

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Policy Guidance Letter (PGL) No. 56, Section 207 of the Water Resources Development Act of 1996, Beneficial Use of Dredged Material

1. Purpose: This PGL provides guidance on implementation of Section 207 of the Water Resources Development Act of 1996 (WRDA 96).

2. Background:

a. Section 207 Provisions. Section 207 of the WRDA 96 modifies Section 204 of the Water Resources Development Act of 1992 (WRDA 92) to add a subsection (e) as follows:

(e) SELECTION OF DREDGED MATERIAL DISPOSAL METHOD.

- In developing and carrying out a project for navigation involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least-cost option if the Secretary determines that the incremental costs of such disposal method are reasonable in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion. The Federal share of such incremental costs shall be determined in accordance with subsection (c).

b. Subsection (c) of Section 204 of WRDA 92, As Amended. This subsection provides that non-Federal interests must enter into a binding agreement with the Secretary in which the non-Federal interests agree to provide 25 percent of the incremental cost associated with construction of the project for the protection, restoration, and creation of aquatic and ecologically related habitats, including provision of all lands, easements, rights-of-way, and necessary relocations; and pay 100 percent of the operation, maintenance, replacement, and rehabilitation costs associated with the project.

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3. Policy for Implementing Section 207 of WRDA 96.

a. Section 207 establishes an authority that is separate and distinct from the authority established by Section 204 of WRDA 92.

b. Section 207 allows the selection of a disposal method that is not the least-cost to achieve environmental benefits. Within the general guidelines of the U.S. Army Corps of Engineers ecosystem restoration program philosophy and policy as presented in Chapter 4 of ER 1105-2-100, any measures or facilities to allow the use of dredged material to achieve environmental benefits are potentially eligible for consideration for implementation under the authority of section 207. The examples of environmental benefits presented in section 207 are the benefits to the aquatic environment from the creation of wetlands and the control of shoreline erosion. With regard to shoreline erosion control, section 207 provides an authority to use dredged material to control shoreline erosion to achieve environmental benefits such as using dredged material to construct a berm to prevent erosion of a wetland. Section 207 does not provide an authority to use dredged material to reduce shoreline erosion solely to achieve economic benefits such as reduction of erosion damages to residences, businesses or other structures.

c. The authority of section 207 applies to dredged material disposal for construction, operation or maintenance by the Corps of an authorized navigation project including harbors, inland harbors and inland waterways.

d. Under the provisions of section 207, the incremental costs of disposal to achieve environmental benefits are shared on a 75 percent Federal and 25 percent non-Federal basis. The operation, maintenance, replacement, and rehabilitation costs associated with the environmentally beneficial disposal method are non-Federal. The incremental costs are the costs over the base plan as defined in paragraph 4.a. of EC 1105-2-209. Non-Federal interests must enter into a binding agreement with the Secretary of the Army as a condition for construction of the environmentally beneficial disposal method.

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e. The decision-making criteria that will be used in determining whether to use an environmentally beneficial disposal method that is not the least cost alternative is whether the incremental cost is reasonable in relation to the environmental benefits achieved. Where the incremental Federal costs does not exceed the lessor of 25% of total base disposal plan cost or \$300,000, the incremental costs are judged to be “reasonable” in relation to the environmental benefits without the need for detailed analysis including incremental analysis. However, it must be demonstrated that the environmental resources to be protected, restored, or created are valuable, the environmental outputs can be quantified and described and Federal and State resource agencies support the environmentally beneficial disposal method. The environmental disposal method would be subject to appropriate National Environmental Policy Act requirements. For environmentally beneficial disposal methods that have incremental Federal costs which exceed 25% or \$300,000, the incremental costs must be justified by demonstrating that the monetary and non-monetary benefits (outputs) of the ecosystem restoration project justify its incremental costs above the base plan. Where the environmentally beneficial use involves separable increments each increment must be justified.

f. Section 204 of the WRDA 92 authorizes an appropriation not to exceed \$15 million annually. This does not limit the amount of funds that may be made available for the work conducted under section 207 and, absent action by Congress limiting the money available for section 207, activities authorized by section 207 can be funded through the standard appropriation process for individually authorized navigation projects (new projects) and for operating Federal navigation projects (existing projects). Funds for the Federal share of the incremental costs of achieving environmentally beneficial use at Federally operated navigation projects will be budgeted in the Construction, General account rather than the Operation and Maintenance account. Work under section 207 is an allowable adjustment to the cap on the total cost of a project established by Section 902 of the WRDA 86.

4. Appropriate Uses of the Authorities of Section 204 and Section 207. Table 1 provides a decision matrix for the use of section 204 and section 207 authorities (Encl).

a. Appropriate Uses of Section 204. The authority of section 204 has been implemented as a program for projects for ecosystem restoration in connection with dredging for authorized Federal navigation projects. The current guidance for implementing section 204 is contained in EC 1105-2-109. Appropriations for the section 204 program have been received annually since the initial funding of the program in Fiscal Year 1994. These annual programmatic appropriations allow for the

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seamless funding of studies, design and construction of projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands. Therefore, section 204 authority and program should be used for environmentally beneficial use projects in connection with maintenance dredging of existing Federal navigation projects including harbors, inland harbors and inland waterways, particularly when costs of such projects are \$5 million or less.

b. Appropriate Use of the Authority of Section 207. The authority of section 207 will primarily be used in conjunction with new work navigation projects but can be used for maintenance dredging in certain circumstances as described below:

(1) New Navigation Projects. As provided in paragraph 5 of EC 1105-2-209, feasibility studies for new navigation projects or modifications to existing navigation projects shall include examination of the feasibility of using dredged material for ecosystem restoration purposes and, if feasible, such environmentally beneficial use would be specifically authorized as part of the project. However, there will be circumstances where opportunities for environmentally beneficial disposal methods will be identified or become available following completion of the navigation project feasibility report seeking authorization but before completion of navigation project construction. In these cases the authority of section 207 can be used to select the environmentally beneficial disposal method without the need to seek additional authorization based on a determination by the Secretary of the Army that the incremental costs are reasonable in relation to the environmental benefits. Funding of the Federal share of the incremental costs of environmentally beneficial disposal at existing navigation projects under section 207 authority would be through the new navigation project construction appropriations in the Construction, General account.

(2) Maintenance Dredging. The new authority of section 207 would only be used in conjunction with maintenance dredging of an existing Federal navigation project where the environmentally beneficial disposal method has large incremental costs of which the Federal share could not be funded within the annual appropriation limits of the original section 204 program. Section 207 authority potentially allows large incremental costs environmentally beneficial disposal to be implemented at existing Federal navigation projects without the need for specific authorization based on a determination by the Secretary of the Army that the incremental costs are reasonable in relation to the environmental benefits. Funding of the Federal share of the incremental

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costs of environmentally beneficial disposal at existing navigation projects under section 207 authority would be through individual project appropriations in the Construction, General account.

5. Procedural Guidance. Procedures for implementing the policy provided herein will be developed by CECW-P.

6. Permanent Guidance. The guidance in this PGL will be incorporated into permanent guidance as it is updated.

FOR THE COMMANDER:

Encl
as

/S/
HANS A. VAN WINKLE
Brigadier General, USA
Deputy Commander for
Civil Works

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Table 1. Decision Matrix for Appropriate Use of Section 204 and Section 207 Authorities

Proposed work involves the beneficial use of dredged material						
YES						
Does proposed work involve control of shoreline erosion?	---- NO--> ---> 	Is proposed work associated with new dredging?	----NO--->	Is incremental cost of work more than \$5 million?	----NO--->	Use Section 204 authority
YES	YES	YES		YES		
Are benefits primarily environmental?	 -----	Is new dredging authorized?	-----YES----->	Use Section 207 authority		
NO		NO				
Use appropriate Hurricane & Storm Damage Reduction Authority		Seek authority for beneficial use in navigation project authorization				