we discussed with responsible officials in the North Central Division the various procedures used by the three districts and the apparent need for a uniform application of procedures, the Division Engineer on July 13, 1965, issued procedures to the districts in the division; these procedures provided for a uniform application to all industrial plants in the division of the laws governing unauthorized deposits. The starting point in these procedures is a survey of all industrial facilities located on navigable waters over which the Secretary of the Army exercises jurisdiction; this survey will determine probable offenders.

The districts are to use readily available sources of information such as Public Health Service water pollution reports, and reports of state and local commissions. Following completion of the survey, the Division Engineer is to notify the probable offenders of the requirement to cease the deposition or seek a permit. When permits are issued, they may include a provision for the participation of the industry in maintenance dredging.

Other districts

Our review in the Mobile, Galveston, New York, and Philadelphia Districts indicated that these districts did not have adequate procedures designed to identify industrial plants depositing waste solids into navigable waters and to determine the extent of

resultant shoaling. In some of these districts, there have been no continuing investigations of effluent or shoal material to determine whether industrial plants are depositing waste solids which result in shoaling; some of the districts do not maintain complete listings of industrial plants depositing waste solids into navigable waters, and some do not have procedures which require plants to request permits to deposit waste solids into navigable waters.

Other industrial plants are depositing
into navigable waters waste solids
which may result in shoaling

It was not practicable for us to determine the amount of shoaling caused by companies' depositing waste solids into navigable waters because of the technical knowledge required to make such a determination. However, during our review of Corps records and a number of Public Health Service water pollution reports, we found that there were a number of industrial plants currently discharging waste solids into navigable waters and that many of these plants are not participating in the costs of maintenance dredging, although some of the waste solids may settle and result in shoaling which must be removed by the Corps.

The following examples cite specific areas where industrial waste solids are deposited into navigable waters in which the Corps performs maintenance dredging.

1. In 1954 the Buffalo District Engineer estimated that about 30 percent of the annual maintenance dredging in the Cleveland Harbor project, or about 275,000 cubic yards, was caused by industrial waste solids of three steel companies. The amount of the unauthorized deposits may have been reduced since 1954 because of better waste treatment by the companies; however, for the past several years, the Corps has not analyzed samples of shoal material to determine the extent of shoaling that is being caused by these deposits.
2. A Public Health Service report of April 1965, which included the Detroit River project in the Detroit District, shows that the chemical and steel plants add daily about 621,000 pounds of settleable solids to the river. The district performs maintenance dredging of the Detroit River and annually removes an average of 300,000 cubic yards of material.
3. A Public Health Service report of September 1963 involving the Pearl River, Mississippi and Louisiana project, in the

Mobile District, shows that an average of 45,000 pounds of pulp is discharged daily from the sewers of a paper and pulp mill in Bogalusa, Louisiana.

4. A Department of Health, Education, and Welfare report of August 1965 involving pollution of Lake Erie and its tributaries lists several companies which discharge waste solids directly into Lake Erie or rivers that flow into the Lake.

Furthermore, in October 1963 the Deputy Division Engineer, North Central Division, in commenting on a uniform policy on illegal deposits, informed the Chief of Engineers that the steel, paper, cement, chemical, and other industries all contributed substantial amounts of solids to navigable waters.

There are several plants in the Galveston, Mobile, New York, and Philadelphia Districts producing products similar to those produced by plants located in the Chicago and Detroit Districts, which are depositing waste solids into navigable waters and participating in the costs of maintenance dredging. The likelihood exists, therefore, that some of these plants are depositing waste solids into navigable waters and that such deposits result in shoaling; however, the Corps has not made the necessary investigations to make such a determination.

In view of the experience of the Chicago and Detroit Districts in identifying industrial plants depositing waste solids and in obtaining industrial participation in the costs of maintenance dredging and in view of the possibility that similar circumstances exist in other districts, we believe that the Corps should make studies in all districts to determine the full extent of industrial deposits of waste solids into navigable waters and the resultant shoaling.

Agency comments and our evaluation thereof

By letter dated May 3, 1966, the Department of the Army, in commenting on the matters discussed in this report, stated that the Federal Water Pollution Control Administration indicated that it would strongly object to the Corps' issuing permits allowing the discharge of solids into navigable waters of the United States and that, consequently, the Corps' study to develop criteria to identify and measure industrial wastes has been held in abeyance. (See p. 10.)

We were informed also that enactment of recently proposed legislation relating to the deposition of wastes into navigable waters would affect the position of the Department of the Army with respect to the proposed recommendation in our report--that the Chief of Engineers establish uniform procedures which require that industrial plants either not deposit waste solids into navigable waters or obtain a permit authorizing such deposits.

The proposed legislation referred to by the Department of the Army included companion Senate and House bills. The Senate bill (S. 2947, 89th Cong.) provided in effect that, before the Secretary of the Army could issue a permit authorizing deposit of industrial waste solids into navigable waters, the Secretary of the Interior would have to determine that the issuance of such a permit would be consistent with the purposes of the Federal Water Pollution Control Act. The House bill (H.R. 16076, 89th Cong.), however, did not include this requirement. In conference, the Senate language was deleted and the Senate conferees informed the Senate:

"The Senate also receded from its amendments to the Refuse Act of 1899 which provided for the Secretary of the Interior to determine whether deposits of refuse in navigable waters should be consistent with the purposes of

the Federal Water Pollution Control Act. It is the position of the Senate conferees that mere amendment of this legislation would not be satisfactory, that review of the existing law is essential."

Consequently, the bill finally enacted did not so restrict the Secretary of the Army in his issuance of permits. Moreover, the final bill provided:

"This Act shall be in addition to other laws for the preservation and protection of navigable waters of the United States and shall not be construed as repealing, modifying, or in any manner affecting the provisions of such laws."

The water pollution program is a long-range program which at best will require several years of work before pollution of navigable waters will be controlled. Although we recognize the desirability of eliminating the deposition of industrial waste solids into navigable waters, the fact is that industry is presently discharging and depositing waste solids into navigable waters, oftentimes in violation of 33 U.S.C. 407.

The Secretary of the Army has it within his authority to stop such violations in that existing law requires that industrial plants, to deposit solids into navigable waters, must obtain a permit from the Secretary of the Army and comply with the prescribed conditions of the permit.

Because there are a number of industrial plants which are depositing waste solids into navigable waters, the possibility exists that some of these deposits result in shoaling and that the Corps could realize significant savings in maintenance dredging costs by establishing adequate and uniform procedures for identifying the responsible plants and by requiring that the plants so identified

either stop depositing waste solids into navigable waters or obtain permits to continue depositing into navigable waters. We believe that one of the conditions included in the permits should be the requirement that the plants participate in the costs of maintenance dredging.

Until such time as concentrated action is taken to eliminate the deposition of industrial waste solids into navigable waters, we believe that the responsible industrial plants should bear that portion of the costs of maintenance dredging necessitated by their deposits of waste solids.

Recommendations

Accordingly, we recommend that the Secretary of the Army direct the Chief of Engineers to establish uniform procedures (1) for identifying industrial plants that are depositing waste solids into navigable waters, (2) for providing a means by which the deposited waste solids and the resulting shoaling will be measured and by which each industrial plant's proportionate share of the maintenance dredging costs will be identified, and (3) requiring that any plants so identified either stop depositing waste solids into navigable waters or obtain from the Secretary of the Army permits authorizing continued depositing and that the permits require that the plants participate in the costs of maintenance dredging.

We recommend also that, whenever a plant refuses to obtain a permit or stop depositing waste solids into navigable waters, the Corps take appropriate legal action.

APPENDIXES

PRINCIPAL MANAGEMENT OFFICIALS
OF THE DEPARTMENT OF DEFENSE
AND THE DEPARTMENT OF THE ARMY
RESPONSIBLE FOR THE ADMINISTRATION
OF THE ACTIVITIES
DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
<u>DEPARTMENT OF DEFENSE</u>		
SECRETARY OF DEFENSE:		
Robert S. McNamara	Jan. 1961	Present
Thomas S. Gates, Jr.	Dec. 1959	Jan. 1961
Neil H. McElroy	Oct. 1957	Dec. 1959
Charles E. Wilson	Jan. 1953	Oct. 1957
Robert A. Lovett	Sept. 1951	Jan. 1953
George C. Marshall	Sept. 1950	Sept. 1951
<u>DEPARTMENT OF THE ARMY</u>		
SECRETARY OF THE ARMY:		
Stanley R. Resor	July 1965	Present
Stephen Ailes	Jan. 1964	July 1965
Cyrus R. Vance	July 1962	Jan. 1964
Elvis J. Stahr, Jr.	Jan. 1961	June 1962
Wilber M. Brucker	July 1955	Jan. 1961
Robert T. Stevens	Feb. 1953	July 1955
Frank Pace, Jr.	Apr. 1950	Jan. 1953
CHIEF OF ENGINEERS:		
Lt. Gen. William F. Cassidy	July 1965	Present
Lt. Gen. Walter K. Wilson, Jr.	May 1961	June 1965
Lt. Gen. Emerson C. Itschner	Oct. 1956	May 1961
Lt. Gen. Samuel D. Sturgis	Jan. 1953	Sept. 1956
Lt. Gen. Lewis A. Pick	Mar. 1949	Jan. 1953



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

3 MAY 1966

Honorable J. T. Hall, Jr.
Assistant Director, Civil Accounting and
Auditing Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Hall:

On behalf of the Secretary of Defense and in response to your letter of 10 February 1966 inclosing copies of your proposed report to the Congress entitled "Need to Improve Procedures for Recovering Costs of Removing Shoals Caused by Unauthorized Deposits of Industrial Waste, Corps of Engineers (Civil Functions), Department of the Army," the following comments are furnished.

The subject report has been reviewed and found to be factual.

Upon the successful conclusion of the litigation United States v. Republic Steel Corporation, et al, it appeared mandatory that every industry depositing any solids in navigable waters of the United States should be required to apply for a Federal permit to continue such deposition. As a result of the problems encountered during the litigation in establishing each company's pecuniary responsibility for dredging, the first step required the establishment of standards for identification and measurement of industrial waste solids. In December of 1963, the Chief of Engineers authorized the Chicago District Engineer to make a study to develop criteria to identify and measure industrial waste solids. When such criteria were developed they would be disseminated Corps-wide.

The study by the Chicago District Engineer to develop a uniform policy on illegal deposits was initiated early in 1964 by the collection and analysis of samples from the Grand Calumet River, by a preliminary survey of all industrial facilities located on the navigable waters of the North Central Division which includes all of the Great Lakes and waters which flow into the lakes, and by coordination with the Federal Water Pollution Control Administration of the Department of Health, Education, and Welfare.

The Regional Program Director, Federal Water Pollution Control Administration, Region V has stated that "(1) stringent criteria for the control of suspended solids discharges have been adopted in enforcement conferences called by the Secretary pursuant to the provisions

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of Section 10(d) of the Federal Water Pollution Control Act, (2) the comprehensive programs for water pollution control being developed under authority of Section 3(a) of the Act, contains water quality goals and recommended measures for achieving pollution abatement, including the discharge of suspended solids, and (3) because of the above reasons, we would object strongly to the discharge of suspended solids or other substances having a deleterious effect upon water quality."

Because the Federal Water Pollution Control Administration indicated that it would strongly object to the Corps of Engineers' issuing permits allowing the discharge of solids into navigable waters of the United States, the authorized study to develop criteria to identify and measure industrial wastes has been held in abeyance.

Pursuant to President Johnson's message to the Congress February 23, 1966 on the "Preservation of Our Natural Heritage" the Administration has recommended the enactment of the Clean Rivers Restoration Act of 1966 and amendments to the Federal Water Pollution Control Act, as amended. Enactment of this proposed legislation would affect the position of the Department of the Army with respect to the recommendation in your proposed report.

I suggest, in view of the foregoing, that you defer the completion of your proposed report until Congress has completed action on the proposed legislation referred to above.

Sincerely yours,



Alfred B. Fitt
Special Assistant (Civil Functions)