



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 228**

**[EPA-R2-OW-2014-0587; FRL-9928-04-Region 2]**

### **Modification of the Designations of the Caribbean Ocean Dredged Material Disposal Sites**

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

**ACTION:** Final rule.

**SUMMARY:** Through this rulemaking, the U.S. Environmental Protection Agency (EPA) is modifying the designations for the five Ocean Dredged Material Disposal Sites (ODMDS) around Puerto Rico (San Juan Harbor, PR ODMDS; Yabucoa Harbor, PR ODMDS; Ponce Harbor, PR ODMDS; Mayaguez Harbor, PR ODMDS; Arecibo Harbor, PR ODMDS). Currently, each of the ODMDS is restricted to only allow disposal of dredged material from the specific harbor for which it is named. This modification removes the restriction that limits eligibility for disposal at each of the disposal sites based solely on the geographic origin of the dredged material. The modifications to the site designations do not actually authorize the disposal of any particular dredged material at any site. All proposals to dispose of dredged material at any of the designated sites will continue to be subject to project-specific reviews and must still be demonstrated to satisfy the criteria for ocean dumping before any material is authorized for disposal. This rulemaking was taken to provide long-term flexibility for management of any dredged material that may potentially be derived from maintenance, development, or emergency activities in areas outside those harbors provided for in the original designations. The modifications to the site designations are for an indefinite period of time. Each ODMDS will continue to be monitored to ensure that significant unacceptable, adverse environmental impacts do not occur as a result of dredged material disposal

at the site.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OW-2014-0587. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy by appointment at the Dredging, Sediment and Oceans Section (CWD), U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York NY 10007. This Docket Facility is open from 8:30 a.m. and 4:30 p.m, Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-3799.

**FOR FURTHER INFORMATION CONTACT:** Mark Reiss, Clean Water Division Region 2 (24<sup>th</sup> Floor), Environmental Protection Agency, 290 Broadway New York, NY 10007; telephone number: 212-637-3799; fax number: 212-637-3891; e-mail address: reiss.mark@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background

II. Final Action

III. Regulatory Reviews

## IV. Statutory and Executive Order Reviews

### I. 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. These modifications are being made pursuant to that authority. EPA is conducting this rulemaking to remove the geographic restrictions on the origin of the dredged material that can be disposed from the designations of the San Juan Harbor, PR Ponce Harbor, PR, Yabucoa Harbor, PR, Mayaguez Harbor, PR and Arecibo Harbor, PR ODMDSs.

The site modifications in this action provide the Corps, Commonwealth of Puerto Rico, municipal, and private entities with greater long term flexibility in managing dredged materials outside the specific harbors provided for in the original designations.

The background for today's action is discussed in detail in EPA's October 14, 2014, proposal (79 FR 61591). The EPA received two comments on the proposed rule that supported the rulemaking. One of the letters raised some general concerns about the need to ensure that sensitive marine habitats are not adversely impacted by activities allowed by this rulemaking.

Modification of the designation of ocean disposal sites under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (see 33 U.S.C. 1413(b).) Modification of the designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and

environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria.

This modification provides flexibility for management of dredged material from areas outside the harbors provided for in the original designations. However, it should be emphasized that modification of the designations of the ODMDS does not constitute or imply Corps' or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at any site may commence, Essential Fish Habitat and Endangered Species Act consultations must be completed, and EPA and the Corps must evaluate the proposal and authorize disposal according to the ocean dumping regulatory criteria (40 CFR part 227). All projects proposed for disposal at the ODMDS will be subject to review and comment by the relevant resource agencies and the public to ensure that any concerns regarding potential impacts associated with transport of material from the project area to the ODMDS are addressed before they are authorized for disposal. All transport and disposal activities must adhere to the strict provisions and restrictions laid out for each site in its Site Monitoring and Management Plan, which include specific monitoring and management requirements to avoid impacts to sensitive habitats. Finally, EPA has the right to disapprove the actual disposal, if it determines that environmental requirements under the MPRSA (including required Essential Fish Habitat and Endangered Species Act consultations) have not been met.

Enabling management of the additional dredged materials at monitored designated sites restricts impacts to those areas and minimizes the potential for using other near shore discharge strategies with potentially greater impacts to the marine environment. As such, this rulemaking would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures and sensitive marine habitats will not be adversely impacted by activities allowed by this rulemaking.

## **II. Final Action**

The EPA hereby modifies the designations of Arecibo Harbor PR Ocean Disposal Site, Mayaguez Harbor PR Ocean Disposal Site, Ponce Harbor PR Ocean Disposal Site, San Juan Harbor PR Ocean Disposal Site and Yabucoa Harbor PR Ocean Disposal Site by removing the geographic restrictions on the origin of dredged material that can be managed at each site. This modification is made pursuant to MPRSA section 102(c). These ocean disposal sites are located in ocean waters off Puerto Rico outside the harbors corresponding to their names.

## **III. Regulatory Reviews**

Details of the regulatory requirements of this rule are in EPA's October 14, 2014, proposed rule, 79 FR 61591. To summarize, this final rule complies as follows:

—It complies with the National Environmental Policy Act of 1969 (42 U.S.C. 4332) under the doctrine of functional equivalency; the EPA has relied on information from the final Environmental Impact Statement in its consideration and application of ocean dumping criteria to modification of the designations of the San Juan Harbor, PR Ponce Harbor, PR, Yabucoa Harbor, PR, Mayaguez Harbor, PR and Arecibo Harbor, PR dredged material sites;

—It complies with the Endangered Species Act (16 U.S.C. 1536(a)(2)), regarding consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in that modification of the designations of the ocean disposal sites is not expected to adversely affect any threatened or endangered species or their critical habitat;

—It complies with the Magnuson-Stevens Fishery Conservation and Management Act of 1996 regarding consultation with the National Marine Fisheries Service in that modification of the designations of the ocean disposal sites is not expected to have significant impacts to marine fishery resources; and

—It complies with the Coastal Zone Management Act, regarding federal activities that affect a state’s coastal zone in that the Corps will submit Coastal Zone Consistency determinations to the Commonwealth of Puerto Rico for individual projects proposing to dispose at the sites.

#### **IV. Statutory and Executive Order Reviews**

Details of the applicability of executive orders and statutory provisions to this rule are in EPA’s October 14, 2014, proposed rule, 79 FR 61591. To summarize, this final rule complies with applicable executive orders and statutory provisions as follows:

- It is not a “significant regulatory action” subject to Office of Management and Budget (OMB) review under Executive Order 12866 (58 FR 51735, October 4, 1993);
- It does not impose an information collection burden under the provisions of the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*;
- It is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601);
- 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);
- It does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- It is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- It has no Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000);
- It is not an economically significant regulatory action subject to Executive Order 12866 (62 FR 19885, April 23, 1997), and does not present a disproportionate risk to children;

- It is not a significant regulatory action under Executive Order 12866 and so is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001) );
- It is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note) as it does not involve technical standards;
- It will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations subject to Executive Order 12898 (59 FR 7629);
- EPA has written this rulemaking in plain language to be consistent with the Plain Language Directive of Executive Order 12866; and
- It will provide additional protection of aquatic organisms and therefore advances the objective of Executive Order 13158 (65 FR 34909, May 31, 2000) to protect marine areas.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. The EPA will submit a report containing this action 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.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

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

Dated: April 20, 2015.

Judith A. Enck,  
Regional Administrator, Region 2.

In consideration of the foregoing, EPA hereby amends part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228- CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING**

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

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

2. Section 228.15 is amended by revising paragraphs (d)(10)(vi), (d)(11)(vi) , (d)(12)(vi), (d)(13)(vi), and (d)(14)(vi) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(10) \* \* \*

(vi) *Restriction:* Disposal shall be limited to dredged material.

(11) \* \* \*

(vi) *Restriction:* Disposal shall be limited to dredged material.

(12) \* \* \*

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(13) \* \* \*

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(14) \* \* \*

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[FR Doc. 2015-12335 Filed: 5/21/2015 08:45 am; Publication Date: 5/22/2015]