

USACE. Under section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., fish wastes, burial at sea). Under section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the USACE. Determinations to issue section 103 MPRSA permits for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA provides that EPA shall designate recommended times and sites for ocean dumping, and section 103(b) further provides that the USACE shall use such EPA designated sites to the maximum extent feasible. Regulations implementing these and other provisions of MPRSA are set forth at 40 CFR parts 220 through 229. Forty CFR part 228 provides that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation specifying the site. On October 1, 1986, the Administrator delegated the authority to designate/de-designate ocean dumping sites for dredged material to the Regional Administrator of the Region in which the site is located. In accordance with that authority, EPA Region 2 designated the HARS in September 1997 for placement of dredged material suitable for use as Material for Remediation, 40 CFR 228.15(d)(6); 62 FR 46142 (August 29, 1997). Pursuant to that designation, use of the HARS is restricted to dredged material determined to be suitable for use as Material for Remediation.

Material for Remediation, or Remediation Material, is defined in 40 CFR 228.15(d)(6)(A) as material "selected so as to ensure it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity, in accordance with 40 CFR 227.6." The HARS was designated for continuing use until EPA determines that the PRA (Primary Remediation Area: a nine square nautical mile area to be remediated) has been sufficiently capped with at least 1 meter of the Material for Remediation. This Remediation Material is, "uncontaminated dredged material (*i.e.*, dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)" (Preamble to HARS designation Final Rule 62 FR 46142). The HARS is being managed to reduce impacts of historical disposal activities at the site to acceptable levels in accordance with 40 CFR 228.11(c).

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum of

Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process initiated by EPA, and responding to input from both the peer review and the public.

EPA is today modifying the HARS designation (40 CFR 228.15(d)(6)) by establishing a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Material for Remediation, pursuant to 40 CFR 228.10 and 228.11(c). This value will remain in effect until after EPA and the U.S. Army Corps of Engineers (USACE) complete their review of the 2002 scientific peer review comments on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for human health effects, conduct and respond to the comments on the future scientific peer review on the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use at the HARS as Remediation Material for ecological effects, and revise, as necessary, the HARS testing evaluation process used for bioaccumulation data from dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 MOA between EPA and the USACE. It should be noted that MPRSA site designation does not constitute or imply EPA's approval of the placement of particular material at the site. Before placement of the Material for Remediation at the HARS may commence, the USACE must evaluate permit applications according to EPA's Ocean Dumping Regulations and obtain EPA's concurrence.

III. Public Comments

In the preamble to the proposed rule, EPA requested public comment by November 8, 2002, and held two public hearings (attended by an estimated total of 120 people) as follows:

October 28, 2002, at 7 PM: Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750 (16 individuals presented testimony).

October 29, 2002, at 2 PM: EPA Region 2 NYC Office, Conference Room 27A, 290 Broadway, NY, NY 10007-1866 (five individuals presented testimony).

In addition to the testimony and comments provided at the hearings, EPA also received 220 sets of written comments on the proposed action.

Dredging and remediation of the HARS has proven to be a controversial and complex issue in recent years. As would be expected in light of such controversy, EPA received both supportive and non-supportive comments. In developing the final rule, EPA reviewed and considered all the written comments as well as those received verbally at the two public hearings. Most of the comments received were e-mails from elected officials, local governments, citizens and environmental/public interest groups that expressed, to varying degrees, support for the 113 ppb HARS-specific worm tissue PCB criterion. Many of these comments requested that the proposed rule be adopted without change. Thus, the 113 ppb HARS-specific PCB worm tissue criterion appears to be acceptable to the majority of those who provided comments. Approximately 40 commenters requested an end to ocean dumping and placement of dredged material at the HARS; for these commenters, the 113 ppb HARS-specific PCB worm tissue criterion appears not to have been sufficiently conservative. Approximately 20 comment letters were critical and non-supportive. Although in the minority based upon number of comments received, they presented the majority of issues raised. These non-supportive comment letters were from the USACE, New York Shipping Association, New York City Economic Development Corporation, private marina owners, ferry operators, dredging applicants, and other business groups. These comment letters requested that EPA not finalize the proposed rule until completion of the human health and ecological scientific peer review process. (That process commenced in 1998, and is expected to be completed in four to five more years.) The non-supportive comments had similar criticism of the proposed rule. Most expressed reservations concerning the scientific basis and economic consequences for the HARS-specific worm tissue PCB criterion of 113 ppb and offered alternative ideas for estimating a HARS-specific PCB worm tissue criterion. Following are summaries of the most significant among these comments:

Definition of PCBs

A few comments requested that EPA include a definition of PCBs in the final rule. For purposes of this rule total PCBs are defined in the EPA Region 2/USACE