



Los Angeles Basin Contaminated Sediments Task Force Process for Adopting a Long-Term Management Strategy

Introduction

The main product of the Task Force will be the Contaminated Sediment Long-Term Management Strategy for the Los Angeles Region. The strategy will provide information on the volume and location of contaminated sediments likely to be dredged within the next five to ten years, sources of pollution contributing to the sediment contamination problems, disposal alternatives (including upland and aquatic sites), and criteria for use and selection of the alternative appropriate for a given dredging project. The Task Force is expected to submit the completed strategy to the Executive Committee for approval, prior to submitting it to the agencies for adoption.

The Strategy does not become effective until it has been adopted by the four regulatory agencies (California Coastal Commission, Los Angeles Regional Water Quality Control Board, United States Environmental Protection Agency [USEPA] and United States Army Corps of Engineers). The Task Force is required to transmit the Long-Term Management Strategy to the Legislature by January 1, 2003. The Task Force plans to complete the final strategy by September 2002 and submit it to the Legislature by December 2002. The following discussion presents some of the issues pertaining to adoption of the Strategy by each agency. Appendix I shows the potential timelines to consider when preparing and adopting the Strategy.

California Coastal Commission

For the Coastal Commission to adopt a sediment management strategy, it must demonstrate that the strategy is consistent with California's Coastal Act and that it complies with the California Environmental Quality Act (CEQA). Once the Task Force has developed the Long-Term Management Strategy, this Strategy would proceed through an internal Coastal Commission review process. Commission staff would meet with upper management to discuss and obtain comments on the Strategy prior to any public workshops or hearings. Upon completing this internal review, Commission staff would present a draft Strategy for public review and comment. A public workshop would be scheduled as part of a Coastal Commission hearing to allow discussion of the strategy and receive comments from the Commissioners, the public and other interested parties. Once the public review process has been completed, staff would place the Strategy on the Commission agenda and submit a staff report recommending adoption of the Strategy. Official adoption of the Strategy by the vote of the Coastal Commission would indicate the agency's commitment to implement this plan.

Typically a minimum of four months would be required to complete the Coastal Commission's adoption process. Given that the Coastal Commission's Executive Director would have already reviewed and approved the Long-Term Management Strategy through participation on the Task Force's Executive Committee, the Commission's internal review process should proceed

quickly. To facilitate the public review process, it might be possible to coordinate the Coastal Commission's public workshop on the Strategy with the Task Force's Annual Public Workshop.

The Long-Term Management Strategy to be adopted by the Coastal Commission might be general in scope. Depending on the types of recommendations presented in the Strategy, the document could be exempt from CEQA. If the strategy were to set forth enforceable policies, then an analysis of environmental impacts would be required. Depending on the recommendations in the Strategy, it could be necessary to seek changes to the language in the Coastal Act and/or the California Code of Regulations.

Los Angeles Regional Water Quality Control Board

For the Regional Board to adopt a sediment management strategy, it must demonstrate that the Strategy is consistent with the Clean Water Act, the Porter-Cologne Act and the CEQA. To avoid creating underground regulations, the Regional Board probably would choose to adopt the Strategy formally in a public hearing, either as a stand-alone plan or guidance document, or through incorporation into the Basin Plan as an amendment. Staff would prepare an environmental checklist and staff report on the Strategy. A public workshop, including at least a 30-day public review period, would be held by staff to discuss the strategy and receive public comments. Staff would prepare written responses to all comments received during the public review process, place the strategy on the Regional Board's agenda and submit a staff report recommending adoption of the strategy. In the case of a Basin Plan amendment, staff would prepare a Functional Equivalent Document, which would serve to comply with CEQA. Official adoption of the strategy by the vote of the Regional Board would indicate the agency's commitment to implement this plan. However, if there were a Basin Plan amendment, that amendment also must be submitted to the State Water Resources Control Board (SWRCB), Office of Administrative Law (OAL) and the USEPA for approval and would not take effect until approved by all three.

Typically a minimum of four to six months would be required to complete the Regional Board's adoption process. An additional three to six months might be required for approval of a Basin Plan amendment by SWRCB, OAL and USEPA. Given that the Regional Boards' Executive Officer would have already reviewed and approved the Long-Term Management Strategy through participation on the Task Force's Executive Committee, this would lend weight to the staff recommendation for adoption by the Regional Board. To facilitate the public review process, it might be possible to coordinate the Regional Board's public workshop on the strategy with the Task Force's Annual Public Workshop.

United States Army Corps of Engineers

For the Corps to adopt a sediment management strategy, it must demonstrate that the Strategy is consistent with the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, the Rivers and Harbors Act, and the National Environmental Policy Act (NEPA). A strategy that requires fundamental modifications to dredging permitting procedures could require a change in regulations at the headquarters level. Congress has established a number of requirements that agencies must meet when issuing regulations. However, it should be possible to develop a Memorandum of Agreement (MOA) for the strategy to be employed by the various regulatory agencies, outlining the permitting procedures to be applied within the context of existing regulations. This type of change would not need to go all the way to the headquarters level, but could be approved at the South Pacific Division level. Compliance with NEPA would require staff to prepare an Environmental Impact Statement (EIS), which would need approval at

Headquarters. The MOA would be reviewed by the Regulatory Branch, Construction-Operations Division, prior to review by the District Engineer, Los Angeles District. The MOA then would be reviewed and approved by the Division Engineer, South Pacific Division. Signature of the MOA by the Division Engineer would indicate the agency's commitment to implement this plan.

In developing the MOA, the Corps could produce a programmatic EIS for the general types of disposal alternatives identified in the Strategy. In this case, project applicants could develop an Environmental Assessment, if there are no potentially significant adverse impacts, or an EIS for specific projects in the future. Preparation of an EIS could require approximately two years, although much of the background work already has been completed for the Marina Del Rey and Ballona Creek feasibility study and could be adapted for this purpose. Development and approval of an MOA would require six to twelve months to complete. Given that the Corps' District and Division Engineers already would have reviewed and approved the Long-Term Management Strategy through participation on the Task Force's Executive Committee, approval of the MOA should proceed quickly.

To implement the MOA and the Long-Term Management Strategy, the Corps might choose to develop a Regional General Permit (RGP) specific to dredging activities. This process might be completed within three to four months. Under this scenario, it might not be necessary to publish a Notice of Proposed Rulemaking in the Federal Register. A proposed RGP would go through the same steps as an individual permit application (i.e., public comment period, NEPA/CWA compliance documentation).

United States Environmental Protection Agency

For USEPA to adopt a sediment management strategy, it must demonstrate that the Strategy is consistent with the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, the Rivers and Harbors Act, and NEPA. It should be possible to develop an MOA for the strategy to be employed by the various regulatory agencies, outlining the permitting procedures to be applied within the context of existing regulations. USEPA could work jointly with the U.S. Army Corps of Engineers to develop an EA or EIS for this process. In signing the MOA, the Regional Administrator would indicate the agency's commitment to implement this plan.

Given that USEPA's Regional Administrator already would have reviewed and approved the Long-Term Management Strategy through participation on the Task Force's Executive Committee, approval of the MOA should proceed quickly. USEPA could coordinate activities to work simultaneously with the Corps, thus completing tasks on the same schedule outlined above. USEPA might choose to create a Dredged Material Management Office to implement the Strategy. In this case, three to six months might be required to execute this action. If the Corps were to choose to develop a Regional General Permit, USEPA would review and comment during development of the RGP. If there would be a need to designate a regional confined aquatic disposal site as part of the Strategy, USEPA might be the agency responsible for completing the designation process, which could require a total of four to five years.

Local Agencies

The adoption and implementation of the Long-Term Management Strategy would affect several local agencies, such as the Port of Los Angeles, Port of Long Beach and City of Long Beach. The Strategy could be more effective if it also were adopted at the local level by the appropriate agencies.

The California Coastal Commission already has certified a Port Master Plan (PMP) for the Port of Los Angeles and one for the Port of Long Beach. These plans identify land and water uses within the port boundaries and delegate coastal development permit responsibility to the ports. Each port could choose to amend its plan, seeking to incorporate the provisions of the Long-Term Management Strategy. These amendments could be approved by the Coastal Commission at the same time that it considers approval of the Strategy itself, or the amendments could be considered at a separate meeting following adoption of the Strategy. Although the ports may amend their certified PMPs, no amendment may take effect until the Coastal Commission certifies the amendment. Once the Coastal Commission has certified an amendment to the plan, project proponents might not need to go through the Federal Consistency or Coastal Development Permit process to implement elements of the Strategy.

Alternatively, the Ports may choose to adopt the recommendations of the Task Force without amending their PMPs. In this case, each Port could ask its Board of Harbor Commissioners to adopt a resolution supporting implementation of the provisions of the Long-Term Management Strategy.

The California Coastal Commission already has certified a Local Coastal Program (LCP) for the City of Long Beach. This program consists of a land-use plan and implementing ordinances. The City of Long Beach might choose to amend its LCP to include the provisions of the Long-Term Management Strategy. Once the City Council has approved the amended LCP, it would be submitted to the Coastal Commission for certification.

Under the Coastal Act, local agencies would be required to adopt amendments to the PMPs and LCP if those agencies agreed under the Strategy to impose requirements or establish policies to be implemented in the coastal zone. To the extent that the Strategy might not include policies or requirements to be implemented by the ports or city, then the agencies would not need to amend the PMPs or LCP. Instead, the agencies could develop resolutions that would be adopted by the agencies' respective boards. These resolutions could serve as a mechanism to demonstrate support for the Strategy.