RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-6702-1]

Ocean Dumping: Designation of Site

Thursday, May 18, 2000

***31492** AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) designates an existing dredged material disposal site located in the Gulf of Mexico at the mouth of Atchafalaya Bay for the continued disposal of dredged material removed from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana. This action is necessary to provide an acceptable ocean dumping site for current and future disposal of this material. This final site designation is for an indefinite period and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Monica Young (6WQ-EM), EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733.

Information supporting this designation is available for review at the following location: EPA, Region 6, 1445 Ross Ave, 9th floor file room, Dallas, TX 75202.

FOR FURTHER INFORMATION CONTACT: Monica Young 214-665-7349.

SUPPLEMENTARY INFORMATION:

Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, (33 U.S.C. 1401 et seq.), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 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.

EPA's Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in Part 228. A list of “Approved Interim and Final Ocean Dumping Sites” was published on January 11, 1977 (42 FR 2461 et seq.). That list established the Atchafalaya River Bar Channel ocean dredged material disposal site (ODMDS) on an interim basis.

The interim designation of the Atchafalaya River Bar Channel ODMDS was extended indefinitely in January 1980.

However, Section 506 of the Water Resources Development Act (WRDA) of 1992, amended MPRSA such that beginning January 1, 1997, open water offshore disposal could only be into ODMDSs either designated by EPA under §102(c) of the Act or selected by the Corps of Engineers (COE) under §103(b) as an alternative site. Since EPA had not ruled on final designation by January 1, 1997, the Atchafalaya River Bar Channel ODMDS was selected by the New Orleans District COE as a §103(b) alternative to accommodate annual channel maintenance dredging beyond 1996. Recognizing a five (5) year extension of the COE's §103(b) selection allowed the continued use of the Atchafalaya River Bar Channel ODMDS through the year 2006, EPA was to designate the Atchafalaya River Bar Channel ODMDS site pursuant to §102(c) of MPRSA, or to find that the site is inappropriate for final designation. 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.

Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the Atchafalaya River Bar Channel ODMDS, under the MPRSA, 33 U.S.C. 1401 et seq. The Rule would be primarily of relevance to parties in the Morgan City area seeking permits from the COE to transport dredged material for the purpose of disposal into ocean waters at the Atchafalaya River Bar Channel ODMDS, as well as the COE itself (when proposing to dispose of dredged material at the ODMDS). Potentially regulated categories and entities seeking to use the ODMDS and thus subject to this Rule include:

Category	Examples of regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects. Other Federal Agencies, including the Department of Defense.
Industry and General Public	Port Authorities. Marinas and Harbors. Shipyards and Marine Repair Facilities. Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths. Government agencies requiring disposal of dredged material associated with public works projects.

This table lists the types of entities that EPA is now aware could potentially be regulated. EPA notes, however, that nothing in this final ruling alters in any way, the jurisdiction of EPA, or the types of entities regulated under the MPRSA. To determine if you or your organization is potentially regulated by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the Atchafalaya River Bar Channel ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section. Since ODMDS use is restricted to dredged material removed from the bar channel of the Atchafalaya River, EPA anticipates that the COE will be the only user of the ODMDS.

EIS Development

Section 102 (2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.), requires that ***31493** Federal agencies prepare Environmental Impact Statements (EISs) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to ODMDS designations, however EPA voluntarily prepared an EIS in connection with this designation action.

EPA prepared a Draft EIS on the designation of the Atchafalaya River Bar Channel ODMDS in November, 1983. Six

comment letters were received on the Draft EIS. Based on the comments received, EPA determined that a Supplemental Draft EIS was appropriate to correct information deficiencies and include more recent data in response to the commenting agencies. EPA and the COE jointly prepared the Supplemental Draft EIS, which was distributed to interested agencies, environmental groups and individuals for review in December, 1990. Five comments letters were received on the Supplemental Draft EIS. Responses to these comments were included in EPA's Final EIS, which was completed and distributed to interested agencies, environmental groups and individuals in November, 1998. The 30-day comment period on EPA's Final EIS closed on January 11, 1999.

Only one comment letter, from the State of Louisiana, Department of Culture, Recreation and Tourism, Office of Cultural Development, was received on the Final EIS. The Louisiana Office of Cultural Development found the document to be thorough and well written, and concurred with the evaluation that there would be no effect on significant cultural resources, and as such, had no objections to the proposal.

EPA's NEPA review included coordination with the State of Louisiana under requirements of the Coastal Zone Management Act. The State of Louisiana concurred with EPA's determination that final designation of the Atchafalaya River Bar Channel ODMDS is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

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

Site Designation

EPA's proposal to designate the Atchafalaya River Bar Channel ODMDS was published in the Federal Register on February 6, 1991 (pages 4777-4781). The public comment period on this proposed rule closed on March 25, 1991. One comment letter was received on the proposed rule from the U.S. Department of the Interior (DOI), Office of the Secretary, in Washington, D.C. The DOI recommended: (1) That dredged material be used for beneficial purposes (e.g., to rebuild eroded shoreline and increase marsh habitats); (2) that the final rule include a requirement for dredged material to be used to build bird islands and avoid shell reefs, in consultation with the U.S. Fish and Wildlife Service and the Louisiana Department of Wildlife and Fisheries; and (3) that the final rule require, prior to each dredging event, an interagency evaluation of the feasibility of using the dredged material to create marsh, reduce shoreline erosion, or build bird nesting/roosting islands.

In response to DOI's comments on the proposed rule (and similar comments received on the Supplemental Draft EIS), the Final EIS evaluated these recommendations, and other reasonable, beneficial use alternatives. EPA's action [i.e., site designation under §102(c) of MPRSA] does not authorize the placement of dredged materials or require interagency evaluation of beneficial use alternatives. However, beneficial use alternatives and other options for the placement of dredged material are evaluated through annual COE dredging conferences.

The Atchafalaya River Bar Channel ODMDS is located east of, and parallel to, the Atchafalaya River bar channel and is approximately 18.5 miles long. The center of the ODMDS is approximately 16 miles from the mouth of the Atchafalaya River. North Point of Point au Fer Island is about 2 miles east of the northern end of the site. The average water depth at the site is approximately 16 feet. Boundary coordinates of the rectangular shaped site are as follows: 29E20'59.92"N, 91E 23'33.23"W; 29E20'43.94"N, 91E23'09.73"W; 29E08'15.46"N, 91E34'51.02"W; and 29E07'59.43"N, 91E34'27.51"W.

Ocean Dumping Site Designation Criteria

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 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 are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels.

The five general criteria are given in 40 CFR 228.5 of the Ocean Dumping Regulations. EPA has determined, based on the information and analyses in the Draft EIS, Supplemental Draft EIS, and Final EIS, that the site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the site has not resulted in substantial adverse impacts to living resources of the ocean or to other uses of the marine environment.

Section 228.6 of the Ocean Dumping Regulations lists eleven specific factors to be used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the site are reviewed below in terms of these eleven specific factors.

1. Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)).

Geographical position and average water depth are given above. The Atchafalaya River Bar Channel ODMDS is located in the near shore area of the Gulf of Mexico (i.e., to a depth of about 75 feet). The ODMDS gently slopes from a depth of about 5 feet at its near shore end to about 22 feet at its seaward end. Except for being located adjacent to the dredged channel, the area occupied by the ODMDS is similar in depth and bottom topography to the overall lower Atchafalaya River area.

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 northwestern Gulf of Mexico is a breeding, spawning, nursery, and feeding area for shrimp, menhaden, and bottomfish. To complete their life cycles, many of the species migrate seasonally between the coastal estuaries and the Gulf. Because the timing varies by species, some migration can occur at almost any time of the year. The ODMDS is located in a region dominated by species that are estuary-related. The ODMDS represents a small area (9.14 square miles) of the total range of the white and brown shrimp and their related communities; however, the nearby Atchafalaya River estuarine area is one of the region's major nursery areas.

Disposal of material at the ODMDS would have negligible effects on Federally listed endangered and threatened species. Endangered whale species which may be found in the vicinity of the ODMDS are the sei, fin, humpback, right, and sperm. However, occurrences of whales off Louisiana are ***31494** considered rare, and because the animals generally inhabit waters far deeper than those in the ODMDS, it is unlikely that disposal operations would have any impact on whale species.

Three species of sea turtles (hawksbill, Kemp's ridley, and leatherback) classified as endangered and two species of sea turtles (green and loggerhead) classified as threatened could potentially inhabit the ODMDS. Hopper dredging has been identified as a source of mortality (incidental take) to sea turtles in inshore waters. However, disposal of maintenance material dredged from the Atchafalaya River Bar Channel is by hydraulic cutter head pipeline dredge, which has not been identified as a source of sea turtle mortality.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).

The nearest point of land is North Point of Point au Fer Island, about 2 miles from the northeast end of the ODMDS. While it may be possible to observe the disposal plume, the plume is expected to dissipate quickly after completion of the disposal operations. Except for minor affects of these limited observations, there should be no effects on the aesthetics of the area. There are no known recreational parks, beaches, or other amenity areas in proximity to the ODMDS.

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)).

Material dredged from the upper one-third of the bar channel generally is comprised of 26% sand, 30% silt, and 44% clay, and material from the lower two-thirds of the bar channel generally is comprised of 7% sand, 44% silt, and 49% clay. An estimated 9 to 11 million cubic yards of material is removed annually from the Atchafalaya River Bar Channel using a hydraulic cutter head pipeline dredge and released within the ODMDS as an un-cohesive slurry. Future disposal operations will follow the past disposal pattern with respect to types, quantities, and methods of release. Any material disposed of at the site is required to comply with the criteria of the Ocean Dumping Regulations. None of the material will be packaged in any way. The COE will likely be the only user of the site.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).

The ODMDS is shallow and close to shore, which facilitates surveillance and monitoring of the site. Operational observations can be made using shore-based radar, aircraft, ship riders, and day-use boats. Monitoring would be facilitated by the database that has been established for the ODMDS. A monitoring program has been developed by EPA in cooperation with the COE for the ODMDS, as part of the “Atchafalaya ODMDS Site Management Plan.”

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)).

Water currents in the vicinity of the ODMDS are very complex. Although tides, loop current intrusions, and river flow may affect the local currents, the currents are influenced predominantly by winds. Thus, the direction and velocity of currents vary throughout the year.

Water currents in the area can reach velocities sufficient to resuspend the disposed dredged material. The resuspended material would be transported in the direction of the current causing the resuspension. During these periods, constant mixing of the dredged material and sediments originally in the area takes place. The mixed dredged material and background sediments settle as the velocity decreases, and become resuspended when some event again raises the current velocity.

Sediment transport at the ODMDS is both to the northwest and to the southeast. The prevailing northwest currents are relatively weak and generally transport silt-sized and clay-sized particles. In the winter, however, stronger currents to the southeast, which are driven by the passage of cold-air outbreaks (northers), transport the latter particle sizes plus sand-sized particles. Gale-force winds for a duration of 20 to 30 hours are common during the passage of one of the cold-air outbreaks, which occur from 15 to 30 times each year.

7. Existence and effects of current and previous discharges dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).

Sediment physical and chemical characteristics are generally similar within and adjacent to the ODMDS. Identified effects of dredged material disposal on sediments within the ODMDS include a few relatively high concentrations for sedi-

mentary constituents (alpha chlordane, some chlorinated biphenols, para-para-DDD, iron, aluminum, perylene, zinc, oil, and grease). However, the area is influenced by shallow water depths, frequent resuspension of bottom sediments by winds and waves, and input of large quantities of fine sediments from riverine sources. Furthermore, dredged materials released at the ODMDS are similar to background sediments in the vicinity and are widely distributed by natural processes after deposition. Since the effects of disposal area temporary, there are no cumulative effects.

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 ODMDS is outside the navigation channel and, thus, not in the path of ocean-going vessels. Some smaller boats may pass over the site; however, since any mounds are expected to be short-lived, there should be no interference. All dredging and disposal operations are closely coordinated among the dredging operators and the shipping interests to avoid interference with ship traffic. Without dredging, the channel would be impassible to most shipping.

There is periodic, short-term, interference with recreational activities at the ODMDS during disposal operations. The plumes of dredged material have a minor impact on targeted fish stocks, temporarily affecting recreational fishing in the area. This interference is temporary and restricted to the relatively small area of the ODMDS being used for disposal at the particular time. Past experience with use of the site for disposal of dredged material has not indicated interference with oil and gas exploration or production. No other types of mineral extraction are taking place either within the site or in the general vicinity of the site.

The nearest oyster leases are located about 4 miles to the east of the ODMDS, near Point au Fer. Because the transport of suspended materials from the ODMDS is mainly parallel to the coastline, adverse effects of disposal operations on these oyster beds should be minimal. In addition, the oyster beds are naturally subjected to periodic episodes of high, suspended-solid concentrations from the waters of the Atchafalaya River. There have been no impacts to oyster leases from past use, and no impact is expected to result from future use of the ODMDS.

The Atchafalaya Delta Wildlife Management Area is located about 8 miles to the north of the ODMDS. Shell Keys National Wildlife Refuge and Russell Sage—Marsh Island State Wildlife Refuge are located about 29 miles to the west of the ODMDS. There has been no impact to the refuges from past use, and none is expected to result from future use of the ODMDS.

Periodically, scientific studies are carried out in the area. Use of the site ***31495** is not expected to interfere with any such studies. It is not expected that use of the site for disposal of dredged material would interfere with any other legitimate uses of the ocean.

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)).

The water quality and ecology of the ODMDS generally reflect that of the near shore region off the Louisiana coast affected by discharges from the Atchafalaya River. The variations in water quality depend on the amount and mixing of freshwater runoff, which are highly variable.

In the summer, calm winds, freshwater input, and intrusions of offshore waters may restrict vertical mixing in the near shore waters. Under these conditions, bottom waters can be depleted of oxygen. This hypoxic condition (dissolved-oxygen content of less than 2 ppm) may be an annual phenomenon, but the event is patchy and ephemeral and has been shown to affect shelf waters from the Mississippi Delta to the upper Texas coast.

With the following exceptions, concentrations of trace metals in waters from the Atchafalaya River Bar Channel were below detection limits: concentrations of barium, iron, and manganese from the channel sample were greater, by a factor of 4, 2, and 3, respectively. There are no EPA marine acute or chronic criteria for these elements, however, and copper was less than the detection limit.

None of the water-column parameters measured during site surveys indicated that dredged material after disposal has a permanent or measurable effect on water quality in the area of the ODMDS. Waters off southeastern Louisiana are generally turbid because of shallow depths and riverine influences, and the levels of most parameters in the ODMDS appear to be typical of the region.

A site survey of macrofaunal distribution and abundance found 40 taxa, with very little difference in average taxa richness or overall average abundance. The general pattern of percent taxa and abundance group was approximately similar to those identified in other near-coastal and estuarine waters of the northern Gulf of Mexico.

The ODMDS benthic assemblage is dominated by species that live for about 1 year and undergo rapid population expansions. Results of site surveys indicated that most macrofaunal species were distributed in patches throughout the study area and several are considered opportunistic. Endemic species have considerable ability to adapt to a range of natural disturbances in their habitat. Thus, if dredged-material disposal had affected the density of these organisms, these effects could not be discerned.

Fish collected during site surveys are characteristic of the area. Furthermore, relative numbers of dominant organisms collected, such as large numbers of sciaenids (drums and croakers), are similar to results of other baseline studies conducted in the area.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).

Past disposal of dredged material at the existing ODMDS has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is expected that continued disposal of dredged material will not result in the development or recruitment of such species.

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)).

Studies, which involved literature search and coordination with the Louisiana State Historic Preservation Officer, did not demonstrate any known features of historical importance within the ODMDS. However, results from the literature review indicate shipwrecks may be found near the Point Au Fer Shell Reef and at the mouth of the Atchafalaya River. Hence, the northernmost portion of the ODMDS is considered to have the greatest potential to contain submerged cultural resources.

Future dredging and disposal operations at the ODMDS will consider the results of the submerged cultural resources survey. Plans and specifications for dredging contracts would be reviewed by COE cultural resources specialists to ensure that significant cultural resources are not impacted by any proposed action. In addition, future disposal into the ODMDS area will be reviewed by the COE in compliance of Section 106 of the National Historic Preservation Act of 1966 (as amended), Final Rule for Operation and Maintenance Of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material Into Waters of the U.S. or Ocean Waters (33 CFR parts 209, 335, 336, 337, and 338), and requirements of the Louisiana SHPO.

Action

The action evaluated through this EPA rulemaking and completed NEPA/EIS processes is designation under §102(c) of MPRSA of the existing COE §103(b) alternative ODMDS for dredged material removed from the Atchafalaya River Bar Channel. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged materials removed from the Atchafalaya River Bar Channel. The evaluative processes provide a thorough and objective evaluation of reasonable alternatives, including no action, and the information needed to evaluate the suitability of an ocean disposal area for final site designation. EPA's final site designation is being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. Once designated, the appropriateness of ocean disposal is determined on a case-by-case basis.

EPA emphasizes that ocean disposal site designation does not constitute or imply EPA Region VI's or the COE's approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at the Atchafalaya River Bar Channel ODMDS may occur, EPA Region VI and the COE must evaluate the proposed project according to the Ocean Dumping Criteria (40 CFR part 227) adopted pursuant to the MPRSA. EPA Region VI or the COE will not allow ocean disposal of dredged material if either agency determines that the Ocean Dumping Criteria are not met. In addition, the COE is required to evaluate all proposed dredging projects associated with the Atchafalaya River in accordance with the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Endangered Species Act.

Administrative Requirements

1. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of ***31496** State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's final Rule does not create a mandate on State, local, or tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. This final Rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this Rule.

2. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084

requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's final Rule does not significantly or uniquely affect the communities of Indian tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Executive Order 12866

Under Executive Order 12866, (58 FR51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and therefore subject to OMB review and other requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principals set forth in the Executive Order.

This final Rule should have minimal impact on permittees. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA has determined that this Rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

4. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA.

5. Executive Order 13132

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.”“Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is no required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it only has the effect of designating an existing ocean disposal site and does not alter the relationship or the distribution of power and responsibilities among the levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.***31497**

6. Regulatory Flexibility Act, as Amended by the Small Businesses Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). Today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA's final Rule will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final Rule will not have a significant economic impact on a substantial number of small entities.

7. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the final Rule would not establish or modify any information or record-keeping requirements, but only finalizes existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

8. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, it imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Rule.

9. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12 (d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 19, 2000.

11. Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act, federal agencies must insure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or result in adverse modification or destruction of designated critical habitat. Continuing to dispose of dredged material at the designated site will not materially change the status quo and there is no designated critical habitat in the area. Moreover, the COE will continue to consult with the National Marine Fisheries Service (NMFS) on its own project-specific use of the site and on any project for which it proposes to issue a permit authorizing disposal of dredged material at the site. EPA accordingly found today's designation action was unlikely to adversely affect any listed species or critical habitat. NMFS concurred in that finding by letter dated September 9, 1999.

12. Magnuson-Stevens Fishery Conservation and Management Act

Under section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies must

consult with the NMFS and appropriate fisheries councils before undertaking actions that may adversely affect designated essential fish habitat. NMFS has designated most of the Gulf of Mexico, including the area in which the designated disposal site is located, as essential fish habitat. It is unlikely that today's designation action will adversely affect essential fish habitat because it will not materially change the status quo. Because potentially adverse effects might be associated with its future use in the context of a specific project, the COE will continue to consult NMFS on a case-by-case basis. See 50 CFR 605.920(2).

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: January 25, 2000.

Jerry Clifford,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, EPA amends subchapter H of chapter I of title 40 of the Code of Federal Regulations as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING1. The authority citation for part 228 continues to read as follows:

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

40 CFR § 228.14

§228.14 [Amended]

40 CFR § 228.14

2. Amend §228.14 by removing and reserving paragraph (j)(5).

40 CFR § 228.15

3. Amend §228.15 by adding a new paragraph (j)(21) to read as follows: ***31498**

40 CFR § 228.15

§228.15 Dumping sites designated on a final basis.

* * * * *

(j) * * *

(21) Atchafalaya River and Bayous Chene, Boeuf, and Black, LA

(i) Location: 29E20'59.92" N, 91E 23' 33.23" W; 29E20'43.94" N, 91E23'09.73" W; 29E08'15.46" N, 91E34'51.02" W; and 29E07'59.43" N, 91E34'27.51" W.

(ii) Size: 9.14 square miles.

(iii) Depth: Average water depth of 16 feet.

(iv) Primary Use: Dredge material.

(v) Period of Use: Indefinite period of time.

(vi) Restriction: Disposal shall be limited to dredged material from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana.

* * * * *

[FR Doc. 00-12388 Filed 5-17-00; 8:45 am]

BILLING CODE 6560-50-P

65 FR 31492-01, 2000 WL 632210 (F.R.)
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