

DISCUSSION PAPER ON DISPOSAL AT SEA PERMIT FEES FOR DREDGING AND EXCAVATION OPERATIONS



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Environment Canada
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1.0 INTRODUCTION

The *Canadian Environmental Protection Act, 1999 (CEPA 1999)* prohibits disposal at sea of dredged or excavated material without a permit. Permits may be granted only for a limited list of wastes, following an assessment of alternatives and an environmental assessment of the proposed disposal project. Permits are not issued where there are preferable and viable alternative uses for the material, such as beneficial use in construction or beach nourishment.

When permits are issued, Environment Canada (EC) charges a \$2500 permit application fee and collects a permit fee for the disposal at sea of dredged and excavated material at a rate of \$470 per 1,000 cubic metres. The permit fee was established by regulations under the *Financial Administration Act* in 1999 as the fair market value for the right and privilege of access to suitable disposal at sea sites. It is not a service fee.

The Disposal at Sea Program has been in place since 1975. Its purpose is to protect and preserve the marine environment by preventing, reducing and, where practical, eliminating pollution caused by disposal at sea of wastes and other matter. The Program administers the permit fee system which funds a national disposal site monitoring program. This is consistent with user pay and precautionary principles. In addition, disposal site monitoring is required under *CEPA 1999*, and is an obligation under the *London Convention, 1972* and the *London Protocol* which will come into effect on March 24, 2006. Monitoring enables the Department to determine whether and to what extent disposal at sea sites are still suitable for use by clients and provides feedback on whether permit decisions are adequately protective of the environment. Monitoring is conducted at representative disposal at sea sites receiving dredged and excavated materials.

The Department produces an annual report that includes monitoring information and details on how EC allocates permit fee revenues. Each year, approximately 38 dredging and excavation permits are issued to 30 – 40 permittees to dispose of about 1.5 million cubic metres of dredged material mostly from ports and waterways. This helps to ensure safe navigation and facilitate commerce.

This paper discusses ways of modifying the permit fee to reduce the costs for clients that carry out routine dredging or excavation and to set a maximum level for the fees. The first proposal is the introduction of an annual fee cap for disposal at sea permits for maintenance dredging and excavation operations. The second proposal involves a multi-year permit fee for maintenance dredging and excavation.

1.1 Rationale for Proposed Changes

The rationale for the proposed changes includes bringing greater cost predictability to permittees within the regulated community. During informal discussions with some permittees, clients indicated that there should be a limit to how much one can be charged for a single permit. Clients also suggested that efficiency could be improved by allowing a permit to be valid for longer than one year.

1.2 Treasury Board Policy

In 1997-98, the Government of Canada articulated its policy principles on government activities that resulted in specific benefits received by identifiable clients. The implementation of cost recovery for ocean disposal permits was guided by the principles set out in both the 1997 and the revised 2003 Treasury Board Policy on cost recovery. The following guiding principles are relevant to both the Treasury Board Policy and the *User's Fee Act*, which was passed in 2004.

- **Equity:** User fees directly target those clients benefiting from access to suitable, monitored disposal sites, rather than having program costs funded by general tax revenues.
- **Right and Privilege:** By using a permit and accessing certain sites, dredging and excavation clients create the need for dump site monitoring. The cost of monitoring is borne by those creating that environmental/public risk.
- **Accountability:** The Department provides its paying clients with detailed monitoring plans, yearly consultative and planning meetings, and annual reports.
- **Partnership:** Permittees may assist with monitoring or working with the Department to find ways to re-use, not dispose of their waste materials.
- **Cumulative Impact:** Incremental and cumulative impacts of fees on direct and indirect clients are considered
- **Mediation:** Mechanisms for dispute resolution/appeals are established.

The objectives of the Treasury Board cost recovery policy include promoting the efficient allocation of resources, promoting an equitable approach to financing government programs and earning a fair return for the Canadian public for access to, or exploitation of, publicly-owned or controlled resources. The options presented in this discussion paper are consistent with the above-noted policy.

1.3 Background

When the fees were introduced in 1999, the Department committed to a review of the fees three years after their implementation. The 2003 review indicated that the fees covered EC's direct and indirect program costs of approximately \$1.2 million per year. The majority of this amount was paid by large volume permittees who were of the view that the portion of the fees that they paid was not commensurate with the benefits received. Permittees also maintained that fee stability and predictability are crucial to business planning and forecasting, and recommended that permits be valid for more than one year. As a result of this review, the Department committed to exploring a fee cap. In addition, EC committed to working with permittees to develop options that would account for the effects of the variability in the dredging business cycle. Further details on this review are available on the Disposal at Sea website at www.ec.gc.ca/seadisposal.

This discussion paper provides proposals on both a fee cap and a multi-year permit system.

1.3.1 Public Good/Client Benefit

During the development of the permit fee regulations in 1999, the Department released a Regulatory Impact Analysis Statement. It articulated the public good and client benefit elements of the regulations as follows: the costs to be recovered are approximately 45% of the total costs of the disposal at sea program and represent a specific benefit to an identifiable client. An additional 15% of the total cost is to be recovered for review and assessment of the permit application. The remaining 40% of the total costs are for related program activities such as enforcement, research, policy and international negotiations. These are considered public benefit and are, therefore, not subject to cost recovery.

2.0 DESCRIPTION OF PROPOSED CHANGES TO THE FEE STRUCTURE

2.1 Maintenance Dredging Permits

The proposed changes to the fee structure would apply to those permittees that have held disposal at sea permits on a yearly basis over a number of years. In general, these permittees perform maintenance dredging that may be required annually or on a regular cycle. Maintenance dredging is defined as dredging to maintain or deepen existing navigation channels. The amounts to be dredged can be difficult to predict and may fluctuate due to natural and market factors. As a result, disposal fees may also fluctuate.

2.2 Fee Cap for Maintenance Dredging

A permit fee cap is being considered to set a maximum annual cost for a disposal at sea permit for maintenance dredging and excavation operations. The objective is to make costs more predictable for permittees. Analysis has shown that a fee cap of \$300,000 per permit per year may be appropriate and that this could translate into savings for eligible permittees. A fee cap would require amendments to the *Ocean Dumping Permit Fee Regulations* (Site Monitoring) under the *Financial Administration Act* and be subject to the formal regulatory process.

Question

1. Do you support a fee cap for maintenance dredging and excavation? If so, what fee cap would you propose?

2.3 Multi-Year Permit

The one-year maximum term for a permit is set by *CEPA 1999*. EC has proposed that a maximum term of four years be set. The proposed validity of a multi-year permit system reflects the duration for which analytical data from load sites normally remains valid and permittees could be required to submit this data with the permit application.

A multi-year permit would include provisions for a regular payment schedule that could provide predictability, greater flexibility in the volume used in a given year and reduce or eliminate the need for refunds. A multi-year permit could include per annum fee cap. A multi-year permit fee for maintenance dredging and excavation would require amendments to *CEPA 1999*.

Questions

1. Do you support a multi-year permit system?
2. What payment schedule would you favour?

3.0 EXPECTED IMPACTS OF CHANGES TO THE PERMIT FEE STRUCTURE

3.1 Clients

The proposed changes are expected to generate cost savings for those engaged in routine maintenance dredging or excavation, as well as provide predictability. Most small-volume permittees may not be affected by the proposed fee cap as their annual permit fees may be below the cap. The multi-year permit proposal, however, could benefit all permittees as clients would have the option of paying the application fee once every four years instead of every year.

3.2 Environment Canada

EC recognizes that program revenues may be reduced as a result of the proposed maintenance dredging and excavation fee cap and a multi-year permit system. The Department, however, remains committed to maintaining a level of monitoring that protects the environment, to meeting its domestic and international obligations, and to ensuring that permittees have access to suitable disposal sites.

4.0 HOW DO THESE CHANGES COMPARE TO OCEAN DISPOSAL PROGRAMS IN OTHER JURISDICTIONS?

The proposed fee cap and potential multi-year permit are comparable to the fee systems used in many other jurisdictions.

Brazil has a fee cap for large disposal volumes. In addition, England and Australia determine permit fees using tonnage bands such that fixed fees are charged for specified ranges of volumes. This system effectively caps the amount that a single permit can cost.

Under some circumstances, multi-year permits are issued in England, Australia, South Africa, and Denmark. In England, multi-year permits are issued for a maximum of five years and considered for long-term capital projects and maintenance dredging where permit volumes at the same site have not varied by more than 25% in the previous three years. Multi-year fees are paid in annual installments and discounted after the first year.

Australia issues multi-year permits for all types of dredging where sediment screening criteria are met. South Africa issues multi-year permits for large development projects. These permits are subject to annual review. It should be noted, however, that South Africa's permit fee is currently being restructured. Denmark issues multi-year permits for routine dredging or small projects.

5.0 NEXT STEPS

EC seeks your views on the proposals for a fee cap on disposal at sea permits and a multi-year permit system. Should the nature of the comments warrant, regional meetings will be held.

Departmental officials will review all comments and write a consultation report that outlines the nature of the comments and the Department's response. The report will be made available on EC's Ocean Disposal at Sea Program web site at www.ec.gc.ca/seadisposal/main/index_e.htm. Should the Department proceed with the changes for the fee cap proposed herein, there will be an additional opportunity to comment once the draft regulations are published in *Canada Gazette I* in the fall of 2006. Should the multi-year permit receive favorable comments, this would require legislative amendments under *CEPA 1999*.

Submitting Comments

This discussion paper has been distributed to individuals and organizations with an interest in Departmental decisions related to permit fees for disposal at sea. Please provide your written comments no later than April 15, 2006 to:

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