Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

Testimony of
Cynthia A. Zipf, Executive Director
Clean Ocean Action
P.O. Box 505, Sandy Hook, NJ 07732
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Thank you for the opportunity to testify. Clean Ocean Action is a coalition of over 170 organizations, formed in 1984, and is dedicated to cleaning up and protecting the waters of the New York Bight, roughly form Montauk, NY to Cape May, NJ. COA bases its campaign on identifying problems, effects and solutions to sources of pollution. Finding solutions to problems caused by ocean disposal of dredged material has long been a goal.

In general, Clean Ocean Action's position of dredged material is the following:

-not against dredging

-opposes ocean dumping of contaminated material

-supports shipping as the most environmentally sound method to move cargo

-supports true remediation of the ocean to reduce impacts to natural ocean levels

-rejects USEPA's new and twisted definition of "uncontaminated"

-supports a halt to ocean placement of material until true Remediation Material standards are established

-actively advocates solutions that create jobs, decontaminates and beneficially uses material

-fights to reduce sources of pollution in waterways through pollution prevention and clean-up of toxic hot spots

My testimony will focus on three areas: 1) the area off the Jersey Shore that has been harmed by ocean dumping of dredged material, 2) the failure on the part of federal agencies to reduce the levels of contaminants in the ocean, and 3) the failure of New York to meet commitments to develop alternatives for dredged material.

The Ocean Disposal of Dredged Material off the Jersey Shore

The waters off the Jersey Shore are some of the most productive in the Atlantic Ocean. The number and diversity of species is astounding. The reasons for this include the unique and extraordinary physical characteristics creating a natural underwater carnival for marine life. The New York/New Jersey Estuary, the Hudson Canyon, Christiansen Basin, the Shrewsbury Rocks, and the Mud Hole all play a critical role. The ocean is also more than just a fish magnet, it's a people magnet. The ocean brings joys and livelihoods to millions of people. For the business community it is a multi-billion dollar asset.

Not so long ago others viewed the ocean as a cheap and easy, out-of-sight-out-of-mind quiet dumping ground. However, over the last decade citizens have challenged those assumptions -- ocean sores such as Acid Waters, Colera Bank, Sewage Sludge Dump Site, and the Dead Sea have all been closed. In fact, all of the dumpsites have been closed and efforts have been made on land to stem the tide of some wastes that were previously dumped in the ocean. For that, the state and federal environmental agencies should be congratulated. The ocean, in response, has thrived and water quality has vastly improved. The waste materials once dumped are now either no longer produced or recycled. So, progress has lead to an end to all of these barbaric practices of ocean dumping, or so we thought.

Lurking on the bottom just offshore, at the front door to the Hudson Raritan Estuary is a huge swath of contaminated ocean, roughly one and a half times the size of Manhattan. This area, known locally as the Toxic Stain, was a result of nearly 100 years of ocean dumping dredged materials. In 1997, this area, known as the Historic Area Remediation Site, was determined by the Environmental Protection Agency to exhibit the following conditions:

-elevated levels of toxins in the sediments,

-elevated levels of toxins in the animals living there,

-toxicity to hardy shrimp-like animals (called amphipods), and

-harmful levels of two toxins (PCBs and dioxin) in lobsters in the area.

The physical effects are equally disturbing. A grotesque mountain of muck rises up off the sea floor beginning five miles from shore and climbs upwards of 45 feet, more or less a seven story building. This mountain of muck will continue to resuspend toxins into the ocean as the ocean attempts to remove this wart and restore the original seafloor.

The Failure of Federal Agencies to Reduce Impacts

The designation of the HARS was one of the key components of an Agreement brokered in 1996 by Vice President Al Gore. The Agreement articulated many actions to benefit the port and its economy.

The letter and spirit of the 1996 Agreement stated that areas affected by ocean dumping would be remediated with "**uncontaminated dredged material. "** The "designation [of the HARS] will include a proposal that the site be managed to **reduce impacts** at the site to acceptable levels in accordance with 40 CFR 228.11(c) which states, 'the Administrator shall place such limitations on the use of the site as necessary to reduce impacts to acceptable levels.' " All emphases added.

The regulations regarding impact reductions set forth a series of indicators for determining an impacted site. Under section 228.10 effects of dumping activities are related to the increase of pollutants in animals and

sediments above ambient (background) levels. The EPA recognizes the importance of the "ocean background" levels in the Supplemental Environmental Impact Statement by comparing levels of bioaccumulation in animals in HARS to those levels outside of HARS. These "ocean background" levels, far from pristine, represent areas of the ocean that are not impacted by ocean disposal of dredged material to an extent that the material requires remediation. The levels of "ocean background" are reported and reviewed in the evaluation framework used to determine Material for Remediation. However, the EPA does not use these levels to determine Material for Remediation. A common sense, minimum approach to remediating the area of HARS would be to place materials that did not exceed these "ocean background" levels.

USEPA continues to use antiquated science and an evaluation process developed for ocean dumping to make determinations for material to reduce impacts. This evaluation process will not reduce levels of contamination in the HARS and, in fact, will increase the levels of contamination in the HARS. You will hear from experts that have reviewed the EPA's scheme and they will expose just a few of the scientific deficiencies.

Simply put, under the auspices of the federal agencies' plans to remediate the ocean, the ocean will become more polluted. Since when does reducing impacts allow and result in greater impact? A detailed review of EPA and the Corps' failure to develop standards for Material for Remediation is attached at Appendix A.

Currently, and for the last three years, USEPA has been conducting a peer review of their process. We trust best and current science. This evaluation must result in a Material for Remediation standard that will truly clean up the HARS with a cap that will bring these polluted areas to the ambient ocean background as intended in the Gore Agreement.

In fact, the Material for Remediation should go a step further and be protective of sensitive marine life at sensitive life stages.

However, as long as the federal agencies continue to break the spirit and the letter of the Agreement, serious consideration must be given to stopping ocean placement of any material in the HARS-- allowing "mother nature" to take over the remediation process.

Ideally, Material for Remediation must be based on best available science to:

- reduce levels of contamination in sediments and animals at the site, and

- reflect ambient "background" levels found in areas not impacted by dumping, and

- protect against adverse effects, including through bioaccumulation.

USEPA must be led, directed or forced to adopt standards that are currently scientifically and technically sound to meet the goal of reducing impacts in the HARS to acceptable levels - i.e. a healthy ocean for fish and people.

Failure for New York to Meet Commitments to Develop Alternatives

The outstanding elephant in the living room that has been glossed over is the lack of New York based alternatives. It is the lack of New York to meet its commitments to developing and implementing solutions

for dredged material that is largely to blame for the current impasse. Environmentally sound alternatives to open water disposal have been developed and are currently available. In fact, New Jersey is the national leader and has developed alternatives while New York has failed to develop alternatives relying instead on dumping off the Jersey Shore.

In October 1996, NJ Governor Christie and NY Governor George Pataki, stood side-by-side and announced a "*Joint Dredging Plan for the Port of New York and New Jersey.*" This Plan articulated efforts to develop and implement alternatives for dredged materials and pollution prevention to reduce the sources of toxins into waterways that contaminate the sediments. Environmentalists and port leaders lauded the plan. The Plan provided $65 million dollars from the Port Authority of NY/NJ to each state to accomplish the tasks.

New Jersey has developed many alternatives that treat the mud, turning it into a reusable product. In fact, NJ has more environmentally sound alternatives than mud. Companies are actually fighting over contracts for mud. These alternatives improve the environmental condition of land, rejuvenates land in areas where land is scarce, reduces pollution entering waterways, and creates good jobs. For example, the Jersey Gardens Mall would never have been possible if NJ hadn't ended ocean dumping and put the dredged material to work. Thousands of employees now work in the mall and citizens have access to the Arthur Kill River. They can't eat the fish there yet, but one step at a time. These alternatives are feasible and, in fact, recently a one million ton dredging project from Claremont Channel, NJ applied to re-use the majority of its sediment for upland remediation purposes.

In stark contrast, New York has failed to develop any alternatives, even though they were provided millions of dollars in 1996 to develop alternatives. Nearly $45 million remains and companies willing to invest in these technologies to use sediment are ready to assist New York. We urge you to join with New York Representatives Weiner, Lowey, Crowley, Nadler, and Towns to urge Governor Pataki to use alternatives available while aggressively pursuing implementation of NY developed solutions. This is a regional problem -- solutions must be regionally applied.

COA believes renewed ocean dumping of contaminated material to be the tip of the dirty iceberg. Renewed ocean dumping will stop any incentives for NY to implement environmentally sound alternatives. Finally, if NY continues to use the cheap and easy ocean dumping, NJ shippers will follow. Not only will this be devastating to the ocean and the shore economies of NJ and NY, but it will set-back all the advances in developing and implementing dredged material treatment alternatives.

In sum, dumping contaminated material in the ocean not only threatens the ocean, but is a waste. Better technologies and solutions are available to put that material to work and to put more people to work. Attached, Appendix B is a list of some of the available alternatives.

Thank you for the opportunity to testify.

APPENDIX A

FAILURE BY FEDERAL AGENCIES TO DEFINE

"MATERIAL FOR REMEDIATON":

Conclusion: US EPA Region 2 has failed to promulgate standards for and define Material for Remediation

to reduce impacts at the Historic Area Remediation Site (HARS) as required by the 1996 Agreement and federal regulations. USEPA continues to employ an evaluation methodology that was created to determine if waste dredged material was qualified for the purposes of ocean dumping.

What follows is a chronology of USEPA's evaluation methods and the requirements pursuant to the agreement and the regulations.

July 24, 1996 - the pertinent sections of the agreement state:

The Mud Dump Site will be closed by September 1, 1997.

"The designation (of the Historic Area Remediation Site) will included a proposal that **the site be managed to reduce impacts at the site to acceptable levels (in accordance with 40 CFR section 228.11(c)).** The Historic Area Remediation Site will be remediated with uncontaminated dredged material i.e. dredged material that meets **current** Category I standards and will not cause significant undesirable effects including through bioaccumulation." (emphasis added).

(From letter dated July 24, 1996 to Rep. Frank Pallone signed by Secretary of Transportation Fredrico Pena, Secretary of the Army Togo West, and Administrator Carol Browner, USEPA)

In July 1996 the following US EPA Region 2 definitions existed for dredged material:

Category I: Sediments which meet ocean dumping criteria. Test results indicate **no unacceptable toxicity or bioaccumulation** biological test systems. These sediments are acceptable for "unrestricted" ocean disposal. There are no potential short term (acute) impacts or long-term (chronic) impacts; no special precautionary measures are required during disposal. (Bold emphasis added).

Category II: Sediments which meet ocean dumping criteria. Test results indicate **no significant toxicity but a potential for bioaccumulation**. To protect from this potential for bioaccumulation, USEPA and USACE will require appropriate capping. This is referred to as "restricted" ocean disposal. (Only bold emphasis added).

(From Final Comprehensive Conservation and Management Plan, 1996 pages 137,138.)

October 1996 EPA and the NY District Army Corps of Engineers propose new standards and evaluation framework for Category I material at the Mud Dump Site. *(Via a "Memo For the Record" proposing ocean disposal of material from South Brother Island Channel, NY).*

October 31, 1996 - letter from COA to Vice President Al Gore raising strong objections regarding EPA new standards for Category 1 evaluation of proposed ocean dumping of South Brother Island Channel, New York as Category I material at the Mud Dump Site.

December 20, 1996 - EPA Region 2 and NYDCOE release final Testing Memorandum for the Record: South Brother Island Channel, New York formalizing new standards and evaluation framework for ocean disposal at the Mud Dump Site as Category I.

December 24, 1996 - A memo from Headquarters USEPA was sent in response to COA's concerns which indicates that there is a difference between Category I material for ocean dumping and Material for Remediation purposes. Specifically regarding the South Brother Island Channel evaluation, the memo stated

that the evaluation "would be a model for decisions re disposal at the Mud Dump Site until its closure." The memo also stated that, "(W)e all agree that this analysis does **NOT** have to set the precedent for remediation at the HARS". The memo also gave assurance that the work of the criteria committee [would be] expedited to set technically sound criteria for remediation material at the HARS". (*Memo from Suzanne Schwartz, Acting Director, and Dawn Martin, Program Development Director and Special Assistant to the Assistant Administrator, USEPA Office of Wetlands, Oceans, and Watersheds to Clean Ocean Action*).

May 13, 1997- EPA publishes final rule that HARS would be remediated with Material for Remediation which is defined by referencing the July 24, 1996 letter (no reference made to the South Brother Channel Island permit)

August 1997- US EPA Region 2 finalizes an Environmental Impact Study which identifies contaminants and environmental impacts in the HARS. These impacts include:

> Elevated levels of contaminants in bottom muds at the HARS exceeding NOAA sediment quality guidelines.
>
> Elevated contaminants in biota (benthic worms) in the HARS as compared to ocean background (ambient) levels outside the HARS (e.g. PCBs, polycyclic aromatic hydrocarbons).
>
> Dioxin concentrations in benthic worms exceeding 1 ppt.
>
> Elevated levels of dioxin and PCBs in area lobster stocks
>
> Contaminant acute toxicity in areas around the Mud Dump Site.

(*from MDS/HARS Supplemental Environmental Impact Statement, May 1997*)

40 CFR 228.11(c) states that "The Administrator shall place such limitations on the use of the site as necessary to reduce impacts to acceptable levels".

August 25, 1997 - Regulations are adopted to terminate The Mud Dump Site on September 1,1997 and designate the HARS. Regulations state,

> "Restrictions on Use: The site will be managed so as to reduce impacts within the [HARS] to acceptable levels in accordance with 40 CFR 228.11(c). Use shall be restricted to dredged material as the Material for Remediation."

Again, reference is made to the July 24, 1996, letter to define Material for Remediation; no reference is made to any other definition or standards.

September 1, 1997 - The Mud Dump Site is terminated and HARS designated. There is no longer an ocean dumpsite off the Jersey Shore but rather a remediation site that is restricted to only placement of Material for Remediation to reduce impacts.

September 1, 1997- February 8, 2000- The EPA continues to use the same evaluation process as that for ocean dumping. The material will not reduce impacts at the HARS, in particular those of bioaccumulation and sediment contamination. In fact the levels will allow materials far more contaminated than are present in the HARS.

Appendix B

List of Selected Alternatives for

Dredged Materials

OENJ - Cherokee Processing (active)

The company has a stabilization and land remediation technology. They are currently remediating several areas in NJ.

Cost: $39 to dredge, barge, stabilize and place material at an upland NJ Site. Material from NY may not be placed at NJ sites.

$28 to dredge, barge and stabilize material. Price to place material in NY is unknown.

Contact: OENJ - Cherokee, Mark Bensel, 201-377-9325

Pennsylvania Landfills - a Project of COAST (active)

The Commonwealth of Pennsylvania has a Remediation Laboratory at Bark Camp, PA. The facility has been testing different management strategies to address acid leachate from coal mining areas. Three years ago the COAST committee (a bi-state legislative body) contracted a 500,000-ton demonstration project using dredged material from the NY/NJ harbor region. To date 20,000 tons of material has been placed. A potential project of 275,000 tons of material is pending. Capacity of roughly 200,000 tons would remain. The transfer station at Claremont Channel is anticipated to be completed by August 31, 1999. NJ has granted a pass for NY material to be transferred through NJ. Several calls have been made to seek transport clearance.

Pilot Scale Cost: $47 per cubic yard from river bottom to Bark Camp.

Commercial Costs: approximately $20 per cubic yard

Contact: Andrew Voros, COAST, 732-932-4673

Up-Cycle Technologies (active)

In August, a pilot scale demonstration project of 25,000 tons funded by NJ will take place at Up-Cycle Inc., a lightweight aggregate company. The process is high temperature and uses contaminated oils to fuel the process. If successful, large volumes can then be processed. They made a bid to take Castle Astoria's mud earlier this year. The sticker shock of the cost compared to ocean disposal is what may have lead CA to fight for ocean disposal.

Penn-Fountain Landfill (not active)

The sites are owned by New York City (they were Dept. of Sanitation landfills) and now the NY City Department of Environmental Protection has developed a closure plan which is 90% complete and awaiting NY State Department of Environmental Conservation approval. According to Deputy Commissioner

Gaffoglio, the remediation will require

1 million tons of material. All material must arrive by barge and must meet specifications outlined in the plan, however, it is still in draft form and we do not have access to the specifications. We have been told that the plan does not preclude the use of dredge material. Any "processed material" must meet the specifications as stated above. The landfills are in the National Park Service, Jamaica Bay Wildlife Refuge.

Information on several other alternatives is available, contact Clean Ocean Action, PO Box 505, Sandy Hook, NJ 07732. 732-872-0111.

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