RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-5346-2]

Ocean Dumping; Final Site Designation

Tuesday, January 30, 1996

***2941** AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Miami, Florida, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Miami, Florida vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: February 29, 1996.

ADDRESSES: The supporting document for this designation is the Final Environmental Impact Statement (EIS) for Designation of an Ocean Dredged Material Disposal Site offshore Miami, Florida, August 1995, which is available for public inspection at the following locations:

A. EPA/Region 4, Coastal Programs Section, 345 Courtland Street, NE., Atlanta, Georgia 30365

B. Department of the Army, Jacksonville District Corps of Engineers, Planning Division, 400 West Bay Street, Jacksonville, FL 32232-0019.

FOR FURTHER INFORMATION CONTACT: Christopher J. McArthur, 404/347-1740 ext. 4289.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This designation of a site offshore Miami, Florida, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR ch. 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 (January 11, 1977)). The list established the existing Miami (“Miami Beach”) site as an interim site. The site is now listed in 40 CFR 228.14(h)(6).

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 et seq., requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974).

EPA Region 4, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS entitled, “Final Environmental Impact Statement for Designation of An Ocean Dredged Material Disposal Site Located Offshore Miami, Florida.”On September 1, 1995, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the Federal Register (60 FR 45717 (September 1, 1995)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the Final EIS was to have closed on October 2, 1995. However, the closing date was extended until October 17, 1995 due to a request by the State of Florida.

One comment letter was received in support of the Final EIS and no letters were received critical of the Final EIS. The letter of support endorsed the Site Management and Monitoring Plan (SMMP) and the SMMP team.

The EIS has served as a Biological Assessment for purposes of Section 7 of the Endangered Species Act coordination. By itself, site designation of the Miami ODMDS will not adversely impact any threatened or endangered species under the purview of the National Marine Fisheries Service ***2942** (NMFS) and the U.S. Fish and Wildlife Service (FWS). Use of the ODMDS is not expected to adversely impact any threatened or endangered species. Pursuant to Section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) has been asked by EPA to concur with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. The National Marine Fisheries Service determined that populations of endangered/threatened species under their purview would not be adversely affected by the designation and use of the proposed ODMDS. This consultation process has been fully documented in the Final EIS.

EPA has evaluated the site designation for consistency with the State of Florida's (the State) approved coastal management program. EPA determined that the designation of the site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. The State has concurred with this determination. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the proposed site on the State coastal zone. There were three main concerns raised by the State during consultation: (1) placement of beach quality sand in the ODMDS; (2) potential for movement of silt and clay sized particles out of the disposal area and onto environmentally sensitive hardbottoms and coral reefs to the west during the occurrence of Gulf Stream frontal eddies; and (3) disposal of contaminated sediments from locations such as the Miami River. Concerns raised by the State of Florida, regarding use of suitable material for beach nourishment, were addressed in the Final EIS. EPA concurs with the State of Florida regarding the use of suitable material for beach nourishment, in circumstances where this use is practical. To address the concern regarding movement of material, a real-time monitoring system has been instituted by the Army Corps of Engineers to identify the occurrence

of Gulf Stream frontal eddies. During the occurrence of such eddies, disposal at the ODMDS will discontinue. Details of the monitoring plan and protocol has been included in the Site Management and Monitoring Plan as part of the Final EIS. With regard to contaminated materials, before any material can be placed within an ODMDS, it must be evaluated and shown to be acceptable for ocean disposal in accordance with ocean dumping regulations (40 CFR 227.13). Certain portions of the sediments proposed to be dredged from the Miami River have been found to be unacceptable for ocean disposal.

In a letter dated September 13, 1990, the Florida Department of State agreed that the designation will have no effect on any archaeological or historic sites or properties listed, or eligible for listing, in the National Register of Historic Places in accordance with the National Preservation Act of 1966 (Pub. L. 89-6654), as amended.

The action discussed in the EIS is the permanent designation for continuing use of the existing interim ocean disposal site near Miami, Florida. The purpose of the action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation of the Miami ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Miami area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Miami ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220-229) and the COE regulations (33 CFR 209.120 and 335-338). The COE also issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits to private applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the final action. Non-ocean disposal options have been examined in the previously published Feasibility Report and EIS for the Miami Harbor Channel Project. Alternatives to ocean disposal may include upland disposal within the port area, disposal in Biscayne Bay, and beach disposal. Upland disposal in the intensively developed Port of Miami-Biscayne Bay area has not been found feasible. The Port of Miami itself is built partially on fill in Biscayne Bay. Undeveloped areas within cost-effective haul distances are environmentally valuable in their own right.

Almost all inshore waters of the Biscayne Bay area are part of the Biscayne Bay Aquatic Preserve. The waters of the southern portion of Biscayne Bay, now included in the Aquatic Preserve, are to be incorporated, along with some offshore waters, into the Biscayne National Park in the near future. The Florida Department of Environmental Regulation (DER) has afforded the waters of these areas special protection as Outstanding Florida Waters. This effectively removes virtually all of the Biscayne Bay area from consideration for disposal of dredged material.

Dredged sand might be placed on beaches in the Miami Beach area. Suitable rock might be placed in nearshore waters. These options may be feasible where a substantial quantity of the desired type of material is separable from silt or other undesirable material. Such usage will be considered on a case by case basis.

The COE has been authorized to deepen Miami Harbor. For that project, environmental and economic analyses were performed and an EIS was prepared. The COE examined and documented the feasibility of each of the above-described disposal options and found none to be feasible.

The following ocean disposal alternatives were evaluated in the EIS:

1. Alternative Sites on the Continental Shelf

In the Miami nearshore area, hardgrounds supporting coral and algal communities are concentrated on the continental shelf. Disposal operations on the shelf could adversely impact this reef habitat. Because the shelf is narrow, about 3.3 nmi (6 km) off Government Cut, the transport of dredged materials for disposal beyond the shelf is both practical and economically feasible. Therefore, alternative sites on the continental shelf are not desirable.

2. Designated Interim Site (Candidate Site)

The preferred alternative considered in this document is the final designation of an ODMDS. This site is an area of approximately one square nautical mile with the following corner coordinates: 25degrees45'30" N, 80degrees03'54" W; 25degrees45'30" N, 80degrees02'50" W; 25degrees44'30" N, 80degrees02'50" W; 25degrees44'30" N, 80degrees03'54" W. The site is centered at: 25degrees45' 00" N and 80degrees03'22" W. This site is considered suitable in ***2943** terms of practicality and economic feasibility. Sections 228.5 and 228.6 of EPA's Ocean Dumping Regulations and Criteria 40 CFR establish criteria for the evaluation of ocean disposal sites.

3. Alternative Sites Beyond the Continental Shelf

The candidate site is beyond the continental shelf. The western edge of the Gulf Stream meanders about one mile east of the candidate site. Dumping in the Gulf Stream was considered, but the enormous task and expense of monitoring disposal under such conditions caused sufficient concern to eliminate that option. Therefore, additional sites beyond the continental shelf and beyond the candidate site are not desirable.

4. No Action

Under the “no action” alternative, the interim site would not receive final designation. The Water Resources Act of 1992, title V, section 506(a) prohibits the continued use of ocean dump sites which have not been designated by EPA as section 102 dump sites after January 1, 1997. If EPA fails to designate the Miami ODMDS by that date, the continued foreseeable need to have an appropriate site for disposal of suitable sediments from dredging projects in the Miami area would place pressure on the Corps and EPA to approve on a project-by-project basis the use of temporary ocean dumping locations pursuant to either Clean Water Act section 404 or MPRSA section 103.

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

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On October 27, 1994, EPA proposed designation of this site for the continueing disposal of dredged materials from the greater Miami, Florida vicinity. The public comment period on this proposed action closed on December 12, 1994. EPA received 1 letter regarding the proposed rule. The letters comments are listed and addressed below.

1. Dredged Material Evaluation

The commentor was concerned as to whether EPA will evaluate the contents of the dredged material for toxins and make them public.

Response. The suitability of dredged material for ocean disposal must be verified by the COE and agreed to by EPA prior to disposal. Verification will be valid for 3 years from the time last verified with the option of a 2-year extension. Verification will involve: (1) A case-specific evaluation against the exclusion criteria (40 CFR 227.13(b)), (2) A determination of the necessity for bioassay (toxicity and bioaccumulation) testing for non-excluded material based on the potential for contamination of the sediment since last tested, and (3) Carrying out the testing and determining that the non-excluded, tested material is suitable for ocean disposal.

Documentation of verification will be completed prior to use of the site. Documentation for material suitability for dredging events proposed for ocean disposal more than 5 years since last verified will be a new 103 evaluation and public notice. Documentation for material suitability for dredging events proposed for ocean disposal less than 5 years but more than 3 years since last verified will be an exchange of letters between the COE and EPA.

Should EPA conclude that reasonable potential exists for contamination to have occurred, acceptable testing will be completed prior to use of the site. Testing procedures to be used will be those delineated in the 1991 EPA/COE Dredged Material Testing Manual and 1992 Regional Implementation Manual. Only material determined to be suitable through the verification process by the COE and EPA will be placed at the designated ocean disposal site.

Verification documentation will be provided to the public in one of two ways. For federal dredged material disposal projects, verification documentation will be provided to the public by the COE through the NEPA process, either in the form of an EIS or an Environmental Assessment. The COE also issues MPRSA permits to private applicants for the transport of dredged material intended for disposal. In this case verification documentation will be made available to the public by the COE through the Public Notice process.

2. Sources of Dredged Material

The commentor was concerned as to what regions the greater Miami, Florida vicinity include and whether or not other sources besides the Miami Harbor Channel Project may use the site.

Response. The primary need for designation of the Miami ODMDS was for disposal of dredged material from the Miami Harbor Channel and the Federal Miami Harbor Deepening Project.

However, other projects such as the maintenance dredging of that portion of the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Miami Harbor and locally constructed channels within an economic haul distance of the Miami ODMDS can use the site provided the material is suitable for ocean disposal. Restrictions of use of the site to specific projects has not been deemed necessary at this time. If in the future, it is determined that use of the site should be restricted to a specific project, appropriate changes will be made to the Site Management and Monitoring Plan.

3. Period of Use

The commentor was concerned as to why a closing date of the site had not been determined.

Response. The period of use of the Miami ODMDS has been designated as continueing. Because the site is located in deep water, no restrictions are presently placed on disposal volumes. Future disposal of unrestricted volumes is depend-

ent upon results from future monitoring surveys. If future surveys indicate that capacity of the site is being reached or unacceptable adverse environmental impacts are occurring, then either the ODMDS Management and Monitoring Plan will be modified or use of the site will be modified or discontinued.

4. Long-term Movement of Dredged Material

The commentor was concerned about movement of disposed dredged material moving to more environmentally sensitive areas in the event of an extreme storm event.

Response. Long-term modeling efforts were conducted to determine whether a disposal mound is stable over long periods of time. A 24-hour sustained storm surge simulation showed that essentially no material would be transported as a result of the surge. A second study investigated the potential for moving material other than uniformly graded, non-cohesive sediments by calculating shear stress values on the mound and in the surrounding area. Under normal environmental conditions, shear stress values at the ODMDS are low, and little movement is anticipated for either cohesive or non-cohesive material. During storm events, the shear stress values increase by an order of magnitude. However, the shear stress on the dredged material disposal mound increases by less than 2 dynes/cm^2***2944** above the shear stress of the surrounding area. When subjected to storms, material is anticipated to move from the mound for short periods of time but large dispersion of the mound is not predicted. For the proposed Miami ODMDS, simulations show that local velocity fields are simply not adequate to move material in 600 feet or more of water. Both the short-term disposal and long-term erosion simulations of sediment transport as a function of local velocity fields indicate little possibility of affecting reefs as a direct result of use of the disposal site.

In addition, should the results of the monitoring surveys indicate that continuing use of the site would lead to unacceptable impacts, then either the ODMDS Management and Monitoring Plan will be modified to alleviate the impacts, or the location or use of the ODMDS would be modified.

5. Availability of Monitoring Results

The commentor asked if the monitoring results of the site will be made public.

Response. Monitoring results will be available to the public upon request. As discussed in the Final EIS, monitoring data will be provided to the ODMDS Site Management and Monitoring team members for review. Data will be provided to other interested parties requesting such data to the extent possible.

The site is located east of Miami, Florida, the western boundary being 3.6 nautical miles (nmi) offshore. The ODMDS occupies an area of about 1 square nautical mile (nmi^2), in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 130 to 240 meters (427 to 785 feet). The coordinates of the Miami site for designation are as follows:

25degrees45'30" N	80degrees03'54" W;
25degrees45'30" N	80degrees02'50" W;
25degrees44'30" N	80degrees03'54" W; and
25degrees44'30" N	80degrees02'50" W.

Center coordinates are 25degrees45'00" N and 80degrees03'22" 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

Pursuant to the Ocean Dumping Regulations, 40 CFR §228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. The site conforms to the five general criteria.

In addition to these general criteria in §§228.5, 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

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

The boundary and center coordinates of the site are given above. The western boundary of the site is located about 3.6 nmi offshore of Miami, Florida. The site is an approximate 1 nmi by 1 nmi square configuration. Water depth in the area ranges from 427 to 785 feet.

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

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known in the Miami area. The site is not known to include any major breeding or spawning area, except for sea turtles which use the entire beach area of eastern Florida as nesting habitat. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

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

The western edge of the candidate site is located 3.6 nautical miles from the coast. Shore-related amenities include Virginia Key, the Biscayne Bay Aquatic Preserve, Biscayne National Park, and the Bill Baggs Cape Florida State Recreational Area. Currents in the vicinity trend alongshore in a general north-south orientation. It is not expected that detectable quantities of dredged material will be transported onto beaches. Considering the distance that the disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches. Modelling performed by the COE indicates that disposed material will not impact these areas.

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(a)(4))

It is anticipated that the candidate site will be used primarily for disposal of maintenance material from the Port of Miami. Maintenance dredging has only occurred four times since 1957. Another use of the site would be the Miami Harbor Deepening Project. Estimated volume for this project is expected to be 6 million cubic yards. For each future dredging project, each disposal plan must be evaluated on a case-by-case basis to ensure that ocean disposal is the best alternative and that the material meets the Ocean Dumping Criteria in 40 CFR part 227.

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

Due to the proximity of the site to shore, surveillance will not be difficult. Survey vessels, dredges or aircraft overflights are feasible surveillance methods. However, the depths at this site make conventional ODMDS monitoring techniques difficult to utilize. An interagency Site Management and Monitoring Team was established to assist EPA in the development and implementation of a Site Monitoring Plan (SMMP) for the Miami ODMDS. The SMMP has been developed and was included as an appendix in the Final EIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agencies.

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))

Prevailing currents parallel the coast and are generally oriented along a north-south axis. Northerly flow predominates. Mean surface currents range from 62 to 95 cm/sec with maximum velocities of about 150 cm/sec. Current speeds are lower and current reversals more common in near-bottom waters. Mean velocities of 3.5 cm/sec and maximum velocities of 27 cm/sec have been reported for near-bottom waters in the area. A pycnocline occurs in site waters throughout the ***2945** year at reported depths ranging from about 60 feet in the summer to 325 feet in the winter. A dredged material dispersion study conducted by the COE for both the short- and long-term fate of material disposed at the site indicates little possibility of disposed material affecting near-shore reefs. Measures as discussed in the Site Management and Monitoring Plan will be instituted during disposal operations to minimize the possibility of material being transported to the near-shore reefs.

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

The ODMDS was used for the first time in April 1990. Only 225,000 cubic yards of maintenance material was disposed in the ODMDS. In conjunction with this use of the site, the Corps of Engineers in cooperation with the National Oceanic and Atmospheric Administration (NOAA) monitored the physical processes and the dispersive characteristics of the dredged material plume. Monitoring results indicated that the material discharged, except for a low concentration residual remaining within the water column, reached the bottom within the designated site boundaries. During the monitoring, the resulting plumes were observed to be transported in a north to northeast direction. The full monitoring report has been included as part of the Final EIS. Effects monitoring is discussed in the Site Management and Monitoring Plan as part of the Final EIS.

No other discharges or dumping occurs in the site. The Miami-Dade Central publicly owned treatment plant outfall discharges approximately 1.2 nmiles west of the site. The effects from this discharge are local and predominately in a north-south direction due to prevailing currents and should not have any effect within the 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))

While shipping is heavy at the Port of Miami, the infrequent use of this site should not significantly disrupt either commercial shipping or recreational boating. Commercial and recreational fishing activities are concentrated in inshore and nearshore waters. No mineral extraction, desalination, or mariculture activities occur in the immediate area. Scientific resources present throughout this area are not geographically limited to the Miami ODMDS or nearby waters.

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

Water quality at the ODMDS is variable and is influenced by discharges from inshore systems, frequent oceanic intrusions, and periodic upwelling. The disposal site lies on the continental slope in an area traversed by the western edge of the Florida Current. The location of the western edge of the current determines to a large extent whether waters at the site are predominantly coastal or oceanic. Frequent intrusions or eddies of the Florida Current transport oceanic waters over the continental slope in the ODMDS vicinity. Periodic upwelling/downwelling events associated with wind stress also influence waters in the area.

No critical habitat or unique ecological communities have been identified at the candidate site. Buffer zone protection has been applied to any existing fish havens, artificial reef communities, turtle nesting areas, and onshore amenities in the general region of the site.

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

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

No known natural or cultural features of historical importance occur at or in close proximity to the site. No such features were noted in a video survey of the disposal area.

E. Site Management

Site management of the Miami ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the Miami ODMDS was developed as a part of the process of completing the EIS. The plan was developed with the assistance of an interagency Site Management and Monitoring team. The Team will also provide assistance during the implementation of the plan. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agencies for cause.

F. Final Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Miami site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The Miami ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable

dredged material from the greater Miami, Florida vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the 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.

***2946** This Final Rule does not contain any information collection requirements subject to Office 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: November 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, 40 CFR Chap. I, Subchapter H 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.

40 CFR § 228.14

2. Section 228.14 is amended by removing paragraph (h)(6).

40 CFR § 228.15

3. Section 228.15 is amended by adding paragraph (h)(19) to read as follows:

40 CFR § 228.15

§228.15 Dumping sites designated on a final basis

* * * * *

(h) * * *

(19) Miami, Florida; Ocean Dredged Material Disposal Site.

(i) Location:

25degrees45'30" N	80degrees03'54" W;
25degrees45'30" N	80degrees02'50" W;
25degrees44'30" N	80degrees03'54" W;
25degrees44'30" N	80degrees02'50" W.

Center coordinates are 25degrees45'00" N and 80degrees03'22" W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 130 to 240 meters.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Miami, Florida vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

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61 FR 2941-01, 1996 WL 32346 (F.R.)
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