

Who Should Pay for Sediment Cleanup?

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Introduction: While technology for investigating and remediating contaminated sediment sites has advanced significantly over the past decade, the inventory of such sites in Europe has not been significantly reduced. One repeated obstacle to progress is the question: “who will pay the cost”? The analysis of this question is convoluted and involves primarily legal and technical issues but also social and economic aspects. The typical response to the question has been “the polluter should pay”! And for the most part, this is true but the premise of “polluter pays” reaches practical limits in countries that have experienced repeated cycles of industrial nationalization and privatization or in countries lacking the aggressive legal framework needed to enforce such an approach. Also limiting this approach are the “time bars” that many national and transnational legislative frameworks impose on polluter liability. The fact that most sediment contamination is derived from discharges associated with the industrial activity of the mid-twentieth century makes such time bars more or less insurmountable obstacles to the polluter pays principle.

Methods: Methods to allocate cleanup cost are being used in alternative dispute resolution format on several sites in the United States. These methods usually involve technical and legal elements. Because legal frameworks vary from country to country, we focus here on the technical issues. The methods used include careful analysis of facts surrounding industrial and municipal discharge points and sediment deposits. The history and current status of these discharge points and associated sediment deposits can be evaluated using several scientific techniques.

Discussion: This approach could have beneficial application in cases where certain conditions exist. The approach is predicated on the belief that distributing the cost of cleanup beyond a single polluter to a wider group of stakeholders will result in better incentives to proceed with cleanups. More specific, and often more reasonable, cases can be developed to support the relationship between sources and deposits of pollution using modern physical and chemical investigative and forensic techniques. Additionally, careful economic analysis

can reveal both profit and tax incentives that will appeal to developers and municipalities alike. Lastly, social benefits, typically relating to better access to the waterfront as well as advancement of other public trust values, will appeal to communities. Thus the cost of cleanup can be allocated to a wider spectrum of interests including industry, commercial development, municipal or regional government, and the public. This distribution can be justified by evaluating the benefit, as well as liability, present in the specific case.

Results: Using this approach, it may be possible to bring parties together and break at least some of the gridlock currently typical of many European countries.