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MEMORANDUM

SUBJECT: Clarification of RCRA Authorities Regarding U.S. Army
Corps of Engineers Dredge Sediments

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

TO: Basil G. Constantelos, Director
Waste Management Division
Region V

This memorandum responds to your May 30, 1989, request for clarification concerning RCRA authorities to regulate dredged sediments that exhibit one of more characteristics of a hazardous waste. As you stated, EPA's policy regarding such materials is defined in the January 23, 1986, memorandum from Marcia Williams to David Stringham. However, the U.S. Army Corps of Engineers (USACOE) published a Federal Register notice on April 26, 1988 (53 FR 14902), in which USACOE concluded that dredged materials are not solid waste and, therefore, not subject to RCRA. These contradictory statutory interpretations and policies have caused confusion in properly implementing RCRA authorities over dredged sediments.

The Agency's policy regarding the applicability of RCRA to dredged sediments remains unchanged from the January 23, 1986, memorandum. The pertinent points of this policy are: 1) point source discharges subject to Section 402 of the Clean Water Act (CWA) are exempt from RCRA, 2) hazardous wastes dumped into surface water in a manner that does not trigger Section 402 of the CWA are subject to RCRA regulation, as well as any sediments that are contaminated by such discharges (under the contained-in rule), and 3) in cases where the pollutants discharged into surface water are not subject to RCRA, sediments would be regulated under Subtitle C of RCRA only when they are dredged from the surface waters and only if they exhibit one or more characteristics of hazardous wastes.

The Office of Solid Waste and the Office of General Counsel are currently evaluating the best approach to take in addressing USACOE's April 26, 1988, Federal Register notice. I agree that a definitive statement of RCRA authorities over dredge sediments is needed to clarify the regulatory requirements.

Thank you for bringing this issue to our attention. Should you have any questions, your staff should contact Mitch Kidwell, of my staff, at FTS 475-8551.

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