

## **Section-by-Section Analysis of 1996 Protocol Implementation Act**

### **Amendments to the Marine Protection, Research, and Sanctuaries Act (MPRSA) to Ratify the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972**

#### **Section 1. Short title.**

This Act amends the Marine Protection, Research, and Sanctuaries Act to implement the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972. Therefore, the short title of this Act is the 1996 Protocol Implementation Act.

#### **Section 2. Congressional finding, policy, and declaration of purpose.**

(1) and (2) The change from “ocean waters” to “the ocean” throughout the MPRSA is to clearly reflect the fact that disposal and storage of material in the seabed and subsoil thereof are explicitly considered dumping under the Protocol (Article 1.4.1.3) (see section 3(1)).

(3) The MPRSA currently regulates (1) the transportation of material from the United States for the purpose of ocean dumping, (2) the transportation of material by a U.S. owned or flagged vessel from any location for the purpose of ocean dumping, and (3) the dumping of material transported from outside the United States by a non-U.S. vessel in the U.S. territorial sea and contiguous zone, to the extent that it affects the territorial sea or territory of the U.S. The Protocol (Article 10.1.3) obligates Parties to regulate dumping in all areas within which they are entitled to exercise jurisdiction under international law. Accordingly, it is proposed that the MPRSA be amended to regulate dumping in the entire Exclusive Economic Zone and continental shelf, not just the territorial sea and contiguous zone, from non-U.S. vessels that come from outside the United States. Furthermore, language is proposed to regulate any ocean dumping of material transported from the United States or transported from any location by a U.S. owned or flagged vessel (see sections 4(1) and (2)).

#### **Section 3. Definitions.**

(1) The term “Ocean waters” would be changed to “Ocean,” and its definition would be changed to explicitly include the seabed and subsoil, to reflect that the disposal and storage of material in the seabed and subsoil thereof are explicitly considered dumping under the Protocol (Articles 1.4.1.3 and 1.7). Sub-seabed repositories accessed only from land are excluded from the definition of “sea” under the Protocol (Article 1.7). A corresponding exclusion in the MPRSA definition of “ocean” is proposed.

(2) The phrase “Wastes or other” would be added to the term “Material” to conform to the use of the phrase “wastes or other material” throughout the MPRSA. The term “form” would be added to the definition of “Wastes or other material” to conform to the definition of “wastes or other matter” in the Protocol (Article 1.8).

(3) The term “United States” would be updated to delete the Canal Zone and the Trust Territory of the Pacific Islands and to include the Commonwealth of the Northern Mariana Islands.

(4) The term “Dumping” in the current MPRSA is broadly defined to mean “a disposition of material,” with a number of exclusions. The term would be expanded to clarify what activities are and are not considered dumping, and to ensure that everything covered by the Protocol is clearly covered under the MPRSA.

Section (f)(1) of the revised definition of dumping would add the four provisions from the Protocol that are included in the definition of dumping (see Article 1.4.1), the first two of which (subsections (f)(1)(A) and (f)(1)(B)) are currently explicitly covered under the MPRSA. The proposed language would track the language of the Protocol more clearly.

First, subsection (f)(1)(A) would define dumping to include any deliberate disposal of material from vessels, aircraft, platforms, or other man-made structures at sea. Note that there is an exclusion from the definition of dumping (subsection (f)(2)(B)) for incidental discharges from vessels, aircraft, platforms or other man-made structures (discussed below).

Second, subsection (f)(1)(B) would define dumping to include any deliberate disposal of vessels, aircraft, platforms or other man-made structures.

Third, subsection (f)(1)(C) would explicitly define dumping to include any storage of wastes or other material in the seabed or subsoil thereof from any vessel, aircraft, platform or other man-made structure.

Fourth, subsection (f)(1)(D) would define dumping to include abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal. This provision from the Protocol (Article 1.4.1.4) is not in the London Convention or the current MPRSA. The proposed language would cover abandonment of entire platforms or other man-made structures. Any parts of such platforms or structures remaining in place after removal of the platform or structure would not be regulated under the MPRSA provided that the removal complies with Federal and State law (discussed below). Note that there is an exclusion from the definition of dumping (subsection (f)(2)(D)) for abandonment of other materials placed for a purpose other than disposal (discussed below). Note also that this provision would not govern conversion of a platform to a designated artificial reef under the Rigs-to-Reefs program, because such re-use would not constitute abandonment for the purpose of disposal. Instead, such re-use provides habitat for fish and other marine species.

Section (f)(2) of the revised definition of dumping would refine some of the current exclusions from the definition of dumping, clarify when abandonment of materials placed for a purpose other than disposal is not considered dumping, and exclude from the definition of dumping the sub-seabed disposal or storage of wastes or other material from the exploration, exploitation and processing of seabed mineral resources.

The first change in this section would be in subsection (f)(2)(B), which clarifies the exclusion from dumping for incidental discharges from vessels by substituting the language from the Protocol (Article 1.4.2.1) for the current language. The current definition excludes the “routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels.” The proposed amendment would track the language of the Protocol, and would clarify the exclusion to include disposal of wastes or other material incidental to or derived from the normal operations of

vessels, aircraft, platforms or other man-made structures at sea and their equipment. This would include disposal of material derived from the treatment of these wastes, even if the wastes were temporarily stored prior to such treatment. As in the Protocol, this exclusion from the definition of dumping would not apply to wastes or other material (1) transported by or to vessels, aircraft, platforms or other man-made structures at sea operating for the purpose of disposal of such wastes or other material, or (2) derived from the treatment of wastes or other material transported by or to vessels, aircraft, platforms or other man-made structures at sea operating for the purpose of disposal of such wastes or other material, on such vessels, aircraft, platforms or other man-made structures at sea. This amendment would not affect the regulation of incidental vessel discharges under any other U.S. laws.

Subsection (f)(2)(C) would clarify the current exclusion from the definition of dumping for placement of any material for a purpose other than disposal. As is currently the case under the MPRSA, such placement is not considered dumping when it is otherwise regulated or authorized (e.g., destruction of sunken or floating dangers to navigation under 14 U.S.C. § 88). This subsection also would include a requirement that the placement not be contrary to the policy of the MPRSA. This reflects a similar provision in the Protocol (Article 1.4.2.2)—placement is not included in the definition of dumping provided that the placement is not contrary to the aims of the Protocol. The term “policy” rather than “aims” is proposed in the MPRSA because section 1401(b) of the Act lays out its policy—to regulate ocean dumping and to prevent or strictly limit the dumping of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

Subsection (f)(2)(D) would clarify that abandonment of material placed for a purpose other than disposal is not considered dumping under the MPRSA, except as provided in subsection (f)(1)(C) of this section (requiring a permit for the abandonment of platforms or other man-made structures at sea). This provision is based on a similar provision in the Protocol (Article 1.4.2.3) and is consistent with current practice under the MPRSA. This provision would include examples from the Protocol of materials that may be abandoned without a permit (cables, pipelines, marine research devices). It also would specify that parts of mineral resource production platforms or structures remaining in place after removal of the platform or structure would not require a permit provided that the removal complies with Federal and State law. The Department of the Interior’s Minerals Management Service (MMS) administers a comprehensive regime to regulate the removal of platforms, wellheads, pipelines, and other facilities no longer needed for offshore mineral production. Consistent with MMS regulations and international guidelines, platforms and other structures must be removed to a depth of 15 feet beneath the mudline unless the water depth is greater than 800 meters, seafloor sediment stability poses a safety concern for divers, or the operator demonstrates to the satisfaction of MMS that the remaining structure would not become an obstruction to other users of the sea (taking into consideration erosional processes). In these cases, the offshore operator may seek MMS approval of an alternate removal depth. Finally, this subsection would specify that incidental deposits of debris or other material from military activities, such as debris from missiles, gun projectiles and bombs, do not require an ocean dumping permit. This provision is consistent with current practice under the MPRSA and would not affect the status of the permit at 40 CFR 229.2, under which the Navy may transport vessels from the United States or from any other location for the purpose of sinking such vessels in ocean waters in testing ordnance and providing related data.

Subsection (f)(2)(E) would exclude from the definition of dumping disposal or storage in the seabed and the subsoil thereof of wastes or other material directly arising from or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources. Disposal or storage of these wastes is not covered by the Protocol (Article 1.4.3). This proposal would follow the Protocol with respect to disposal in the seabed and the subsoil thereof, and would reflect the current, common practice of disposal in the seabed and the subsoil thereof of these wastes under regulations of the Minerals Management Service.

(5) The term "District court of the United States" would be revised to correspond to the revisions to the definition of "United States," i.e., to delete the Canal Zone and the Trust Territory of the Pacific Islands and to include the Commonwealth of the Northern Mariana Islands.

(6) The term "High-level radioactive waste" would be updated to incorporate by reference the definition of high-level radioactive waste in the Nuclear Waste Policy Act (NWPA) of 1982 (Pub.L. 97-425). High-level radioactive waste is defined in section 2(12) of the NWPA to mean (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (B) other highly radioactive material that the [Nuclear Regulatory] Commission, consistent with existing law, determines by rule requires permanent isolation. This updated definition makes explicit that classification of highly radioactive material as high level radioactive waste considers its origin from reprocessing and the risk to public health and safety and the environment. This proposed definition for the MPRSA is also the same as the current definition found in EPA's environmental radiation protection standards for management and disposal of spent nuclear fuel, high-level and transuranic radioactive wastes at 40 CFR 191.02(h).

(7) The following terms would be added to the definitions section of the MPRSA:

The term "Protocol" would be defined as the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

The term "Incineration at sea" would be defined as it is in the Protocol (Article 1.5.1) to mean the combustion on board a vessel, platform or other man-made structure at sea of wastes or other material for the purpose of their deliberate disposal by thermal destruction. As in the Protocol (Article 1.5.2), incineration at sea would not include incineration of wastes or other material that were generated during the normal operation of that vessel, platform or other man-made structure at sea.

The term "Territorial sea" would be defined to adopt the 12 mile territorial sea that was proclaimed by the United States in 1988. This change in the definition of territorial sea would not affect U.S. regulation of ocean dumping because (1) the MPRSA currently applies to dumping in all ocean waters by U.S. flagged or owned vessels or by any vessel leaving from the United States, and (2) under the changes proposed in section 4(2) (discussed below), the MPRSA would apply to dumping out to the edge of the Exclusive Economic Zone (200 miles from shore) by non-U.S. vessels when coming from outside the United States. This change in the definition of territorial sea would not affect the definition of territorial sea in any other U.S. laws. The relationship between the MPRSA and Section 404 of the Clean Water Act will remain the same—i.e., there will continue to be an overlap in the first three miles outside the baseline; any dredged material dumped in this area will be regulated under the MPRSA while any dredged material placed in this area for another purpose will be regulated under the CWA (see 40 CFR 230.2(b) and 33 CFR 336.0).

The term "Exclusive Economic Zone" is included because of the change in section 4(2) (discussed below).

The term "Continental shelf" is included because of the change in section 4(2) (discussed below).

The term "At sea" would be defined as in or on the ocean.

The term "Industrial waste" as defined in MPRSA section 1412a is included here for ease of reference.

#### **Section 4. Prohibited Acts.**

(1) The MPRSA currently regulates (1) the transportation of material from the United States for the purpose of ocean dumping and (2) the transportation of material by a U.S. owned or flagged vessel from any location for the purpose of ocean dumping. There have been circumstances where the issue of "purpose" has been unclear but dumping occurred and was not otherwise regulated. Therefore, it is proposed that MPRSA section 1411(a) be revised to explicitly cover any person who transports from the United States and dumps into the ocean any material, or, in the case of a U.S. flagged or owned vessel, transports from any location and dumps into the ocean any material. This language, which is based on language currently in MPRSA section 1411(b), would make clear that any ocean dumping of transported material requires a permit under the MPRSA, regardless of the purpose of the person dumping, unless in the case of an emergency situation as described in proposed section 6(3). Note that the definition of dumping does not include discharges incidental to the normal operations of vessels, aircraft, platforms or other man-made structures (see section 3(4)). A reference to MPRSA section 1412a (on emergency permits) also is added to clarify that EPA may issue an emergency permit for ocean dumping under certain circumstances.

(2) The MPRSA currently regulates the dumping of material transported from outside the United States by a non-U.S. vessel in the U.S. territorial sea and contiguous zone. The Protocol (Article 10.1.3) obligates Parties to regulate dumping in all areas within which they are entitled to exercise jurisdiction under international law. Accordingly, MPRSA section 1411(b) would be amended to regulate dumping in the entire Exclusive Economic Zone and continental shelf, not just the territorial sea and contiguous zone, from non-U.S. vessels that come from outside the United States. A reference to MPRSA section 1412a (on emergency permits) also is added to clarify that EPA may issue an emergency permit for ocean dumping under certain circumstances.

(3) The following five subsections would be added to MPRSA section 1411.

(c) The Protocol (Annex 1, paragraph 1) contains a list of eight categories of materials that may be considered for ocean dumping. This "reverse list" in the Protocol includes dredged material; sewage sludge; fish waste or material resulting from industrial fish processing operations; vessels and platforms or other man-made structures at sea; inert, inorganic geological material; organic material of natural origin; bulky items primarily comprising iron, steel, concrete, and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping; and carbon dioxide streams from carbon dioxide capture processes for sequestration, which may only be considered for dumping if: (1) disposal is into a sub-seabed geological

formation; (2) the carbon dioxide streams consist overwhelmingly of carbon dioxide; they may contain incidental associated substances derived from the source material and the capture and sequestration processes used; and (3) no wastes or other matter are added for the purpose of disposing of those wastes or other matter. The Protocol obligates parties to prohibit the dumping of any wastes or other materials not on this reverse list, except in an emergency situation or in a case of *force majeure* (Article 4.1.1; Articles 8.1 and 8.2).

This subsection would add the reverse list to the MPRSA, with two changes. First, sewage sludge would not be included (even though it is on the Protocol's reverse list) because of the existing ban on the dumping of sewage sludge in MPRSA section 1414b(a). Thus, this proposal would maintain the current ban on the dumping of sewage sludge generated by wastewater treatment plants.

The second change to the reverse list would be the addition of the phrase "including any waste from a tuna cannery operation located in American Samoa or Puerto Rico" to "fish waste or material resulting from industrial fish processing operations." This change would clarify that wastes from tuna canneries in American Samoa or Puerto Rico may be considered for dumping under the MPRSA. This language is from the Ocean Dumping Ban Act, which prohibited the dumping of industrial waste and sewage sludge, but excluded from the definition of industrial waste "any waste from a tuna cannery operation located in American Samoa or Puerto Rico discharged pursuant to a permit issued by the Administrator under section 1412 of this title" (see MPRSA section 1414b(k)(3) and (4)). This exclusion was considered necessary in ODBA, and is proposed here, because of an EPA interpretation in the 1970s that the fish wastes from these plants were not covered by the fish waste exclusion in the MPRSA (section 1412(d)). This interpretation stated that, because there were certain chemicals added during the processing, those wastes had to be regulated. The language in ODBA made clear that these wastes were not banned as industrial wastes. Under this proposal, which maintains the current ban on the dumping of industrial waste, these cannery wastes from American Samoa and Puerto Rico would continue to be treated as fish wastes and thus could continue to be considered for ocean dumping with appropriate regulation. (See section 5(2) for more information on fish wastes.)

The category of carbon dioxide streams from carbon dioxide capture processes for sequestration, with the accompanying limitations and restrictions, was added to the Protocol by amendment during the first meeting of Contracting Parties to the Protocol in November 2006, with an entry into force date of February 10, 2007. Under this proposed MPRSA provision, the transportation and dumping of carbon dioxide streams from carbon dioxide capture processes for sequestration, subject to the limitations and restrictions set forth at Section 101(c), must be authorized by a permit issued by EPA under the MPRSA. In certain circumstances, sequestration operations might also require approval under other authorities, such as the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h et seq. Under the SDWA, any sub-seabed injection of carbon dioxide streams in geological formations beneath ocean waters out to 3 miles from shore must comply with any applicable requirements under EPA's Underground Injection Control (UIC) program regarding the design, operation, and closure of underground injection wells. These requirements are designed to prevent injected fluids from escaping from the well or the injection zone and endangering underground sources of drinking water.

(d) The Protocol prohibits incineration at sea (Article 5) except in emergencies or cases of *force majeure* (Article 8). This provision would similarly ban incineration at sea. EPA terminated its incineration at sea program in 1988.

(e) The Protocol prohibits the dumping of materials containing levels of radioactivity greater than *de minimis* (exempt) concentrations as defined by the International Atomic Energy Agency and adopted by Contracting Parties (Annex 1, paragraph 3). This provision would prohibit disposal of any material

containing levels of radioactivity greater than *de minimis* concentrations. While there is currently a section of the MPRSA that would allow permits for low-level radioactive waste with a resolution by Congress (section 1414(i)), this provision has never been used to our knowledge.

(f) As mentioned in the discussion of section 3(4) above, the Protocol defines dumping to include abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal (Article 1.4.1.4). The proposed provision would require a permit from EPA for the abandonment of entire platforms or other man-made structures. Any parts of such platforms or structures remaining in place after removal of the platform or structure would not be regulated by the MPRSA provided that the removal complies with Federal and State law. As in the Protocol (Article 1.4.2.3) and consistent with current practice under the MPRSA, abandonment of other materials placed for a purpose other than disposal would not require an ocean dumping permit. (See discussion of section 3(4).)

(g) The Protocol prohibits the export of wastes or other matter to other countries for dumping or incineration at sea (Article 6). This provision would similarly ban export of wastes of other material for ocean dumping or incineration at sea.

### **Section 5. Dumping permit program.**

(1) Changes to the first paragraph of MPRSA section 1412(a) would make it consistent with proposed MPRSA section 1411(a) and (b) (see section 4(1) and (2)). In the final sentence of this section, "Convention" is changed to "Protocol," indicating that EPA would apply the standards and criteria binding upon the United States under the Protocol in establishing or revising criteria under the MPRSA. While the Protocol is intended to eventually replace the London Convention, this will only happen if all Parties to the London Convention also become party to the Protocol. The Parties to the London Convention have determined that, while both the Protocol and the London Convention are in force, a State party to both instruments will not need to maintain dual systems of domestic implementation because the standards set by the Protocol are more comprehensive, more stringent and more protective of the marine environment, and because the Protocol would not allow the dumping of wastes or other matter that would be prohibited under the London Convention. Therefore, following U.S. ratification of the Protocol, all dumping permits would be issued pursuant to the Protocol, and would be considered to fully comply with the London Convention as well.

(2) The Protocol (Annex 1, paragraph 1) contains a list of eight types of materials that may be considered for ocean dumping; this "reverse list" includes fish waste or material resulting from industrial fish processing operations. Under the Protocol, the dumping of material on the reverse list requires a permit (Article 4.1.2).

Currently under MPRSA section 1412(d), no permit is required for ocean dumping of fish wastes, except when they are deposited in harbors or other protected or enclosed coastal waters, or where EPA finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where EPA makes such a finding, ocean dumping of fish wastes may still be allowed, but requires a permit under the Act.

Because the Protocol requires a permit for dumping any materials (including fish wastes), it is proposed that this limited exemption from permitting for fish wastes be amended as follows. First, under subsections (1) and (2), ocean dumping of fish wastes from persons engaged in fishing on vessels would be authorized without any further permitting and without the need for designation of an ocean dumping site, except in certain circumstances: i.e., when such fish wastes are deposited in harbors or other protected or enclosed coastal waters, or when the Administrator finds that such deposits could endanger health, the

environment, or ecological systems in a specific location or that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. In these cases, deposits of fish wastes produced by persons engaged in fishing on vessels would require a permit issued by EPA under the MPRSA after appropriate notice of such a finding, except that no MPRSA permit would be required if the disposal of such fish wastes is authorized by a permit under section 402 of the Clean Water Act (CWA). This provision, which is consistent with current practice, would make explicit EPA's discretion to allow the regulation of such deposits as either a discharge under CWA section 402 or as dumping under the MPRSA. Under CWA section 403, any permits issued under CWA section 402 for discharges into the territorial seas, the waters of the contiguous zone, or the oceans (i.e., any portion of the high seas beyond the contiguous zone) must comply with the guidelines established by EPA under CWA section 403(c) for determining degradation of these waters, including the effect of disposal on human health and marine life, and other possible locations and methods of disposal or recycling.

As mentioned above, the current MPRSA exemption for ocean dumping of fish wastes does not apply when the fish wastes are deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. The proposed provision would be similar to the current MPRSA exclusion in that the authority for persons engaged in fishing on vessels to dump their fish wastes would not apply if such fish wastes were to be deposited in harbors or other protected or enclosed coastal waters, or if EPA were to find that such deposits could endanger health, the environment, or ecological systems in a specific location. In such cases, a permit would be required under either the MPRSA or CWA section 402. In addition, the authority for persons engaged in fishing on vessels to dump their fish wastes under this proposed provision would not apply if EPA were to find that appropriate opportunities exist to re-use, recycle or treat the wastes without undue risks to human health or the environment or costs that are disproportionate to the costs of ocean dumping. This new language addresses factors that must be assessed under Annex 2 of the Protocol. Again, in such cases, a permit would be required under either the MPRSA or CWA section 402.

Second, subsection (3) would clarify that deposits of fish wastes at sea other than those described in subsections (1) or (2), e.g., from industrial fish processing operations, would require a permit from EPA under the MPRSA or a permit under CWA section 402. EPA is considering the issuance of an MPRSA general permit (after public notice and comment) to cover the ocean dumping of fish wastes that would meet the current MPRSA permitting exemption and that are not regulated by a permit under CWA section 402.

These changes would not expand the universe of fish wastes that are currently covered under the MPRSA. As is currently the case, the MPRSA would not apply to routine aquaculture operations. However, the transportation and ocean dumping of fish wastes collected during aquaculture operations would continue to be subject to the MPRSA.

(3) Currently under the MPRSA, a U.S. owned or flagged vessel may apply for an ocean dumping permit from a foreign State party to the London Convention when transporting material from a location in that State for dumping. This section would be modified to include permits from a foreign State party to the Protocol as well.

(4) In general, vessels and aircraft owned or operated by the United States would be subject to the provisions of the MPRSA. However, a provision is proposed that would allow the President to exempt any particular warship, naval auxiliary, or other vessel or aircraft owned or operated by the United States and used, for the time being, only on government non-commercial service if the President determines it to be in the paramount interest of the United States to do so. This provision is similar to provisions in the Clean



Water Act (section 313) and other statutes. These provisions in other statutes historically have been invoked only rarely. The proposed provision in the MPRSA is consistent with the Protocol, which does not apply to vessels and aircraft entitled to sovereign immunity, but requires that Contracting Parties ensure by the adoption of appropriate measures that such vessels or aircraft owned or operated by it act in a manner consistent with the object and purpose of the Protocol (Article 10.4). The United States would comply with that obligation by applying the MPRSA to its sovereign immune vessels and aircraft in all cases except those in which the President determines it to be in the paramount interest of the United States to invoke this exemption.

## **Section 6. Emergency dumping of industrial waste.**

(1) A change is proposed to the title and text of this section to clarify that other materials, in addition to industrial waste, may be ocean dumped in an emergency. This is consistent with EPA regulations implementing the MPRSA (see 40 CFR sections 220.1(c)(4) and 220.3(c)) and with the Protocol (Article 8).

(2) Currently under the MPRSA and the London Convention (Article V(2)), an emergency permit may be issued if there is an emergency which poses an unacceptable risk relating to human health and admits of no other feasible solution. The Protocol allows an emergency permit to be issued if there is an unacceptable threat not only to human health, but also to safety or the marine environment (Article 8.2). This would enable Parties to address threats to human safety and to the marine environment (for example, a threat to nearshore waters that could be averted by offshore dumping). It is proposed that the MPRSA include this provision to address emergencies posing an unacceptable risk to human safety and the marine environment, in addition to human health.

(3) Consistent with MPRSA implementing regulations (40 CFR 220.1(c)(4)) and the Protocol (Article 8.1), a subsection is proposed to clarify that ocean dumping necessary to secure the safety of human life or vessels in cases of *force majeure* is not covered by the MPRSA (i.e., would not require a permit). Specifically, this section would exempt from regulation under the MPRSA ocean dumping or incineration at sea necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, if dumping or incineration appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration will be less than would otherwise occur. Such dumping or incineration would have to be conducted so as to minimize the likelihood of damage to human or marine life and would have to be reported to EPA for reporting to the International Maritime Organization as required by the Protocol.

## **Section 7. Dumping permit program for dredged material.**

(1) Consistent with the changes to MPRSA section 1411 (see section 4(1)), language would be added to this section to clarify that the ocean dumping of dredged material transported from the United States, in addition to the transportation of dredged material for the purpose of dumping, is regulated under the MPRSA.

(2) The word "disposition" would be changed to "dumping" to correspond to the change in the definition of dumping (see section 3(4)).

### **Section 8. Permit conditions.**

The Protocol prohibits the dumping of materials containing levels of radioactivity greater than *de minimis* (exempt) concentrations as defined by the IAEA and adopted by Contracting Parties (Annex 1, paragraph 3). Therefore, MPRSA section 1414(i), which allows EPA to issue permits for low-level radioactive waste under certain circumstances (including a resolution by Congress), would be deleted. This provision has never been used to our knowledge. MPRSA section 1414(h), which allowed EPA to issue research permits for low-level radioactive waste from 1983 to 1985, also would be deleted to avoid any confusion.

### **Section 9. Ocean dumping of sewage sludge and industrial waste.**

The change from "ocean waters" to "the ocean" throughout the MPRSA is to clearly reflect the fact that disposal and storage of material in the seabed and subsoil thereof are explicitly considered dumping under the Protocol (Article 1.4.1.3) (see section 3(1)).

### **Section 10. Penalties.**

The current civil administrative penalty amount, adjusted for inflation, for violating the MPRSA, its regulations, or a permit issued under the MPRSA is \$65,000 (\$157,500 for medical waste). The amount would be increased to \$160,000 (same amount for medical waste) to reflect the importance of the prohibition against unpermitted dumping and to adequately deter violations. This increased penalty amount would be comparable to the administrative penalty maximum under the Clean Water Act (\$157,500).

### **Section 11. Relationship to other laws.**

(1) The word "disposition" would be changed to "dumping" to correspond to the change in the definition of dumping (see section 3(4)).

(2) The change from "ocean waters" to "the ocean" throughout the MPRSA is to clearly reflect the fact that disposal and storage of material in the seabed and subsoil thereof are explicitly considered dumping under the Protocol (Article 1.4.1.3) (see section 3(1)).

There are no revisions proposed to Subchapter II or III of the MPRSA.