

take effect six months after the date of the enactment of this Act [Oct. 23, 1972].”

SAVINGS PROVISION

Pub. L. 92-532, title I, §110(b), Oct. 23, 1972, 86 Stat. 1060, provided that: “No legal action begun, or right of action accrued, prior to the effective date of this title [this subchapter] shall be affected by any provision of this title [this subchapter].”

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1412. Dumping permit program

(a) Environmental Protection Agency permits

Except in relation to dredged material, as provided for in section 1413 of this title, and in relation to radiological, chemical, and biological warfare agents, high-level radioactive waste, and medical waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 1411(b) of this title, where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following :

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes.

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this subchapter, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

(b) Permit categories

The Administrator may establish and issue various categories of permits, including the general permits described in section 1414(c) of this title.

(c) Designation of sites

(1) In general

The Administrator shall, in a manner consistent with the criteria established pursuant to subsection (a), designate sites or time periods for dumping. The Administrator shall designate sites or time periods for dumping that will mitigate adverse impact on the environment to the greatest extent practicable.

(2) Prohibitions regarding site or time period

In any case where the Administrator determines that, with respect to certain materials, it is necessary to prohibit dumping at a site or during a time period, the Administrator shall prohibit the dumping of such materials in such site or during such time period. This prohibition shall apply to any dumping at the site or during such time period. This prohibition shall apply to any dumping at the site or during the time period, including any dumping under section 1413(e) of this title.

(3) Dredged material disposal sites

In the case of dredged material disposal sites, the Administrator, in conjunction with the Secretary, shall develop a site management plan for each site designated pursuant to this section. In developing such plans, the Administrator and the Secretary shall provide opportunity for public comment. Such plans shall include, but not be limited to—

(A) a baseline assessment of conditions at the site;

(B) a program for monitoring the site;

(C) special management conditions or practices to be implemented at each site

that are necessary for protection of the environment;

(D) consideration of the quantity of the material to be disposed of at the site, and the presence, nature, and bioavailability of the contaminants in the material;

(E) consideration of the anticipated use of the site over the long term, including the anticipated closure date for the site, if applicable, and any need for management of the site after the closure of the site; and

(F) a schedule for review and revision of the plan (which shall not be reviewed and revised less frequently than 10 years after adoption of the plan, and every 10 years thereafter).

(4) General site management plan requirement; prohibitions

After January 1, 1995, no site shall receive a final designation unless a management plan has been developed pursuant to this section. Beginning on January 1, 1997, no permit for dumping pursuant to this Act or authorization for dumping under section 1413(e) of this title shall be issued for a site (other than the site located off the coast of Newport Beach, California, which is known as "LA-3") unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 1413(b) of this title. Beginning January 1, 2011, no permit for dumping pursuant to this Act or authorization for dumping under section 1413(e) of this title shall be issued for the site located off the coast of Newport Beach, California, which is known as "LA-3", unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 1413(b) of this title.

(5) Management plans for previously designated sites

The Administrator shall develop a site management plan for any site designated prior to January 1, 1995, as expeditiously as practicable, but not later than January 1, 1997, giving priority consideration to management plans for designated sites that are considered to have the greatest impact on the environment.

(d) Fish wastes

No permit is required under this subchapter for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) Foreign State permits; acceptance

In the case of transportation of material, by an agency or instrumentality of the United States or by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the au-

thority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued pursuant to subsection (a) of this section, shall be accepted, for the purposes of this subchapter, as if it were issued by the Administrator under the authority of this section: *Provided*, That in the case of an agency or instrumentality of the United States, no application shall be made for a permit to be issued pursuant to the authority of a foreign State Party to the Convention unless the Administrator concurs in the filing of such application.

(Pub. L. 92-532, title I, §102, Oct. 23, 1972, 86 Stat. 1054; Pub. L. 93-254, §1(4), Mar. 22, 1974, 88 Stat. 51; Pub. L. 96-572, §3, Dec. 22, 1980, 94 Stat. 3345; Pub. L. 100-688, title III, §3201(b), Nov. 18, 1988, 102 Stat. 4153; Pub. L. 102-580, title V, §506(a), Oct. 31, 1992, 106 Stat. 4868; Pub. L. 104-303, title V, §582, Oct. 12, 1996, 110 Stat. 3791; Pub. L. 106-53, title V, §562, Aug. 17, 1999, 113 Stat. 355; Pub. L. 110-114, title V, §5046, Nov. 8, 2007, 121 Stat. 1209.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(4), means Pub. L. 92-532, which is classified generally to this chapter, chapter 41 (§2801 et seq.) of this title, and chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation.

AMENDMENTS

2007—Subsec. (c)(4). Pub. L. 110-114 substituted "January 1, 2011" for "January 1, 2003" in third sentence.

1999—Subsec. (c)(4). Pub. L. 106-53 substituted "January 1, 2003" for "January 1, 2000" in third sentence.

1996—Subsec. (c)(4). Pub. L. 104-303 inserted "(other than the site located off the coast of Newport Beach, California, which is known as 'LA-3') after 'for a site' and inserted at end 'Beginning January 1, 2000, no permit for dumping pursuant to this Act or authorization for dumping under section 1413(e) of this title shall be issued for the site located off the coast of Newport Beach, California, which is known as 'LA-3', unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 1413(b) of this title.'"

1992—Subsec. (c). Pub. L. 102-580 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped."

1988—Subsec. (a). Pub. L. 100-688 substituted "agents, high-level" for "agents and high-level" and inserted "and medical waste," after "radioactive waste."

1980—Subsec. (e). Pub. L. 96-572 inserted applicability to United States agency or instrumentality, and proviso respecting such agency or instrumentality.

1974—Subsec. (a). Pub. L. 93-254, §1(4)(A), substituted "for which no permit may be issued," for "as provided for in section 1411 of this title," inserted "or in the case of a vessel or aircraft registered in the United States or flying the United States flag," after "instrumentality of the United States," and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93-254, §1(4)(B), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-254, §2, Mar. 22, 1974, 88 Stat. 51, provided in part that: "The amendments made by subparagraph

1(4)(A)(iii) and paragraph 1(4)(B) of this Act [enacting provision of subsec. (a) respecting application of standards by Administrator and subsec. (e) of this section] shall become effective on the date that the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters enters into force for the United States." [The Convention entered into force for the United States Aug. 30, 1975.]

Amendment of subsec. (a) of this section, other than last sentence, by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as a note under section 1401 of this title.

EFFECTIVE DATE

Section effective 6 months after Oct. 23, 1972, see section 110(a) of Pub. L. 92-532, set out as a note under section 1411 of this title.

§ 1412a. Emergency dumping of industrial waste

(a) Issuance of emergency permits

Notwithstanding section 104B of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1414b], after December 31, 1981, the Administrator may issue emergency permits under title I of such Act [33 U.S.C. 1411 et seq.] for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b) [33 U.S.C. 1411(b)], if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, 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.

(b) "Industrial waste" defined

For purposes of this section, the term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant.

(Pub. L. 95-153, §4, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 96-572, §2, Dec. 22, 1980, 94 Stat. 3344; Pub. L. 100-688, title I, §1003(a), Nov. 18, 1988, 102 Stat. 4149.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (a), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

Such section 101(b), referred to in subsec. (b), means section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972.

CODIFICATION

Section was not enacted as part of the Marine Protection, Research, and Sanctuaries Act of 1972 which comprises this chapter.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-688, §1003(a)(1), (3)-(5), redesignated subsec. (c) as (a), substituted "Notwithstanding section 104B of the Marine Protection, Research, and Sanctuaries Act of 1972 after" for "After", and "title I of such Act" for "such title I". Former subsec. (a), which related to cessation of dumping, with exceptions, was struck out.

Subsec. (b). Pub. L. 100-688, §1003(a)(2), (7), added subsec. (b). Former subsec. (b), which related to issuance of permits for dumping of industrial waste, was struck out.

Subsec. (c). Pub. L. 100-688, §1003(a)(3), redesignated subsec. (c) as (a).

Subsec. (d). Pub. L. 100-688, §1003(a)(6), struck out subsec. (d) which related to definitions.

1980—Subsec. (a). Pub. L. 96-572, §2(1), inserted applicability to industrial waste, exceptions respecting subsecs. (b) and (c) of this section, and conforming changes in phraseology.

Subsec. (b). Pub. L. 96-572, §2(2), added subsec. (b). Former subsec. (b), defining "sewage sludge", was struck out.

Subsecs. (c), (d). Pub. L. 96-572, §2(2), added subsecs. (c) and (d).

§ 1413. Dumping permit program for dredged material

(a) Issuance by Secretary of the Army

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations; alternative sites

In making the determination required by subsection (a), the Secretary shall apply those criteria, established pursuant to section 1412(a) of this title, relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the maximum extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title. In any case in which the use of a designated site is not feasible, the Secretary may, with the concurrence of the Administrator, select an alternative site. The criteria and factors established in section 1412(a) of this title relating to site selection shall be used in selecting the alternative site in a manner consistent with the application of such factors and criteria pursuant to section 1412(c) of this title. Disposal at or in the vicinity of an alternative site shall be limited to a period of not greater than 5 years unless the site is subsequently designated pursuant to section 1412(c) of this title; except that an alternative site may continue to be used for an additional period of time that shall not exceed 5 years if—

(1) no feasible disposal site has been designated by the Administrator;

(2) the continued use of the alternative site is necessary to maintain navigation and facilitate interstate or international commerce; and

(3) the Administrator determines that the continued use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment.