Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990.

On May 23, 2002 (67 FR 36135), EPA proposed to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO as of December 31, 2001. A detailed discussion of EPA's proposal is contained in the May 23, 2002, proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments

We received no comments in response to EPA's proposed action to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide as of December 31, 2001.

III. Attainment Determination

EPA has determined that the Fairbanks serious CO nonattainment area has attained the CO NAAQS by its attainment date of December 31, 2001. Consistent with CAAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This finding of attainment should not be confused with a redesignation to attainment under CAAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAAA for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Fairbanks CO nonattainment area until such time as EPA finds that Alaska has met the CAAA requirements for redesignation to attainment.

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 13211, ''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 Clean Air Act. 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 Clean Air Act. 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 Clean Air Act. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 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 81

Environmental protection, Air pollution control, Carbon monoxide, National parks, Reporting and recordkeeping requirements, Wilderness areas.

Dated: June 26, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–16854 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7241–2]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates 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 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 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.

DATES: This final rule is effective on August 5, 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 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.''

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.

The proposed rule was published for public review and comment in the **Federal Register** (67 FR 15348 (April 1, 2002)). No comments were received.

This rule permanently designates the continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the 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. Site Designation

The site is located approximately 5 nautical miles offshore Bald Head Island. The ODMDS occupies an area of about 9.4 square nautical miles (nmi^2). Water depths within the area range from 35–52 feet (ft.). The coordinates of the New Wilmington site 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 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 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 site is given above. The northern boundary of the site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximatelty 9.4 nmi^2 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 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 site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the new 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 228.6(a)(4)).*

The type of materials to be disposed of within this 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 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 ODMDS was designed to avoid interference with commericial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the 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 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 site is the wreck of the Virginius. This wreck lies outside the eastern boundary of the 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 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. Action

The EIS concludes that the site may appropriately be designated for use. The 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 Final 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

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 August 5, 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: June 7, 2002.

J.I. Palmer, Jr.,

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 adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, NC; 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.

* * * * *

[FR Doc. 02–16855 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P