RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL 3896-5]

Ocean Dumping; Designation of Site

Friday, January 11, 1991

***1112** AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the dredged material disposal site located offshore of San Diego, California (LA-5) for the disposal of suitable dredged material removed from the Port of San Diego and other nearby harbors or dredging sites. The LA-5 site is approximately 5.4 nautical miles southwest of Point Loma and occupies an area of about 0.77 square nautical miles (2.6 square kilometers). Water depths within the area are between 480 and 660 feet (145 and 200 meters). The center coordinates of the site are: 32° 36.83'‘ North latitude and 117° 20.67' West longitude (North American Datum from 1927), with a radius of 3,000 feet (910 meters). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material. The final LA-5 site designation is for an indefinite period, and the site is subject to management and monitoring programs to ensure that unacceptable adverse environmental impacts do not occur.

DATES: This designation shall become effective February 11, 1991.

FOR FURTHER INFORMATION CONTACT:Mr. Patrick Cotter, Regional Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX, W-7-1, 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1985 or FTS 484-1985. The file supporting this designation (including the Proposed Rule, the Final Environmental Impact Statement, the Coastal Consistency Determination, the Science Applications International Corporation (1990) survey, the fish block data from 1984 to 1988, the EPA Region IX August 1989 sediment testing requirements, the Management Plan and the Site Monitoring Program) are available for public inspection at the following locations:

1. EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street, SW., Washington, DC.

2. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.

3. U.S. Army Corps of Engineers, Los Angeles District, Library, 300 North Los Angeles Street, Los Angeles, California.

4. Port of San Diego, Clerks Office, 3165 Pacific Highway, San Diego, California.

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 authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The LA-5 site designation action is being made pursuant to that authority.

The EPA Ocean Dumping Regulations state that ocean dumping sites will be designated by publication in 40 CFR part 228 (40 CFR 228.4). A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2462) and was last extended on August 24, 1984 (49 FR 33647). That list established the Point Loma ODMDS (LA-4) in 300 feet of water and the LA-5 site as interim sites. The interim designation status of the LA-4 and LA-5 sites was cancelled after December 31, 1988 when time expired on a 1980 Consent Agreement between EPA and the National Wildlife Federation to have selected ocean dredged material disposal site designated. The LA-4 site was never used as a dredged material disposal site. Since LA-4 was cancelled, no further discussion concerning this site is necessary and it will remain cancelled.

EPA Region IX now proposes to designate LA-5 as an ODMDS for continued use, subject to a Management Plan. The LA-5 site is approximately 5.4 nautical miles southwest of Point Loma and occupies an area of about 0.77 square nautical miles (2.6 square kilometers). Water depths within the area are between 480 and 660 feet (145 and 200 meters). The center coordinates of the site are: 32° 36.83' North latitude and 117° 20.67' West longitude (North American Datum from 1927), with a radius of 3,000 feet (910 meters). The Management Plan incorporates a Site Monitoring Program and MPRSA Section 103 permit review process. A copy of the Management Plan is available from the EPA Region IX address above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., 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 Federal agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to designation of ocean disposal sites, EPA has voluntarily committed to prepare EISs for these actions (39 FR 37419, October 21, 1974).

EPA Region IX prepared a final EIS entitled "San Diego (LA-5) Ocean Dredged Material Disposal Site Designation (U.S. EPA, Region IX, 1988)." On August 26, 1988 a notice of availability for public review of the FEIS was published in the Federal Register (53 FR 32656). A Proposed Rule was also published in the Federal Register on August 26, 1988 discussing EPA Region IX's intent to designate the LA-5 site (53 FR 32628). Anyone desiring a copy of the FEIS or the Proposed Rule may obtain them from the EPA Region IX office address given above in this Final Rule.

C. Responses to FEIS and Proposed Rule Comments

During the public comment period on the FEIS and Proposed Rule, which closed on September 26, 1988, EPA Region IX received 6 comment letters.

The following substantive comments were discussed in the 6 comment letters:

1. The County of San Diego requested that EPA Region IX cooperate closely on the location of future outfalls near the LA-5 site. EPA Region IX and the U.S. Army Corps of Engineers' (Corps) Los Angeles District, are currently working closely with the City of San Diego staff on this issue. Several designs for ocean outfalls are being evaluated by the City of San Diego. EPA Region IX is directly involved with the review of environmental documents and analysis of potential impacts. Possible conflicts between construction of ocean outfalls and the LA-5 site will be minimized.

2. The California Coastal Commission commented that a Coastal Consistency Determination may be required. EPA Region IX has evaluated the proposed LA-5 site designation for consistency with the State of California's approved coastal management program. We determined that the designation of LA-5 is consistent to the maximum extent practicable with section 307(c)(1) of the Coastal Zone Management Act, as amended (16 CFR 1451 et seq.) and the State of California's Coastal Management Program (sections of chapters 1, 3 and 8 of the California Coastal Act of 1976, as amended). EPA Region IX's determination was submitted to the California Coastal Commission for review on September 21, 1990. A copy of this determination is available from EPA Region IX upon request.

In addition, as part of the NEPA process, EPA Region IX has consulted throughout the designation process with the California Coastal Commission regarding the effects of disposal at LA-5 on California's coastal zone. EPA Region IX has taken the California Coastal Commission's comments into account in preparing the LA-5 Final EIS and this Final Rule, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on the use of the site. On December 11, 1990, the California Coastal Commission voted 10 to 1 to adopt EPA Region IX's Coastal Consistency Determination.

3. The California Coastal Commission expressed concern over the possible cumulative effects of contaminants disposed of at the LA-5 site. EPA Region IX and the Corps' Los Angeles District, will evaluate the suitability of all sediments proposed for disposal at the LA-5 site. National sediment testing guidance (“Green Book”) was published in 1978 by EPA and the Corps (U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, 1978). The Green Book is in the final stages of revision and a new version is expected in early 1991. Proposed revisions to the 1978 Green Book include a recommendation to develop a regional testing manual for the ocean dumping program. This manual is now being prepared by EPA Region IX, the Corps' South Pacific Division and the Corps' Los Angeles District. In August 1989 Region IX prepared recommended sediment testing procedures for all sediments proposed for ocean disposal as an aid to permit applicants. The August 1989 recommended procedures and the 1978 Green Book (or the 1991 revision) should be used until a regional manual is prepared and approved for use.

Adherence to these procedures and careful review of the test results by EPA Region IX and the Corps' Los Angeles District will ensure that unacceptable dredged materials are not disposed of at LA-5. Sediments will be considered suitable for ocean disposal only if significant undesirable effects on the marine environment and human health are not expected to occur based on the results of sediment chemistry tests, toxicity tests and bioaccumulation tests. Sediment from the proposed dredging site will be compared to the reference site for LA-5. This reference site is located at 32° 46.00' North latitude by 117° 22.70' West longitude, North American Datum from 1927, at the 600-foot depth contour. The LA-5 site will be restricted to disposal of dredged sediments only, and will not be used for the disposal of industrial or municipal wastes. A Management Plan, including a Site Monitoring Program, has been prepared. The guidelines listed in the Management Plan will help to insure that cumulative effects of contaminants will be reduced and that significant adverse impacts, if they occur, can be mitigated.

The existing Point Loma wastewater outfall is located approximately 4.5 nautical miles (8.3 kilometers) from the LA-5 site. The associated municipal discharge effects are limited to local areas near the outfall and do not extend to the vicinity of the dredged material disposal site. There is little likelihood of cumulative interaction between dredged material disposal and the existing Point Loma outfall discharge. No other outfalls or point sources of pollution exist near the LA-5 site.

Estimates of sediment accumulation at the disposal site have been made by mathematical modeling. Data from Corps MPRSA Section 103 permits for the period 1977-1988 shows that an average of 370,000 cubic yards (280,000 cubic meters) of dredged material was disposed at LA-5. Based on an annual average deposition of 10 percent clumped material into a 990-foot (300 meter) radius dumping zone, bottom accumulation will average 5.5 inches (14 centimeters) at 980 to 1,310 feet (300 to 400 meters) from the center of the dumping zone. Deposit thickness is predicted to decrease to an average of about 0.5 inch (1.3 centimeters) at radial distances of about 3,000 feet (910 meters). Beyond 3,000 feet, accumulation is projected to average no more than about 0.3 inch (0.8 centimeter) per year. For higher percent clumping of the sediment, the corresponding footprint is smaller, with higher accumulation near the center of LA-5 and lower accumulation at the disposal site boundary and beyond.

4. The California Coastal Commission also expressed concern over the effects of recurring turbidity from disposal operations. Additional modeling using disposal quantities twice those assumed in the 1988 FEIS has been conducted to determine the turbidity effects at the LA-5 site. Parameters chosen for this modeling are conservative and overestimate potential impacts of disposal operations. The results indicate that suspended solid levels in the disposal plume decrease as the material settles and disperses from the dump area. While sand and other heavy particles will settle to the bottom within 60 seconds, clay and silt will remain in the water column longer and these particles will be affected more by dispersal than settlement.

If levels of suspended solids in the water at LA-5 are a concern, EPA Region IX and the Corps' Los Angeles District may require special disposal procedures to minimize plume interaction. Assuming that ocean disposal is occurring on a regular basis and an average current speed of 0.39 foot per second (12 centimeters per second), a disposal plume dumped at the upcurrent edge of the dumping zone will clear the downcurrent boundary in less than 1.5 hours. Therefore, overlapping of plumes is not predicted to occur provided individual dumps are separated by at least 2 hours. As a conservative measure, the Corps' Los Angeles District may restrict repetitive dumping to a minimum interval of 3 hours to ensure overlapping plumes will not occur, and to ensure there is no long-term build-up of suspended solids concentrations at the LA-5 site. This interval may be revised when results of the Site Monitoring Program are reviewed.

5. The California Coastal Commission suggested that the LA-5 site should be designated on an experimental basis to allow monitoring of disposal operations, and a re-evaluation of the designation based upon the monitoring results. EPA Region IX has chosen to designate the LA-5 site for long-term disposal, and to implement a tiered Site Monitoring Program which will evaluate three major components, water column impacts, sediment impacts, and biological impacts. EPA Region IX and the Corps' South Pacific Division and Los Angeles District will review the results of the Site Monitoring Program periodically to determine if a change in site use or designation of the site is warranted.

6. The Corps' South Pacific Division questioned the need for testing of all proposed dredged material and the procedures used for evaluating the test results. The Corps is correct that some sediments are exempt from chemical and biological testing requirements based upon the physical characteristics of the material and the location

of the dredging site in relation to sources of contamination. However, much of the material expected to be disposed at the LA-5 site may not satisfy this exemption. The Ocean Dumping Regulations require the EPA Regional Administrator to make an independent evaluation of the proposed dumping in accordance with the ocean dumping criteria (40 CFR 225.2(c)). This evaluation includes reviewing results of physical, chemical and biological testing of the sediments proposed for disposal.

7. The Corps' South Pacific Division questioned the need to monitor the disposal site. Under 40 CFR 228.9 of the Ocean Dumping Regulations, the Regional Administrator may initiate a monitoring program if necessary. EPA Region IX has determined that a monitoring program is crucial to evaluate the extent of potential impacts at the LA-5 site. A Site Monitoring Program has been developed as a framework to addresses the concerns raised by regulatory agencies, resource agencies and the public in response to both the Draft and Final EISs regarding water and sediment quality, dispersion of the disposed material, and impacts upon biota near the site. The Site Monitoring Program is a flexible program based on specific monitoring objectives and concerns about physical and biological impacts.

D. Alternatives Analysis

The action evaluated in the 1988 FEIS is the designation of the LA-5 ODMDS for continuing use. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. Approval of a specific ocean dredged material disposal permit application is a completely separate process from site designation. MPRSA Section 103 permit applications are reviewed on a case-by-case basis to determine whether the proposed dredged material is suitable for disposal at LA-5.

The FEIS discussed the need for the site designation and examined a range alternatives to the proposed action, including 3 ocean disposal sites. Land-based disposal alternatives were examined in the FEIS and found to be unacceptable for disposal of large amounts of dredged material (FEIS pages 2-1 to 2-8). However, land disposal alternatives will be evaluated by EPA Region IX and the Corps' Los Angeles District on a case-by-case basis during the permitting process when the need for ocean dumping is presented by the permit applicant (40 CFR 227.14 to 227.16). The following alternatives were evaluated in the FEIS:

1. No Action—Selection of this alternative would prevent final designation of the LA-5 site. No action on the site designation could force the Corps's Los Angeles District to designate a site under Section 103 of MPRSA, or modify, cancel or recommend no Federal participation in dredging projects that may require ocean disposal of suitable material. This alternative has been rejected by EPA Region IX because the LA-5 site has been used successfully in the past and the environmental impacts at the site have been acceptable.

2. Delayed Action Alternative—The need for an ODMDS is a continuing concern for dredging projects in San Diego Bay and requires conclusion of the site designation process in the most expeditious manner possible. Therefore, EPA Region IX is proposing to designate LA-5 for continued use and we will manage the site to prevent significant adverse environmental impacts.

3. Upland Disposal (including beach replenishment, landfilling in port areas and disposal at sanitary landfills)—These alternatives are considered on a case-by-case basis during the Corps' MPRSA section 103 permit application review process. Beach replenishment may be preferred to ocean disposal if the dredged material is compatible with the beach and studies show that the dredged material will replinish the beach. Permitting for beach replenishment is regulated under section 404 of the Clean Water Act (CWA). Disposal of large amounts of dredged material at an upland site is not a feasible long-term solution for management of dredged material

disposal because these sites are limited in the San Diego area. Upland disposal can be evaluated on a case-by-case basis as part of the permit application process.

4. LA-5 ODMDS (Preferred Alternative)—This site was selected as the preferred alternative because it is a historical site and it satisfies the site selection criteria (40 CFR 228.5 and 228.6(a)). The site is located 5.4 nautical miles (10 kilometers) southwest of Point Loma on the continental shelf in 480 to 660 feet (145 to 200 meters) of water. The environmental impacts at the site have been determined to be acceptable. The anticipated future use of the site will not cause significant adverse environmental impacts and conflicts with other uses of the ocean are minimal.

5. LA-4 ODMDS—This site is located in 270 feet (82 meters) of water, 4.9 nautical miles (9.1 kilometers) south of Point Loma. Synergistic effects from the Point Loma outfall, proximity to fishing and boating areas, and effects on kelp beds, benthic resources, cultural resources, navigation and shoreline processes were evaluated in the FEIS. EPA Region IX and the Corps' Los Angeles District determined that the environmental impacts of designating the LA-4 site were not acceptable because the site could potentially impact the major resources listed above.

6. Deep Water ODMDS—The candidate deep water site is located 12 to 16 nautical miles (22 to 30 kilometers) off Point Loma in 3,600 feet (1,090 meters) of water. This site has not been used previously as a disposal site. The major reason for not selecting this deep site is that disposal of dredged material would cause new impacts at an undisturbed habitat. The LA-5 site, in contrast, has been used for disposal of dredged material since the 1970's and impacts at the site have been acceptable. Other reasons for not selecting the deep site include: the proximity to the Coronado Bank (also known as 9-Mile Bank) which is an important fishing area, the distance from potential dredging areas, the larger size of the area affected by disposal, and the difficulty in monitoring and surveillance.

The FEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation of LA-5 and is based on a disposal site environmental study. The Final Rule is being promulgated in accordance with MPRSA, the EPA Ocean Dumping Regulations, and other applicable Federal environmental legislation. This Final Rule for designation of LA-5 as an ocean dredged material disposal site fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

E. Site Designation

On August 26, 1988 (53 FR 3268), EPA proposed designation of the LA-5 for the continuing use as a dredged material disposal site for San Diego Bay and vicinity. The public comment period on the proposed action closed September 26, 1988. Today EPA Region IX designated LA-5 as an ocean dredged material disposal site for continued use, subject to a Management Plan. If disposal operations at the site are shown to cause unacceptable adverse environmental impacts, further use of the site will be restricted or terminated as soon as a suitable alternative disposal site can be designated.

F. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use (40 CFR 228.5). Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from causing impacts outside the disposal site. In addition, site selection must permit effective monitoring

to evaluate specific areas of concern, such as water quality impacts, significant movement of sediment outside the site and unacceptable impacts to the marine environment or human health. Where feasible, locations off the continental shelf and historical sites are chosen. The 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations. These specific factors are used to evaluate all candidate disposal sites.

The LA-5 site, is acceptable under the 5 general and 11 specific site selection criteria defined at 40 CFR 228.5 and 228.6(a), respectively. Historical use at the existing site has not resulted in substantially adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the LA-5 site are reviewed below in terms of the 11 specific site selection criteria.

1. Geographical position, depth of water, bottom topography and distance from coast (40 CFR 228.6(a)(1)). The LA-5 site is approximately 5.4 nautical miles southwest of Point Loma and occupies an area of about 0.77 square nautical mile. Water depths within the area are between 480 and 660 feet. The center coordinates of the site are: 32° 36.83' North latitude and 117° 20.67' West longitude (North American Datum from 1927), with a radius of 3,000 feet (910 meters).

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 LA-5 site provides feeding and breeding areas for common resident benthic species. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially or recreationally important species or rare or endangered species.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The LA-5 site is 5.4 nautical miles southwest of Point Loma (the nearest shoreline), 10 nautical miles (18 kilometers) from Mission Beach and 11 nautical miles (20 kilometers) from Imperial Beach. EPA Region IX and the Corps' Los Angeles District have determined that aesthetic impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated. Suspended solids from the LA-5 site will move northwest with the prevailing current. Currents in the region are variable, however, and sometimes flow southeast towards shore. Initial modeling results using a southeastern current scenario indicate that suspended solid levels would decrease to background levels before the plume reaches the shoreline. More detailed plume data from the Site Monitoring Program will be used in future modeling analyses when it becomes available.

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)). An annual average of approximately 370,000 cubic yards (280,000 cubic meters) of predominantly silts and clays dredged from San Diego Bay and other nearby harbor areas are expected to be disposed at the LA-5 ODMDS once it is designated. These projections are based on historical use of the site. The actual amount of disposal may vary from the annual average for any given year. EPA Region IX and the Corps' Los Angeles District will evaluate and manage the amount of dredged material proposed for disposal at LA-5 through the MPRSA section 103 permit process.

All dredged material proposed for disposal at the site must be suitable for ocean disposal. This determination will be made by EPA Region IX and the Corps' Los Angeles District based upon the results of physical, chemical and biological tests before a MPRSA section 103 permit can be issued. Certain dredged material may be exempted from chemical and biological testing based upon the physical characteristics of the sediments and their location in relation to sources of contamination (40 CFR 227.13(b)(1)). Disposal will occur from hopper dredges

or split-hull barges or scows towed by tugboats to the site. Dumping of dredged material that containing prohibited compounds defined at 40 CFR 227.5, or persist or other industrial or municipal wastes will not be permitted at the site.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). The U.S. Coast Guard (USCG) is the Federal agency with authority to conduct surveillance of disposal activities at the sea. EPA Region IX and the Corps' Los Angeles District will assist the USCG to enforce permit conditions.

A Site Monitoring Program has been developed by EPA Region IX and the Corps' South Pacific Division and Los Angeles District. The major components are listed below.

a. Physical and biological concerns will be key factors in the three-tiered Site Monitoring Program.

(1) Tier 1 monitoring is a physical survey of the disposal site to determine whether disposed dredged material remains at LA-5. The types of surveys could include: Precision bathymetry, side-scan sonar, REMOTS sediment profile photography, sub-bottom profiling, or other similar procedures. If a management decision can be made with the data obtained from the physical survey, then additional monitoring activities in a higher tier may not be necessary. If more data are needed to make a management decision, Tier 2 monitoring may be initiated.

(2) Tier 2 monitoring will focus on the physical effects of dredged material movement out of the LA-5 site on sensitive benthic biological resources of concern identified by EPA Region IX and the Corps' Los Angeles District. The benthic resources of concern could include infauna, epifauna, demersal fishes and fisheries resources identified in the FEIS and in the 1984 to 1988 fish block data from the California Department of Fish and Game. The benthic community at the boundary of LA-5 and the adjacent areas will be compared to the benthic community at the reference site used to determine whether proposed dredged material is suitable for ocean disposal. If a management decision can be made with the data obtained from the benthic community comparisons, then additional monitoring activities in a higher tier may not be necessary. If more data are needed to make a management decision, Tier 3 monitoring may be initiated.

(3) Tier 3 monitoring will be conducted as part of EPA Region IX's oversight responsibilities for site designation. This tier involves the assessment of benthic body burdens of contaminants if Tier 2 shows unacceptable environmental impacts on the resources of concern. EPA Region IX will determine whether LA-5 is a source of significant bioaccumulation in the tissues of benthic species collected at LA-5 and the adjacent area compared to the reference site. These data will be the basis for continuing use of LA-5, management options to further limit disposal times, quantities or characteristics of the dredged material, or the possible closure of the site after another site is designated.

b. The LA-5 Management Plan has some basic guidelines for site use including:

(1) Use of the site shall be restricted to disposal of dredged sediments only, regulated under Section 103 of MPRSA.

(2) All sediments proposed for dredging must be determined to be suitable for ocean disposal by EPA Region IX and the Corps' Los Angeles District. Suitability for ocean disposal will be determined after review of the results of physical, chemical and biological testing of the sediments, except those sediments specifically exempted from such testing. When the material does not qualify for an exemption, testing and reporting procedures shall be conducted as described in procedures approved by EPA Region IX and the Corps' Los Angeles District.

(3) No dredged material will be disposed of at LA-5 without a MPRSA section 103 permit issued by the Corps' Los Angeles District, or as authorized in a Corps' Civil Works project. All such permits or Corps' Civil Works projects are subject to the approval of EPA Region IX. All disposal operations will be carried out in accordance with the special conditions and other procedures set out in the MPRSA section 103 permits or specifications of the Corps' Civil Works project.

(4) If the dredged material is expected to form significant surface plumes, the timing of disposal operations may be restricted to no more than one every 3 hours, unless otherwise directed.

(5) Disposal is expected to average about 370,000 cubic yards (280,000 cubic meters) per year. If more dredged material is proposed for disposal than the annual average, management decisions will be evaluated.

(6) All sediments will be disposed within a 990-foot (300 meter) radius circle centered at the coordinates of the disposal site, unless otherwise directed.

(7) There are no restrictions on the type of disposal equipment that can be used; however, it is anticipated that most of the dredged material will be excavated by clamshell dredges and disposed from split-hull scows or barges, or excavated by hopper dredges and disposed from the hopper dredge or a towed barge.

(8) The USCG is responsible for surveillance of vessels disposing of dredged material at the site. As staff and equipment availability permit, EPA Region IX, the Corps' Los Angeles District or the USCG may provide a vessel rider, an escort, or impose other requirements to confirm that disposal occurs within the central dumping zone.

(9) The following reporting requirements shall be incorporated into all MPRSA section 103 permits for use of the LA-5 site:

(a) The permittee shall notify EPA Region IX, the Corps' Los Angeles District and the USCG Marine Safety Office in Long Beach at least two weeks prior to the start of the disposal activity.

(b) Each permittee shall provide EPA Region IX and the Regulatory Branch of the Corps' Los Angeles District, with the following information within 30 days following the end of the disposal operation:

Project information: Project name; permittee; permit number; project beginning and ending dates; project description, including a chart of the area dredged, depth of dredging, side slopes and overdredging (tolerance) depth; and the type of dredging, either construction or maintenance.

Disposal information: For each trip to the disposal site the master of the towing vessel or hopper dredge shall provide a certified record of the following information: Date; hopper dredge or towing vessel and scow or barge name, number and owner; capacity of the hopper dredge, disposal vessel, scow or barge (in cubic yards and cubic meters); estimate of yardage discharged on each trip; a plot of each hopper dredge, barge or scow disposal track once inside the boundaries of the LA-5 disposal site, including the time and coordinates for the beginning and ending of disposal; and any unusual conditions affecting disposal on any trip (i.e., heavy seas, equipment malfunction, etc.).

Post-dredging information: A copy of the controlled pre-dredging and post-dredging hydrographic surveys of the dredging site; quantity calculations of the separable reaches actually dredged; the total number of disposal trips; total amount of dredged material placed at LA-5 in cubic yards and cubic meters; and if the dredged material is

not exempt from testing, the mass loading of materials disposed at the LA-5 site should be calculated based on chemical analyses used to characterize the dredged material before the permit was issued.

c. If significant adverse impacts are detected at or beyond the site boundary, site use or designation can be modified by EPA Region IX and/or the Corps' Los Angeles District to minimize adverse environmental impacts. These modifications will be governed by the following criteria:

(1) Exceedance of Federal water quality criteria no more than 4 hours after a disposal within the site, or at any time beyond the LA-5 site boundary.

(2) Movement of disposed material toward significant biological resource areas, marine sanctuaries or beaches that will cause unacceptable environmental impacts.

(3) Significant adverse changes in the structure of the benthic community outside the disposal site boundary.

(4) Significant adverse bioaccumulation in organisms collected from the disposal site or areas adjacent to the LA-5 site boundary compared to the reference site.

(5) Significant adverse impacts upon commercial or recreational fisheries resources near 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)). Surface water currents near LA-5 are variable in magnitude and direction but the net movement is predominantly north to northwest at 0.06 to 0.10 feet per second (2 to 3 centimeters per second). Instantaneous current speeds are 0.3 to 0.7 feet per second (10 to 20 centimeters per second). Counter currents, eddy currents and upwelling conditions form a complicated system that has both large scale and small scale variations. At times the current flows toward the southeast. These current conditions can persist for a few weeks. According to modeling results, levels of suspended solids at the surface would decrease to background levels within 24 hours.

Very little resuspension of deposited sediments is expected. However, bottom currents are not yet well defined at the site, but can be expected to be somewhat slower and comparable in direction and variability to those at the shallower Tijuana Ocean Engineering Study (TOES) station for which there are current data. Currents would follow the 600-foot depth contour to the north. These currents will be better defined during the initial year of monitoring by deployment of a current meter array by EPA Region IX.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)). LA-5 was used as an interim site for disposal of dredged material from the San Diego Bay area between the late 1970s and 1988. Comparison to a nearby reference site as part of the EIS field study suggests that some site characteristics may have been modified by disposal activities. These characteristics include:

a. A greater range of grain sizes at the site,

b. Elevated concentrations of trace metals and chlorinated hydrocarbons,

c. Lower species diversity and abundance of the demersal fish community, and

d. Lower diversity of benthic infauna and epifauna communities.

These effects are considered to be acceptable localized impacts within the disposal site because disposal of dredged material is expected to affect the bottom physically within the disposal site boundary. Impacts on the water column associated with disposal events are minimal and temporary.

The potential for cumulative effects with a possible South Bay outfall and the proposed Point Loma Outfall extension are uncertain now. EPA Region IX and the Corps' Los Angeles District are working with the City of San Diego on their alternatives for municipal wastewater disposal. A South Bay treatment plant with ocean discharge may be constructed in the future to treat sewage from both San Diego and Tijuana. The feasibility and location of these facilities are still in the planning stages. EPA Region IX and the Corps' Los Angeles District will work with the City of San Diego to ensure that the outfall is constructed so impacts of the outfall and the LA-5 ODMDS will be spatially separated.

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 288.6(a)(8)). Interference with shipping is minimal because of the volumes of material to be discharged at LA-5 are small and because the disposal site is located outside the USCG Precautionary Area and major shipping lanes. Impacts on fishing activities are expected to be minor and temporary since most of the catch near LA-5 consists of pelagic species. The impacts of dredged material disposal on the upper water column are intermittent and short-term.

The most important impacts of dredged material disposal are localized changes in the benthic community. The benthic fish community at LA-5 site is somewhat depauperate compared to the nearby reference site. This effect is localized and not expected to affect the major recreational and commercial fishing activities which concentrate on pelagic species not benthic species. Sportfishing, pleasure boating, and dredged material disposal have coexisted at LA-5 during the interim designation, and no changes are expected. Oil and gas development has not occurred off the San Diego coast and will not be affected by designation of the LA-5 site.

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 LA-5 is indistinguishable from the water quality of nearby areas. Sediment quality differs from the reference site in grain size distribution, and levels of trace metals and organic chemicals. Species diversity of benthic epifauna, infauna, and demersal fish are lower at the LA-5 site than at the reference site. Many of the same species exist at both sites. Changes in benthic community of LA-5 are expected because historical disposal of fine grained dredged material has allowed different benthic species to colonize the area affected by disposal. If initial monitoring results indicate that unacceptable impacts have affected the benthic community at LA-5, then evaluation of the effects on the benthic community will be conducted as a component of the Site Monitoring Program. Management decisions will be evaluated to mitigate environmental impacts where possible.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)). Opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. Opportunistic polychaetes, such as Capitella, may colonize the disposal site. These worms can become food items for bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem are expected.

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)). The California State Historic Preservation Officer has determined there are no

known shipwrecks nor any known aboriginal artifacts near the LA-5 site.

G. References

SAIC. 1990. Survey of the Ocean Dredged Material Disposal Site (LA-5) off San Diego, California. Final Report submitted to U.S. EPA Region IX under EPA Contract No. 68-C8-0061.

U.S. Environmental Protection Agency, Regon IX. 1988. Final Environmental Impact Statement (EIS) for the San Diego (LA-5) Ocean Dredged Material Disposal Site Designation.

U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. 1978. Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters: Implementation Manual for Section 103 of the Public Law 92-532 (Marine Protection, Research and Sanctuaries Act of 1972). Second Printing. Environmental Effects Laboratory, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MI.

H. Action

EPA Region IX has concluded that the LA-5 site may be designated for continued use. Designation of the LA-5 site complies with the 5 general criteria and 11 specific factors used for site evaluation. The designation of the LA-5 site as an EPA-approved Ocean Dumping Site is being published as final rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX, in cooperation with the Corps' South Pacific Division Engineer and Los Angeles District Engineer, based on objectives defined in the Management Plan for LA-5.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA Region IX's or the Corps' Los Angeles District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may commence, EPA Region IX and the Corps' Los Angeles District must evaluate MPRSA section 103 permit applications according to EPA's Ocean Dumping Criteria and the Corps' Permitting Regulations. EPA Region IX or the Corps' Los Angeles District have the right to deny permits if either agency determines that the Ocean Dumping Criteria of MPRSA have not been met.

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 site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

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

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 19, 1990.

John Wise,

Acting Regional Administrator for Region IX.

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. 1412 and 1418.

40 CFR § 228.12

2. Section 228.12 is amended by adding paragraph (b)(69) to read as follows:

40 CFR § 228.12

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

* * * * *

(b) * * *

(69) San Diego (LA-5) Ocean Dredged Material Disposal Site—Region IX.

Location: Center coordinates of the site are: 32° 36.83' North latitude and 117° 20.67' West longitude (North American Datum from 1927), with a radius of 3,000 feet (910 meters).

Size: 0.77 square nautical mile.

Depth: 480 to 660 feet (145 to 200 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use.

Restrictons: Disposal shall be limited to dredged materials that comply with EPA's Ocean Dumping Regulations and Corps Permitting Regulations.

[FR Doc. 91-688 Filed 1-10-91; 8:45 am]

56 FR 1112-02, 1991 WL 369945 (F.R.)
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