DREDGED MATERIAL MANAGEMENT OFFICE

GUIDANCE

FOR REQUESTS

FOR

TIER I DECISIONS

April 2024

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3919

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94111-4704

U.S. Army Corps of Engineers San Francisco District
450 Golden Gate Avenue
San Francisco, CA 94102-3404

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612-1413

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95835-8202

Introduction

A Tier 1 Exclusion from Testing, "Tier I," decision by the Dredged Material Management Office (DMMO)[1] is a recommendation that testing is not required to make a suitability determination for proposed sediment disposal or beneficial reuse of the sediment proposed for dredging disposal. This recommendation is based on review and analysis of existing data, volume of sediment to be dredged, or if the sediment is sand. However, in some cases, confirmatory physical and chemical analyses may be required to verify that the sediment quality has not changed since the last testing has occurred. The type and quantity of information that applicants need to supply for a Tier I decision is based on the proposed project, history and size of the site, and projects complexity.

A suitability determination is required prior to dredging and disposal or beneficial reuse of the dredged sediment. A Tier I request may be submitted by a project proponent or recommended by the DMMO. A project proponent may choose to submit a Tier I request, rather than complete a new round of sediment testing, prior to a dredge episode where sediment testing results and a suitability determination were completed within the past three to five years, depending on the site's existing data and potential contaminant exposure. In addition, projects that have received a suitability determination, but then do not dredge for more than one year should submit a Tier I to address the additional sedimentation that has occurred at the dredge site since the previous testing was completed.

The DMMO strongly recommends that project proponents submit a summary table of past test results and other pertinent information as part of the Tier 1 request. Providing this information as part of the submittal reduces the that it will need to be resubmitted and will help to expedite review.[2] In some cases, the DMMO will determine that a Tier 1 is not appropriate, and that further testing is needed, information gathered to produce the Tier 1 documentation will be useful to the Sampling and Analysis Plan (SAP) development. The information may be particularly useful in the identification of contaminants of concern.

Exclusion from Testing

Dredged material may be excluded from further testing if it is determined to meet one of the following: criteria (40 CFR 230.60 and 40 CFR 227.13(b))[3]:

- Where the results of prior evaluations, chemical and biological tests, scientific research, and experience can provide information helpful in making a determination, these should be used. Such prior results may make new testing unnecessary. The information used shall be documented. Where the same information applies to more than one determination, it may be documented once and referenced in later determinations.

[1] The DMMO is composed of the U.S. Army Corps of Engineers, San Francisco District, the U.S. Environmental Protection Agency, Region IX, the San Francis co Bay Regional Water Quality Control Board, the San Francisco Bay Conservation and Development Commission, and the California State Lands Commission.

[2] It is important to emphasize here that project proponents are responsible for providing all available and pertinent information to contractors or consultants preparing SAPs and requests for Tier I decisions. Incomplete requests, missing past history or land use information, are likely to be rejected by the DMMO.

[3] Note that, although these two regulations differ slightly in their definition of what constitutes the exclusion criteria, the following language is consistent with both regulations.

- The dredged material is composed predominantly of sand, gravel, rock, or any other naturally occurring bottom material with particle sizes larger than silt, **and** the material is found in areas of high current or wave energy; or
- The dredged material is for beach nourishment or restoration and is composed predominantly of sand, gravel, or shell with particle sizes compatible with material on the receiving beaches; or
- When:
  - (i) The material proposed for placement is substantially the same as the substrate at the proposed placement site; and
  - (ii) The proposed dredging site is far removed from known existing and historical sources of pollution to provide reasonable assurance that such material has not been contaminated by such pollution.

The DMMO makes Tier I decisions based on whether results of previous testing provide adequate information to make a suitability determination for the currently proposed disposal or beneficial reuse. In some cases, the data will provide necessary assurance that contaminants of concern do not exist in the proposed dredged material in concentrations of concern. Tier 1 decisions may still be made for sediments that have previously been identified to have elevated levels of contaminants, but the suitability determination for disposal and/or beneficial reuse site would remain the same until a new round of testing is completed. Tier I decisions generally cannot be made in cases where the proposed disposal/beneficial reuse site has changed, or sediment contaminants may have changed and could have exhibited significant toxicity, bioaccumulation, or chemistry values indicative of potentially adverse environmental effects. Lastly, data that is outdated generally would require renewed evaluation prior to dredging. If sufficient data is not present within your project site, recent chemical, physical, or biological testing data from areas immediately adjacent to the proposed project site can be submitted that indicate that the proposed dredged material is likely to be free from contamination and toxicity can be included. The Tier I Data Requirement section below gives a detailed overview of the information required for a complete request.

Confirmatory Testing

The DMMO may require confirmatory physical and/or chemical tests before finalizing a Tier I decision. The intent of these tests is to evaluate whether conditions in the dredging area have changed substantially since the last full testing episode. For instance, the DMMO may require confirmatory testing if information exists suggesting that events such as oil or fuel spills have occurred which may have impacted the proposed dredging area. In addition, the DMMO may require confirmatory testing in cases when the existing data are marginal (e.g., results were equivocal or borderline), where evidence of possible release of contaminants exist, or when the data are relatively old or incomplete.

If confirmatory test results show that unacceptable potential impacts may result from disposal of the material proposed to be dredged, full Inland Testing Manual (ITM) or Ocean Testing Manual (OTM or Green Book) testing, may be required by the DMMO agencies. The permittee is responsible for notifying the DMMO, or the member agencies, of any changes in the proposed dredging site that may occur between the time that a Tier I decision is made and dredging commences. Failure to do so may result in enforcement actions by one or more of the DMMO agencies.

Tier I Data Requirements

A complete request for a Tier I decision must include the following information for the DMMO agencies to consider the request:

1) A **vicinity map** that clearly shows the project area in relation to other land and aquatic uses. Poor copies and illegible copies are not acceptable.[4] Include nearby land use, aquatic use, development, and other pertinent information.
2) A **site-specific project map** that indicates the areal extent of the proposed dredging project. Clearly indicate the approximate boundaries of the project area. This map should also show the locations of pertinent uses, such as fuel docks, storm drains, ship repair facilities, and other activities with the potential to affect the quality of the sediment proposed for dredging. At least one map should include the most recent available bathymetric information.[5] If the project involves more than a single proposed project depth, the limits of the different proposed depths should be clearly indicated on the project map.
3) A **site history narrative**, including all information pertinent to the request for a Tier I decision. This information should include a description of any potential sources of contamination and pathways of contaminant transport (e.g., storm drains, agricultural runoff, industrial and municipal discharges).
4) A **history of dredging** at or near the site, including dates, areas, volumes, and depths previously dredged. Historic sedimentation rate should be included, along with a calculation of the anticipated rate.
5) A **table or description of the proposed dredging depths**, permitted depths, and overdredge depth all expressed relative to Mean Lower Low Water (MLLW), and the associated volumes to be dredged.[6]
6) A **summary table of the past physical and chemical tests** (usually at least three recent testing episodes). Testing data from all sampling completed from 2000 to the present should be in a table. This table should include the date sampled, the results of each individual chemical measurement, detection limits, units, and any information on the precision and accuracy of the values. An acceptable option would be to include properly identified tables from the past test results. Please do not attach full Sampling and Analysis Reports to the Tier 1 request. This information should be summarized for quick and thorough review.
7) **If sufficient data is not present within your project site**, recent chemical, physical, or biological testing data from areas immediately adjacent to the proposed project site can be submitted that indicate that the proposed dredged material is likely to be free from contamination and toxicity can be included. Adjacent site data should be used if it can be shown the sediment at your project site can be reasonably represented by the adjacent site information, typically considering similar site conditions, sediment type, and surrounding land use.
8) A **table of the past bioassay results**. This table should include the date sampled, species tested, mean control survival, mean reference survival and mean survival values in the dredged material.

[4] We recommend that applicants reproduce the appropriate U.S. Geological Survey Quad map for this purpose.

[5] Bathymetry survey should not be older than one year. If there has been an event that has caused excessive sedimentation within the past 12 months, it is highly recommended to update the bathymetric survey.

[6] The volume proposed in the Tier I document should remain within 15% range after the suitability determination.

9) **Maps showing all past sampling stations** for which results are included, with the currently proposed dredging area superimposed. This can be especially helpful in areas within a project footprint that had multiple contaminant exceedances in past testing.

10) A **narrative description of past suitability determinations** for the project area. Please provide specific information in the case of ambiguous data, negative decisions, or conditioned decisions. Note any unusual circumstances (e.g., poor control or reference sediment bioassay survival) in previous test results.

11) A **description of any spill or other events** that have occurred since the last sampling or dredging event that might influence sediment chemistry or bioassay results (e.g., oil or fuel spills). Provide any pertinent data and correspondence, such as results from a search of the state spill release reporting database and include the date accessed. Also, if relevant based on the research, definitively state if there were no spills.

12) **Provide a Sampling and Analysis Plan if confirmatory chemistry is proposed** for the project (refer to Public Notice 99-4 for guidance on preparing a SAP).