

III. Background Information

Why Were These Rules Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA

requires states to submit regulations that control PM-10 emissions. Table 3 lists some of the national milestones leading

to the submittal of local agency rules that help control PM-10 emissions.

TABLE 3.—PM-10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the CAA, as amended in 1977 (43 FR 8964; 40 CFR 81.305).
July 1, 1987	EPA replaced the TSP standards with new PM-10 standards (52 FR 24672).
November 15, 1990	CAA Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990	PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated non-attainment by operation of law and classified as moderate or serious pursuant to section 189(a) or section 189(b). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02-7634 Filed 3-29-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-7165-1]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the

Atlantic Ocean offshore Wilmington, North Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before May 16, 2002.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562-9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a new site offshore Wilmington, North Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. The existing ODMDS was designated and has been used since 1987. However, site capacity limitations and a proposed realignment of the ocean bar channel negate the utility of the existing site. The details of these issues can be found in the "Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation." Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et*

seq., requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled "Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation." On November 30, 2001, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (66 FR 59787 (November 30, 2001)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on December 31, 2001.

EPA has received 3 letters on the final EIS. All comments were either supportive or unconcerned by this proposed action.

This rule proposes the permanent designation for continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a new Wilmington ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Cape Fear River area and the issues raised by site capacity and channel realignment. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the new Wilmington ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE

regulations (33 CFR 209.120 and 335-338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (Section 102(a)) or conditions of designation (Section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Proposed Site Designation

The proposed site is located approximately 5 nautical miles offshore Bald Head Island. The proposed ODMDS occupies an area of about 9.4 square nautical miles (nmi²). Water depths within the area range from 35-52 feet (ft.). The coordinates of the New Wilmington site proposed for final designation are as follows: 33°46' N., 78°02.5' W.; 33°46' N., 78°01' W.; 33°41' N., 78°01' W.; 33°41' N., 78°04' W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary of the proposed site is given above. The northern boundary of the proposed site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximately 9.4 nmi² in area. Water depth in the area ranges from 35–52 ft.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the proposed site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the proposed disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

The type of materials to be disposed of within this proposed site is dredged material as described in type and quantity by Section 2 of the FEIS. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, Appendix A).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of

monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

A detailed current study, along with fate modelling of dredged material, was conducted within the proposed site and can be found described in the FEIS. The findings of these studies indicate that transport of disposed material should not present any adverse impacts.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The shape of the proposed ODMDS was designed to avoid interference with commercial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the proposed site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The disposal of dredged materials should not attract or promote the

development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

The only resource known to exist in close proximity to the proposed site is the wreck of the *Virginius*. This wreck lies outside the eastern boundary of the proposed site. Since no disposal will occur within 600 ft. of the boundary, and the wreck lies in shallower water, placement of material within the site is not expected to adversely affect it.

E. Site Management

Site management of the New Wilmington ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

F. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the New Wilmington site as an EPA-approved ODMDS is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The New Wilmington ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted,

however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 8, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

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

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

(i) Location: 33°46' N., 78°02.5' W.; 33°46' N., 78°01' W.; 33°41' N., 78°01' W.; 33°41' N., 78°04' W.

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

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[FR Doc. 02-7774 Filed 3-29-02; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

[DFARS Case 2001-D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments and notice of public meeting.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002. Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts. In addition to the request for written comments on this proposed rule, DoD will hold one or more public meetings to hear the views of interested parties.

DATES: *Submission of comments:* Written comments on the proposed rule should be submitted to the address shown below on or before May 6, 2002, to be considered in the formation of the final rule.

Public meeting: The first public meeting will be held at the address shown below on April 29, 2002, from 12 p.m. to 3 p.m., local time.

ADDRESSES: *Submission of comments:* Respondents are encouraged to submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001-D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2001-D017.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

Public meeting: The public meeting will be held in Room C-43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Proposed rule information: Ms. Susan Schneider, (703) 602-0326.

Public meeting information: Ms. Melissa Rider, (703) 695-1098.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Parts 208 and 216 to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107). Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule and hear the views of interested parties on what they believe to be the key issues pertaining to use of Federal Supply Schedules, Governmentwide acquisition contracts, multiple agency contracts, and multi-agency indefinite-delivery-indefinite-quantity contracts for the acquisition of services. Possible issues include (but are not limited to): procedures for establishing the basic contractual instruments; ordering procedures; ability to maintain a competitive environment; and suitability of current Government training on multiple award contracts. Subsequent meetings may be held, depending on the level of interest shown by the general public at the