

## SUBCHAPTER H—OCEAN DUMPING

### PART 220—GENERAL

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AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2468, Jan. 11, 1977, unless otherwise noted.

#### § 220.1 Purpose and scope.

(a) *General.* This subchapter H establishes procedures and criteria for the issuance of permits by EPA pursuant to section 102 of the Act. This subchapter H also establishes the criteria to be applied by the Corps of Engineers in its review of activities involving the transportation of dredged material for the purpose of dumping it in ocean waters pursuant to section 103 of the Act. Except as may be authorized by a permit issued pursuant to this subchapter H, or pursuant to section 103 of the Act, and subject to other applicable regulations promulgated pursuant to section 108 of the Act:

(1) No person shall transport from the United States any material for the purpose of dumping it into ocean waters;

(2) In the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of dumping it into ocean waters; and

(3) No person shall dump any material transported from a location outside the United States:

(i) Into the territorial sea of the United States; or

(ii) Into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(b) *Relationship to international agreements.* In accordance with section 102(a)

of the Act, the regulations and criteria included in this subchapter H apply the standards and criteria binding upon the United States under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter to the extent that application of such standards and criteria do not relax the requirements of the Act.

(c) *Exclusions*—(1) *Fish wastes.* This subchapter H does not apply to, and no permit hereunder shall be required for, the transportation for the purpose of dumping or the dumping in ocean waters of fish wastes unless such dumping occurs in:

(i) Harbors or other protected or enclosed coastal waters; or

(ii) Any other location where the Administrator finds that such dumping may reasonably be anticipated to endanger health, the environment or ecological systems.

(2) *Fisheries resources.* This subchapter H does not apply to, and no permit hereunder shall be required for, the placement or deposit of oyster shells or other materials for the purpose of developing, maintaining or harvesting fisheries resources; provided, such placement or deposit is regulated under or is a part of an authorized State or Federal program certified to EPA by the agency authorized to enforce the regulation, or to administer the program, as the case may be; and provided further, that the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the U.S. Army Corps of Engineers concur in such placement or deposit as it may affect their responsibilities and such concurrence is evidenced by letters of concurrence from these agencies.

(3) *Vessel propulsion and fixed structures.* This subchapter H does not apply to, and no permit hereunder shall be required for:

(i) Routine discharges of effluent incidental to the propulsion of vessels or the operation of motor-driven equipment on vessels; or

(ii) Construction of any fixed structure or artificial island, or the intentional placement of any device in ocean waters or on or in the submerged

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land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal or State law or made pursuant to an authorized Federal or State program certified to EPA by the agency authorized to enforce the regulations or to administer the program, as the case may be.

(4) *Emergency to safeguard life at sea.* This subchapter H does not apply to, and no permit hereunder shall be required for, the dumping of material into ocean waters from a vessel or aircraft in an emergency to safeguard life at sea to the extent that the person owning or operating such vessel or aircraft files timely reports required by § 224.2(b).

### § 220.2 Definitions.

As used in this subchapter H:

(a) *Act* means the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401);

(b) *FWPCA* means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251);

(c) *Ocean or ocean waters* means those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639); this definition includes the waters of the territorial sea, the contiguous zone and the oceans as defined in section 502 of the FWPCA.

(d) *Material* means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, industrial, municipal, agricultural, and other waste, but such term does not mean sewage from vessels within the meaning of section 312 of the FWPCA. Oil within the meaning of section 311 of the FWPCA shall constitute "material" for purposes of this subchapter H only to the extent that it is taken on board a vessel or aircraft for the primary purpose of dumping.

(e) *Dumping* means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the FWPCA, under the provisions of section 13 of the River and Harbor Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the 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 or occurs pursuant to an authorized Federal or State program; And provided further, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(f) *Sewage Treatment Works* means municipal or domestic waste treatment facilities of any type which are publicly owned or regulated to the extent that feasible compliance schedules are determined by the availability of funding provided by Federal, State, or local governments.

(g) *Criteria* means the criteria set forth in part 227 of this subchapter H.

(h) *Dredged Material Permit* means a permit issued by the Corps of Engineers under section 103 of the Act (see 33 CFR 209.120) and any Federal projects reviewed under section 103(e) of the Act (see 33 CFR 209.145).

(i) Unless the context otherwise requires, all other terms shall have the meanings assigned to them by the Act.

### § 220.3 Categories of permits.

This § 220.3 provides for the issuance of general, special, emergency, and research permits for ocean dumping under section 102 of the Act.

## § 220.4

## 40 CFR Ch. I (7–1–21 Edition)

(a) *General permits.* General permits may be issued for the dumping of certain materials which will have a minimal adverse environmental impact and are generally disposed of in small quantities, or for specific classes of materials that must be disposed of in emergency situations. General permits may be issued on application of an interested person in accordance with the procedures of part 221 or may be issued without such application whenever the Administrator determines that issuance of a general permit is necessary or appropriate.

(b) *Special permits.* Special permits may be issued for the dumping of materials which satisfy the Criteria and shall specify an expiration date no later than three years from the date of issue.

(c) *Emergency permits.* For any of the materials listed in §227.6, except as trace contaminants, after consultation with the Department of State with respect to the need to consult with parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter that are likely to be affected by the dumping, emergency permits may be issued to dump such materials where there is demonstrated to exist an emergency requiring the dumping of such materials, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, “emergency” refers to situations requiring action with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action. Emergency permits may be issued for other materials, except those prohibited by §227.5, without consultation with the Department of State when the Administrator determines that there exists an emergency requiring the dumping of such materials which poses an unacceptable risk to human health and admits of no other feasible solution.

(d) [Reserved]

(e) *Research permits.* Research permits may be issued for the dumping of any materials, other than materials specified in §227.5 or for any of the materials listed in §227.6 except as trace contaminants, unless subject to the exclusion of §227.6(g), into the ocean as

part of a research project when it is determined that the scientific merit of the proposed project outweighs the potential environmental or other damage that may result from the dumping. Research permits shall specify an expiration date no later than 18 months from the date of issue.

(f) *Permits for incineration at sea.* Permits for incineration of wastes at sea will be issued only as research permits until specific criteria to regulate this type of disposal are promulgated, except in those cases where studies on the waste, the incineration method and vessel, and the site have been conducted and the site has been designated for incineration at sea in accordance with the procedures of §228.4(b) of this chapter. In all other respects the requirements of parts 220 through 228 apply.

[42 FR 2468, Jan. 11, 1977; 43 FR 1071, Jan. 6, 1978; 73 FR 74986, Dec. 10, 2008]

### § 220.4 Authorities to issue permits.

(a) *Determination by Administrator.* The Administrator, or such other EPA employee as he may from time to time designate in writing, shall issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities and take any and all other actions necessary or proper and permitted by law with respect to general, special, emergency, or research permits.

(b) *Authority delegated to Regional Administrators.* Regional Administrators, or such other EPA employees as they may from time to time designate in writing, are delegated the authority to issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities, and take any and all other actions necessary or proper and permitted by law with respect to special permits for:

(1) The dumping of material in those portions of the territorial sea which are subject to the jurisdiction of any State within their respective Regions, and in those portions of the contiguous zone immediately adjacent to such parts of the territorial sea; and in the oceans with respect to approved waste disposal sites designated pursuant to part 228 of this subchapter H, and

(2) Where transportation for dumping is to originate in one Region and dumping is to occur at a location within another Region's jurisdiction conferred by order of the Administrator, the Region in which transportation is to originate shall be responsible for review of the application and shall prepare the technical evaluation of the need for dumping and alternatives to ocean dumping. The Region having jurisdiction over the proposed dump site shall take all other actions required by this subchapter H with respect to the permit application, including without limitation, determining to issue or deny the permit, specifying the conditions to be imposed, and giving public notice. If both Regions do not concur in the disposition of the permit application, the Administrator will make the final decision on all issues with respect to the permit application, including without limitation, issuance or denial of the permit and the conditions to be imposed.

(c) *Review of Corps of Engineers Dredged Material Permits.* Regional Administrators have the authority to review, to approve or to disapprove or to propose conditions upon Dredged Material Permits for ocean dumping of dredged material at locations within the respective Regional jurisdictions. Regional jurisdiction to act under this paragraph (c) of § 220.4 is determined by the Administrator in accordance with § 228.4(e).

[42 FR 2468, Jan. 11, 1977, as amended at 73 FR 74986, Dec. 10, 2008]

## PART 221—APPLICATIONS FOR OCEAN DUMPING PERMITS UNDER SECTION 102 OF THE ACT

Sec.

221.1 Applications for permits.

221.2 Other information.

221.3 Applicant.

221.4 Adequacy of information in application.

221.5 Processing fees.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2470, Jan. 11, 1977, unless otherwise noted.

### § 221.1 Applications for permits.

Applications for general, special, emergency, and research permits under section 102 of the Act may be filed with the Administrator or the appropriate Regional Administrator, as the case may be, authorized by § 220.4 of this chapter to act on the application. Applications shall be made in writing and shall contain, in addition to any other material which may be required, the following:

- (a) Name and address of applicant;
- (b) Name of the person or firm transporting the material for dumping, the name of the person(s) or firm(s) producing or processing all materials to be transported for dumping, and the name or other identification, and usual location, of the conveyance to be used in the transportation and dumping of the material to be dumped, including information on the transporting vessel's communications and navigation equipment;
- (c) Adequate physical and chemical description of material to be dumped, including results of tests necessary to apply the Criteria, and the number, size, and physical configuration of any containers to be dumped;
- (d) Quantity of material to be dumped;
- (e) Proposed dates and times of disposal;
- (f) Proposed dump site, and in the event such proposed dump site is not a dump site designated in this subchapter H, detailed physical, chemical and biological information relating to the proposed dump site and sufficient to support its designation as a site according to the procedures of part 228 of this subchapter H;
- (g) Proposed method of releasing the material at the dump site and means by which the disposal rate can be controlled and modified as required;
- (h) Identification of the specific process or activity giving rise to the production of the material;
- (i) Description of the manner in which the type of material proposed to be dumped has been previously disposed of by or on behalf of the person(s) or firm(s) producing such material;
- (j) A statement of the need for the proposed dumping and an evaluation of short and long term alternative means