

HEINONLINE

Citation: 56 Fed. Reg. 47404 1991



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue Mar 1 10:54:43 2016

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

accordance with the Lajuana Wilcher memorandum of July 17, 1990.) Because needs for deobligated funds may not occur within the current two year period of availability under current regulation, it would be inappropriate for EPA to force States to choose between obligating such funds and losing them to reallocation. Rather, States should be allowed to manage their deobligated funds in a manner which will allow them to use these funds to manage their projects to successful completion.

The class deviation is published following this notice.

Dated: August 21, 1991.

Edward J. Hanley,

Acting Assistant Administrator for Administration and Resources Management.

Dated: August 5, 1991.

Martha G. Prothro,

Acting Assistant Administrator for Water.

Memorandum

Subject: Class Deviation from 40 CFR 35.2010(d)

From: Harvey C. Phippen, Jr., Director, Grants Administration Division

To: Regional Administrators, Regions I-X

Dated: August 23, 1991.

Action

I am approving a deviation from the provisions of 40 CFR 35.2010(d). This deviation allows deobligated (CWA) construction grant funds reissued on or after October 1, 1990, and after their initial period of availability, to remain available for obligation in the same State until the last day of FY 1995.

Background

Section 205(b)(2) of the Clean Water Act provides that deobligated funds be added to amounts last allotted to a State and be available for obligation in the same manner and to the same extent as such last allotment. Section 205(d) provides that allotted funds that remain unobligated at the end of the year following the year of allotment shall be reallocated. EPA implemented these provisions in 1984, in part, through regulation at 40 CFR 35.2010(d) (1984) which states that deobligated funds reissued after their reallocation date shall be available for up to 2 years for obligation in the same State. This was an appropriate procedure prior to FY 1991 when there was a series of follow-on allotments and reallocations.

Circumstances have now changed because there are no more construction grant allotments. The last allotment was in FY 1990 and those funds are available for obligation only through the end of FY 1991. Funds not obligated during that period are subject to reallocation and reissuance to the States in FY 1992. Beginning in FY 1993, section 205(d) does not require reallocations. Since deobligated construction grant funds are no-year money (i.e., they remain available until expended to carry out the purpose of the appropriation), the funds may remain available for obligation in the same State.

Therefore, it is appropriate to grant this deviation from the regulatory two year limit on availability.

Bringing the construction grant program to an expeditious and successful completion in the next several years is a high priority for the Agency and the States. Deobligations are important because they will be the only source within each State for funding grant increases. (Up to \$400,000 per year may also be used to fund State program management costs in accordance with the Lajuana Wilcher memorandum of July 17, 1990.) Because needs for deobligated funds may not occur within the period of their availability under the current regulation (i.e., within two years or less time), it would be inappropriate for EPA to force States to choose between obligating such funds and losing them to reallocation. Rather, States should be allowed to manage their deobligated funds in a manner that allows them to manage their projects to successful completion.

Providing a longer period of availability for deobligated funds gives States the flexibility necessary to manage program completion efficiently and effectively. This action is consistent with the principles of Total Quality Management and Section 101(f) of the Act, which directs the Agency to make the best use of available funds. That is, this deviation will permit States to match dwindling funds to priority needs in a timely manner.

The goal of the national strategy for completing and closing out the construction grant program is to have all projects administratively completed by the end of FY 1995. Extending the reallocation date of deobligated funds through FY 1995 should provide sufficient time for States to use these funds effectively.

This deviation extends the reallocation date of deobligated Title II funds reissued on or after October 1, 1990, until the end of FY 1995.

Dated: August 5, 1991.

Concur:

Martha G. Prothro,

Acting Assistant Administrator for Water.

Dated: August 21, 1991.

Concur:

Edward J. Hanley,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 91-22622 Filed 9-18-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[AD-FRL-3975-3]

National Emission Standards for Hazardous Air Pollutants; Amendment to Benzene Rule for Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 14, 1989, EPA published, under the authority of section 112 of the Clean Air Act (CAA), a final

rule promulgating 40 CFR part 61 subpart L, national emission standards for hazardous air pollutants (NESHAP) for benzene emissions from coke by-product recovery plants (54 FR 38044). The EPA proposed on April 1, 1991 (56 FR 13368), and today is promulgating, a revision to subpart L to add provisions for the use of certain add-on control devices as alternative means of complying with the standards for process vessels, storage tanks and tar-intercepting sumps. The additional provisions do not change the stringency of the standards. The provisions also include testing, monitoring, recordkeeping and reporting requirements for these alternative controls. No other changes to the September 14, 1989 benzene NESHAP are made in this notice.

DATES: *Effective Date.* September 19, 1991.

Each NESHAP issued under the authority of section 112 of the CAA is effective on the date of publication of the final NESHAP in the *Federal Register*. The NESHAP to control benzene emissions from coke by-product recovery plants, 40 CFR part 61 subpart L, was effective September 14, 1989. The revisions to Subpart L in today's notice are effective September 19, 1991. Promulgation of these revisions does not alter the general effective date of subpart L.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A-79-16, containing information considered by EPA in the development of the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M1500, 1st floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the basis and content of this rulemaking, contact Ms. Gail Lacy at (919) 541-5261, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency,

Research Triangle Park, North Carolina 27711. For further information on the emission testing aspects of this rule, contact Mr. William Grimley at (919) 541-1065, Emission Measurement Branch, Technical Support Division (MD-19) at the above address.

SUPPLEMENTARY INFORMATION:

The Standards

On September 14, 1989, EPA published a final NESHAP under the authority of section 112 of the CAA to control benzene emissions from coke by-product recovery plants (54 FR 38044). The rule is contained in subpart L of 40 CFR part 61. On November 13, 1989, the American Coke and Coal Chemicals Institute (ACCCI) filed a petition for review of the benzene NESHAP with the U.S. Court of Appeals for the District of Columbia Circuit. The EPA and ACCCI entered into an agreement to settle this litigation. The agreement, submitted to the Court on May 22, 1990, is based on EPA's adding provisions to the NESHAP allowing the use of carbon adsorbers and of vapor incinerators that achieve as much emission reduction as gas blanketing. These control devices are alternative means of compliance used to control benzene emissions from sources subject to 40 CFR 61.132. The record in the case was remanded to EPA, thereby permitting EPA, in accordance with section 112(q) of the CAA Amendments of 1990, to revise the NESHAP on the basis of section 112 as in effect prior to November 15, 1990.

In accordance with the settlement, EPA proposed on April 1, 1991 (56 FR 13368), and today is promulgating, a revision to EPA's subpart L to add provisions for the use of carbon adsorbers and vapor incinerators to control sources subject to 40 CFR 61.132. These control devices would be alternatives to a gas-blanketing system, the control technology on which the standards were based. The sources subject to § 61.132 are process vessels, tar-intercepting sumps, and storage tanks. Process vessels are defined in subpart L as tar decanters, flushing liquor circulation tanks, light-oil condensers, light-oil decanters, wash-oil decanters, and wash-oil circulation tanks.

This amendment includes detailed, step-by-step provisions designed to assure that each control device achieves emission reductions equivalent to gas blanketing. These provisions are design, operational, testing, monitoring, recordkeeping and reporting requirements. They are summarized in more detail in the preamble to the proposed rule. No adverse

environmental, energy or cost impacts are associated with this amendment.

Public Participation

This amendment was proposed in the Federal Register on April 1, 1991 (56 FR 13368). A public hearing was offered to anyone who requested the opportunity for oral presentation of data, views or arguments concerning the proposed rule. No one requested a hearing. The public comment period on the proposed rule was open from April 1 to May 1, 1991. One comment letter was received. The comments in this letter have been carefully considered; EPA's response is provided in the next section of this preamble.

Significant Comments and Changes to the Proposed Standards

The EPA received a comment letter from a representative of a coke by-product recovery plant that is planning to install a nitrogen gas-blanketing system connected to a catalytic incinerator. The commenter said that for his particular system, the flow indicator required by the proposed rule would not provide useful information on the proper operation of the control system. The proposed rule included a requirement that a flow indicator be installed in the duct from the emission point to the incinerator before the stream is combined with any other stream. Periods of no flow or periods when the vent stream was diverted from the control device were required to be reported. The commenter noted that in his system, under proper operation, there would be periods of no flow in the line that connects the source to the combined flow duct to the control device, such as when there are no working or breathing losses from a storage tank. Additionally, under normal operation, there could be flow in this line toward the source (e.g., when the vapor pressure in the source drops, causing nitrogen to flow toward the source). These periods would not necessarily indicate that emissions were being diverted from the vapor incinerator. The commenter requested an opportunity to use alternative monitoring procedures in cases such as his where the proposed required monitoring would not yield useful information.

The EPA agrees that the monitoring in the proposed rule does not achieve the desired result on a system such as the commenter's, in which there is a nitrogen blanket. The purpose of the flow indicator is to provide a record of each period when the emissions bypass the control device and are emitted to the atmosphere. Emissions bypass the

control device during a number of events, including the opening of a relief device on the source or the diversion of the flow in the closed vent system to the atmosphere. To address situations where the proposed monitoring and associated recordkeeping and reporting are not good indicators that the control device has been bypassed, EPA has provided alternative monitoring requirements in the final rule. These alternatives are substantively the same as those included in the NESHAP for benzene transfer operations (40 CFR part 61 subpart BB). One alternative is to place a flow indicator in each line that could divert emissions from the vapor incinerator (i.e., a bypass line). In this case, periods of flow away from the control device are required to be recorded and reported. A second alternative is for situations when there is a car seal or a lock-and-key arrangement on the device used to change the position of a bypass line valve (e.g., from closed to open). In this case, there is no requirement for a flow indicator. The owner or operator would be required to visually inspect the seal or closure mechanism at least once every month to ensure that it is maintained in the closed position such that the vent stream is not diverted to the atmosphere through the bypass line. In addition, the owner or operator is required to identify the date and duration of each period when the car seal has been broken or the valve has been open.

A correction has been made to the recordkeeping requirements for vapor incinerators. The proposed rule stated that an exceedance of the temperature parameter for a vapor incinerator was any 3-hour period during which the monitored combustion temperature averaged less than 28°C (50°F) below the average combustion temperature during the most recent performance test. This is correct for a vapor incinerator other than a catalytic incinerator. However, the proposed rule inadvertently did not include the definition of an exceedance for a catalytic incinerator; it has been included in the final rule. For a catalytic incinerator, an exceedance is defined as any 3-hour period during which the monitored temperature of the vent stream immediately before the catalyst bed is more than 28°C (50°F) below the average temperature of the vent stream during the most recent performance test. In addition, an exceedance is any 3-hour period during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most

recent performance test. These specifications are consistent with other EPA rules that include requirements for catalytic incinerators. Examples of these other rules are the NESHAP for benzene waste operations (40 CFR part 61 subpart FF), and the new source performance standards for organic emission sources in the synthetic organic chemical manufacturing industry (40 CFR part 60 subparts III and NNN).

Clarification on Flare Use

During EPA's review of the initial reports for subpart L, the question arose as to whether § 61.132(a) prohibits the flaring of coke oven gas instead of using it to underfire the coke oven. There are situations where more clean coke oven gas is generated than can be used to underfire the coke ovens and a plant may not have other opportunities to sell or use it as fuel. In these situations, flares typically have been used to burn this coke oven gas.

The EPA would like to clarify that it considers flares to be part of the gas combustion system at the by-product plant. In the document *Benzene Emissions from Coke By-Product Recovery Plants—Background Information Document to the Revised Proposed Standards (EPA-450/3-83-016b)*, § 7.2 includes a discussion of EPA's cost analysis of the standards for plants where EPA knew that coke oven gas is flared. Thus, EPA did not intend to prohibit this practice. However, it is important to note that § 61.132(a)(2) of subpart L requires that the benzene emissions from the subject sources be recovered or destroyed. Therefore, when benzene from subject sources is vented to the coke oven gas system and is not recovered as a light oil product, excess coke oven gas containing the benzene may not be vented directly to the atmosphere. Furthermore, the flare must be designed and operated to reduce the benzene emissions by at least 98 percent. Examples of flare specifications that would achieve greater than or equal to 98 percent control of benzene are those in 40 CFR 60.18.

Miscellaneous

Docket: The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions,

and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0185. Comments on these requirements, including suggestions for reducing this burden, should be submitted to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC, 20503, marked "Attention: Desk Officer for EPA" as well as to Chief, Information Policy Branch (PM-223Y), USEPA, 401 M Street, SW., Washington, DC, 20460.

During the first 3 years that the rule is in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 190 hours per year per respondent. This paperwork burden is required for owners or operators who choose to use one of the add-on control devices provided for in today's rule to comply with subpart L. However, the use of these alternative controls instead of gas blanketing, the control on which 40 CFR 61.132 is based, is optional.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rule is not major because it is a technical amendment to allow alternative controls to be used to comply with an existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order. This rulemaking was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket No. A-79-16. The docket is available for public inspection at EPA's Air Docket listed under the **ADDRESSES** section of this notice.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the identification of potentially adverse impacts of Federal regulations upon

small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this amendment imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporations by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: September 12, 1991.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, 301 of the Clean Air Act as amended, (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.130 of subpart L is amended by revising the heading and by adding paragraphs (c) and (d) to read as follows:

§ 61.130 Applicability, designation of sources, and delegation of authority.

(c) In delegating implementation and enforcement authority to a State under section 112 of the Act, the authorities contained in paragraph (d) of this section shall be retained by the Administrator and not transferred to a State.

(d) Authorities that will not be delegated to States:

§ 61.136(d)

3. Section 61.131 of subpart L is amended by adding the following definitions in alphabetical order to read as follows:

§ 61.131 Definitions:

Car seal means a seal that is placed on the device used to change the position of a valve (e.g., from open to closed) such that the position of the valve cannot be changed without

breaking the seal and requiring the replacement of the old seal, once broken, with a new seal.
* * * * *

Non-regenerative carbon adsorber means a series, over time, of non-regenerative carbon beds applied to a single source or group of sources, where non-regenerative carbon beds are carbon beds that are either never regenerated or are moved from their location for regeneration.
* * * * *

Regenerative carbon adsorber means a carbon adsorber applied to a single source or group of sources, in which the carbon beds are regenerated without being moved from their location.
* * * * *

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not necessarily extract energy in the form of steam or process heat.
* * * * *

4. Section 61.139 of subpart L is revised to read as follows:

§ 61.139 Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps.

(a) As an alternative means of emission limitation for a source subject to § 61.132(a)(2) or § 61.132(d), the owner or operator may route gases from the source through a closed vent system to a carbon adsorber or vapor incinerator that is at least 98 percent efficient at removing benzene from the gas stream.

(1) The provisions of § 61.132(a)(1) and § 61.132(a)(2)(i) and (ii) shall apply to the source.

(2) The seals on the source and closed vent system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in § 61.245(c).

(3) The provisions of § 61.132(b) shall apply to the seals and closed vent system.

(b) For each carbon adsorber, the owner or operator shall adhere to the following practices:

(1) Benzene captured by each carbon adsorber shall be recycled or destroyed in a manner that prevents benzene from being emitted to the atmosphere.

(2) Carbon removed from each carbon adsorber shall be regenerated or destroyed in a manner that prevents benzene from being emitted to the atmosphere.

(3) For each regenerative carbon adsorber, the owner or operator shall initiate regeneration of the spent carbon bed and vent the emissions from the source to a regenerated carbon bed no

later than when the benzene concentration or organic vapor concentration level in the adsorber outlet vent reaches the maximum concentration point, as determined in § 61.139(h).

(4) For each non-regenerative carbon adsorber, the owner or operator shall replace the carbon at the scheduled replacement time, or as soon as practicable (but not later than 16 hours) after an exceedance of the maximum concentration point is detected, whichever is sooner.

(i) For each non-regenerative carbon adsorber, the scheduled replacement time means the day that is estimated to be 90 percent of the demonstrated bed life, as defined in § 61.139(h)(5).

(ii) For each non-regenerative carbon adsorber, an exceedance of the maximum concentration point shall mean any concentration greater than or equal to the maximum concentration point as determined in § 61.139(h).

(c) Compliance with the provisions of this section shall be determined as follows:

(1) For each carbon adsorber and vapor incinerator, the owner or operator shall demonstrate compliance with the efficiency limit by a compliance test as specified in § 61.13 and § 61.139(g). If a waiver of compliance has been granted under § 61.11, the deadline for conducting the initial compliance test shall be incorporated into the terms of the waiver. The benzene removal efficiency rate for each carbon adsorber and vapor incinerator shall be calculated as in the following equation:

$$E = \frac{\sum_{i=1}^n Q_{bi}C_{bi} - \sum_{j=1}^m Q_{aj}C_{aj}}{\sum_{i=1}^n Q_{bi}C_{bi}} \times 100$$

Where:

E=percent removal of benzene.

C_{aj}=concentration of benzene in vents after the control device, parts per million (ppm).

C_{bi}=volumetric flow rate in vents after the control device, standard cubic meters/minute (scm/min).

Q_{aj}=volumetric flow rate in vents after the control device, standard cubic meters/minute (scm/min).

Q_{bi}=volumetric flow rate in vents before the control device, scm/min.

m=number of vents after the control device.

n=number of vents before the control device.

(2) Compliance with all other provisions in this section shall be determined by inspections or the review of records and reports.

(d) For each regenerative carbon adsorber, the owner or operator shall install and operate a monitoring device

that continuously indicates and records either the concentration of benzene or the concentration level of organic compounds in the outlet vent of the carbon adsorber. The monitoring device shall be installed, calibrated, maintained and operated in accordance with the manufacturer's specifications.

(1) Measurement of benzene concentration shall be made according to § 61.139(g)(2).

(2) All measurements of organic compound concentration levels shall be reasonable indicators of benzene concentration.

(i) The monitoring device for measuring organic compound concentration levels shall be based on one of the following detection principles: Infrared absorption, flame ionization, catalytic oxidation, photoionization, or thermal conductivity.

(ii) The monitoring device shall meet the requirements of part 60, appendix A, method 21, sections 2, 3, 4.1, 4.2, and 4.4. For the purpose of the application of method 21 to this section, the words "leak definition" shall be the maximum concentration point, which would be estimated until it is established under § 61.139(h). The calibration gas shall either be benzene or methane and shall be at a concentration associated with 125 percent of the expected organic compound concentration level for the carbon adsorber outlet vent.

(e) For each non-regenerative carbon adsorber, the owner or operator shall monitor either the concentration of benzene or the concentration level of organic compounds at the outlet vent of the adsorber. The monitoring device shall be calibrated, operated and maintained in accordance with the manufacturer's specifications.

(1) Measurements of benzene concentration shall be made according to § 61.139(g)(2). The measurement shall be conducted over at least one 5-minute interval during which flow into the carbon adsorber is expected to occur.

(2) All measurements of organic compound concentration levels shall be reasonable indicators of benzene concentration.

(i) The monitoring device for measuring organic compound concentration levels shall meet the requirements of paragraphs § 61.139(d)(2) (i) and (ii).

(ii) The probe inlet of the monitoring device shall be placed at approximately the center of the carbon adsorber outlet vent. The probe shall be held there for at least 5 minutes during which flow into the carbon adsorber is expected to occur. The maximum reading during that period shall be used as the measurement.

(3) Monitoring shall be performed at least once within the first 7 days after replacement of the carbon bed occurs, and monthly thereafter until 10 days before the scheduled replacement time, at which point monitoring shall be done daily except as specified in paragraphs (e)(4) and (e)(5) of this section.

(4) If an owner or operator detects an exceedance of the maximum concentration point during the monthly monitoring or on the first day of daily monitoring as prescribed in paragraph (e)(3) of this section, then, after replacing the bed, the owner or operator shall begin the daily monitoring of the replacement carbon bed on the day after the last scheduled monthly monitoring before the exceedance was detected, or 10 days before the exceedance was detected, whichever is longer.

(5) If an owner or operator detects an exceedance of the maximum concentration point during the daily monitoring as prescribed in paragraph (e)(3) of this section, except on the first day, then, after replacing the bed, the owner or operator shall begin the daily monitoring of the replacement carbon bed 10 days before the exceedance was detected.

(6) If the owner or operator is monitoring on the schedule required in paragraph (e)(4) or paragraph (e)(5) of this section, and the scheduled replacement time is reached without exceeding the maximum concentration point, the owner or operator may return to the monitoring schedule in paragraph (e)(3) of this section for subsequent carbon beds.

Note: This note provides an example of the monitoring schedules in paragraphs (e)(3), (e)(4) and (e)(5) of this section. Assume that the scheduled replacement time for a non-regenerative carbon adsorber is the 105th day after installation. According to the monitoring schedule in paragraph (e)(3) of this section, initial monitoring would be done within 7 days after installation, monthly monitoring would be done on the 30th, 60th and 90th days, and daily monitoring would begin on the 95th day after installation. Now assume that an exceedance of the maximum concentration point is detected on the 90th day after installation. On the replacement carbon bed, the owner or operator would begin daily monitoring on the 61st day after installation (i.e., the day after the last scheduled monthly monitoring before the exceedance was detected), according to the requirements in paragraph (e)(4) of this section. If, instead, the exceedance were detected on the first bed on the 95th day, the daily monitoring of the replacement bed would begin on the 85th day after installation (i.e., 10 days before the point in the cycle where the exceedance was detected); this is a second example of the requirements in paragraph (e)(4) of this section. Finally, assume that an exceedance of the maximum

concentration point is detected on the 100th day after the first carbon adsorber was installed. According to paragraph (e)(5) of this section, daily monitoring of the replacement bed would begin on the 90th day after installation (i.e., 10 days earlier than when the exceedance was detected on the previous bed). In all of these examples, the initial monitoring of the replacement bed within 7 days of installation and the monthly monitoring would proceed as set out in paragraph (e)(3) of this section until daily monitoring was required.

(f) For each vapor incinerator, the owner or operator shall comply with the monitoring requirements specified below:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1 percent of the temperature being monitored expressed in degrees Celsius or $\pm 0.5^\circ \text{C}$, whichever is greater.

(i) Where a vapor incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Comply with paragraph (f)(2)(i), paragraph (f)(2)(ii), or paragraph (f)(3)(iii) of this section.

(i) Install, calibrate, maintain and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow to the incinerator at least once every hour for each source. The flow indicator shall be installed in the vent stream from each source at a point closest to the inlet of each vapor incinerator and before being joined with any other vent stream.

(ii) Install, calibrate, maintain and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow away from the vapor incinerator at least once every 15 minutes. The flow indicator shall be installed in each bypass line, immediately downstream of the valve that, if opened, would divert the vent stream away from the vapor incinerator.

(iii) Where a valve that opens a bypass line is secured in the closed position with a car seal or a lock-and-key configuration, a flow indicator is not required. The owner or operator shall perform a visual inspection at least once every month to check the position of the valve and the condition of the car seal or lock-and-key configuration. The owner or operator shall also record the date and duration of each time that the

valve was opened and the vent stream diverted away from the vapor incinerator.

(g) In conducting the compliance tests required in § 61.139(c), and measurements specified in § 61.139(d)(1), (e)(1) and (h)(3)(ii), the owner or operator shall use as reference methods the test methods and procedures in appendix A to 40 CFR part 60, or other methods as specified in this paragraph, except as specified in § 61.13.

(1) For compliance tests, as described in § 61.139(c)(1), the following provisions apply.

(i) All tests shall be run under representative emission concentration and vent flow rate conditions. For sources with intermittent flow rates, representative conditions shall include typical emission surges (for example, during the loading of a storage tank).

(ii) Each test shall consist of three separate runs. These runs will be averaged to yield the volumetric flow rates and benzene concentrations in the equation in § 61.139(c)(1). Each run shall be a minimum of 1 hour.

(A) For each regenerative carbon adsorber, each run shall take place in one adsorption cycle, to include a minimum of 1 hour of sampling immediately preceding the initiation of carbon bed regeneration.

(B) For each non-regenerative carbon adsorber, all runs can occur during one adsorption cycle.

(iii) The measurements during the runs shall be paired so that the inlet and outlet to the control device are measured simultaneously.

(iv) Method 1 or 1A shall be used as applicable for locating measurement sites.

(v) Method 2, 2A, or 2D shall be used as applicable for measuring vent flow rates.

(vi) Method 18 shall be used for determining the benzene concentrations (C_{a1} and C_{b1}). Either follow section 7.1, "Integrated Bag Sampling and Analysis," or section 7.2, "Direct Interface Sampling and Analysis Procedure." A separation column constructed of stainless steel, 1.83 m by 3.2 mm, containing 10 percent 1,2,3-tris (2-cyanoethoxy) propane (TECP) on 80/100 mesh Chromosorb P AW, with a column temperature of 80°C , a detector temperature of 225°C , and a flow rate of approximately 20 ml/min, may produce adequate separations. The analyst can use other columns, provided that the precision and accuracy of the analysis of benzene standards is not impaired. The analyst shall have available for review information confirming that there

is adequate resolution of the benzene peak.

(A) If section 7.1 is used, the sample rate shall be adjusted to maintain a constant proportion to vent flow rate.

(B) If section 7.2 is used, then each performance test run shall be conducted in intervals of 5 minutes. For each interval "t," readings from each measurement shall be recorded, and the flow rate (Q_{a_i} or Q_{b_i}) and the corresponding benzene concentration (C_{a_i} or C_{b_i}) shall be determined. The sampling system shall be constructed to include a mixing chamber of a volume equal to 5 times the sampling flow rate per minute. Each analysis performed by the chromatograph will then represent an averaged emission value for a 5-minute time period. The vent flow rate readings shall be timed to account for the total sample system residence time. A dual column, dual detector chromatograph can be used to achieve an analysis interval of 5 minutes. The individual benzene concentrations shall be vent flow rate weighted to determine sample run average concentrations. The individual vent flow rates shall be time averaged to determine sample run average flow rates.

(2) For testing the benzene concentration at the outlet vent of the carbon adsorber as specified under §§ 61.139(d)(1), (e)(1) and (h)(3)(ii), the following provisions apply.

(i) The measurement shall be conducted over one 5-minute period.

(ii) The requirements in § 61.139(g)(1)(i) shall apply to the extent practicable.

(iii) The requirements in § 61.139(g)(1)(vi) shall apply. Section 7.2 of method 18 shall be used as described in § 61.139(g)(1)(vi)(B) for benzene concentration measurements.

(h) For each carbon adsorber, the maximum concentration point shall be expressed either as a benzene concentration or organic compound concentration level, whichever is to be indicated by the monitoring device chosen under § 61.139 (d) or (e).

(1) For each regenerative carbon adsorber, the owner or operator shall determine the maximum concentration point at the following times:

(i) No later than the deadline for the initial compliance test as specified in § 61.139(c)(1);

(ii) At the request of the Administrator; and

(iii) At any time chosen by the owner or operator.

(2) For each non-regenerative carbon adsorber, the owner or operator shall determine the maximum concentration point at the following times:

(i) On the first carbon bed to be installed in the adsorber;

(ii) At the request of the Administrator;

(iii) On the next carbon bed after the maximum concentration point has been exceeded (before the scheduled replacement time) for each of three previous carbon beds in the adsorber since the most recent determination; and

(iv) At any other time chosen by the owner or operator.

(3) The maximum concentration point for each carbon adsorber shall be determined through the simultaneous measurement of the outlet of the carbon adsorber with the monitoring device and method 18, except as allowed in paragraph (h)(4) of this section.

(i) Several data points shall be collected according to a schedule determined by the owner or operator. The schedule shall be designed to take frequent samples near the expected maximum concentration point.

(ii) Each data point shall consist of one 5-minute benzene concentration measurement using method 18 as specified in § 61.139(g)(2), and of a simultaneous measurement by the monitoring device. The monitoring device measurement shall be conducted according to § 61.139 (d) or (e), whichever is applicable.

(iii) The maximum concentration point shall be the concentration level, as indicated by the monitoring device, for the last data point at which the benzene concentration is less than 2 percent of the average value of the benzene concentration at the inlet to the carbon adsorber during the most recent compliance test.

(4) If the maximum concentration point is expressed as a benzene concentration, the owner or operator may determine it by calibrating the monitoring device with benzene at a concentration that is 2 percent of the average benzene concentration measured at the inlet to the carbon adsorber during the most recent compliance test. The reading on the monitoring device corresponding to the calibration concentration shall be the maximum concentration point. This method of determination would affect the owner or operator as follows:

(i) For a regenerative carbon adsorber, the owner or operator is exempt from the provisions in paragraph (h)(3) of this section.

(ii) For a non-regenerative carbon adsorber, the owner or operator is required to collect the data points in paragraph (h)(3) of this section with only the monitoring device, and is exempt from the simultaneous method 18 measurement.

(5) For each non-regenerative carbon adsorber, the demonstrated bed life shall be the carbon bed life, measured in days from the time the bed is installed until the maximum concentration point is reached, for the carbon bed that is used to determine the maximum concentration point.

(i) The following recordkeeping requirements are applicable to owners and operators of control devices subject to § 61.139. All records shall be kept updated and in a readily accessible location.

(1) The following information shall be recorded for each control device for the life of the control device:

(i) The design characteristics of the control device and a list of the source or sources vented to it.

(ii) A plan for proper operation, maintenance, and corrective action to achieve at least 98 percent control of benzene emissions.

(iii) The dates and descriptions of any changes in the design specifications or plan.

(iv) For each carbon adsorber, the plan in paragraph (i)(1)(ii) of this section shall include the method for handling captured benzene and removed carbon to comply with § 61.139(b) (1) and (2).

(v) For each carbon adsorber for which organic compounds are monitored as provided under § 61.139 (d) and (e), documentation to show that the measurements of organic compound concentrations are reasonable indicators of benzene concentrations.

(2) For each compliance test as specified in § 61.139(c)(1), the date of the test, the results of the test, and other data needed to determine emissions shall be recorded as specified in § 61.13(g) for at least 2 years or until the next compliance test on the control device, whichever is longer.

(3) For each vapor incinerator, the average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured and averaged over the most recent compliance test shall be recorded for at least 2 years or until the next compliance test on the incinerator, whichever is longer.

(4) For each carbon adsorber, for each determination of a maximum concentration point as specified in § 61.139(h), the date of the determination, the maximum concentration point, and data needed to make the determination shall be recorded for at least 2 years or until the next maximum concentration point determination on the carbon adsorber, whichever is longer.

(5) For each carbon absorber, the dates of and data from the monitoring required in § 61.139(d) and (e), the date and time of replacement of each carbon bed, the date of each exceedance of the maximum concentration point, and a brief description of the corrective action taken shall be recorded for at least 2 years. Also, the occurrences when the captured benzene or spent carbon are not handled as required in § 61.139(b)(1) and (2) shall be recorded for at least 2 years.

(6) For each vapor incinerator, the data from the monitoring required in § 61.139(f)(1), the dates of all periods of operation during which the parameter boundaries established during the most recent compliance test are exceeded, and a brief description of the corrective action taken shall be recorded for at least 2 years. A period of operation during which the parameter boundaries are exceeded is a 3-hour period of operation during which:

(i) For each vapor incinerator other than a catalytic incinerator, the average combustion temperature is more than 28°C (50°F) below the average combustion temperature during the most recent performance test.

(ii) For each catalytic incinerator, the average temperature of the vent stream immediately before the catalyst bed is more than 28°C (50°F) below the average temperature of the vent stream during the most recent performance test, or the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test.

(7) For each vapor incinerator, the following shall be recorded for at least 2 years:

(i) If subject to § 61.139(f)(2)(i), records of the flow indication, and of all periods when the vent stream is diverted from the vapor incinerator or has no flow rate.

(ii) If subject to § 61.139(f)(2)(ii), records of the flow indication, and of all periods when the vent stream is diverted from the vapor incinerator.

(iii) If subject to § 61.139(f)(2)(iii), records of the conditions found during each monthly inspection, and of each period when the car seal is broken, when the valve position is changed, or when maintenance on the bypass line valve is performed.

(j) The following reporting requirements are applicable to owners or operators of control devices subject to § 61.139:

(1) Compliance tests shall be reported, as specified in § 61.13(f).

(2) The following information shall be reported on a quarterly basis. Two of

the quarterly reports shall be submitted as part of the semiannual reports required in § 61.138(f).

(i) For each carbon adsorber:

(A) The date and time of detection of each exceedance of the maximum concentration point and a brief description of the time and nature of the corrective action taken.

(B) The date of each time that the captured benzene or removed carbon was not handled as required in § 61.139(b)(1) and (2), and a brief description of the corrective action taken.

(C) The date of each determination of the maximum concentration point, as described in § 61.139(h), and a brief reason for the determination.

(ii) For each vapor incinerator, the date and duration of each exceedance of the boundary parameters recorded under § 61.139(i)(6) and a brief description of the corrective action taken.

(iii) For each vapor incinerator, the date and duration of each period specified as follows:

(A) Each period recorded under § 61.139(i)(7)(i) when the vent stream is diverted from the control device or has no flow rate;

(B) Each period recorded under § 61.139(i)(7)(ii) when the vent stream is diverted from the control device; and

(C) Each period recorded under § 61.139(i)(7)(iii) when the vent stream is diverted from the control device, when the car seal is broken, when the valve is unlocked, or when the valve position has changed.

(iv) For each vapor incinerator, the owner or operator shall specify the method of monitoring chosen under § 61.139(f)(2) in the first quarterly report. Any time the owner or operator changes that choice, he shall specify the change in the first quarterly report following the change.

(3) If, for a given quarter in which no semiannual report is due under § 61.138(f), there is no information to report under § 61.139(j)(2)(i)(A), (j)(2)(i)(B), (j)(2)(ii)(A), and (j)(2)(ii)(B), then the owner or operator may submit a statement to that effect along with the information to be reported under § 61.139(j)(2)(i)(C) in the next semiannual report, rather than submitting a report at the end of the quarter.

(Approved by the Office of Management and Budget under control number 2060-0185)

[FR Doc. 91-22621 Filed 9-18-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-4010-2]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is designating a dredged material disposal site located offshore of the mouth of the Chetco River, Oregon, for the disposal of dredged material removed from the federal navigation project at the Chetco River, Oregon, and for materials dredged during other actions authorized by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. 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.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/553-1286.

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 updated on February 2, 1990 (55 FR 3688 *et seq.*). That list established this site an interim site.

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 prepared a draft and final EIS entitled "Chetco, Oregon, Dredged Material Disposal Site (ODMDS) Designation". Three letters of comment were submitted, which EPA assessed and responded to in the final EIS. As a separate but concurrent action, a notice of availability of the final EIS was published in the *Federal Register*. Anyone desiring a copy of the final EIS may obtain one from the address given above.

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 for ocean disposal of dredged material. 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 final EIS provides documentation to support designation of an ocean dredged material disposal site (ODMDS) for continuing use to be located in the Pacific Ocean off the mouth of the Chetco River, in the State of Oregon. The designated ODMDS is the existing interim site located one mile south of the mouth of the Chetco River. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA, Region 10. This ODMDS is located in the area best suited for dredged material disposal in terms of environmental and navigational safety factors. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps of Engineers to maintain the federally authorized navigation project at the Chetco River, Oregon, and for disposal of materials dredged during other actions authorized in accordance with section 103 of MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal.

The study and final designation process were conducted in accordance with the Act, the Ocean Dumping

Regulations, and other applicable Federal environmental legislation.

C. Site Description

On April 10, 1990, EPA proposed designation of the Chetco ODMDS for the continuing disposal of dredged material. The public comment period for the proposed rule and draft EIS were concurrent and closed on May 25, 1990. Three letters of comment were received commenting on the draft EIS. No comments were received specifically referencing the proposed rule. These comments were responded to in the final EIS. The comments requested clarification and were not considered substantive. No one raised serious concerns regarding designation of management of the Chetco site. During the time between the draft EIS and the final EIS, additional species were added to the list of threatened and endangered species and reauthorization of the Coastal Zone Management Act (CZMA) occurred. Consultation with the National Marine Fisheries Service on the newly listed species resulted in a determination that designation and use of the ODMDS would not affect any listed species which is described in the final EIS. Additional coordination also occurred with the coastal zone management agency for the State of Oregon regarding federal consistency.

The proposed site is located approximately 1 mile offshore of the Chetco River entrance and occupies an area of about 74 acres (0.09 square nautical miles). Water depths within the area average 21 meters. The coordinates of the site (NAD 83) are as follows:

42°01'55" N.	124°16'37" W.
42°01'55" N.	124°16'13" W.
42°01'37" N.	124°16'13" W.
and	
42°01'37" N.	124°16'37" W.

If at any time disposal operations at the 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 a 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 site, as discussed below under the eleven specific factors, is 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 EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing site 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 proposed site 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). The site is 50 to 70 feet (15–21 m) of water, approximately 1.0 nautical mile offshore of the entrance to the Chetco River. Coordinates are:

42°01'55" N.	124°16'37" W.
42°01'55" N.	124°16'13" W.
42°01'37" N.	124°16'13" W.
and	
42°01'37" N.	124°16'37" W.

The site's center line is on a 270 degree azimuth from the mouth of the Chetco River. Bottom topography within the site is varied.

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). Aquatic resources at and near the site are described in detail in Appendix A of the EIS. The existing disposal site is located in the nearshore area and many nearshore pelagic organisms occur in the water column over the site. These include zooplankton (copepods, euphausiids, pteropods, and chaetognaths) and meroplankton (fish, crab and other invertebrate larvae). These organisms generally display seasonal changes in abundance. Since they are present over most of the coast, those from Chetco are not critical to the overall coastal population. Based on evidence from previous zooplankton and larval fish studies, it appears that there will be no impacts to organisms in the water column. The site is also adjacent to neritic reefs and haystack rocks. These reefs are unusual features along the coast and support a variety of aquatic organisms, including bull kelp (*Nerocystis lutekeana*) and its associated.

fish and invertebrate community. Recently, the Oregon Department of Fish and Wildlife (ODFW) has identified a squid spawning area offshore of the disposal site.

Based on the analysis of benthic samples collected from the Chetco disposal site and the adjacent areas to the north and south, the disposal site contains a benthic fauna characteristic of nearshore, sandy, wave-influenced regions common along the coasts of the Pacific Northwest. The abundance and density of the infaunal community was found to be low at the disposal site, typical of shallow, nearshore, high energy habitats. The fauna is dominated by polychaete annelids (marine worms), small crustaceans (amphipods and cumaceans), molluscs (clams and snails), and echinoderms (sand dollars). The particular species identified from the disposal site are adapted to high energy environments and are able to withstand large sediment fluxes.

The disposal site is in an area where concentrations of common murre, gulls and other marine foraging species occur. Large concentrations have been observed shoreward of the interim site extending to and within the confines of the jetties. Concentrations undoubtedly occur at the site periodically. Concentrations of shorebirds, gulls, waterfowl, and other species occur in the Chetco estuary or on adjacent beaches.

Portland District requested an endangered species listing for the ODMDS from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as part of their coordination of the Site Evaluation Report. At that time only the brown pelican and the gray whale were listed. Based on previous biological assessments conducted along the Oregon coast regarding impacts to the brown pelican and the gray whale, it was concluded that no impact to either species is anticipated from the proposed designation and use. This information was presented in the draft EIS. Subsequently, the Corps was informed by the NMFS that they had revised their list of threatened/endangered species. Species listed by the NMFS included the gray, humpback, blue, fin, sei, right, and sperm whales; northern (Steller) sea lions; leatherback sea turtles, and Sacramento River winter run chinook salmon. A biological assessment was prepared addressing the newly listed species and revising previous biological assessment on the gray whale. The assessment concluded that no impact to any of the species is anticipated by designation and use of the Chetco

ODMDS. This information is presented in appendix F of the EIS, including a letter of concurrence from NMFS.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. There is no evidence that past disposal has seriously impacted the resources in proximity to the interim site. Accordingly, this site is considered an acceptable site for designation.

3. *Location in relation to beaches and other amenity areas.* 40 CFR 228.6(a)(3). Due to depth of disposal operations and the presence of the south reef, there is little possibility of beach nourishment by natural onshore movement of dredged material from the existing site. Summer wave conditions may transport some sediment from the site shoreward and south, but the limiting depth for this movement is probably 40 to 50 feet (12-15 m) mean lower low water. The majority of disposal material is deeper than 50 feet, so shoreward transport of dredged material is unlikely.

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 proposed disposal site will continue to receive dredged materials transported by either government or private contractor hopper dredges. The current dredges available for use at Chetco have hopper capacities from 800 to 1,500 cubic yards. Barges have a greater capacity, up to 4,000 cubic yards, but have not been routinely used at this project in the past. This would be the range in volumes of dredged material disposed of in any one dredging/disposal cycle. The approximately 48,000 cubic yards estimated to be removed annually from the Chetco project can be placed at the site in one dredging season by any combination of private and government plants. The dredges would be under power and moving while disposing. This allows the ship to maintain steerage.

The material dredged consists of medium to fine grain marine sands and coarser materials, including gravels and cobbles (Appendix C of the EIS provides detailed grain size information for the disposal area and the dredged area). These materials are predominant throughout the entire project length, RM 0 to 2.8. The materials are very similar to bottom materials at the site and the entire nearshore area. All sediments destined for ocean disposal are subject to specific evaluation, including independent review by EPA. Past

sediments discharged at the interim site have typically met the exclusion criteria (40 CFR 227.13(b)).

5. *Feasibility of surveillance and monitoring.* 40 CFR 228.6(a)(5). The proximity of the disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. There is, routinely, a Coast Guard vessel patrolling entrance and nearshore areas, so surveillance can also be accomplished by surface vessel.

Following designation of ODMDS, EPA, Region 10, and the Corps District develop a site management plan which addresses the need for post-disposal monitoring. All Oregon ODMDS are periodically monitored jointly by the Corps and EPA already. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity.* 40 CFR 228.6(a)(6). The sediments dredged from the Chetco River entrance are predominantly marine sands and fluvial gravels. These are generally similar to sediments at the disposal site. Under winter wave conditions common to this part of the Pacific Coast, the sand component is highly mobile to a depth of 90-120 feet (27-37 m). Summer wave conditions commonly mobilize sands to a depth of 40-60 feet (12-18 m). Studies at Coos Bay show wave-generated currents can move this size sediment over 60 percent of the time during summer and winter and over 50 percent of the time during spring and fall. While waves are responsible for resuspending bottom sediments, including dredged materials, it is the long-term mean current that determines the extent and direction of dispersal. While some winter storms would move gravels at the disposal site, these coarse sediments do not migrate very far away from the site and probably stay in the general area where they have been disposed.

The nearshore mean circulation is alongshore, closely paralleling the bathymetric contours, with a lesser onshore-offshore component. Circulation patterns are variable with season and weather conditions. In winter, the general shelf circulation is to the north, although short periods of southerly flow occur. Coos Bay studies suggest that offshore flow is more common in winter. This would indicate a tendency for sediment in the disposal site to move north and west under winter circulation conditions. During the

remainder of the year, flow is southerly with lower current velocities than in winter. Periodic changes in summer wind direction lead to episodes of upwelling in which near-shore ocean water transport causes a compensating near-bottom onshore flow. These upwelling events occur between April and July and continue for several days at a time. Near-bottom flow in the vicinity of the disposal site during summer should be generally southerly with onshore/offshore flow varying due to local wind conditions.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* 40 CFR 228.6(a)(7). Appendix B of the EIS gives annual volumes of materials disposed for the last 10 years. On the average, 48,000 cubic yards have been annually disposed. Future volumes are expected to be similar; although probably showing some increase as other disposal options are exhausted.

Sidescan sonar of the disposal site and adjacent areas shows an area of coarse sand/gravel covering about half of the site and extending north and west of the site up to 1200 feet (31 m), both offshore and toward the river entrance. This is most likely an accumulation of the coarser dredged material fractions that have remained in the same general area since disposal. There are no bathymetric anomalies associated with this deposit (no mounding). The feature will persist as long as coarse sediments are disposed in this area. This has not caused adverse impacts on habitat, however, since the overall area is characterized by a wide range of bottom types.

No biological information has been found to exist regarding the interim site prior to any disposal having occurred. It is expected that no significant impacts to the interim site have occurred beyond the yearly, site-specific effects of past disposals. Oregon Department of Fish and Wildlife biologists have recommended that the site be left at its present location.

Sediments disposed in the past have been physically similar to the sample collected in close proximity to the disposal site, and have met the exclusion criteria. Elutriate analysis performed in the past show minimal contaminant releases during this simulated disposal operation with receiving water from the interim disposal site.

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 EIS identified no

legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial Fishing: Two active commercial fisheries occur in the inshore area, salmon trolling and Dungeness crab fishing. The length of the salmon fishing season varies each year depending upon the established quota; however, it normally extends from July to September. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that they were unaware that this had ever been a problem. The Dungeness crab season is from December 1 to August 15 each year; however, most of the fishing is done prior to June and usually ends early because of the increase in soft shell crabs in the catch which are not marketable. As a result, most crab fishing occurs outside of the normal dredging season and it is unlikely that a conflict would result. ODFW has identified a potential squid fishery offshore from the existing site. No fishery exists at present, but stocks may be sufficient to support a fishery if a market develops. There are no existing commercial fish or shellfish aquaculture operations that would be impacted by continued use of the existing disposal site.

Recreational Fishing: Recreational fishing opportunities are extensive and varied in the Chetco area. The small boat harbor is used extensively in the summer by recreational fishermen. Private party and charter boat recreational fishing for both salmon and rock and reef fish occur. The salmon fishing season coincides with the commercial season and extends from early summer until the quota for the area is reached. Recreational fishing boats have a potential for conflicting with dredging operations; however, none have been reported to date. It is unlikely that any significant conflict will develop in the near future.

Offshore Mining Operations: All considerations for offshore mining and oil/gas leases are in the development stages. The disposal site is not expected to interfere with any of the proposed operations, as most exploration programs are scheduled for the outer continental shelf.

Navigation: No conflicts with commercial navigation traffic have been reported and none are expected, due to the light traffic in the Chetco River area. This situation is not expected to change substantially. Rock pinnacles that are navigation hazards occur nearshore and south of the ODMDS. Avoidance of

these submerged and emergent pinnacles by navigation traffic and the dredges was considered during final positioning of the ODMDS

Scientific: There are no identified scientific study locations that could be impacted by the disposal site

Coastal Zone Management: In reviewing proposed ODMDS for consistency with the Coastal Zone Management (CZM) plan, they are evaluated against Oregon's Statewide Goal 19 (Ocean Resources). Local comprehensive land use plans for the Chetco area have been approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredged materials. The requirements of the ocean dumping regulations are broad enough to meet the needs of Goal 19. Therefore, the designation of this site for ocean disposal of dredged material following the ocean dumping regulations would be consistent with Goal 19 and the State of Oregon's Coastal Zone Management Plan.

Pursuant to an EPA, Office of Water, policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State's approved coastal zone management program. The State of Oregon has concurred with this determination (appendix F of final EIS). In addition, as part of the NEPA process, EPA has consulted with the State of Oregon regarding the effects of dumping at the site on the State coastal zone. EPA has taken the State's comments into account in preparing the final EIS for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on use of the site.

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). Water quality off the mouth of the Chetco River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. Water and sediment quality analyses conducted at several Oregon ODMDS are discussed in appendix C of the EIS. These studies have not shown adverse water quality impacts from ocean disposal of entrance shoal sands. The ecology of the area is discussed in appendix A in the EIS. The offshore area within and adjacent to the ODMDS is a typical northwest Pacific mobile sand community, shifting to the north and southeast to a neritic reef system. The sand communities are ubiquitous to nearshore ocean habitats

off Oregon. The site is sufficiently removed from rock and kelp habitats so that they would not be impacted by ocean disposal. Designation and use of the proposed ODMDS is not expected to have significant ecological consequences.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species could be established at the disposal site as a result of dredging and disposal activities.

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). Neritic reefs, common off the southern Oregon coast, comprise a unique ecological feature. They support a wide variety of invertebrates and fish species unique to rocky areas, as well as bull whip kelp communities. These areas are sheltered from wave action and, when receiving nutrients from both the ocean and the estuaries, are unusually productive. The ODMDS is removed from these areas.

A cultural resource literature search of the Chetco River study area did not document any wrecked vessels in the project area. This is consistent with the fact that the Chetco River historically has not been a major shipping point on the coast. Most export commodities, especially timber products, have been transported by rail and barge rather than by lumber schooner or ship. Wrecks could have occurred in the area that have not yet been discovered. However, based on previous investigations in other Oregon coastal settings (Yaquina Bay, Coquille, Columbia River Mouth), beaches, surf zones, neritic reefs, and shallow waters are the most likely areas for shipwreck occurrence. The ODMDS is removed from these areas. Also, there were no indications of wrecks from the side scan sonar survey completed during geophysical investigations.

No cultural resources impacts are expected to result from designation of the Chetco ODMDS. Existing information, along with supplementary side scan sonar data, has been reviewed by the Oregon State Historic Preservation Officer (SHPO). The SHPO letter of concurrence is included in the final EIS.

E. Action

The EIS concludes that the Chetco River site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Chetco River ODMDS as an EPA approved Ocean

Dumping Site is being published as final rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if 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 or dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, 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 rule 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 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: September 10, 1991.

Dana A. Rasmussen,

Regional Administrator for Region 10.

In consideration of the foregoing, 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 the entry for "Chetco River Entrance" from the Dredged Material

Site listing in paragraph (a)(3), and by adding paragraph (b)(85) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(85) Chetco River—Region 10.
Location: 42°01'55"N., 124°16'37"W.; 42°01'55"N., 124°16'13"W.; 42°01'37"N., 124°16'13"W.; and 42°01'37"N., 124°16'37"W. (NAD 83),

Size: .09 square nautical miles.

Depth: 21 meters (average).

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Chetco Estuary and River and adjacent areas.

[FR Doc. 91-22623 Filed 9-18-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6881

[MT-930-4214-10; MTM 067221]

Withdrawal of National Forest System Lands for Protection of Recreational Values, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 95 acres of National Forest System lands from mining for a period of 20 years to protect recreational values. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect three Forest Service recreation areas: