

# Solid Waste Interpretive Guidance Statement (SWIGS)

## MANAGEMENT OF DREDGED MATERIAL

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The purpose of this guidance document is to clarify the waste management standards governing characterization and disposal of dredged material and to clarify the role and responsibilities of the waste program in regards to management of dredged material.

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For the purposes of this guidance, **Adredged materials**≡ are bottom sediments, vegetation, or other materials that have been dredged or excavated from the waters of the Commonwealth of Virginia. Dredged materials consist primarily of natural bottom sediments (i.e., silt, sand, gravel, rock) and natural bottom vegetation. Dredged materials can consist of solid waste and other materials which may be found commingled with the natural bottom sediments and vegetation. Dredged material may be contaminated by municipal, commercial, or industrial wastes or by runoff from terrestrial sources.

For the purposes of this guidance, dredged natural bottom sediment and bottom vegetation that is **not contaminated with waste constituents** is considered **soil** and is therefore conditionally exempt from the requirements for management as a solid waste (see VSWMR §2.4.D.5).

For the purposes of this guidance, **Aother bottom material**≡ are items, such as brush, stumps, debris, pilings, etc., that may normally be found at the bottom of a surface water body but have not been discarded or otherwise placed there in a manner which constitutes disposal.

For the purposes of this guidance, **Acontaminated sediment**≡ refers to natural bottom sediments and natural bottom vegetation that are contaminated, above normal background levels, with waste constituents. Contaminated sediment does not include industrial wastewater discharges regulated under CWA § 402.

The management of dredged material is currently regulated by the United States Army Corps of Engineers, the Virginia Marine Resources Commission, and the State Water Control Board (i.e. DEQ Water Division). In many cases, when dredged material is properly managed in accordance with the standards of those other agencies or boards, regulation of the dredged material under the Virginia Waste Management Act (AVWMA≡) imposes unnecessary and duplicative regulatory burdens upon persons engaged in dredging activities.

Dredged material is not excluded from regulation as a solid waste, however the Virginia Waste Management Board is authorized by Va. Code §10.1-1402(9) to:

*Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.*

To determine when management of bottom sediments and other bottom material contaminated with waste constituents is appropriate and not duplicative under the VWMA, it is important to know the source of the contamination. The major question to answer is whether the contamination resulted from non-point source discharges or unknown releases, or from point source discharges subject to regulation under the Clean Water Act (ACWA≡), as amended.

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**Note:** Disposal of any dredged material into state waters (i.e., Aoverboard disposal≡) including wetlands, can be considered a point source discharge of wastewater subject to regulation under CWA   401, 402, and 404 and is therefore considered to be excluded from definition as a solid waste (see 40 CFR 261.4 (a) (2)). This activity should be allowed without involvement from the Waste Division provided the disposal is properly done in accordance with the standards of those sections of the Clean Water Act.

40 CFR 261.4 (a) (2) (Identification and Listing of Hazardous Waste), specifically exempts industrial wastewater discharges (AIWD≡) that are point source discharges subject to regulation under CWA   402. These IWDs are excluded from definition as a solid waste. This authority, under CWA   402, pertains to the addition of any pollutants to waters of the United States from any discernible, confined, and discrete conveyance, except discharges of dredged and fill material regulated under CWA   401 and CWA   404. The intent of the industrial wastewater exclusion is to avoid potentially duplicative regulation, under RCRA and the CWA, of point source discharges. Thus, once wastewater flows from an NPDES discharge point into waters of the United States, that wastewater is exempt from RCRA regulation. This is true even if the discharge could be regulated under CWA   402, but is not. A point source discharge of wastewater without an NPDES permit would be a violation of the CWA, and could be subject to enforcement action under the CWA.

Conversely, if there is evidence to demonstrate that solid waste or hazardous wastes have been released into surface water in a manner that does not trigger CWA   402 (i.e., illegal dumping, a spill, or other non-point source discharge), this constitutes disposal under RCRA and would be subject to the appropriate regulatory controls under the VWMA. For example, bottom sediment or other bottom material which are contaminated by a listed hazardous waste that was Adumped≡into the water is considered a listed hazardous waste and would be subject to regulation under the Virginia Hazardous Waste Management Regulations (VR 672-10-1) ("VHWMR"). And for example, rail road ties, brush, and wood debris that were discarded by being bulldozed into the water would be considered a solid waste subject to regulation under the Virginia Solid Waste Management Regulations (VR 672-20-10) (AVSWMR≡).

Contaminated sediment and other bottom material that are determined **not** to be a **listed hazardous waste** subject to regulation under the VHWMR, as describe in the paragraph above, (such as bottom sediment or other bottom material that are contaminated with hazardous waste constituents from unknown sources, etc.), are not considered wastes as long as the contaminated sediment or other bottom material is not actively managed or removed from the water.

When contaminated sediments or other bottom material are actively managed and removed through dredging, the removed bottom sediments, bottom vegetation, or other bottom material, (i.e., Acontaminated dredged material≡), may meet the definition of a solid waste, as set forth in Va. Code   10.1-1400 and in VSWMR Part III, by either being discarded or by being applied to the land in a manner constituting disposal. The dredged material may also be considered a hazardous waste under Part III of the VHWMR by possessing a hazardous waste characteristic (see VHWMR   3.6 - 3.9).

Contaminated dredged material that is considered a solid waste, is subject to the hazardous waste determination requirements of the VHWMR. Under VHWMR   6.1, a person who generates a solid waste shall determine if that waste is a hazardous waste using the prescribed methods (see VHWMR   6.1). The determination may be made by either testing the waste according to accepted testing methods, or by applying knowledge of the hazard characteristics of the waste in light of the materials or the processes used.

Testing of the material, for hazardous waste determination purposes, may be done either *in situ* or after removal. However, until it has been determined that the dredged material is **not** a hazardous waste, it is recommended that the generator manage the contaminated dredged material in accordance with the requirements of VHWMR  6.4.E. In particular, in order to avoid the unintentional creation of an unpermitted hazardous waste management unit, until characterized the contaminated dredged material should be managed in tanks and/or containers, and should not be placed in waste piles, in surface impoundments, or onto the land.

Since dredged material is currently regulated by the United States Army Corps of Engineers, the Virginia Marine Resources Commission, and the State Water Control Board, **the Waste Division will allow non-hazardous waste, contaminated dredged sediment to be disposed on-land in locations other than a permitted solid waste management facility (SWMF)**, provided the contaminated dredged sediment is properly managed in accordance with the regulatory programs of those agencies or boards, and

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provided further that no open dump, hazard, or public nuisance is created (see Va. Code §§ 10.1-1402(21), -1408.1.G.-H). Additionally, **prior to on-land disposal, the contaminated dredged sediment shall be evaluated for any potential risks which may be associated with its disposal at the proposed location. If the contaminated dredged sediment contains constituents not normally found in the environment (i.e. PCBs, creosote, TPH, etc.) and health risk standards are available for those constituents, then, to evaluate the potential risks, a formal risk assessment should be performed (i.e., evaluation by REAMS model), or the values for the waste contaminants in the sediment can be compared to accepted health based standards. Contaminated dredged sediment can be disposed on-land in locations other than a permitted SWMF depending on the degree of risk associated with its disposal and provided the sediment does not require special handling for disposal.**

Contaminated dredged material other than natural bottom sediment and vegetation (i.e., wood pilings, metal, garbage, debris) and contaminated dredged sediment that requires special handling or poses unacceptable risks for uncontrolled on-land disposal, shall be disposed only in a permitted solid waste management facility, or otherwise recycled, reused, or managed in accordance with the VSWMR.

It is recommended that the Waste and Water staff within the regional offices establish waste constituent levels that would be appropriate for allowing land disposal of non-hazardous waste contaminated dredged material in locations other than permitted SWMFs. When contaminated dredged material is considered for approval for on-land disposal by the regional office water staff (i.e., before approval or a permit which allows this activity is actually given), information regarding the waste constituents and the proposed on-land disposal sites should be forwarded to the regional office waste staff for evaluation and feedback. If the conditions for disposal of the dredged material in on-land locations other than a permitted SWMF, as outlined in this guidance, are met, the waste staff should acknowledge that on-land disposal of the material at the proposed location would not pose an unacceptable risk or otherwise be considered a solid waste subject to regulation under the VWMA in accordance with this guidance.

Note: The intent here is to eliminate duplicative submittal of information by the permittee. By having all waste and water concerns addressed initially during the permitting process under Water Program, persons engaged in dredging operations will not have to get separate approval from the Waste Program for on-land disposal of the waste.