

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA—Continued

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Part E .....	Surface Coating of Magnet Wire .....	10/26/01	May 7, 2002 .....	[Insert citation of publication].
Part F .....	Surface Coating Miscellaneous Metal Parts & Products.	10/26/01	May 7, 2002 .....	[Insert citation of publication].
*	*	*	*	*
Part N .....	Solvent Metal Cleaning .....	10/26/01	May 7, 2002 .....	[Insert citation of publication].
*	*	*	*	*
<b>Standard No. 6 Alternative Emissions Limitation Options ("Bubble")</b>				
		10/26/01	May 7, 2002 .....	[Insert citation of publication].
*	*	*	*	*
<b>Section II Conditions for Approval</b>				
Part A .....	Emissions of Total Suspended Particulate or Sulfur Dioxide.	10/26/01	May 7, 2002 .....	[Insert citation of publication].
*	*	*	*	*
<b>Section III Enforceability</b>				
<b>Standard No. 7 Prevention of Significant Deterioration</b>				
		10/26/01	May 7, 2002 .....	[Insert citation of publication].
*	*	*	*	*

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 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[FRL-7207-5]

**Ocean Dumping; Site Modification**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today modifies the designation of an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Charleston, South Carolina. The modification is to amend the restriction on use and shorten the site's name. This action is necessary to allow for disposal activities to continue as previously planned by the site's Task Force for management and monitoring.

**EFFECTIVE DATE:** This final rule is effective on June 6, 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 December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that use of disposal sites may be modified.

Two ODMDS's were ultimately designated for Charleston in 1987. One was a 12-square mile site for deepening material. The second site was 3-square miles and was placed within the 12-square mile site. During the 1980's, additional benthic and sedimentological

studies were conducted by the South Carolina Department of Natural Resources (SCDNR). In 1987, live bottoms were identified in the western portion of the 12-square mile site. Concerns regarding impacts to the living resources at the ODMDS encouraged EPA to place a restriction on the use of the 12-square mile site. The Final Rule regarding this restriction was published in the **Federal Register** March 5, 1991 stating, "Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged material, except entrance channel material, shall be limited to that part of the site east of the line between coordinates 32°39'04" N, 79°44'25" W and 32°37'24" N, 79°45'30" W unless the materials can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074mm) by weight and shown to be suitable for ocean disposal." This bisecting line was an immediate effort by EPA to protect live bottom resources initially reported by fishermen. The line was set with limited knowledge of the exact location and extent of those resources, and was set in a location that was believed to be as protective as possible at that time.

During this same time frame, an interagency group (EPA, SCDNR, COE and State Ports Authority) began working together to develop a monitoring and management plan (MMP) for the ODMDS. As part of this MMP process, construction of an L-shaped berm was developed approximately midway within the ODMDS. The COE began construction of the L-shaped berm using consolidated material from the last (42-foot) deepening project. The berm was evident on 1993 bathymetry. Also, as part of the MMP, the interagency group began looking for an area within the ODMDS for disposal of dredged material which would have the least impacts on the live bottom resources located in the western region of the site. A 4-square mile area (disposal box) was identified within the eastern half of the 12-square mile designated ODMDS and placed in position with the L-shaped berm as part of the western boundary. This location was approved by all the agencies involved, and placed where it would impact minimal reef habitat. At that time, the bisecting line should have been moved, but due to an oversight, it was not.

In 1995, EPA de-designated the smaller 3-square mile site and modified the larger site to allow for continued disposal of all material, not just deepening material. However, the COE agreed not to place any material outside of the 4-square mile disposal box. During the 1999–2000 (deepening project) dredging, a number of unauthorized dumps occurred to the west of the 4-square mile site. To date, studies indicate that some fine-grained material is present to the west of the 4-square mile site. It is unknown at this time whether the disposal material is moving from the ODMDS over the berms, from the berms, is part of the unauthorized dumps that occurred in 1999 and 2000, whether it is from the dispersion of the material during disposal activities at the site, or whether it is some combination of these four possibilities. Subsequent investigation and studies conducted by SCDNR to date have not identified adverse impacts at index reef sites being monitored. Other samples of the sand bottom benthic communities in areas that now have muddy sediments are still being processed.

The proposed rule for this action was published in the **Federal Register** on October 10, 2001 (66 FR 51628). Only one letter was received during the 45 day comment period and was supportive of this action.

## B. EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites (39 FR 16186 (May 7, 1974)). The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The continued use of the Charleston ODMDS is vital to the management goals of the Plan. EPA believes these changes do not warrant the preparation of an Environmental Impact Statement (EIS).

EPA's primary concern is to provide an environmentally acceptable ocean disposal site for Charleston Harbor area dredging projects on a continued basis.

## C. Site Modification

The site modification for the Charleston Harbor Deepening Project ODMDS is the removal of the line that restricts disposal of fine-grained material and the addition of four corner coordinates (4 square-mile disposal box) that will define where all dredged material must be placed within the ODMDS. In addition, the site's official name is being shortened to the Charleston ODMDS.

## D. Regulatory Assessments

### 1. Regulatory Flexibility Act

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 action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

### 2. Executive Order 12866

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.

### 3. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this rule.

### 4. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

### 5. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This final rule does not have federalism implications. It will 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. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this rule and no concerns were raised.

### 6. Congressional Review Act

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). This rule will be effective June 6, 2002.

This Final 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: April 12, 2002.

**A. Stanley Meiburg**,  
*Acting Regional Administrator, Region 4.*

In consideration of the foregoing, subchapter H of chapter I of title 40 is 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 revising the paragraph heading of paragraph (h)(5) and revising paragraphs (h)(5)(v) and (vi) to read as follows:

#### § 228.15 Dumping sites designated on a final basis.

\* \* \* \* \*

(h) \* \* \*

(5) Charleston, SC, Ocean Dredged Material Disposal Site.

\* \* \* \* \*

(v) Period of Use: Continued use.

(vi) Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged materials must be placed within the box defined by the following four corner coordinates (NAD83): 32.65663° N, 79.75716° W; 32.64257° N, 79.72733° W; 32.61733° N, 79.74381° W; and 32.63142° N, 79.77367° W.

Additionally, all disposals shall be in accordance with all provisions of disposal placement as specified by the Site Management Plan, which is periodically updated.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 271

[FRL-7205-9]

#### Utah: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Utah has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is authorizing the State's changes through this immediate final action. We are publishing this rule to authorize the

changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Utah's changes to their hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on July 8, 2002 unless EPA receives adverse written comment by June 6, 2002. If EPA receives such comment, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139. Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII, from 7:00 AM to 4:00 PM, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139 or Utah Department of Environmental Quality (UDEQ), from 8:00 AM to 5:00 PM, 288 North 1460 West, Salt Lake City, Utah 84114-4880, contact: Susan Toronto, phone number: (801) 538-6776.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

#### SUPPLEMENTARY INFORMATION:

#### A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code