

Comments Document (USEPA, 2003a). Approximately 15 million cubic yards of Remediation Material has been placed at the HARS since it was designated in 1997. No deepening material (below 45 feet Mean Low Water) is expected to be affected by today's rule.

Nevertheless, MPRSA section 103(b) expressly provides an opportunity for the USACE to select a disposal site meeting the criteria of 40 CFR part 228, should use of an EPA-designated site prove not to be feasible. Existence of an EPA-designated disposal site thus is not a prerequisite for ocean disposal, nor does it bar use of other sites selected in accordance with section 103(b).

Further, MPRSA section 103(b) states that in considering permit applications, the Secretary's determination as to the need for the dumping is to be "[b]ased upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States \* \* \*". And, in the highly unlikely event that there was to be no economically feasible alternative to ocean disposal, MPRSA section 103(d) provides the opportunity for the Secretary of the Army to seek a waiver of the environmental criteria. EPA's rulemaking in no way affects that authority.

#### *Existing Permits/Authorizations Should Be "Grandfathered"*

One comment requested that EPA "grandfather" existing dredging projects that have an approved Testing Evaluation Memo (signed by EPA and the USACE), but do not have a USACE permit or authorization. EPA considered this comment and has determined that the 113 ppb HARS-specific PCB worm tissue criterion will be applied to all USACE permit and authorization requests pending as of the effective date of the final rule and all permit and authorization requests filed thereafter.

EPA carefully considered and responded to each comment received. A complete Response to Comments Document has been prepared which contains all the comments received and EPA's responses to each of these comments. That document is available for viewing at the location specified in the section titled, "How Can You Get Additional Information or Copies of Support Documents" below.

#### **IV. Supporting Documents**

1. *USACE. 1981.* Final Interpretive Guidance for Bioaccumulation of Petroleum Hydrocarbon, DDT, Cadmium, and Mercury in the New York Bight. Memorandum from North

Atlantic Division Corps of Engineers to G.R. Tobertson, Deputy Director of Civil Works, Dept. of Army.

2. *EPA/USACE. 1991.* Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA-503/8-91/001. February 1991.
3. *EPA Region 2/USACE-NYD (New York District). 1992.* Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal. U.S. Army Corps of Engineers New York District and Environmental Protection Agency Region, New York, NY. Draft Release. December 1992.
4. *EPA. 1996.* Letter dated February 14, 1996 from Mario Del Vicario, U.S. Environmental Protection Agency, region 2, to John Tavoraro, U.S. Army Corps of Engineers New York District. Subject PCB Quantification. February 1996.
5. *NY/NJ HEP (New York/New Jersey Harbor Estuary Program). 1996.* Comprehensive Conservation and Management Plan for the Harbor Estuary Program, including the Bight Restoration Program. Final Report. March 1996.
6. *USEPA. 1997a.* Supplement to the Environmental Impact Statement on the New York Dredged Material Disposal Site Designation for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex. May 1997.
7. *USEPA. 1997b.* Response to Comments on the May 13, 1997, Proposed Rule for the Simultaneous De-Designation and Termination of the Mud Dump Site (MDS) and Designation of the Historic Area Remediation Site (HARS). August 1997.
8. *USEPA. 1997c.* Biological Assessment for the Closure of the Mud Dump Site and Designation of the Historic Area Remediation Site in the New York Bight Apex. May 1997.
9. *USEPA. 2000a.* Memorandum of Agreement: among the Department of the Army, the Environmental Protection Agency, and the U.S. Army Corps of Engineers. To Strengthen Environmental Protection of the Ocean Environment and to Promote Economic Progress in the Port of New York and New Jersey. September 27, 2000.
10. *USEPA. 2000b.* Proposed Changes to the Bioaccumulation Testing Evaluation Framework and Response to Scientific Peer Reviewers Comments on the Framework for Determining the Suitability of Dredged Material to be Placed at the

Historic Area Remediation (HARS). October 19, 2000.

11. *USEPA. 2000c.* Memorandum to the File from Douglas Pabst. Subject: Modification of the Matrix Value for PCB in Worm Tissue. September 27, 2000.
12. *USEPA. 2001.* Scientific Peer Review Package and Charge, Proposed Bioaccumulation Testing Evaluation Framework for Assessing the Suitability of Dredged Material to be Placed at the Historic Area Remediation Site (HARS). USEPA, Region 2. New York, NY. December 21, 2001.
13. *USACE. 2002.* Email from Stephen Knowles to EPA Region 2. Subject: Ocean Placement Summary Table. December 12, 2002.
14. *USEPA. 2002a.* Interim Consensus Report of the HARS Specific Peer Review. Phase 1: Human Health Evaluation. July 20, 2002.
15. *USEPA. 2002b.* Memorandum to the File from Douglas Pabst. Subject: Private Permits Placing Dredged Material at the Historic Area Remediation Site. October 1, 2002.
16. *USEPA. 2002c.* Memorandum to the File from Douglas Pabst. Subject: Small Businesses Applications to Place Dredged Material at the Historic Area Remediation Site. October 1, 2002.
17. *USEPA. 2002d.* Dun & Bradstreet Reports for Castle Astoria Terminals, American Sugars, Port Imperial Marina, International Matex Tank Chemicals, and New York Waterways. September 20, 2002.
18. *USEPA. 2003a.* Response to Comments on the October 8, 2002 Proposed Rule for the Establishment of a Historic Area Remediation Site (HARS)-Specific Polychlorinated Biphenyl Worm Tissue Criterion. March 7, 2003.
19. *USEPA. 2003b.* Memorandum to the File from Douglas Pabst. Subject: Private Permits for Navigational Dredging with Placement of Dredged Material at the Historic Area Remediation Site. March 6, 2003.
20. *USEPA. 2003c.* Email from Robert Hargrove to Douglas Pabst. Subject: Coastal Zone Consistency Review for the Proposed PCB 113 Guideline for the HARS. March 5, 2003.

How Can You Get Additional Information or Copies of Support Documents?

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