

40 CFR Part 228

[FR-3562-1]

Ocean Dumping; Proposed Designation of Site**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA today designates two ocean dredged material disposal sites (ODMDS) known as the Western ODMDS and Eastern ODMDS located offshore of Nome, Alaska for the disposal of dredged material removed from the Nome channel and harbor area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material. This site designation is for an indefinite period of time, but the sites are subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on July 3, 1989.

ADDRESSES: John Malek, Ocean Dumping Coordinator, Region X, WD-138.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW, Washington, DC.

EPA Region X, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Alaska District, Building 21-700, Elmendorf AFB, Alaska.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping site will be designated by publication in Part 228. A list of "Approved and Final

Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established these sites as interim sites.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) 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 agency decision-making processes 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 EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA has prepared a Draft and Final EIS entitled "Environmental Impact Statement (EIS) for Nome, Alaska, Dredged Material Disposal Site Designation". Four reviewers submitted comments on the draft EIS, which EPA assessed and responded to in the final EIS. Comments that could not be appropriately treated as text changes were addressed point by point in the final EIS following the letters of comment. On May 25, 1984, a notice of availability of the Final EIS for public review and comment was published in the *Federal Register* (49 FR 22123). One reviewer submitted comments after the close of the public comment period concerning the potential effects of dredged material disposal on existing mineral leases and mining operations. The comment was considered in preparing this rulemaking notice. Because of the dynamic environment of the two proposed sites, it is unlikely that dredged material disposal would cause a significant adverse effect. Comments were also received after the close of the public comment period from the Corps of Engineers concerning the proposal to de-designate the Western ODMDS. Coordination continued with the Corps regarding this issue and resulted in this final rulemaking notice to designate both sites. Coordination has included the City of Nome.

The action discussed in the Final EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location of ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis as

part of the process of issuing permits for ocean disposal.

The EIS discussed the need for the action and examines ocean disposal sites and alternatives to the proposed action, including land-based disposal options.

The EIS presented the information needed to evaluate the suitability of ODMDS areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On September 23, 1988, EPA proposed designation of these sites for the continuing disposal of dredged materials from Nome harbor. The public comment period on this proposed action closed November 7, 1988. One letter of comment was received from the U.S. Department of the Interior, Minerals Management Service (MMS), on December 29, 1988. The letter noted several events that had occurred since the final EIS was filed by EPA in 1984 and requested that EPA consider updating the EIS. Specifically, MMS cited the apparently elevated concentrations of mercury in Norton Sound sediments. A response was provided to MMS by letter dated February 21, 1989. That letter acknowledged the serious concerns raised by MMS regarding the quality of sediments throughout Norton Sound. However, these concerns were judged to be more appropriately handled as a part of site management rather than site designation. As stated elsewhere in this rule, site designation does not constitute or imply approval of actual disposal of materials at sea. Accordingly, updating of the final EIS was determined to be unnecessary. On February 27, 1989, following coordination with the Corps of Engineers, a letter was sent to the District Engineer of the Alaska District advising him that sediments from Nome harbor may be unacceptable for unrestricted disposal and recommending that a sediment testing program be jointly developed to address this situation. Coordination to develop this testing plan is proceeding. Dredged sediments found to be unsuitable for unrestricted ocean disposal will not be disposed of at either Nome site.

The sites are located adjacent to shore, west and east of the entrance channel to Nome harbor and occupy a total area of about 0.67 square nautical miles. Water depths within the areas range from 1 meter along the shoreline boundary to maximum depths of 11 and 12 meters along the southern boundary of the Western and Eastern ODMDS respectively. The coordinates of the sites are as follows:

The Western ODMDS is located adjacent to the west of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.30 square nautical miles. Its corner coordinates are:

64°30'04"N., 165°25'52"W.;
64°29'18"N., 165°26'04"W.;
64°29'13"N., 165°25'22"W.;
64°29'54"N., 165°24'45"W.;

The Eastern ODMDS is located adjacent to the east of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.37 square nautical miles. Its corner coordinates are:

64°29'54"N., 165°24'41"W.;
64°29'45"N., 165°23'27"W.;
64°28'57"N., 165°23'29"W.;
64°29'07"N., 165°24'25"W.;

If at any time disposal operations at either site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping 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 are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Draft and Final EIS, that a site off the Continental

Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of this action. Historical use at the existing sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the sites are reviewed below in terms of the eleven factors.

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

Geographical positions and distances from the coast for each site are given above. Water depth at the sites ranges from 1 to 12 meters. Bottom topography is similar at both sites. Slope gradient is 1:120 to about -13 meters.

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

Breeding, spawning, nursery, and/or passage activities of commercially important finfish and shellfish species typical of the Norton Sound all occur on a seasonal basis in or near the proposed sites. The two sites comprise a small portion of the available habitat of the Sound. No unique breeding, spawning, nursery, or passage areas for living resources occur in the sites. Feeding of Gray Whales may reach to within about 770 meters of Nome's shoreline. Anticipated disposal volumes represent about 2 percent of natural annual sediment transport for the Norton Sound area. Accordingly, any impacts would be of very short duration and minor in nature.

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

Both sites adjoin the shore at their northern boundary. Thus, they are in close proximity to the beaches on either side of the entrance channel to Nome harbor.

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 228.6(a)(4)

Sediments from operations and maintenance dredging of the Nome harbor have been deposited annually in either site since 1923. It is expected that disposal of project sands and silts from the turning basin and entrance channel will continue to occur during summer months at an estimated annual volume of 13,000 cubic yards. The interim sites are immediately adjacent to the

dredging areas and their use will minimize transport time. All dredged material disposed at the sites must comply with the requirements of EPA's Ocean Dumping Regulations.

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

Surveillance and monitoring of the sites can be accomplished because of the proximity to shore and the shallow depths of the sites. Monitoring by EPA, the Corps of Engineers, and permittees, as required, will occur as long as the site is used. If evidence of significant environmental effects is found, EPA will take appropriate action to alter or terminate disposal practices at the site(s).

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

Littoral drift will be a primary force causing dispersion of material at the sites. Except for a small portion of their outer limits in mid-summer, the sites are in a single mixed zone. Both sites are in a highly dynamic environment with an estimated 650,000 cubic yards of sediments transported annually under natural conditions. Transport direction appears to be predominantly easterly, but has been interrupted by construction of a 2,600-foot long breakwater/port facility. Plans exist to increase the length of the breakwater to a total of 3,500 linear feet in the future. Disposal at the eastern or western site would occur to complement littoral drift patterns and prevent significant build-up or erosion of sediments.

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

The sites have been used for dredged material disposal annually since 1923. There has been no indication that these disposal events have materially altered the characteristics of the sites.

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)

Ice forms in Norton Sound during the winter months, restricting all commercial and recreational vessel traffic. The sites lie outside the navigation channel. While there is need for navigation coordination during dredging and disposal, these operations

are not expected to interfere with commercial shipping in the area. Some restrictions on recreational activities may be necessary in the vicinity of dredging and disposal activities. The sites do not uniquely support fisheries, but commercial and subsistence shellfishing do exist. Accordingly, fishing and fish and shellfish culture could be affected at the site during and immediately after disposal operations. Significant interference with these activities is not expected. No interference with mineral extraction, desalination, areas of special scientific importance, or other legitimate uses of the ocean are anticipated.

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

Evaluation of existing information indicates that disposal of dredged sediments from Nome harbor will have minimal impact on the water quality and ecology of the sites. The area is a dynamic, high-energy environment; water quality parameters (concentrations of dissolved nutrients, trace metals, dissolved oxygen, pH, etc.) and biological characteristics (planktonic and benthic communities) are not expected to be significantly altered by dredging or disposal activities. Temporary reductions in water quality and minor, temporary disruptions to biological communities within the sites during and after disposal will occur.

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

There appears to be little, if any, potential for development or recruitment of nuisance species in the disposal sites.

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)

There are no known cultural or historic properties in close proximity of the Nome sites that could be affected by disposal activities.

E. Action

The EIS concluded that either or both of the sites may be appropriately designated for use. The sites are compatible with the general criteria and specific factors used for site evaluation. Designation of the Eastern site was specifically proposed as this site was most frequently used. Because of considerations for littoral drift, which may be affected by the current or

proposed to be expanded breakwater, designation of the Western site is also proposed. Determination whether a particular year's dredged material would go to the Western or Eastern site will be made on a case-by-case basis by the Corps of Engineers, with review by EPA.

The designation of the Western and Eastern ODMDS as EPA approved Ocean Dumping Sites is being published as final rulemaking. Management of the sites will be delegated to the Regional Administrator of EPA Region X.

It should be emphasized that, when an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA will make an independent evaluation of the permit application and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which 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 site designation will only have the effect of providing a disposal option for dredged material. Consequently, this does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

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

Water pollution control.

Dated: April 10, 1989.

Ralph R. Bauer,

Acting Regional Administrator for Region X.

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

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

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

2. Section 228.12 is amended by removing from paragraph (a)(3) "Nome—West Site and Nome—East Site", and adding paragraphs (b)(36) and (b)(37) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

(b) * * *

(36) Nome—West Site—Region X.

Location: 64° 30' 04" N., 165° 25' 52" W.; 64° 29' 18" N., 165° 26' 04" W.; 64° 29' 13" N., 165° 25' 22" W.; 64° 29' 54" N., 165° 24' 45" W.

Size: 0.30 square nautical miles.

Depth: Ranges from 1-11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging. Preference will be given to placing any material in the inner third of the site to supplement littoral drift, as needed.

(37) Nome—East Site—Region X.

Location: 64° 29' 54" N., 165° 24' 41" W.; 64° 29' 45" N., 165° 23' 27" W.; 64° 28' 57" N., 165° 23' 29" W.; 64° 29' 07" N., 165° 24' 25" W.

Size: 0.37 square nautical miles.

Depth: Ranges from 1-12 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging.

[FR Doc. 89-12938 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-29; RM-4941 and RM-5399]

Radio Broadcasting Services; Greenup, KY and Athens, OH

AGENCY: Federal Communications Commission.