

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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Joannet
Cindy C.
John K.

- New Dredging
Guidance - ~~XXXXXX~~

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Superfund Read if
you have an upcoming
remedy that involves
sediment dredging.
JMMK

JAN 19 2000

MEMORANDUM

Subject: Implementing FY2000 Appropriations Report Language on Sediment Dredging

From: Stephen Luftig, Director *Steve Luftig*
Office of Emergency and Remedial Response

Barry N. Breen, Director *B. N. Breen*
Office of Site Remediation Enforcement

To: Superfund National Policy Managers
Regional Counsel Superfund Branch Chiefs

As you know, the FY2000 VA-HUD Appropriation Conference Report, which accompanied EPA's FY2000 appropriations includes the following language regarding EPA's use of dredging:

For Fiscal year 2000 and consistent with fiscal year 1999, the conferees direct the agency not to initiate or order dredging, except as noted in the conference report and statement of the managers accompanying the 1999 Appropriations Act, until the National Academy of Sciences has completed its dredging study and that study has been properly considered by EPA. Further, the Agency should only initiate or order dredging in cases where a full analysis of long and short-term health and environmental impacts has been conducted. [Page 139]

This provision is nearly the same as the report language in our FY99 Appropriations Conference Report.

Based on the legislative history and conversations among EPA representatives and some of the Congressional offices involved in preparing the Report, we understand the FY2000 language to have the same intent as the FY99 language. We believe the FY2000 report language

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adds no additional requirements for documenting sediment dredging decisions beyond those we called for last year. Therefore, the May 17, 1999 Memorandum (copy attached) continues to apply without change for FY2000. In addition, the FY 2000 appropriation language placed other restrictions on allocations to other agencies, however, Those issues will be resolved at headquarters and are not included in this memorandum.

The May 17, 1999 Memorandum notes that documentation should be included in the Action Memorandum, Record of Decision, or documentation supporting the selection of the response action (e.g., Engineering Evaluation/Cost Analysis or Remedial Investigation/Feasibility Study). Again, as in FY1999, a brief memorandum summarizing the analysis should be prepared and added to the administrative record file for previously selected response actions to be implemented this fiscal year. The memorandum should be signed at the Branch Chief level or by a higher level Agency official and include the following information:

- consideration of alternatives to dredging,
- assessment of whether there is an appropriate/available/identified disposal site,
- information on the short-term effectiveness analysis,
- summary of discussions with the community on a description of the alternatives considered, and
- a summary of the substantial threat that supports a dredging decision.

In regard to the status of the National Academy of Sciences dredging study, several meetings with the committee working on this study are planned for this year with the goal of completing the report in September of 2000. Full consideration of the report by EPA as required by the Appropriations Report would, therefore, occur sometime in FY2001.

We continue to expect to report to the Appropriations Committees on Superfund sites with contaminated sediments that require dredging. Each Region has been working with our staff to identify these sites. We request that you continue to do so this year. Rich Norris of OERR (703-603-9053) is a central point of contact for this issue.

For further information on these issues, you may contact either Bruce Means (703-603-8815) or Larry Zaragoza (703-603-8867).

Attachment

cc: Elizabeth Cotsworth
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Delia Scott
Tudor Davies
Tim Oppelt
Earl Salo
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bec: Randy Deitz
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Tim Fields
Cliff Rothenstein
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 17 1999

MEMORANDUM

SUBJECT: Implementing FY'99 Appropriations Conference Report Language on
Sediment Dredging

FROM: Stephen D. Luftig, Director *Cheryl P. Dwyer*
Office of Emergency and Remedial Response

Barry N. Breen, Director *Barry N. Breen*
Office of Site Remediation Enforcement

TO: Superfund National Policy Managers
Regional Counsel Superfund Branch Chiefs
Regions 1 - 10

As you are all aware, the FY'99 VA-HUD Appropriation Conference Report urges EPA "to await the completion of the NAS study [of remediation technologies for PCB-contaminated sediment] before spending any Superfund money on dredging, initiating any new dredging action, or issuing any more dredging orders" to address contaminated sediments. The report states that "exceptions to this should be considered where EPA has found on the record that the contaminated sediment poses a significant threat to the public health to which an urgent or time critical response is necessary, remedial and/or removal alternatives to dredging have been fully evaluated, an appropriate site for disposal of the contaminated material has been selected, and the potential impacts of dredging, associated disposal, and alternatives have been explained to the affected community." (See Attachment A for full text of conference report language.)



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Although conference report language is not legally binding, EPA will generally act in accordance with the views expressed in conference language to the extent possible within the confines of its statutory mandates. Therefore, during fiscal year 1999, each regional office should perform the analysis called for in the language, to the extent possible, when preparing to undertake response actions involving dredging of contaminated sediments and document this analysis in the administrative record file. (We recognize that it will be very difficult to fulfill these requirements for emergency response actions, but we anticipate such actions will be rare.)

In addition to the specific exception to its overall direction not to undertake sediment remediation activities involving dredging until the NAS study is complete for "urgent or time-critical response" actions, a colloquy between Senators Lautenberg and Bond clarified that "the language is not intended to limit EPA's authority during the next two years with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found that dredging is an appropriate response action." (See Attachment B for the full text of the colloquy.) EPA interprets this language to mean that any response action that involves dredging of contaminated sediments that "pose a substantial threat to public health or the environment" should proceed, with the appropriate analysis performed and documented in the administrative record file. If possible, such documentation should be included in the Action Memorandum, Record of Decision, or documentation supporting the selection of the response action (e.g., Engineering Evaluation/Cost Analysis (EE/CA) or Remedial Investigation/Feasibility Study (RI/FS)). For response actions involving dredging of contaminated sediments previously selected that will be implemented in FY 99, a special memorandum summarizing the analysis should be prepared and added to the administrative record file.

We do not believe that the language was intended to apply to demonstration projects being carried out as part of Engineering Evaluation/Cost Analyses or Feasibility Studies to provide information to support a remedy selection decision.

Since the Appropriations Committees will ask for a report on our activities pursuant to this language, we would like to monitor implementation here in headquarters. Therefore, we request that you notify Rich Norris (703/603-9053) in the Office of Emergency and Remedial Response of the following actions taken to date this fiscal year, and any additional such actions you take throughout the remainder of FY 99: 1) initiation of actual construction of dredging activities (which may have been selected in a previous fiscal year); 2) signature of any Action Memoranda or Records of Decisions which select dredging of contaminated sediments as an appropriate response action; and 3) any enforcement orders issued or agreements signed which require dredging of contaminated sediments.

For additional information, please contact Betsy Shaw (703/603-9034) or Bruce Means (703/703-8815) in the Office of Emergency and Remedial Response.

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ATTACHMENT A

FY'99 VA-HUD Appropriations Conference Report (pp. 271 - 272)

October 5, 1998

EPA's recently published Contaminated Sediment Management Strategy states that EPA will not proceed with clean-up of a contaminated sediment site if the short-term and long-term impacts of dredging are determined to cause more environmental harm than leaving the contaminants in place. The conferees believe, however, that EPA is proceeding with some orders to dredge even though the evaluations called for in EPA's own policies have not been undertaken. Further, a National Academy of Sciences evaluation of dredging technology required by the House Appropriations Committee in fiscal year 1998, is not yet available. The conferees expect EPA will implement its Contaminated Sediment Management Strategy by evaluating the short-term and long-term impacts of the proposed clean-up in relation to the reduction of risks to human health and the environment and other benefits.

It is vital that EPA and the Congress have the benefit of the NAS study on remediation technologies for contaminated sediments, including dredging, to assess the ability of various methods to attain the environmental objectives of the remediation, and the potential of these methods to cause greater harm to the environment or other problems. The conferees urge EPA to await the completion of the NAS study before spending any Superfund money on dredging, initiating any new dredging action, or issuing any more dredging orders. Exceptions to this should be considered where EPA has found on the record that the contaminated sediment poses a significant threat to the public health to which an urgent or time critical response is necessary, remedial and/or removal alternatives to dredging have been fully evaluated, an appropriate site for disposal of the contaminated material has been selected, and the potential impacts of dredging, associated disposal, and alternatives have been explained to the affected community. The Agency should take all reasonable steps to assure the expeditious completion of the NAS study.

ATTACHMENT B

COLLOQUY BETWEEN
SENATOR LAUTENBERG AND SENATOR BOND
CLARIFYING THE STATEMENT OF THE MANAGERS
ACCOMPANYING THE VA-HUD CONFERENCE REPORT

Senator Lautenberg: Mr. President, I would like to clarify a section in the statement of the managers accompanying the VA-HUD Conference Report. The language urges EPA not to spend any funds or require any parties to dredge contaminated sediments until completion of a National Academy of Sciences report on dredging technology. The report may take two years to complete. It is my understanding that the language is not intended to limit EPA's authority during the next two years with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found that dredging is an appropriate response action.

Senator Bond: The gentleman is correct. The statement of the managers is not intended to limit EPA's authority with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found that dredging is an appropriate response action.