

## MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Policy Guidance Letter No. 35, Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging

1. Purpose: This policy guidance letter establishes Corps policy and procedures for undertaking environmental dredging as part of operation and maintenance of existing navigation projects.

2. Background: Section 312 of WRDA 90 authorizes the Secretary of the Army to remove contaminated sediments from the navigable waters of the United States. There are two distinct authorities in section 312. Section 312(a) provides 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) provides for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement if such removal is requested by a non-Federal sponsor and the sponsor agrees to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. The text of section 312 is enclosed.

3. Policy:

a. Environmental cleanup of contaminated materials is the primary responsibility of the U.S. Environmental Protection Agency (EPA) under the provisions of "Superfund" and other EPA administered programs. Therefore, Civil Works funds will not be budgeted for the implementation of Section 312(b) of WRDA 90. However, direct assistance to EPA will continue to be provided on a reimbursable basis for environmental cleanup activities including cleanup dredging and related studies.

b. 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 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 elimination of a source of contamination. For example, elimination of a source of contamination may allow continuation or resumption of open water disposal and elimination of the need for more costly confined disposal.

c. 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 not directly related to removal (dredging) 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 sub-aqueous pits, capping/liner requirements, treatment, fish and wildlife mitigation associated with the disposal area, and maintenance and management of the disposal area.

d. The dredging, transport and disposal must be environmentally acceptable pursuant to all applicable Federal statutes and regulations.

4. Procedures.

a. Initial Appraisal.

(1) Where the potential for savings in future operation and maintenance costs through removal of contaminated sediments adjacent to a Federal navigation channel is identified, an initial appraisal or reconnaissance report should be prepared at Federal expense using operation and maintenance (O&M) funds. This initial appraisal should contain:

(a) A preliminary analysis demonstrating that savings in future operating costs would exceed the costs of removal of the contaminated sediments.

(b) A letter of intent from a non-Federal local sponsor indicating a willingness to provide the required costs related to disposal.

(c) A description and preliminary cost estimate for the activities necessary to prepare for removal of contaminated sediment. This includes the costs to perform the required environmental, economic, design, and associated analyses and costs to prepare the section 312 (a) report.

(2) The initial appraisal should be limited to an expenditure of \$20,000. If more than \$20,000 is required, approval should be requested from HQUSACE, attention CECW-O, including sufficient information to justify the additional expenditure.

(3) The initial appraisal or reconnaissance report will be submitted to HQUSACE, attention CECW-O, for approval to move into detailed planning, design, and engineering for the removal of the contaminated sediments and preparation of a section 312 (a) report. CECW-O will coordinate the initial appraisal report with the appropriate elements within HQUSACE including CECW-P, CECW-L, CECW-B, CECW-E, CERE-AP, and CECC-J.

b. Section 312(a) Project Report.

(1) Preparation and approval of a section 312 (a) project report will be required before O&M funds can be utilized in the removal of contaminated sediments. Preparation of a section 312 (a) project report will be initiated upon approval of the initial assessment and provision of the necessary O&M funding.

(2) The section 312 (a) project report will include the following information:

(a) Appropriate technical assessments to determine the source(s) of contamination, the aerial 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.

(b) An evaluation of dredged material disposal alternatives. The report 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. An incremental analysis will be required demonstrating that each increment of cleanup recommended is justified by savings in future O&M costs. The technical manual "Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls," or its appropriate updated version will be used in formulating and evaluating alternative cleanup and disposal plans. The management strategy is

sufficiently broad to handle a wide range of sediment characteristics, dredging techniques, and disposal alternatives. It includes an initial evaluation of sediment contamination, followed by an evaluation of potential contaminant pathways and completed with an evaluation of appropriate contaminant controls and management approaches.

(c) A cost estimate. An M-CACES cost estimate shall be prepared in the Chart of Accounts Format in accordance with EC 1110-2-263 for the final plan that is recommended following the alternative analysis. That cost estimate, fully funded to the mid-point of construction, shall become fixed as the baseline cost estimate at the time of approval of the section 312 (a) report by the ASA(CW).

(d) Addressing of all appropriate environmental and regulatory requirements including the National Environmental Policy Act, Section 404 of the Clean Water Act and Section 103 of the Ocean Dumping Act.

(e) Results of coordination with the U.S. Environmental Protection Agency and other appropriate Federal, state and local resource agencies.

(3) The completed section 312(a) report will be submitted to HQUSACE, attention CECW-O. Following HQUSACE review, including review by the Washington Level Review Center (WLRC), the report will be submitted to the ASA(CW) for approval.

(4) The Federal costs of removal of contaminated sediments will come from the O&M account. Implementation of the removal of contaminated sediments should, to the extent feasible, be accomplished concurrently with maintenance dredging of the involved Federal navigation project.

#### c. Local Cooperation Agreement and Financing Plan.

(1) A draft Local Cooperation Agreement (LCA) and Financing Plan shall be developed in connection with preparation of the section 312 (a) report in accordance with procedures outlined in ER 1165-2-131. The model LCA for harbor projects contained in ER 1165-2-131 should serve as the basis for the draft LCA with appropriate modifications to reflect the requirements of section 312(a) and guidance contained in this policy guidance letter.

(2) The full implications of LCA requirements should be discussed with the local sponsor within the context of the model LCA and Section 312(a) of WRDA 90. The first draft LCA, however, is prepared by the District Commander in conjunction with the local sponsor after completion of the section 312(a) report. No commitments relating to a construction schedule or specific provisions of the draft LCA can be made to the local Sponsor on any aspect of the project until:

(a) The section 312(a) report is reviewed by the HQUSACE, WLRC and ASA(CW) and approved by the ASA(CW); and

(b) The draft LCA has been reviewed and approved by the ASA(CW). (3) Once the project has been approved by the ASA(CW), the District Commander shall begin final negotiations with the local sponsor and submit the draft LCA package (see paragraph 7a. of ER 1165-2-131) for review by HQUSACE, attention CECW-LM, and approval by the ASA(CW). All LCA's covered by this policy are to be signed by the local sponsor and the ASA(CW).

The ASA(CW) will sign the LCA after the LCA is signed by the local sponsor or concurrently with the local sponsor at a signing ceremony. The approved section 312(a) report should be the report referenced in the LCA that serves as the basis for execution of the LCA.

5. Termination Date. This policy expires with the termination date of the section 312 authority, which is 5 years after enactment of WRDA 90, 28 November 1995. Any project under section 312 must be commenced on or before 28 November 1995.

FOR THE COMMANDER:  
Enc ARTHUR E. WILLIAMS  
Major General, USA  
Director of Civil Works

DISTRIBUTION: (see page 6)

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## SECTION 312 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1990 SECTION 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, as part of operation and maintenance of a navigation project, contaminated sediment outside the boundaries of and adjacent to the navigation channel.

(b) NONPROJECT SPECIFIC. –

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

(2) MAXIMUM AMOUNT. - The Secretary may not expend more than \$10,000,000 in a fiscal year to carry out this subsection.

(c) JOINT PLAN REQUIREMENT. - The Secretary may only remove 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) TERMINATION DATE. - This section shall not be effective after the last day of the 5-year period beginning on the date of the enactment of this Act; except that the Secretary may complete any project commenced under this section on or before such last day.