MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the Texas Gulf Terminals Inc. facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law . . ." MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the SPM facility and pipelines require disposal, MRPSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act.

The ODMDS was primarily developed in consultation with US Army Corps of Engineers (USACE) – Galveston to provide placement of suitable navigational sediment; EPA believes it would be beneficial to understand should you choose to utilize the ODMDS site, pertinent information would be helpful prior to requesting usage of the Corpus Christi Ship Channel Ocean Dredged Material Disposal Site (ODMDS).

First, EPA R6 looks forward to working with the Texas Gulf Terminals Inc. should choose to utilize the ODMDS. However, EPA also realizes that sometimes dredged material may not be suitable to be used beneficially but the agency encourages that suitable material should be considered for beneficial uses. EPA encourages that the facility continues to work with all local, state and federal entities to look for suitable beneficial placements. EPA believes that suitable dredged material provides productive purpose from which economic, social or other benefits may be derived. Compared to disposal of dredged material in confined sites, beneficial use reduces the need for disposal. Examples of beneficial use include wetlands restoration, beach nourishment, shoreline construction, and habitat creation. The Clean Water Act (CWA) Section 404 governs discharge of dredged or fill material into "waters of the United States", including the placement of dredged material in the territorial sea for a purpose other than disposal. For information on dredged material permitting under CWA 404, please see our Section 404 of the Clean Water Act Web page.

Second, should the Texas Gulf Terminals Inc. facility choose to utilize the Corpus Christi ODMDS, it is imperative that early coordinate with USACE – Galveston and EPA is warranted due to potential site capacity issues for this site. This is an enormous undertaking and will require that all parties work together collaboratively to achieve a successful outcome.

Third, EPA and U.S. Army Corps of Engineers (USACE) jointly published the Ocean

Testing Manual, a national testing manual for the evaluation of dredged material proposed for ocean dumping (also known as the Green Book). Under section 103 of the MPRSA, any proposed dumping of dredged material into ocean waters must be evaluated through use of EPA's ocean dumping criteria (40 CFR 220-229). The Ocean Testing Manual provides guidance for sampling, testing, and analysis of water, sediment and tissue to evaluate the environmental acceptability of dredged material proposed for ocean disposal. Uncharacterized materials are prohibited from ocean disposal (40 CFR 227.5(c)). Therefore, EPA and USACE review sampling and analysis plans to ensure that each project's sediments are appropriately characterized. EPA recommends that Texas Gulf Terminals Inc. look at the requirements for utilization of the ODMDS should you choose to utilize this site. It is critical that if you should have any questions, to work with USACE – Galveston regulatory to better understand USACE and EPA's role during the permitting process. ***All 3rd party dredging for permits are handled by the USACE in coordination with EPA.*** Evaluation of dredged material for ocean disposal under the Marine Protection, Research and Sanctuaries Act (MPRSA), sometimes referred to as the Ocean Dumping Act, relies on standardized testing using biological organisms (bioassays). The purpose of the evaluation procedures is to ensure efficient and reliable protection against toxicity and bioaccumulation that otherwise may impair the marine environment or human health. The ocean testing manual, also known as the "Green Book," provides national technical guidance for determining the suitability of dredged material for ocean disposal through chemical, physical and biological evaluations. The technical guidance is intended for use by dredging applicants, laboratory scientists, and regulators. Regional guidance is provided in the Regional Implementation Agreement.

Also, if you should need further information about the R6 program for Ocean Disposal please feel free to visit our website at: https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6 or an overview of the entire program nationally at: https://www.epa.gov/ocean-dumping