RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3352-5]

40 CFR Part 228

Ocean Dumping; Proposed Site Designation for San Juan, PR

Wednesday, March 23, 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located offshore of San Juan Harbor, Puerto Rico for the disposal of dredged material removed from San Juan Harbor and vicinity. 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: This designation shall become effective on April 22, 1988.

ADDRESSES: Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.

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

EPA Public Information Reference Unit (PIRU) Room 2904 (rear) 401 M Street Southwest, Washington, DC 20460;

EPA Region II Library, Room 402, 26 Federal Plaza, New York, NY 10278;

EPA Region II, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907.

FOR FURTHER INFORMATION CONTACT: Mario Del Vicario, 212-264-5170.

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 of EPA 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 pursu-

ant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on August 19, 1985 (50 FR 33338). That list established the San Juan site as an interim site and extended its period of use until July 31, 1988, or until final rulemaking is completed, whichever is sooner. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

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 major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

The EPA prepared a final EIS entitled "Environmental Impact Statement for the San Juan Harbor, Puerto Rico Dredged Material Site Designation."On August 13, 1982, a notice of availability of the drafts EIS for public review and comment was published in the Federal Register (47 FR 35335). The public comment period on this draft EIS closed September 27, 1982. On February 4, 1983, a notice of availabilty of the final EIS for public review and comment was published in the Federal Register (48 FR 5308). The public record on the final EIS closed March 7, 1983. Anyone desiring a copy of the EIS may obtain one from the address given above.

The final EIS includes the Agency's assessment of the comments received during the comment period on the draft EIS. Comments correcting facts were incorporated into the text and the changes were noted in the final EIS. Specific comments which could not be appropriately treated as text modifications were addressed point by point. Both comments and responses are found in Appendix D of the final EIS.

Primary commenters on the draft EIS were the U.S. Army Corps of Engineers and the Commonwealth of Puerto Rico's Environmental Quality Board and Department of Natural Resources. The Corps of Engineers noted that the draft referred only to maintenance dredging from existing projects. EPA corrected this oversight in the final EIS. The proposed rule would allow disposal of dredged material from new projects as well as existing ones. Comments received from the Environmental Quality Board and the Department of Natural Resources noted that the endangered West Indian manatee has been sighted off the northeastern coast of Puerto Rico. This observation was included in the final EIS. However, no manatees have recently been seen at the site and their passage through the site, if this were to occur, would be short and infrequent. The Department of Natural Resources expressed concern that dumping at the site would introduce toxic wastes into a commercial fishery area inshore of the dump site. Previous monitoring surveys, together with current data, indicate that as a result of the prevailing coastal current system, migrating pollutants are distributed in an east-west and offshore direction away from inshore fishery areas. In addition, elutriate studies using harbor sediments indicate that trace metal contaminant concentrations, after initial dilution, do not exceed EPA chronic marine Water Quality Criteria (WQC). Therefore, it is unlikely that the dredged material disposal activities in conjunction with the coastal patterns would adversely impact inshore commercial fishing areas.

One comment was received on the final EIS. The Corps of Engineers recommended that the interim site be designated for continuing use. This rule reflects acceptance of this comment.

Dredged material from new projects may be dumped at this site upon completion of an appropriate case-by-case evaluation of the impact of such material on the site. This analysis must demonstrate that the impact would not be unacceptable. EPA plans to monitor ambient water quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Additional monitoring of impacts would be required if dredging volumes or ***9445** characteristics of the dredged materials change significantly to assure that adverse effects on the ecosystem do not develop. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

Based upon the information reported in the EIS, EPA today designates the existing San Juan Harbor site for continuing use for the ocean disposal of dredged material where applicants have demonstrated compliance with EPA's ocean dumping criteria.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this dredged material disposal site will not affect the endangered species under their jurisdiction.

The action discussed in the EIS is the designation for continuing use of an ocean disposal site for dredged material located in the Atlantic Ocean in the vicinity of San Juan Harbor. The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Port of San Juan and nearby coastal areas. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

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

C. Site Designation.

The site is a rectangle located approximately 2.2 nautical miles north-northwest of the entrance to San Juan Harbor, with the following coordinates:

18d 30' 10"N, 66d 09' 31"W;

18d 30' 10"N, 66d 08' 29"W;

18d 31' 10"N, 66d 08' 29"W;

18d 31' 10"N, 66d 09' 31"W.

The site occupies an area of approximately one square nautical mile, and water depths within this area range from 200 to 400 meters. Disposal operations at the site began in 1974.

All of the dredged material disposed at the designated site will be from dredging operations in the Port of San Juan, Puerto Rico and coastal areas within 20 miles of the Port entrance. The total amount of dredged material dumped at the site since 1974 has been approximately 4.3 million cubic yards. Maximum quantities of dredged material to be disposed at this site are to be determined by both EPA and the Corps of Engineers. 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

General criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, further use of the site will be terminated as soon as suitable alternative disposal sites can be designated. These general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The disposal site's location has been chosen to minimize the interference of disposal activities with other activities in the marine environment. The site is not located in major shipping lanes. While there is potential for oil and gas exploration in the area, no serious conflict with such activities is expected. Coordination with future leasing activities should effectively avoid potential conflicts [§ 228.5(a)]. Temporary perturbations in water quality from dredged material disposal can be expected to return to ambient levels before reaching any beach, shoreline or known geographical limited fishery or shellfishery [§ 228.5(b)]. Based upon disposal site evaluation studies presented in the EIS, the designated site satisfies the criteria for site selection set forth in §§ 228.5-228.6 [§ 228.5(c)]. The disposal site has been limited in size in order to localize, identify and control any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts [§ 228.5(d)]. The location of the site satisfies the statutory preference for sites located off the Continental Shelf, where feasible [§ 228.5(e)]. EPA established the 11 specific factors [§ 228.6] to constitute an environmental assessment of the impact of disposal at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the existing site are are viewed below in terms of these 11 factors.

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

The rectangular site is approximately one square nautical mile in size. Its corner coordinates are given above. Water depth ranges from 200 to 400 meters with an average of 292 meters. The center of the site is 2.2 nautical miles from the Isle de Cabras. The bottom drops off steeply to the north. The Insular Slope in this area to the north is characterized by numerous submarine ridges and swales. The bottom sediments within the area of the site average 48 percent silt and 45 percent clay with the balance being sand and gravel.

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

The site does not encompass any known unique breeding, spawning, nursery or passage areas of nekton, marine mammals or birds. The open water of the site may be feeding grounds for some wide ranging pelagic fish such as tuna, jacks, and mackerel. Deep waters at the site are feeding grounds for various snappers (blackfin, silk, and

vermillion), but the site is not unique in this regard.

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

The site is centered approximately 2.2 nautical miles due north of San Juan. Palo Seco and Punta Salinas, on the coast immediately west of San Juan, are both approximately 2.5 nautical miles from the center of the site. Both are developed beaches which serve metropolitan San Juan.

El Morro, one of the two fortifications in the San Juan National Historical Site, attracts thousands of visitors every year. It is located on a prominence on the western tip of Isle San Juan overlooking the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles to the north in the Atlantic Ocean and can be seen from the fortification.

***9446** 4. Types and Quantities of Waste Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any [40 CFR 228.6(a)(4).]*

Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged material must satisfy EPA criteria before any permits for ocean dumping are issued. None of the material will be packaged in any way.

The Corps of Engineers will continue to perform dredging using Corps-owned hopper dredges. Additional dredging will also be performed by private contractors using hopper, dragline, clamshell, and dipper dredges.

The total amount of dredged material dumped at the site since 1974 has been 4.3 million cubic yards. Maintenance dredging encompassed 1.5 million cubic yards, and dredged material from harbor improvements encompassed 2.8 million cubic yards. Dumping occurs several times a year.

A deepening project of San Juan Harbor has been proposed by the Corps of Engineers. The proposal under consideration consists of a plan for deepening, widening, and possibly realigning and extending the channels, deepening the turning basins, and easing the channel connecting angles within the authorized existing project. If the deepening project is implemented, the volume of dredged material is estimated to be 12,795,000 cubic yards of soft material and rock. Maintenance dredging would be scheduled every two years, and would involve an increase of approximately 185,000 cubic yards per year.

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

Surveillance of disposal operations at the proposed site could be achieved by helicopter or shiprider.

Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to assure that adverse impacts do not develop. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

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

Dredged material characteristically exhibit dispersion of fine material and subsequent elevated levels of suspen-

ded sediment and turbidity when they are disposed. The material dredged from San Juan Harbor is primarily silty clay which would increase turbidity during all phases of disposal.

The current regime off the north coast of Puerto Rico is composed of tidal and non-tidal components. Semidiurnal tidal currents rotate in a clockwise direction, whereas wind-driven non-tidal currents are predominantly along shore in a westerly direction. The resulting net surface currents at the site indicate a general westward drift with frequent reversals and a mean speed of 0.6 km/hr. Generally, subsurface currents off the north coast are along shore but weaker than surface currents.

There is no known upwelling of subsurface water at the site. A well-mixed layer of surface water extends to approximately 20 meters in May and to 75-100 meters in January. Below 100 meters, a permanent thermocline exists and inhibits the mixing of surface and bottom waters.

The frequent reversal of currents at the site indicates that elevated levels of suspended sediments associated with dumping would be dispersed parallel to the coast, but not in a specific direction. Surface turbidity would be dispersed rapidly in the mixed layer. Elevated levels of suspended sediments in mid and bottom waters will remain below the thermocline and will also be dispersed in a westerly direction parallel to the coast until the particles settle to the bottom.

At depths averaging 292 meters, the strength of bottom currents is unknown, but sediment information indicates that the area is a depositional environment since the sea floor is relatively undisturbed. Therefore, horizontal movement of dredged material on the sea floor caused by either surface wave action or bottom current is not expected.

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

Chemical and biological data suggest that previous dumping has created only minor modifications at the site. Oil and grease levels are higher in site sediments; however, levels of other trace contaminants show no consistent trends. Benthic infaunal communities at the interim site show low abundances and diversities similar to the surrounding area. The benthic community is typical of that found in muddy bottom sediments throughout the area (i.e. dominated by small-bodied invertebrate deposit feeders).

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalinization, Fish and Shellfish Culture, Areas Scientific Importance and Other Legitimate Uses of the Ocean. [40 CFR 228.7(a)(8).]

Heavy shipping and cruise ship traffic passes through or in the vicinity of the site. However, past disposal activities have not interfered with the ship traffic.

A modest commercial fishery operates out of San Juan, but most fishing activity is concentrated in the shallow waters, inshore of the site. However, commercial fishing in this area is hampered by rough seas and strong winds throughout most of the year.

The Bureau of Land Management does not plan to lease any part of the north coast for oil or gas extraction. No other mineral extraction occurs at or near the site.

Disposal at the site would not interfere with the other activities listed above.

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

Environmental surveys of the site were conducted in 1980 by an EPA contractor and in 1984 by EPA. Both of these studies revealed water quality and thermohaline structure to other areas of the tropical Atlantic.

Benthic infaunal populations at the site and surrounding regions of similar depth are extremely low in density and dominated by polychaete and sipunculid worms.

Fish fauna at the site are expected to be sparse and composed of wide-ranging pelagic fish, such as tuna, jacks, and mackerel. Deep waters at the site may be inhabited by various species having wide depth ranges (spiny dogish, snappers, conger eels, and batfishes) and species representative of the abyssal slope such as grenadiers.

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

Survey work at the site has not indicated the development or recruitment of any nuisance species. ***9447** There are no components in the dredged material which would attact or recruit nuisance species to the site.

11. Existence at or in Close Proximity to the Site of any significant Natural or Cultural Feature of Historical Importance. [40 CFR 228.6(a)(11).]

El Morro, one of two fortifications within the San Juan National Historic Site, is located on a prominence on the western tip of Isle San Juan and overlooks the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles north in the Atlantic Ocean and can be seen from the fortification.

E. Response to Comments

On September 24, 1987 EPA proposed designation of this site in the Federal Register [52 FR 185]. The proposed rulemaking contained information regarding the site and the circumstances surrounding the request to dispose of dredged material. The Comment period on this proposed rulemaking closed on November 9, 1987. EPA received no responses to this request for comments.

F. Action

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

The designation of the San Juan Dredged Material Disposal Site 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 II.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of material at the site. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate permit applications according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the authority to review the applications and to disapprove of the dumping, if it determines that environmental concerns under the Act have not been satisfied.

G. 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 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 of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water Pollution Control.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, Subchapter H of Chapter 1 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. Secs. 1412 and 1418.

40 CFR § 228.12

2. Section 228.12 is amended by removing and reserving paragraph (a)(1)(ii)(B), and by adding paragraph (b)(54) to read as follows:

40 CFR § 228.12

§ 228.12 Delegation of Management Authority for Interim Ocean Dumping Sites.

* * * * *

(b) * * *

(54) San Juan Harbor, PR Dredged Material Site—Region II

Location: 18d 30'10" N°, 66d 09'31" W°; 18d 30'10" N°, 66d 08'29" W°; 18d 31'10" N°, 66d 08'29" W°; 18d 31'10"" N°, 66d 09'31" W°.

Size: 0.98 square nautical miles.

Depth: Ranges from 200-400 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredge material from the Port of San Juan, Puerto Rico, and coastal areas within 20 miles of said port entrance.

[FR Doc. 88-6292 Filed 3-22-88; 8:45 am]

BILLING CODE 6560-50-M

53 FR 9444-01, 1988 WL 264363 (F.R.)
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