

change is designed to ensure that the remedial goals of the HARS will be met.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns.

**DATES:** This final regulation is effective on April 16, 2003.

**ADDRESSES:** 1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Home page at the Federal Register <http://www.epa.gov/fedrgstr/>, or on EPA Region 2's Home page at: <http://www.epa.gov/region02/water/dredge>.

2. *In person.* The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007-1866. For access to the docket materials, call Rebecca Garvin at (212) 637-3185 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA Region 2's Edison, NJ Office Library, 2890 Woodbridge Avenue, Building 209, MS-245, Edison, New Jersey 08837. For access to the docket materials at this facility, call Ms. Margaret Esser (732) 321-6762 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007-1866 (E-mail [pabst.douglas@epa.gov](mailto:pabst.douglas@epa.gov)) (212) 637-3797.

#### SUPPLEMENTARY INFORMATION:

##### I. Regulated Entities

Entities potentially affected by this action include those who might have sought or will seek permits or authorizations to place dredged material into ocean waters at the HARS for purpose of remediation, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the USACE to place Remediation Material at the HARS, as well as the USACE itself. Potentially affected categories and entities seeking to use the HARS include:

| Category                             | Examples of potentially affected entities  |
|--------------------------------------|--|
| Industry .....                       | Ports/facilities in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.<br>Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.<br>Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.<br>Berth owners in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS. |
| State/local/tribal governments ..... | Local governments owning ports or berths in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.  |
| Federal Agencies .....               | U.S. Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas to be placed at the HARS.<br>Other Federal agencies (e.g. U.S. Navy) seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas to be placed at the HARS.  |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully consider whether your organization is required to obtain a MPRSA permit (*See* 40 CFR 220.1), and you wish to use the HARS. If you have any questions regarding applicability of this action to a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's final rule would include commercial and recreational fishing

interests using New York Bight Apex fishing and shellfishing grounds. However, by establishing a pass/fail interim PCB tissue criterion that is approximately 75 percent lower than the previously established 400 ppb worm tissue guideline for remediation of areas adversely impacted by historic disposal activities (*see* discussion below), any effects of today's final rule on fishery and shellfish resources would be expected to be positive.

## II. Background

On October 8, 2002 EPA proposed modifying the designation of the HARS by establishing a HARS-specific worm tissue PCB criterion of 113 ppb for use in determining the suitability of proposed dredged material for use as Remediation Material. (67 FR 62659).

The MPRSA was enacted in 1972 to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA (and the USACE in the case of dredged material) to regulate dumping in ocean waters. Since the MPRSA was enacted, and through its subsequent amendments (including the Ocean Dumping Ban Act of 1988, which prohibited ocean dumping of sewage sludge and industrial waste), dumping in the New York Bight has been dramatically reduced.

With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the