

property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the amount of proceeds realized from the sale of such property less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followed by the claimant to obtain return of the property, or its determined value, must be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Proceeds of sale.

Proceeds from the sale of property subject to this part must be deposited in

the fund established by 39 U.S.C. 2003 as miscellaneous receipts.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-4731 Filed 3-3-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3332-6]

Ocean Dumping; Final Site Designation

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates four sites in the Gulf of Mexico as EPA-approved ocean dumping sites for the dumping of dredged material. These sites are located one each offshore Pensacola, Florida and Mobile, Alabama and two offshore Gulfport, Mississippi. This action is to designate acceptable ocean dumping sites for the current and future disposal of certain kinds of dredged material. EPA published its Proposed Rule designating these sites for dumping of dredged material at 52 FR 29550 (August 10, 1987).

DATE: This designation shall become effective on April 4, 1988.

ADDRESSES: Send comments to:

Sally Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365.

The file supporting these site designations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460
EPA, Region IV, 345 Courtland Street NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Reginald Rogers, 404/347-2126.

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.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted, i.e., an Ocean Dredged Material Disposal Site (ODMDS). On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the

Regional Administrator of the EPA Region in which the site is located. These proposed site designations are within Region IV and are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*), and was extended on August 19, 1985 (50 FR 33338). That list established the existing sites at Pensacola, Mobile, and Gulfport as interim sites and extended their periods of use until December 31, 1988.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 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. 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 these (see 39 FR 16186 [May 7, 1984]).

EPA has prepared a Draft EIS (DEIS) and Final EIS (FEIS) entitled, "Environmental Impact Statement (EIS) for Pensacola, FL, Mobile, AL, and Gulfport, MS Ocean Dredged Material Disposal Site Designation." The action discussed in the EIS is the final designation for continuing use of ocean dredged material disposal sites near Pensacola, Florida; Mobile, Alabama; and Gulfport, Mississippi.

The EIS discusses the need for the designation and examines ocean disposal site alternatives to this action. The EIS evaluates near-shore, mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. The EIS presents information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies.

On Friday, February 13, 1987, a Notice of Availability of the FEIS for public review and comment was published in the *Federal Register* (52 FR 4658 [February 13, 1987]). Four responses were received from EPA's request for comments and were addressed in the Proposed Rule published for this site designation.

C. Site Designation

The Pensacola site is located approximately 1.5 nautical miles (nmi) from Perdido Key and occupies an area of about 2.48 nmi². Water depths within the area average 11 meters (m). The coordinates of the site are as follows:

30°17'24" N., 87°18'30" W.
30°17'00" N., 87°19'50" W.
30°15'36" N., 87°17'48" W.
30°15'15" N., 87°19'18" W.

The site will be designated for the disposal of predominantly sandsized dredged material only.

The proposed Mobile site is located approximately 4.2 nmi from Mobile Point and occupies an area of approximately 4.8 nmi². Water depths in the area average 14 m. The coordinates of the site are as follows:

30°10'00" N., 88°07'42" W.
30°10'24" N., 88°05'12" W.
30°09'24" N., 88°04'42" W.
30°08'30" N., 88°05'12" W.
30°08'30" N., 88°08'12" W.

The two proposed Gulfport sites lie one to the east and one to the west of Ship Island Bar Channel. The eastern site is approximately 1.2 nmi from Ship Island containing an area of approximately 2.47 nmi² in depths averaging 9.1 m. The western site is approximately 0.7 nmi from Ship Island and contains an area of approximately 5.2 nmi² in water depths averaging 8.2 m. The coordinates of the sites are as follows:

Eastern Site

30°11'10" N., 88°58'24" W.
30°11'12" N., 88°57'30" W.
30°07'36" N., 88°54'24" W.
30°07'24" N., 88°54'48" W.

Western Site

30°12'00" N., 89°00'30" W.
30°12'00" N., 88°59'30" W.
30°11'00" N., 89°00'00" W.
30°07'00" N., 88°56'30" W.
30°06'36" N., 88°57'00" W.
30°10'30" N., 89°00'36" W.

On August 10, 1987, EPA proposed a rule change designating these sites for the disposal of dredged materials (52 FR 29550, August 10, 1987). The preamble to this Proposed Rule presented the characteristics of the sites in terms of the eleven specific criteria identified in the Ocean Dumping Regulations which, taken together, constitute an assessment of the sites' suitability as repositories for dredged material. That assessment concludes that these sites are appropriate for final designation. The U.S. Fish and Wildlife Service has concurred with these site designations.

Two letters of comment were received on the proposed rule, both concerning

the Pensacola, Florida ODMDS. The first letter was from the Honorable Bob Martinez, Governor of Florida; and the second was from the Honorable Lawton Chiles, United States Senator. Each of these two letters expressed concerns related to the location of the ODMDS within State of Florida territorial waters and partially within the Fort Pickens State Park and Aquatic Preserve; consideration of NEPA alternatives such as upland disposal (beach nourishment) as options to ocean dumping; the need for an easement to the ODMDS from the Florida Board of Trustees; the need for a site management plan for the ODMDS, and/or site consistency with the Florida Coastal Management Program (CMP). For the following reasons, EPA does not believe that these concerns warrant any change in its proposal to designate the Pensacola ODMDS.

Congress authorized EPA under section 102(c) of MPRSA to make site designations for dumping in ocean waters. Such site designations involve this Agency's application of regulatory site selection criteria (in 40 CFR Part 228) and, by Agency policy, preparation of an EIS evaluating each potential dumping site. A site designation does not, however, authorize any actual dumping at the site. In the case of dredged materials, MPRSA requires approval of each proposed dumping project by the Corps of Engineers, applying EPA's ocean dumping criteria (in 40 CFR Part 227). If disposal in State waters is proposed, the project is also subject to State water quality certification under Section 401 of the Clean Water Act (CWA). The State may, therefore, effectively veto any dumping which it determines to be inconsistent with maintaining State water quality standards for the proposed disposal site.

If, however, a project involving disposal of dredged materials within State territorial waters receives both Corps approval under MPRSA and State certification under the CWA, the disposal may proceed whether or not EPA has designated some site in the project area as an environmentally suitable place for dumping dredged materials. MPRSA provides that an EPA-designated site will be used only if "feasible." When no EPA-designated disposal site exists at a location which is reasonably accessible to a Corps/State-approved dredging project, MPRSA authorizes the Corps to specify a disposal area for that project. In summary, just as the presence of an EPA-designated site does not itself constitute authorization for any actual disposal project, the absence of an EPA-designated site in an area does not

necessarily preclude disposal there once a project receives authorization from the Corps and CWA 401 certification from the State.

Because of the statutory preference for EPA-studied locations as dredged material disposal sites, this Agency believes that it should study and designate disposal sites in any area where the need for such sites may reasonably be anticipated. In the case of the site proposed for EPA designation offshore Pensacola, we believe it is certainly reasonable to suppose that there may be future need for a disposal site in the area of the Fort Pickens Aquatic Preserve. The Florida statute establishing such preserves expressly empowers the Florida Board of Trustees of the Internal Improvement Trust Fund to authorize maintenance dredging for existing navigation channels and dredging and spoiling in preserves for public navigation projects (Florida Statutes, section 258.42), and we are aware of such projects now being planned.

Governor Martinez correctly pointed out that the Pensacola ODMDS is partially located *within* the Fort Pickens Aquatic Preserve, contrary to incorrect statements made in both the EIS and the Proposed Rule indicating that this site is in the *vicinity* of the Preserve. However, portions of the area EPA is proposing to designate within the Fort Pickens Aquatic Preserve have repeatedly been used for disposal of dredged materials from public navigation projects in the past. For example, on March 28, 1985, the U.S. Navy received Corps approval to dump dredged materials within this Preserve, and the State of Florida certified that such dumping would be consistent with Florida's water quality standards for the Outstanding Florida Waters there. Disposal from that Navy project has since occurred without apparent significant adverse effects to the Preserve.

EPA considers the disposal location for dredged material from specific local projects as an issue separate from designation of an ODMDS and one that should be addressed in a project-specific NEPA document. Such a project evaluation document should consider the no action and several action alternatives. Where appropriate, these action alternatives could include upland disposal such as beach nourishment. The presence of an EPA-approved ODMDS will be useful in the event that ocean disposal of acceptable dredged materials is determined to be one of those action alternatives.

Regardless of EPA site designation, the State of Florida retains legal

authority to preclude any actual disposal in these or other State territorial waters by means of its power to deny water quality certification under CWA Section 401. In the case of the Pensacola site, we fully agree with the statement in Senator Chiles' letter that water quality considerations make it unsuitable for material containing more than 10% fines, and the proposed EPA designation would specifically limit any disposal there to "dredged materials which are shown to be predominately sand (defined by median grain size greater than 0.125 mm and a composition of less than 10% fines) * * *." As indicated in the preamble of the Proposed Rule, EPA will insure that the materials have been shown to be predominantly coarse-grained on a project-by-project basis.

EPA agrees with the State of Florida that site management plans are needed. Such plans would be appropriate for most dumping sites, particularly ones such as the Pensacola ODMDS within State territorial waters. They would also help assure that suitable materials are disposed and would help monitor any post-dumping movement of dredged materials.

The overall management of these sites is the responsibility of EPA. Currently a Memorandum of Understanding (MOU) is pending between the Corps of Engineers, South Atlantic Division, and EPA, Region IV to effectively use the available resources of each agency for overall site management.

In general, site management will begin with the review of proposed projects for conformity to the Ocean Dumping Regulations. The projects will be reviewed to ensure that the need for ocean disposal exists and that the material is suitable for ocean disposal at the proposed site. The locations within the site where dumping for a particular project may occur will be specified. The user of the site will report actual dumping information such as the types and quantities of materials disposed and the LORAN-coordinates where the actual disposal occurred.

Subsequent monitoring surveys will concentrate on the portion of the site which has been used according to site use reports. Monitoring objectives will be to: (1) Detect presence of the material, (2) determine the extent of mounding or dispersion of the material, (3) determine migratory pattern of the material, if any, (4) determine any impact associated with the migration, if any, and (5) determine if more intensive monitoring is required. The monitoring techniques available include underwater video and still photography, bathymetric measurements, side scan sonar, water

quality analysis, fish trawls and sediment physical, chemical, and biological analyses. The techniques utilized for each survey will be based on a demonstrated need, on the results of past monitoring surveys at the site and the extent of disposal operations at the site.

If no significant accumulation of the material beyond the site boundary is detected, and mounding in the area used for disposal is not significant, the same area will continue to be used for disposal. If mounding becomes significant or if significant accumulation of material beyond the site boundaries is evident, the discharge point for future disposal operations will be moved to another area within the designated disposal site; and any impacts of the migration or mounding beyond the site boundaries will be assessed. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

At this time only the Mobile disposal site has a project-specific monitoring plan, as the dumping of dredged material from the deepening of Mobile Harbor is imminent. Specific plans will also be developed for the Pensacola and Gulfport sites after the MOU is completed and more specific information is available concerning the types and quantities of materials proposed for disposal. Each monitoring plan will contain quality assurance and quality control measures and will be coordinated with all appropriate state and federal agencies.

With regard to whether an easement should be obtained from the Florida Board of Trustees, we believe that this issue is premature when raised in the context of EPA site designations. As detailed above, site designations are essentially statements of EPA's judgment about the environmental suitability of a location as a potential repository for specified materials; and EPA action of designation does not authorize any use of a site for actual dumping projects. We, therefore, do not regard State requirements for leases or easements for activities using Florida waters as applying to mere designations for potential use, such as the designation EPA has proposed.

The question of consistency with the Florida CMP for the Pensacola site was also addressed in Governor Martinez' letter. The State of Florida continues to believe that the site is inconsistent with the CMP despite EPA's responses to previous State arguments in the notice of the Proposed Rule and EPA's stated judgment that "the Pensacola site designation is consistent with the

Florida CMP to the maximum extent practicable." Specifically, the State indicated that the site would not be consistent unless the following conditions are met:

1. Relocation of the site to be designated so that it is wholly outside the Fort Pickens Aquatic Preserve,
2. Obtaining an easement from the Trustees by EPA prior to designation,
3. Consideration of alternatives to ocean disposal such as upland disposal (beach nourishment) for suitable material, and
4. Formulation of a management program for the site as well as stricter interpretation of the language of the rule with regard to material to be disposed therein.

For the reasons stated earlier in this section, EPA continues to believe that the Pensacola site designation is consistent with the Florida CMP to the maximum extent practicable as required by section 307 of the Coastal Zone Management Act (CZMA). EPA also believes that the Mobile site and the Gulfport sites are consistent with the Coastal Zone Management Plans (CZMP) of Alabama and Mississippi, respectively. Letters sent to the State of Alabama and Mississippi dated October 7, 1984, expressing EPA's determination of CZMP consistency received no comments from either state.

D. Action

The designation of the Pensacola, Mobile, and two Gulfport sites as EPA-approved ocean dumping sites is today being published as final rulemaking. Overall management of these four sites is the responsibility of the Regional Administrator of EPA, Region IV.

It should again be emphasized that a site designation does not constitute or imply EPA's approval of disposal of materials at sea. Before 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. If a federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

E. 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 proposed action will not have a significant impact

on a substantial number of small entities. EPA has also determined that this proposed 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 designation 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 of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

This action 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.*

This Final Rule notice represents the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: February 9, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 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 paragraph (a)(1)(i)(H) and by adding paragraphs (b)(48), (b)(49), and (b)(50) to read as follows:

§ 228.12 Delegation of management authority for dumping sites.

* * *

(b) * * *

(48) Pensacola, Florida Dredged Material Disposal Site—Region IV.

Location:

30°17'24" N., 87°18'30" W.

30°17'00" N., 87°19'50" W.

30°15'36" N., 87°17'48" W.

30°15'15" N., 87°19'18" W.

Size: 2.48 nmi².

Depth: Average 11 m.

Primary use: Dredged Material.

Period of use: Continuing use.

Restrictions: Disposal shall be limited to dredged materials which are shown to be predominantly sand (defined by median grain size greater than 0.125 mm and a composition of less than 10% fines) and meet the Ocean Dumping Criteria.

(49) Mobile, Alabama Dredged Material Disposal Site—Region IV.

Location:

30°10'00" N., 88°07'42" W.

30°10'24" N., 88°05'12" W.

30°09'24" N., 88°04'42" W.

30°08'30" N., 88°05'12" W.

30°08'30" N., 88°08'12" W.

Size: 4.8 nmi².

Depth: Average 14 m.

Primary use: Dredged materials.

Period of use: Continuing use.

Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

(50) Gulfport, Mississippi Dredged Material Disposal Sites—Region IV.

Location: Eastern Site

30°11'10" N., 88°58'24" W.

30°11'12" N., 88°57'30" W.

30°07'36" N., 88°54'24" W.

30°07'24" N., 88°54'48" W.

Western Site

30°12'00" N., 89°00'30" W.

30°12'00" N., 88°58'30" W.

30°11'00" N., 89°00'00" W.

30°07'00" N., 88°56'30" W.

30°06'36" N., 88°57'00" W.

30°10'30" N., 89°00'36" W.

Size: Eastern—2.47 nmi². Western—5.2 nmi².

Depth: Eastern—9.1 m. Western—8.2 m.

Primary use: Both sites—Dredged material.

Period of use: Both sites—Continuing use.

Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

[FR Doc. 88-3901 Filed 3-3-88; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1320

[Ex Parte No. MC-1]

Regulations for Payment of Rates and Charges, Penalty Charges for Nonpayment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its credit regulations at 49 CFR Part 1320 to allow rail, motor, and water common carriers, and regulated freight forwarders to assess and recover damages for the collection of delinquent freight charges. To afford carriers and freight forwarders (collectively called "carriers") flexibility in dealing with

nonpaying shippers, the final rules allow carriers three separate and mutually exclusive methods to recoup collection charges. They are: (1) By tariff rule, a carrier may require that a shipper, as a precondition to receiving a discount, agree to pay the freight bill within a specified period of time, and may provide that payment beyond that date will be at the non-discounted rate; or (2) by tariff rule, a carrier may assess straight liquidated damages for a precise dollar or percentage amount of the unpaid freight bill; or (3) a carrier may, outside of its tariff, recoup collection costs by contract in a bill of lading.

EFFECTIVE DATE: April 3, 1988.

FOR FURTHER INFORMATION CONTACT:

Richard Johnson, (202) 275-7939

or

Richard B. Felder, (202) 275-7691 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The new rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 269-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

The Commission certifies that the adoption of the amendments to the credit regulations will not have a significant economic impact on a substantial number of small entities. The new rules will not require the filing of reports or recordkeeping by small entities, and will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects in 49 CFR Part 1320

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

Decided: February 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows: