

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Policy Guidance Letter (PGL) No. 49, Section 312 of the Water Resources Development Act of 1990, Environmental Dredging, As Amended by Section 205 of the Water Resources Development Act of 1996

1. Purpose : This PGL supersedes PGL No. 35, Section 312 of the Water Resources Development Act of 1990 (WRDA 90) , Environmental Dredging and provides guidance on implementation of Section 312 of WRDA 90 as amended by Section 205 of the Water Resources Development Act of 1996 (WRDA 96).

2. Background:

a. Section 312 of WRDA 90. Section 312 authorized the Secretary of the Army to remove contaminated sediments from the navigable waters of the United States. There were two distinct authorities in Section 312. Section 312(a) provided for removal of contaminated sediments outside the boundaries of and adjacent to a Federal navigation project as part of the operation and maintenance of the project. Section 312(b) provided for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement if such removal was requested by a non-Federal sponsor and the sponsor agreed to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. Section 312 had an annual authorization of appropriations limit of \$10 million for Section 312(b) and a 5-year effective life. The authorities of Section 312 expired on 29 November 1995. At the time of its expiration, no environmental dredging projects had been initiated under Section 312 authority.

b. Section 205 of WRDA 96. Section 205 reestablished and amended the authorities of Section 312 by: (1) providing for removal and remediation of contaminated sediments under the authorities of Section 312(a) and Section 312 (b); (2) raising the annual appropriation authorization from \$10 million to \$20 million ; (3) deleting the termination date for the authorities of Section 312; and (4) giving priority to work at five locations. The text of Section 312 as amended by Section 205 is enclosed.

3. General Policy. The authorities of Section 312, as amended, will not be used to remove or remediate contaminated sediment which are classified as hazardous, toxic and radioactive wastes (HTRW) . Sediments proposed for dredging qualify as HTRW only if they are within the boundaries of a site designated by the U.S. Environmental Protection Agency (EPA) or a state for a response action (either a removal action or a remedial action) under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq (CERCLA), or if they are part of National Priority List (NPL) site under CERCLA. Environmental cleanup of such sites is the primary responsibility of EPA and Civil Works funds will not be used for cleanup activities. However, direct assistance to EPA will continue to be provided on a reimbursable basis for environmental cleanup activities including cleanup dredging and related studies. Sediments beneath the navigable waters, which are not classified as HTRW and proposed for removal and

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remediation under the authorities of Section 312, as amended, shall be tested and evaluated for their suitability for disposal in accordance with the appropriate guidelines and criteria adopted pursuant to Section 404 of the Clean Water Act and/or Section 103 of the Marine Protection and Sanctuaries Act (MPRSA) and supplemented by the Testing Manuals.

4. Policy for Removal and Remediation of Contaminated Sediments Outside the Boundaries of and Adjacent to Federal Navigation Channels (Section 312(a) of WRDA 90, as amended).

a. Implementation of Section 312(a) may be considered where the contaminated material is located outside and adjacent to a Federal navigation channel and contributes to contamination of material in the Federal navigation channel and it can be demonstrated that the costs of removal and remediation, as appropriate, of the contaminated sediment are economically justified based on savings in future operation and maintenance costs. Savings in future operation and maintenance costs are those associated with reduction in dredging and disposal costs through the reduction of contaminated sediment input into the navigation channel. For example, reduction of contaminated sediment may allow continuation or resumption of open water disposal and elimination of the need for more costly confined disposal.

b. Implementation of Section 312(a) will require agreement by a non-Federal sponsor to provide all costs related to the disposal of contaminated sediment. Under this policy, disposal costs are considered those costs not directly related to removal (dredging), remediation (treatment), and transport of the material to reasonably proximate disposal sites; and includes those costs associated with lands, easements, rights of way, retaining dikes, bulkheads, embankments, excavation of subaqueous pits, capping/liner requirements, fish and wildlife mitigation associated with the disposal area, and maintenance and management of the disposal area.

5. Procedures for Removal and Remediation of Contaminated Sediments Outside the Boundaries of and Adjacent to Federal Navigation Channels (Section 312(a) of WRDA 90, as amended).

a. The need to remove and, as appropriate, remediate contaminated sediments outside the boundaries of and adjacent to Federal navigation channels will be identified through dredged material management planning activities. Guidance on development, review, approval, and implementation of Dredged Material Management Plans is contained in EC 1165-2-200. An advanced copy of this Engineering Circular was distributed by CECW-A/CECW-O/CECW-P memorandum of 19 August 1994, subject: Implementation of Guidance on Dredged Material Management Plans (EC 1165-2-200, Advance Copy dated 21 July 1994).

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b. Planning for removal and remediation of contaminated sediments adjacent to Federal navigation channels will include appropriate technical assessments to determine the source(s) of contamination, the areal extent and depth of contamination in areas considered for removal and the time period over which the removal area would remain effectively free of contamination. This assessment will be accomplished in consultation with the Environmental Protection Agency and other appropriate Federal, state and local resource agencies.

c. Planning for removal and, as appropriate, remediation of contaminated sediments adjacent to Federal channels must demonstrate that the recommended cleanup plan is the most cost effective alternative consistent with sound engineering practices and established environmental standards and maximizes net O&M savings considering both Federal and non-Federal costs.

d. A feasibility level decision document on removal and remediation of contaminated sediments adjacent to Federal channels will be submitted to HQUSACE, CECW-AR for policy compliance review in accordance with the guidance for review of decision documents in EC 1165-2-203, Technical and Policy Compliance Review, dated 15 October 1996. This report could be a completed dredged material management plan or an interim report. The Operations, Construction and Readiness Division is the dredged material management functional program manager and is responsible for the decision document after HQUSACE policy compliance review is complete.

e. Based on report (decision document) approval, funding for the contaminated sediment removal and remediation would be sought through the budget process. Funding would be from the Operations and Maintenance, General account. Upon appropriations of funds, negotiation of a PCA will also be completed. The model PCA for construction of dredged material disposal facilities for operation and maintenance of existing navigation harbor projects will need to be modified to reflect the unique cost sharing requirements of Section 312 which provides that all costs of disposal of contaminated sediments shall be a non-Federal responsibility.

f. The PCA will be submitted to HQUSACE, CECW-A for review and approval including approval by the Assistant Secretary of the Army (Civil Works).

g. The PCA will be executed and removal and remediation initiated.

6. Policy for Removal and Remediation of Contaminated Sediments from the Navigable Waters of the United States for the Purpose of Environmental Enhancement and Water Quality Improvement (Section 312(b) of WRDA 90, as amended).

a. Removal and remediation of contaminated sediment from the navigable waters of the

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United States for the purposes of environmental enhancement (restoration) and water quality improvement may be considered for implementation if requested by an appropriate non-Federal sponsor and if it is consistent with current program and budget priorities in effect at the time of consideration.

b. Implementation of Section 312(b) will require agreement by a non-Federal sponsor to provide 50 percent of the costs of removal and remediation. In addition, all costs related to the disposal of contaminated sediment are a non-Federal responsibility. Disposal costs are considered those not directly related to removal (dredging), remediation (treatment), and transport of the material to reasonably proximate disposal sites; and includes those costs associated with lands, easements, rights of way, retaining dikes, bulkheads, embankments, excavation of subaqueous pits, capping/liner requirements, fish and wildlife mitigation associated with the disposal area, and maintenance and management of the disposal area. A project under Section 312(b) authority may include removal and disposal of contaminated sediment, removal and remediation of contaminated sediment or remediation of contaminated sediments in place.

c. Priority will be given to work in the following areas:

- (1) Brooklyn Waterfront, New York
- (2) Buffalo Harbor and River, New York
- (3) Ashtabula River, Ohio
- (4) Mahoning River, Ohio
- (5) Lower Fox River, Wisconsin

d. Federal expenditures may not exceed \$20 million in a fiscal year to carry out sediment removal and remediation under Section 312(b). There is no per project limit on Federal expenditures under Section 312(b).

7. Procedures for Removal and Remediation of Contaminated Sediments from the Navigable Waters of the United States for the Purpose of Environmental Enhancement and Water Quality Improvement (Section 312(b) of WRDA 90, as amended).

a. If an appropriate non-Federal sponsor requests removal and remediation of contaminated sediments and indicates a willingness and capability to provide the required cost sharing, the removal and remediation project may be considered for a new start for a reconnaissance phase study under the General Investigations account. The budget request will be developed and submitted in accordance with the annual program and budget guidance (Annual Budget EC).

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b. Planning for projects to remove and remediate contaminated sediments will be conducted under the two-phase reconnaissance and cost shared feasibility study process. Guidance on the conduct of feasibility studies in ER 1105-2-100 will generally apply except that specific Congressional authorization of these projects is not required. Preparation of a feasibility report will fully meet the Section 312(c) requirement for development of a joint plan. Planning for removal and remediation of contaminated sediments should fully use existing sources of information to expedite the study process. Sources of information could include dredged material management plans, sediment testing results and other information developed in conjunction with operation and maintenance of Federal navigation projects and the regulatory program.

c. Creative solutions and financial partnerships involving all levels of government should be sought in developing plans for removal and remediation of contaminated sediments. Duplication of Federal programs should be avoided and plans for sediment removal and remediation should recognize appropriate Federal, state and local agency roles. An interagency planning team should be formed to conduct the planning study.

d. Projects for removal and remediation of contaminated sediments will be evaluated and justified as ecosystem restoration projects under the guidance contained in EC 1105-2-210, Ecosystem Restoration in the Civil Works Program. Removal and remediation of contaminated sediments may be one measure in comprehensive plans for ecosystem restoration. However, as indicated in paragraph 5, Section 312 (b) projects have unique cost sharing requirements that are different than other ecosystem restoration measures and this cost sharing must be recognized in the implementation of comprehensive plans.

e. A feasibility level decision document on projects for removal and remediation of contaminated sediments will be submitted to the Director of Civil Works attention Planning Division with copies to Policy Division (CECW-AR) in accordance with the guidance on policy review of decision documents in EC 1165-2-203. Specific Congressional authorization of Section 312 (b) projects is not required but the feasibility report for the project must be approved by the Assistant Secretary of the Army (Civil Works).

f. Based on report (decision document) approval, a construction start for the contaminated sediment removal and remediation project will be sought through the budget process.

g. Based on report approval, preconstruction planning and design (PED) studies will be continued using General Investigations funding. A PED agreement will be executed as a condition for initiation of PED studies. PED costs will be subject to 50 percent cost sharing as part of project costs with any PED costs associated with disposal being a 100 percent non-Federal

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responsibility. Negotiation of a PCA will also be completed.

h. The PCA will be submitted to HQUSACE, CECW-A for review and approval including approval by the Assistant Secretary of the Army (Civil Works).

i. The PCA will be executed and project construction initiated.

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

FOR THE COMMANDER:

Encl

/s/
RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

**Section 312 of the Water Resources Development Act of 1990
as amended by Section 205 of the Water Resources Development Act of 1996**

SEC. 312. ENVIRONMENTAL DREDGING.

(a) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.- Whenever necessary to meet the requirements of the Federal Water Pollution Control Act, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) NONPROJECT SPECIFIC.-

(1) IN GENERAL.- The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 50 percent of the cost of such removal and remediation.

(2) MAXIMUM AMOUNT. - The Secretary may not expend more than \$20,000,000 in a fiscal year to carry out this subsection

(c) JOINT PLAN REQUIREMENT.- The Secretary may only remove and remediate contaminated sediment under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) DISPOSAL COSTS. - Costs of disposal of contaminated sediments removed under this section shall be a non-Federal responsibility.

(e) LIMITATION ON STATUTORY CONSTRUCTION. - Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) PRIORITY WORK. - In carrying out this section, the Secretary shall give priority work in the following areas:

- (1) Brooklyn Waterfront, New York.
- (2) Buffalo Harbor and River, New York.
- (3) Ashtabula River, Ohio.
- (4) Mahoning River, Ohio.
- (5) Lower Fox River, Wisconsin.