

**Draft Environmental Assessment on the Newark Bay Area of the New York and
New Jersey Harbor Deepening Project
June 2005**

Errata Sheet

1. Part 3, Environmental Effects and Consequences, Pages 3-11. In order to supplement this section regarding the potential effects of U. S. Army Corps of Engineers (USACE) dredging on the U.S. Environmental Protection Agency's (USEPA) Newark Bay Study Area (NBSA) Remedial Investigation/Feasibility Study (RI/FS) an amendment to the *Draft Environmental Assessment on the Newark Bay Area of the New York and New Jersey Harbor Deepening Project* has been prepared. See attached document titled, "*Draft Environmental Assessment on the Newark Bay Area of the New York and New Jersey Harbor Deepening Project, a Qualitative and Quantitative Analysis of the Potential Effect of USACE Dredging on the Newark Bay Study Area Remedial Investigation/Feasibility Study*".
2. Part 3.1.6, - Hazardous, Toxic, and Radioactive Waste, Page 4; Additional text has been included to clarify HTRW regulations pertaining to Civil Works Projects and specifically Navigation Projects (eg. HDP). See attached document titled, "HTRW Errata Sheet".
3. Part 4.2, Best Management Practices (BMP)s, Page 12; Additional text has been added to Appendix B entitled "*Addendum to Appendix B Alternatives to BMP's*" which addresses several other suggested alternatives for BMPs during dredging.
4. Part 4.3 Water Quality Certification Compliance Monitoring, Page 13; Additional USACE-NYD coordination with USACE ERDC laboratory dredging and resuspension experts has prompted revisions to the TSS/Turbidity monitoring program that has greatly intensified and expanded it's data collection efforts and it's goals. Monitoring of dredging operations will be conducted in Newark Bay, the Kill van Kull, and the Arthur Kill, focusing upon channel reaches with predominantly fine (clay and/or silt) sediments where the probability of dispersion of hydrophobic contaminants would be greatest. The following objectives have been established:
 - *Define relationships between gravimetric, optical, and acoustic measures of turbidity and TSS in the selected channel reaches*
 - *Determine ambient turbidity and TSS conditions in the study areas during selected periods*
 - *Determine the spatial structure and temporal dynamics of plumes (utilizing ACDP) associated with specific dredging operations in the study areas*

HTRW ERRATA SHEET

DEPARTMENT OF THE ARMY

ER 1165-2-132

Regulation No. 1165-2-132 26 June 1992

Water Resource Policies and Authorities

HAZARDOUS, TOXIC, AND RADIOACTIVE WASTE (HTRW) GUIDANCE FOR CIVIL WORKS PROJECTS

1. Purpose. The purpose of this document is to provide guidance for consideration of issues and problems associated with hazardous, toxic, and radioactive wastes (HTRW), which may be located within project boundaries or may affect or be affected by Corps Civil Works projects. The guidance is intended to provide information on how these considerations are to be factored into project planning and implementation.
2. Applicability. This regulation applies to HQUSACE/OCE elements, major subordinate commands, districts, laboratories, and field operating activities (FOA) having Civil Works responsibilities.
3. References. See Appendix A.
4. Definitions.
 - a. Hazardous, toxic and radioactive wastes (HTRW).
 - (1) Except for dredged material and sediments beneath navigable waters proposed for dredging, for purposes of this guidance, HTRW includes any material listed as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq (CERCLA). (See 42 U.S.C. 9601(14).) Hazardous substances regulated under CERCLA include "hazardous wastes" under Sec. 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. 6921 et seq; "hazardous substances" identified under Section 311 of the Clean Air Act, 33 U.S.C. 1321, "toxic pollutants" designated under Section 307 of the Clean Water Act, 33 U.S.C. 1317, "hazardous air pollutants" designated under Section 112 of the Clean Air Act, 42 U.S.C. 7412; and "imminently hazardous chemical substances or mixtures" on which EPA has taken action under Section 7 of the Toxic Substance Control Act, 15 U.S.C. 2606; these do not include petroleum or natural gas unless already included in the above categories. (See 42 U.S.C. 9601(14).)
 - (2) Dredged material and sediments beneath navigable waters proposed for dredging qualify as HTRW only if they are within the boundaries of a site designated by the EPA or a state for a response action (either a removal action or a remedial action) under CERCLA, or if they are a part of a National Priority List (NPL) site under CERCLA. Dredged material and sediments beneath the navigable waters proposed for dredging 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 Research and Sanctuaries Act (MPRSA) and supplemented by the Corps of Engineers Management Strategy for Disposal of

Dredged Material: Containment Testing and Controls (or its appropriate updated version) as cited in Title 33 Code of Federal Regulations, Section 336.1

**EPA guidance on Hazardous Waste Exemptions for Dredge Material.
As Per Dredged Material Exclusion (Sec. 261.4(g)) Hazardous Waste Determination**

The exclusion also applies in the case of a Corps civil works project that receives the administrative equivalent of a CWA or MPRSA permit, as provided for in Corps regulations. This regulatory language refers to the fact that the Corps does not process and issue permits for its own activities, but authorizes its own discharges of dredged or fill material by applying the same applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines or MPRSA criteria. EPA has the authority to develop environmental guidelines and the authority to prohibit or conduct further review of a proposed discharge by the Corps, in the same manner as it can with a private permit applicant. Thus, the exclusion in today's rule includes CWA and MPRSA permits, as well as their administrative equivalents in the case of Corps civil works projects.

For dredged material covered by a CWA or MPRSA permit, the combination of statute, Federal regulations, and Regional guidance, along with the testing and management protocols that have been developed jointly by EPA and the Corps, will be adequate to address potential contaminant-related impacts in both ocean and inland waters. Examples of the existing testing and management protocols include: *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.--Testing Manual (EPA-823-B-98-004)* and *Evaluation of Dredged Material Proposed for Ocean Dumping--Testing Manual (EPA-503-B-91-001)*, which contain current procedures on implementing the dredged material testing requirements under the CWA and MPRSA respectively. The manuals contain tiered evaluation systems that include, as appropriate: physical analysis of sediment; chemical analysis of sediment, water, and tissue; bioassay tests; and bioaccumulation tests of contaminant impacts. EPA believes that CWA and MPRSA permits coupled with these testing manuals and relevant Regional guidance will ensure the protective management and discharge of dredged material.

HTRW applicability for the NBSA:

For our projects' dredged material to qualify as HTRW, the EPA or NJDEP would have had to issue a decision document, typically a record of decision (ROD) that recommends within a specified boundary (i.e., the "site") some type of a response action (either a removal action or a remedial action), to alleviate an unacceptable existing risk to human health and/or the environment.

EPA is just starting the Phase 1 of the RI process, which can take several passes to "zero in" on the area of unacceptable risk (to define the boundary of a potential response action). Once an area of unacceptable risk is identified, then the FS evaluates the alternatives and, thru a ROD process, may recommend the best response action for that

specific area. Response actions can be removal with containment or treatment or remedial (capping, no-action, etc.).

Designation of a response action (either a removal action or a remedial action) within a defined boundary by EPA or the state must be met for dredged material to be considered HTRW. Post designation, the dredging or navigation project is still managed under the CWA and Section 103 of MPRSA.

Addendum to Appendix B- Alternative BMP's

“It has been suggested by some interested parties that the USACE should consider using specific alternative dredging methods to further control the resuspension of contaminated sediments and thereby lessen the potential adverse impacts on the RIWP study goals. Those suggested alternatives include, among other things: (1) outfitting dredging equipment with software and electronic sensors to control the vertical and horizontal placement of the environmental bucket, including a DGPS system (for horizontal placement) and acoustic or electro-mechanical bucket placement sensors (for vertical placement); (2) using a “rinse tank” between dredging cycles whenever dredging occurs within areas demarcated as essential fish habitat; (3) using a closed environmental clamshell bucket “to refusal” whenever dredging in Holocene silt and clay; (4) imposing a “no barge overflow” requirement when dredging Holocene silt and clay; and (5) using appropriate adaptive management practices whenever USACE monitoring determines that resuspension of contaminated sediment occurs above a certain performance standard.

In light of the determination in this DEA and Amendment that the HDP, as currently designed, will have an insignificant affect on the RIWP study goal, further modification to the HDP's best management practices already mandated by the state regulatory agencies as part of the Section 404 Water Quality Certification process is unnecessary. Nevertheless, the USACE has considered these suggested alternatives, as well as the “no action” alternative, and has determined that they are either already being used, are inappropriate for navigational dredging, or would unnecessarily increase the cost and time to complete the project with only a modest, if any, decrease in the already insignificant affects on the RIWP study goals.

In any event, the USACE, through the use of its extensive environmental monitoring program and its ongoing coordination with USEPA and the trustees, will, as appropriate, reevaluate the need of altering its dredging methods within the Newark Bay Study Area to minimize to the fullest extent practicable any adverse affects to RIWP study goals.”