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PART III:

ENVIRONMENTAL PROTECTION AGENCY

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OCEAN DUMPING

**Proposed Revision of
Regulations and Criteria**

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 220 Through 229]

[FRL 563-2]

OCEAN DUMPING

Proposed Revision of Regulations and Criteria

The Environmental Protection Agency today publishes proposed revisions of the regulations and criteria with respect to the transportation of wastes for the purpose of ocean dumping. Under Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq., (hereafter "the Act") the Agency on October 15, 1973 (38 FR 28610 et seq.) published regulations setting forth the procedures to be followed, and the criteria to be applied, in reviewing applications to dispose of materials in ocean waters. These rules now appear at 40 CFR Parts 220-227. In addition, the October 15 notice sets forth substantive criteria to be applied in evaluating permits to discharge materials through ocean outfalls, pursuant to sections 402 and 403(c) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1342, 1343. The regulations proposed today would, if they become final, delete all reference to section 403(c) ocean outfall criteria and make Parts 220-227 (with the addition of Parts 228 and 229) solely addressed to ocean dumping and implementation of the Act. In the near future, the Agency will propose revisions to the ocean outfall criteria presently appearing in 40 CFR Part 227.

The proposed revisions announced today affect both the procedures to be followed in reviewing applications for ocean dumping and the substantive criteria to be applied in evaluating those applications. The Agency believes that changes in the present regulations are appropriate for several reasons:

Operating experience of EPA pointed to several ways in which the regulations required modification. There is a need to specify in more detail the considerations which go into a determination of whether a permit will be issued. The present regulations do not adequately address the regulation of ocean dumping sites. Also, some people consider the present regulations pertaining to the disposal of dredged material inadequate.

A petition for additional rulemaking by the National Wildlife Federation was received in April of 1974 and pointed out several areas in which the present regulations completely satisfy the Act, the Convention on the Prevention of Marine Pollution require changes if they are to be implemented by Dumping of Wastes and Other Matter open for signature December 29, 1972, at London (hereafter, "Convention"), and the Amendments to the Act, in light of the Convention¹, which were

¹ The Convention became effective, according to Article XIX(1), on August 30, 1975, when the fifteenth party acceded to its terms.

brought about by Pub. L. 93-254 (March 22, 1974).

In addition to the petition from the National Wildlife Federation, an individual has requested that the emergency permit provisions contained in the regulations be modified to require more adequate public notice and opportunity for hearing prior to the issuance of those permits. EPA has thoroughly revised and expanded the ocean dumping regulations and criteria to allow for greater public participation in the program.

The Agency has held several major hearings on applications to dispose of materials; the experiences of these hearings and the Regional Administrators' experiences in reviewing applications have prompted several suggestions as to ways in which the present regulations and criteria can be improved to more adequately address the implementation of the Act and Convention, and to address the real world problems encountered by the Regional Administrators.

The criteria have been modified to reflect recent advances in scientific knowledge, but the technical basis for the regulatory program remains the same, and there is no change in EPA's intent to eliminate ocean dumping of unacceptable materials as rapidly as possible.

It is not possible to note in this preamble all the places in the regulations in which changes have been made; many modifications are minor and will not affect the day-to-day operation of the program. However, the major substantive changes have been noted below. It must be emphasized that the regulations proposed today will when promulgated replace seven existing Parts of Title 40 CFR, will add Part 228 and amend Part 229. While the regulations appear to be long and complicated the Agency has attempted to follow a logical pattern which will make their use more convenient than one might assume at first inspection. It also must be noted that the regulations proposed today will constitute the entire set of tools one needs to implement the Act and the Convention.

SUMMARY OF PROPOSED CHANGES

Part 220. There has been confusion over the relationship of the Federal Water Pollution Control Act and the Act, and between the Act and the Convention. Sections 220.1 and 220.2 have been expanded to state with more precision the applicability of the various laws and regulations implementing those laws. As stated before, the proposed modifications will delete any mention of ocean outfalls to the extent that they are covered under the Federal Water Pollution Control Act. Separate regulations are in preparation which will cover ocean outfalls. The prohibited acts of § 220.1(a) and the exclusions of subsection (c) are essentially the same as the language used in Sections 2, 3, and 101 of the Act, 33 U.S.C. 1401, 1402, and 1411. Likewise, the definitions and the categories of permits pre-

sented in Part 220 are almost identical to the existing regulations or to the language used in the Act itself.

It should be pointed out that in § 220.3 (d) the Agency has placed a cutoff of April 23, 1978, for the issuance of interim permits except for the dumping of wastes from sewage treatment works of municipalities presently under interim permits when the applicant has made a showing of good faith effort to comply with requirements of a special permit, and with respect to industrial plants with treatment facilities under construction. Attention is also directed to the limitation in that subsection that prohibits the issuance of an interim permit to a facility which has not previously dumped wastes in the ocean. In view of the greatly expanding capacity of publicly owned treatment works and other industrial treatment facilities which may generate substantial quantities of sludge, this section may have impact on decisions to dispose of residual wastes. Many of the factual assumptions on which the Agency relied in establishing this prohibition on new interim dumping are presented in "Decision to the Administrator, Ocean Disposal Permit No. PA 010", September 25, 1975. That decision involved the appeal by the City of Philadelphia of an order to cease dumping sewage sludge.

Section 220.3(f) has been added to clearly state that incineration of waste at sea is covered by the Act and that only research or interim permits will be issued to operators of at-sea incineration vessels until more specific regulations for such vessels are developed. Since the Agency has been following this policy the addition of this statement in the formal regulations does not constitute a major change in Agency operations.

Part 221. EPA has found that there is as much time and effort required to process applications for permit renewals as for the initial application, and, therefore, the reduced application fee for permit renewal has been eliminated.

Part 222. Section 222.3 amends the requirements with respect to the contents of the public notice, to include in the notice an explanation of the factors considered in reaching the tentative determination on the permit application. Separate notification provisions are established for different categories of permits. For special, interim, and research permits notice will be provided by newspaper publication; for emergency permits special procedures have been developed in response to the petitions from Ms. Jan Blair and the National Wildlife Federation. These procedures allow for appropriate notice within the time constraints that often are involved when a true emergency exists. Section 222.3 provides for the distribution of copies of the notice to agencies and persons, including all states within 500 miles of the proposed dumping site. These changes have been made in response to numerous requests for a greater dissemination of public notices. This change would merely formalize the procedures which the Agency is now following.

Sections 222.4 through 222.12 establish a new hearing procedure. The Agency will now allow requests for adjudicatory hearings and may convene such hearings when the issues raised present substantial questions of public interest or when the Regional Administrator determines that a public hearing of this type is appropriate to resolve outstanding issues. The Agency has found that on several major disputes involving ocean dumping permits it has been useful to conduct adjudicatory hearings in an effort to reconcile conflicting statements of fact. The proposed procedural regulations will codify many of the ad hoc procedures which EPA has used in these adjudicatory hearings.

Part 223. In § 223.2 the reasons which can be used for modification, revocation or suspension of a permit have been amended to include a finding of unacceptable adverse environmental impact according to the procedures set forth in Part 228, which is new. In other words, the review of permit issuance will be conducted not simply on the basis of an analysis of the constituents of the waste and the degree to which these meet or violate the criteria of Part 227, but also they will be evaluated in light of the total environmental effect of the dumping of wastes at a particular site.

Part 224. The reporting requirements are essentially unchanged. However, no longer will an applicant for renewal of a special permit be allowed to file a delayed report. This change has been made on the recommendation of the National Wildlife Federation. EPA agrees that to delay the filing of this important report is not consistent with the spirit of the Act.

Part 225. Under section 103 of the Act, 33 U.S.C. 1413, the Agency plays a major role in the determination by the United States Army Corps of Engineers ("Corps") whether to issue a permit for the ocean disposal of dredged material and whether to concur with the proposal by the Corps itself to proceed with such disposal activities. Part 225 has been rewritten to clarify the procedures EPA will use in evaluating requests to dispose of dredged material in ocean waters. It must be noted that the role the Agency plays in this review is similar to but not identical with the role the Agency plays in review of permits to dispose of dredged material in fresh water under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344. The public is invited to comment on Part 225; specifically the Agency is concerned that the procedures outlined in this part comply with the intent of section 103 of the Act and yet not be so cumbersome as to make the provisions unworkable.

Part 226. The two sections dealing with the assessment of civil penalties for violation of the Act have been rewritten to add substantial detail to the present Sections 226.1 through 226.4. The Regional Administrators have recommended that the procedures to be followed in the enforcement actions be

spelled out in substantially more detail to end some of the confusion that has surrounded use of the present § 226.2. The reader should note that the rules of procedure set forth in Part 222 are substantially incorporated in Part 226.

Part 227. This is the heart of the ocean dumping regulations and contains most of the substantive modifications that have been made to the existing regulations. The criteria of Part 227 are drafted in light of section 102 of the Act and the requirements of the Convention, especially Article IV and the Annexes to that Convention. One of the major criticisms of the existing criteria which has been voiced by the National Wildlife Federation and other observers of the Agency operations under the existing regulations is that the criteria do not clearly state how each of the statutory and regulatory criteria will be applied. Subpart A of the revised criteria states the terms of reference which the Regional Administrator or Administrator will use for making a final determination on a permit application. Each of the Subparts B, C, D, and E addresses a separate consideration which is required by the statute in section 102. No subpart in and of itself is dispositive of the issue, which the Agency believes is consistent with the broad balancing required by the statute. Subpart A replaces § 227.1 in the existing regulations.

Subpart B replaces §§ 227.2 through 227.5 and portions of § 227.6 in the existing regulations. This subpart sets specific environmental impact limits and conditions on the dumping of materials in ocean waters.

Section 227.4 states what statutory findings will be assumed if the environmental criteria of Subpart B are satisfied. Section 227.5 lists the materials which will not be allowed to be disposed of in the ocean under any circumstances; the language of this section to a great extent parallels the language in Annex I of the Convention. Section 227.6 lists additional items that are included in Annex I of the Convention and provides that it is impermissible to dispose of these materials as other than trace contaminants. Also, subsection B provides that above certain numerical limits waste will not comply with the requirements for a special permit. Section 227.6 has perhaps received more attention than any other aspect of the ocean dumping regulations. The Agency has found that defining a trace contaminant in numerical terms is scientifically impossible.

Some scientists believe that a trace contaminant is defined in terms of a certain level over background concentrations. Other scientists believe that the definition of a trace contaminant implies some level slightly above the analytical threshold. To many scientists these are unsound alternatives: the first has little to do with environmental harm; the second merely indicates that the definition will change as developing analytical arts proceed. After several workshops attended by many of the recog-

nized experts in the field, EPA decided not to attempt to define trace contaminant. Instead, EPA has devoted substantial resources to determination of those levels of mercury, cadmium, and other substances which may prove harmful to the environment. The Draft Environmental Impact Statement presents a discussion of the factors and the data considered by the Agency in arriving at the numerical limitations in subsection B of § 227.6. It must be emphasized that although only mercury and cadmium and compounds containing those elements have explicit numerical limitations in the criteria, the other requirements pertaining to organohalogens, oils and greases, and similar highly toxic substances can be translated into numerical terms when the narrative considerations set forth in § 227.6 are followed. The determination of acceptable levels of overall toxicity must involve consideration of the mixing area and the dispersion rate, and for these important elements the applicant is referred to the Definition section of Subpart G of Part 227.

The criteria for evaluating disposal of dredged materials in ocean waters have undergone substantial revision, much of it in response to allegations raised in *National Wildlife Federation v. Train, et al.* Civil Action No. 75-1927 (United States District Court for the District of Columbia). That action challenges the present dredged material criteria. Section 227.1(b) states that only certain portions of Part 227 apply to the consideration of dredged material disposal. The key to determining whether dredged material complies with the EPA criteria is § 227.13, which is a substantial revision of the regulations presently pertaining to dredged materials.

Dredged material which is taken from high current or wave energy areas such as streams with large bedloads or coastal areas with shifting bars and channels is considered acceptable under these proposed criteria. EPA feels that it is not necessary for the public and the governmental agencies to expend substantial resources in considering the pollution potential of naturally occurring and uncontaminated sedimentary material. This is not to say, of course, that the method by which the material is disposed and the site which is used for disposal are not important. For materials which are not clearly environmentally acceptable and which must go through further evaluation, EPA has required that the applicant employ an elutriate test, which is an analytical tool designed to separate from the sediment those pollutants which may leave the sediment in actual dumping operations. EPA has greatly expanded the substances which must be examined during the elutriate test, consistent with the requirements of the Convention and with the demands placed on dumpers of other materials. Thus, in subsection (c) reference is made to the list of constituents in paragraph A of § 227.6.

The reader should also note that a substantial change has been made in

that if elutriate concentrations, after allowance is made for dilution, do exceed limiting permissible concentrations as defined in § 227.27(a)(3), the material will not be deemed environmentally acceptable. This section effectively allows EPA or the Corps of Engineers to require the applicant to conduct a bioassay experiment with the material which is proposed to be disposed of in the ocean and to make the calculations with respect to mixing that is required of other ocean disposal applicants. The public is especially invited to comment on the validity of this procedure in light of the difficulties that have been encountered on conducting such experiments with dredged material.

In the proposed revisions, the terms "polluted" and "unpolluted" are no longer used. These terms were originally used to compare sediments taken near sewage or industrial waste outfalls with those which were apparently not affected by waste discharges. The original differentiation was highly subjective and did not relate directly to the criteria of most concern in ocean disposal, namely, the presence or absence of toxic trace metals or other persistent materials which may be released to the marine environment in such a manner as to cause an environmental hazard. The proposed procedures for determining the environmental acceptability of dredged material in terms of compliance with appropriate water quality criteria provide a more effective regulatory approach than the existing arbitrary classification of "polluted" vs. "unpolluted."

Section 227.13 should be read in connection with the regulations pertaining to the disposal of dredged materials in inland waters, 33 CFR 209.120 and 40 CFR Part 230 (40 FR 41292, September 5, 1975), which regulations were published under section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Permits for the disposal of dredged materials in the territorial seas, i.e., the waters outside the baseline but not more than three miles from shore will be issued, if at all, under the Ocean Dumping Act rather than under Section 404. The Agency has taken this position because, although both Section 103 of the Ocean Dumping Act and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 purport to regulate disposal of dredged materials in territorial seas, the Ocean Dumping Act, in Section 106, 33 U.S.C. 1418, states that the law is to be exclusive with respect to that activity. See, "Federal Environmental Law." (Dolgin and Gullbert, Eds. 1974) at 655.

Paragraph (d) of § 227.13 is an attempt to provide the Regional Administrator with the tools he may need to evaluate further the proposed dredged material disposal in light of the considerations which have been set forth in the Convention and in Section 103 of the Act.

One of the major criticisms of the existing regulations has been the alleged inadequate attention to the demonstra-

tion of the need for dumping. Subpart C attempts to remedy this alleged defect in language which is self explanatory. The Agency anticipates that the Regional Administrators will place greater reliance on demonstrating by the applicant that alternatives to ocean disposal are infeasible or are less environmentally acceptable. It should be noted that even if an applicant for an ocean disposal permit complies with other criteria, EPA may deny a permit if there is no need for ocean dumping.

Subparts D and E also have no counterpart in the existing regulations. These subparts attempt to elaborate on the statutory criteria of section 102 of the Act. The criteria are stated in narrative form because the Agency found that it was impossible to attach numerical values to such an amorphous concept as aesthetic effects. Nevertheless, both the applicant and the Regional Administrator will be required to thoroughly evaluate these important considerations and to address them both, in the application and in the decision to grant or deny the permit.

Most permits which have been issued and which will be issued under the Act, will be interim permits. These permits are valid for not more than one year and require substantial efforts by the permit recipient to bring the waste within the limitations required of a special permit or to take such measures as are necessary to cease the ocean dumping. The Agency has found that the environmental assessments and required plans to eliminate or bring waste into compliance have been an effective tool into prodding ocean dumpers into more acceptable alternatives. The basic thrust of present § 227.4 is maintained in the new Subpart F.

The reader is asked to give special attention to the definitions contained in Subpart G, which in many respects are the most important elements in determining whether a waste complies with the requirements of a special permit. Several definitions have been changed: Appropriate sensitive marine organisms are now defined to include organisms of at least three trophic levels, from among those species documented in the scientific literature as being reliable test organisms for the anticipated impact on the ecosystem at the particular disposal site. Bioassays will be run for a minimum of 96 hours at conditions appropriate for the environmental stress at the disposal site. For phytoplankton it may be desirable to run bioassays for shorter periods of time, and provision is made for this option in the new § 227.26(b).

During the development of these criteria several persons suggested that only organisms indigenous to the dump site be used in the bioassays. The Agency feels that it is impracticable to use only those organisms because not all marine organisms can be maintained in a healthy state under laboratory conditions. Also, it is necessary to maintain the control organisms with very low mortality for at least 96 hours to complete the bioassays. Standard practice invalidates a bioassay

if more than 5 percent of the control organisms die. However, enough representative species are amenable to laboratory culture so that sensitive species appropriate for general geographical regions may be selected.

The zone of initial mixing has been limited to include only that volume of receiving water into which a waste will disperse within four hours after dumping. The means by which the limits of the mixing zone may be estimated have been broadened to include the application of field data and verified mathematical models where such information is actual state of the art in hydrodynamic theory and practice. Further analyses of the role of the mixing zone in determining the acceptability of waste may be found in the Draft Environmental Impact Statement.

Many of the problems which have been encountered in assessing the environmental harms from ocean dumping, and the technical validity of the approaches taken in Parts 227 and 228, are reviewed in "Disposal in the Marine Environment, An Oceanographic Assessment," The National Research Council, National Academy of Sciences, Washington, D.C., 1976. Copies are available from the Printing and Publishing Office, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20418.

Part 228. This part establishes criteria for the management of ocean disposal sites and presents criteria for the initial selection of sites. It also presents factors which must be considered with respect to the determination of the permissible levels of disposal of materials at a particular site. This part has no counterpart in the existing regulations.

Comments on the existing regulations expressed concern that the variability of the marine environment and our lack of knowledge concerning it was such that permit issuance should not be based solely on testing of the waste but should also be based on consideration of the specific marine environment into which the materials are placed. That is, EPA should attempt to evaluate the total stress on the environment at the disposal site rather than concentrate its efforts solely on individual permits.

Part 228 begins by defining key terms used in this part and then sets forth procedures to be used in the designation of the disposal sites for each type of permit (§§ 228.3 and 228.4). There follows a statement of the general considerations which will govern the selection of ocean disposal sites by EPA (§ 228.5). This in turn is followed by more specific listing of the criteria to be used in the selection of sites (§ 228.6).

Sections 228.7 through 228.9 place limitations on the times and rates of disposal of materials at the sites and establish an appropriate monitoring program for each site. The general requirements for the monitoring program are stated; the details in each case are left to the discretion of the permit issuing authority, which in most cases will be the Regional Administrator.

Sections 228.10 through 228.12. These sections establish the criteria which EPA will use for evaluating impact on a disposal site and for altering use of a site. The criteria for evaluating disposal impact on more specific statements of appropriate criteria of section 102(a) of the Act. These criteria deal with ecological impact in general, and specific impacts on alternate uses of the oceans, marine resources, and recreational and esthetic values.

These criteria are presented as two Impact Categories, each of which is differentiated from the other by quantifiable measures of impact obtainable from data collected from the disposal site and other parts of the marine environment. The detailed requirements for surveys to obtain the necessary data are contained in § 228.13.

The survey requirements presented in § 228.13 were developed jointly by EPA and NOAA, with valuable contributions provided by the National Wildlife Federation, as well as a number of private individuals. The data collected on particular sites may be modified slightly from those listed in § 228.13 as dictated by specific conditions at a site or characteristics of wastes dumped at a site, but the structure of baseline and trend assessment surveys will be based on the requirements of § 228.13. Such surveys are not intended to cover all possible ecological features of a site, but to collect, on a consistent reproducible basis, the data necessary to detect impacts.

Impact Category I reflects the situation in which there is an identifiable impact on the biota at the site, but it is not the type of impact that has a measurable effect on another use of the marine environment. With this level of impact, EPA recognizes that there is some impact on the biota that may presage some form of significant long-range impact and regards this level of impact as being "unreasonable degradation."

At the level of Impact Category II, it may be possible to see some changes in chemical characteristics in water and sediments at and near the site, but there are no detectable changes in the biota.

The provisions of § 228.11 identify the actions which will be taken when each level of impact is observed. The Act states that the Administrator of EPA may issue permits for ocean dumping when he determines that unreasonable degradation of the marine environment will not occur. By the provisions incorporated in § 228.11, EPA will determine that unreasonable degradation will occur at Impact Category I, but that impacts at the level of Impact Category II are acceptable.

The basic rationale for the impact classification system is that, some changes in the composition of water and sediments may be tolerated, but any significant sign of damage to any of the biota may be a forerunner of adverse changes affecting the entire ecosystem and steps should be taken to reduce waste loadings to levels at which no changes in the biota are detectable. Wastes dis-

charged in compliance with Part 227 are not expected to have an unacceptable adverse effect on marine biota. Management of each site in compliance with the criteria of this Part 228 will provide an additional safeguard to the environment from any cumulative effects of dumping.

Section 228.12 lists the interim ocean disposal sites available for the disposal of municipal or industrial wastes. This list has been revised from that previously published to reflect changes made during permit operations, and to correct some technical errors in the initial list. All the sites are designated as interim because the Administrator has determined to conduct environmental impact studies and to prepare environmental impact statements prior to the designation of any site as a final ocean dumping site. See 39 FR 37419 (October 21, 1974). Many persons have commented that the Agency has left ocean disposal sites designated as interim for several years and that the interim character of the sites is losing its validity. EPA is aware that there is a need to conclude the environmental assessment process and determine whether a location will or will not be designated. However, it has found that one of the major obstacles to preparation of environmental impact statements is the collection of adequate and reliable baseline information. The sophistication and time required to assemble an adequate data base is considerable, and the assessment of the data is a major scientific undertaking. The Agency hopes to complete environmental impact statements on at least three interim sites in the near future. Ocean disposal sites for the use of persons wishing to discharge dredged material are not designated in this proposed rulemaking.

The United States Coast Guard has suggested to the Agency that all ocean dumping sites other than those to be used for dredged material and for material permitted to be discharged under general permits, be reoriented to coincide with LORAN-C time delay line grid. Most of the present sites are generally rectangular in shape; some are circular. Reorientation would make the sites oblique-angled parallelograms with each side coinciding with a single LORAN-C time delay line of position. Oblique-angles would not exceed 75 degrees for any of the sites under consideration.

The proposed reorientation would simplify the navigational calculations which the person who is ocean dumping must perform to insure that he remains within the boundaries of the site, and will facilitate more accurate surveillance. The problems associated with accurate conversion of LORAN information to latitude-longitude, and the inverse conversion, can be eliminated for both the person dumping the waste and any surveillance craft.

An additional benefit which will be realized by the proposed reorientation will be the simplification of the design of electronic equipment to provide surveillance of dumping operations. The Ocean Dumping Surveillance System

(ODSS) being evaluated by the Coast Guard is designed to insure that dumping is conducted in the designated site. It will accomplish this by recording the vessel's position at frequent time intervals, using LORAN-C data, along with the status of the vessel's dumping mechanism. Computer processing of the recorded data will allow reconstruction of the vessel's activities. Reorientation of the sites would simplify the ODSS by eliminating the need for a micro-processor circuit to define the dump site boundaries. This decreased complexity will result in a less costly system and, more importantly, one of increased reliability.

Geographic coordinates of the reoriented sites are presented together with coordinates of the present sites. The reoriented sites retain wherever practicable the center point and size of the existing sites. Minor changes to the proposed geographic coordinates of some reoriented sites may be required as additional processing is conducted to define the exact geographic coordinates vis-à-vis the time delay lines. Changes are not expected to exceed 200 yards which, in most cases, is much less than the vessel's normal navigational error. The public is invited to comment on the proposed reorientation of the dump sites.

Section 228.13. The ability to accurately assess the environmental effects of ocean disposal is dependent upon the generation of accurate environmental data. As noted above, EPA and the other agencies involved in marine environmental studies have found it difficult to detect subtle environmental changes in an open ocean environment. The Agency has also found that much of the data submitted by persons who are dumping wastes at sea is less than adequate. In the hope that the caliber of information supplied to the Agency in this area can be improved the Agency today publishes guidelines for ocean disposal site baseline and trend assessment surveys in § 228.13.

The survey requirements presented in this Section were developed jointly by EPA and NOAA, with valuable contribution provided by the National Wildlife Federation representatives, as well as by a number of private individuals and scientists. The Agency hopes that the guidelines will encourage persons interested in marine surveys on the effects of ocean disposal to follow a fairly standard assessment practice. The guidelines in § 228.13 are not meant to be overly rigid; the types of data collected on particular sites may be modified slightly from those listed in the guidelines as dictated by specific needs. The trend assessment surveys to a large extent will be used to collect and review the data necessary to detect the impacts as described in the impact categories of §§ 228.10 through 228.12. The reader is invited to study the publication "Disposal in the Marine Environment", supra, especially Chapters 5 and 6 for an analysis of the problems involved in site selection and site monitoring.

PROPOSED RULES

Part 229. This part contains one proposed general permit covering the disposal of clean wrecks and hulks, and one general permit covering the transport and disposal of target vessels and bodies at sea. Because the transport and disposal of vessel hulks occurs quite often, especially in busy commercial port areas, the public is invited to direct its attention to the proposed conditions imposed on this type of activity. It must be remembered that under a general permit the person who wishes to dispose of material is not required to obtain a special or interim disposal permit and is not required to undergo a formal public hearing. The Agency has attempted to consider and incorporate the suggestions of the United States Army Corps of Engineers and the United States Coast Guard in drafting the proposed amendment to Part 229.

ENVIRONMENTAL AND INFLATIONARY IMPACT STATEMENTS

Although the Agency is not required by law to prepare an environmental impact statement in connection with revision of the regulations and criteria pertaining to ocean disposal, it has chosen to prepare such a statement with respect to the proposed revision to Part 227. See 39 FR 37419 (October 21, 1974). A draft environmental statement has been prepared and is available for inspection in the office noted in the last paragraph of this preamble. In addition, there are a limited number of the draft statements available to persons who have an interest in reviewing that document. Requests for copies should be sent to the address noted below.

Executive Order 11821 (November 27, 1974) requires that major proposals for legislation and promulgation of regulations and rules by agencies of the executive branch be accompanied by a statement certifying that the inflationary impact of the proposal has been evaluated; OMB Circular A-107 (January 28, 1975) prescribes guidelines for the identification and evaluation of major proposals requiring preparation of inflationary impact certifications. The Administrator has directed that EPA regulatory actions will require certification when they are likely to result in: (1) Capital investment exceeding \$100,000,000; (2) annualized costs exceeding \$50,000,000; (3) total additional costs of production of any major project exceeding 5 percent of selling price; or (4) increase in net national energy consumption by the equivalent of 25,000 barrels of oil per day. None of these limiting criteria is exceeded by the proposed revisions announced today and, therefore, an inflationary impact statement has not been prepared.

The Agency will consider all written comments on these proposed revisions to criteria and regulations when the comments are received on or before August 27, 1976. At the close of the public comment period, EPA may hold one or more public hearings to review the comments received, if there is sufficient public interest. Comments should be provided in

triplicate and addressed to Mr. T. A. Wastler, Chief, Marine Protection, Branch, Oil and Special Materials Control Division (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(33 U.S.C. 1421 and 1418.)

Dated: June 18, 1976.

RUSSELL E. TRAIN,
Administrator.

Subchapter H of Chapter I of Title 40 is hereby proposed to be amended to read as follows:

1. The table of contents for Subpart H is revised to read as follows:

SUBCHAPTER H—OCEAN DUMPING	
Part	
220	General.
221	Applications for ocean dumping permits under section 102 of the act.
222	Action on ocean dumping permit applications under section 102 of the act.
223	Contents, modifications, revocation and suspension of ocean dumping permits under section 102 of the act.
224	Records and reports required of ocean dumping permittees under section 102 of the act.
225	Corps of engineers dredged material permits.
226	Enforcement of the act.
227	Criteria for the evaluation of permit applications for ocean dumping of materials.
228	Criteria for the management of disposal sites for ocean dumping.
229	General permits.

2. Part 220 is revised to read as follows:

PART 220—GENERAL	
Sec.	
220.1	Purpose and scope.
220.2	Definitions.
220.3	Categories of permits.
220.4	Authorities to issue permits.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 220.1 Purpose and scope.

(a) *General.* This Subchapter H establishes procedures and criteria for the issuance of permits by EPA pursuant to section 102 of the Act. This Subchapter H also establishes the criteria to be applied by the Corps of Engineers in its review of activities involving the transportation of dredged material for the purpose of dumping it in ocean waters pursuant to section 103 of the Act. Except as may be authorized by a permit issued pursuant to this Subchapter H, or pursuant to section 103 of the Act, and subject to other applicable regulations promulgated pursuant to section 108 of the Act:

- (1) No person shall transport from the United States any material for the purpose of dumping it into ocean waters;
- (2) In the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of dumping it into ocean waters; and
- (3) No person shall dump any material transported from a location outside the United States:

(i) Into the territorial sea of the United States; or

(ii) Into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(b) *Relationship to international agreements.* In accordance with section 102(a) of the Act, the regulations and criteria included in this Subchapter H apply the standards and criteria binding upon the United States under the "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter" to the extent that application of such standards and criteria do not relax the requirements of the Act.

(c) *Exclusions.* (1) *Fish wastes.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the transportation for the purpose of dumping or the dumping in ocean waters of fish wastes unless such dumping occurs in:

(i) Harbors or other protected or enclosed coastal waters; or

(ii) Any other location where the Administrator finds that such dumping may reasonably be anticipated to endanger health, the environment or ecological systems.

(2) *Fisheries resources.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the placement or deposit of oyster shells or other materials for the purpose of developing, maintaining or harvesting fisheries resources; provided, such placement or deposit is regulated under or is a part of an authorized State or Federal program certified to EPA by the agency authorized to enforce the regulation, or to administer the program, as the case may be; and provided further, that the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the U.S. Army Corps of Engineers concur in such placement or deposit as it may affect their responsibilities and such concurrence is evidenced by letters of concurrence from these agencies.

(3) *Vessel propulsion and fixed structures.* This Subchapter H does not apply to, and no permit hereunder shall be required for:

(i) Routine discharges of effluent incidental to the propulsion of vessels or the operation of motor-driven equipment on vessels; or

(ii) Construction of any fixed structure or artificial island, or the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal or State law or made pursuant to an authorized Federal or State program certified to EPA by the agency authorized to enforce the regulations or to administer the program, as the case may be.

(4) *Emergency to safeguard life at sea.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the dumping of material into ocean waters from a vessel or aircraft in an emergency to safeguard life at sea to the extent that the person owning or operating such vessel or aircraft files timely reports required by § 224.2(b).

§ 220.2 Definitions.

As used in this Subchapter H:

(a) "Act" means the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401);

(b) "FWPCA" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251);

(c) "Ocean" or "ocean waters" means those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639); this definition includes the waters of the territorial sea, the contiguous zone and the oceans as defined in section 502 of the FWPCA.

(d) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, industrial, municipal, agricultural, and other waste, but such term does not mean sewage from vessels within the meaning of section 312 of the FWPCA. Oil within the meaning of section 311 of the FWPCA shall constitute "material" for purposes of this Subchapter H only to the extent that it is taken on board a vessel or aircraft for the primary purpose of dumping.

(e) "Dumping" means a disposition of material: Provided, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the FWPCA, under the provisions of section 13 of the River and Harbor Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: Provided further, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: And provided further, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is other-

wise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(f) "Sewage Treatment Works" means municipal or domestic waste treatment facilities of any type which are publicly owned or regulated to the extent that feasible compliance schedules are determined by the availability of funding provided by Federal, State, or local governments.

(g) "Criteria" means the criteria set forth in Part 227 of this Subchapter H.

(h) "Dredged Material Permit" means a permit issued by the Corps of Engineers under section 103 of the Act (see 33 CFR 209.120) and any Federal projects reviewed under Section 103(e) of the Act (see 33 CFR 209.145).

(i) Unless the context otherwise requires, all other terms shall have the meanings assigned to them by the Act.

§ 220.3 Categories of permits.

This § 220.3 provides for the issuance of general, special, emergency, interim and research permits for ocean dumping under section 102 of the Act.

(a) *General permits.* General permits may be issued for the dumping of certain materials which will have a minimal adverse environmental impact and are generally disposed of in small quantities, or for specific classes of materials that must be disposed of in emergency situations. General permits may be issued on application of an interested person in accordance with the procedures of Part 221 or may be issued without such application whenever the Administrator determines that issuance of a general permit is necessary or appropriate.

(b) *Special permits.* Special permits may be issued for the dumping of materials which satisfy the Criteria and shall specify an expiration date no later than three years from the date of issue.

(c) *Emergency permits.* For any of the materials listed in § 227.6, except as trace contaminants, after consultation with the Department of State with respect to the need to consult with parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes or Other Matter that are likely to be affected by the dumping, emergency permits may be issued to dump such materials where there is demonstrated to exist an emergency requiring the dumping of such materials, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, "emergency" refers to situations requiring action with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action. Emergency permits may be issued for other materials, except those prohibited by Section 227.5, without consultation with the Department of State when the Administrator determines that there exists an emergency requiring the dumping of such materials which poses an unacceptable risk to human health and admits of no other feasible solution.

(d) *Interim permits.* Prior to April 23, 1978, interim permits may be issued un-

der certain conditions in accordance with Subpart A of Part 227 to dump materials which are not in compliance with the environmental impact criteria of Subpart B of Part 227, or which are otherwise unacceptable for ocean dumping as determined in accordance with the criteria of Subparts D or E of Part 227 or for which an ocean disposal site has not been designated on other than an interim basis pursuant to Part 223 of this Subchapter H; provided, however, no permit may be issued for the ocean dumping of any materials listed in Section 227.5, or for any of the materials listed in Section 227.6, except as trace contaminants; provided further that the compliance date of April 23, 1978, does not apply to:

(1) The dumping of wastes from sewage treatment works when the Regional Administrator determines that the applicant has exercised his best efforts to comply with all requirements of a special permit; or

(2) The dumping of any other wastes by existing dumpers when the Regional Administrator determines that the dumper has attempted in good faith to comply with the date of April 23, 1978, and has a treatment facility under construction on a schedule adequate to permit phasing out of ocean dumping or compliance with the criteria of Subpart B by April 23, 1981, at the latest.

No interim permit will be granted for the dumping of waste from a facility which has not previously dumped wastes in the ocean (except when the facility is operated by a municipality now dumping such wastes), from a new facility, or from the expansion or modification of an existing facility, after the effective date of these regulations. No interim permit will be issued for the dumping of any material in the ocean for which an interim permit had previously been issued unless the applicant demonstrates that he has exercised his best efforts to comply with all provisions of the previously issued permits.

(e) *Research permits.* Research permits may be issued for the dumping of any materials, other than materials specified in § 227.5 or for any of the materials listed in § 227.6 except as trace contaminants, unless subject to the exclusion of paragraph (e) of § 227.6, into the ocean as part of a research project when it is determined that the scientific merit of the proposed project outweighs the potential environmental or other damage that may result from the dumping. Research permits shall specify an expiration date no later than 18 months from the date of issue.

(f) *Permits for incineration at sea.* Permits for incineration of wastes at sea will be issued only as research permits or as interim permits until specific criteria to regulate this type of disposal are promulgated, except in those cases where studies on the waste, the incineration method and vessel, and the site have been conducted and the site has been designated for incineration at sea in accordance with the procedures of § 228.4. In all other respects the requirements of Parts 220-228 apply.

§ 220.4 Authorities to issue permits.

(a) *Determination by Administrator.* The Administrator, or such other EPA employee as he may from time to time designate in writing, shall issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities and take any and all other actions necessary or proper and permitted by law with respect to general, special, emergency, interim, or research permits.

(b) *Authority delegated to Regional Administrators.* Regional Administrators, or such other EPA employees as they may from time to time designate in writing, are delegated the authority to issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities, and take any and all other actions necessary or proper and permitted by law with respect to special and interim permits for:

(1) The dumping of material in those portions of the territorial sea which are subject to the jurisdiction of any State within their respective Regions, and in those portions of the contiguous zone immediately adjacent to such parts of the territorial sea; and in the oceans with respect to approved waste disposal sites designated pursuant to Part 228 of this Subchapter H, and

(2) Where transportation for dumping is to originate in one Region and dumping is to occur at a location within another Region's jurisdiction conferred by order of the Administrator, the Region in which transportation is to originate shall be responsible for review of the application and shall prepare the technical evaluation of the need for dumping and alternatives to ocean dumping. The Region having jurisdiction over the proposed dump site shall take all other actions required by this Subchapter H with respect to the permit application, including without limitation, determining to issue or deny the permit, specifying the conditions to be imposed, and giving public notice. If both Regions do not concur in the disposition of the permit application, the Administrator will make the final decision on all issues with respect to the permit application, including without limitation, issuance or denial of the permit and the conditions to be imposed.

(c) *Review Corps of Engineers Dredged Material Permits.* Regional Administrators have the authority to review, to approve or to disapprove or to propose conditions upon Dredged Material Permits for ocean dumping of dredged material at locations within the respective Regional jurisdictions. Regional jurisdiction to act under this paragraph (c) of § 220.4 is determined by the Administrator in accordance with § 228.4 (e).

3. Part 221 is revised to read as follows:

PART 221—APPLICATIONS FOR OCEAN DUMPING PERMITS UNDER SECTION 102 OF THE ACT

Sec.

- 221.1 Applications for permits.
221.2 Other information.

Sec.

- 221.3 Applicant.
221.4 Adequacy of information in application.
221.5 Processing fees.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 221.1 Applications for permits.

Applications for general, special, emergency, interim and research permits under section 102 of the Act may be filed with the Administrator or the appropriate Regional Administrator, as the case may be, authorized by § 220.4 to act on the application. Applications shall be made by letter and shall contain, in addition to any other material which may be required, the following:

(a) Name and address of applicant;

(b) Name of the person or firm transporting the material for dumping, the name of the person(s) or firm(s) producing or processing all materials to be transported for dumping, and the name or other identification, and usual location, of the conveyance to be used in the transportation and dumping of the material to be dumped, including information on the transporting vessel's communications and navigation equipment;

(c) Adequate physical and chemical description of material to be dumped, including results of tests necessary to apply the Criteria, and the number, size, and physical configuration of any containers to be dumped;

(d) Quantity of material to be dumped;

(e) Proposed dates and times of disposal;

(f) Proposed dump site, and in the event such proposed dump site is not a dump site designated in this Subchapter H, detailed physical, chemical and biological information relating to the proposed dump site and sufficient to support its designation as a site according to the procedures of Part 228 of this Subchapter H;

(g) Proposed method of releasing the material at the dump site and means by which the disposal rate can be controlled and modified as required;

(h) Identification of the specific process or activity giving rise to the production of the material;

(i) Description of the manner in which the type of material proposed to be dumped has been previously disposed of by or on behalf of the person(s) or firm(s) producing such material;

(j) A statement of the need for the proposed dumping and a full evaluation of short and long term alternative means of disposal, treatment or recycle of the material. Means of disposal shall include without limitation, landfill, well injection, incineration, spread of material over open ground; biological, chemical or physical treatment; recovery and recycle of material within the plant or at other plants which may use the material, and storage. The statement shall also include an analysis of the availability of such alternatives; and

(k) An assessment of the anticipated environmental impact of the proposed dumping, including without limitation,

the relative duration of the effect of the proposed dumping on the marine environment, navigation, living and non-living marine resource exploitation, scientific study, recreation and other uses of the ocean.

§ 221.2 Other information.

In the event the Administrator, Regional Administrator, or a person designated by either to review permit applications, determines that additional information is needed in order to apply the Criteria, he shall so advise the applicant in writing. All additional information requested pursuant to this § 221.2 shall be deemed part of the application and for purposes of applying the time limitation of § 222.1, the application will not be considered complete until such information has been filed.

§ 221.3 Applicant.

Any person may apply for a permit under this Subchapter H even though the proposed dumping may be carried on by a permittee who is not the applicant; provided however, that the Administrator or the Regional Administrator, as the case may be, may, in his discretion, require that an application be filed by the person or firm producing or processing the material proposed to be dumped. Issuance of a permit will not excuse the permittee from any civil or criminal liability which may attach by virtue of his having transported or dumped materials in violation of the terms or conditions of a permit, notwithstanding that the permittee may not have been the applicant.

§ 221.4 Adequacy of information in application.

No permit issued under this Subchapter H will be valid for the transportation or dumping of any material which is not accurately and fully described in the application. No permittee shall be relieved of any liability which may arise as a result of the transportation or dumping of material which does not conform to information provided in the application solely by virtue of the fact that such information was furnished by an applicant other than the permittee.

§ 221.5 Processing fees.

(a) A processing fee of \$1,000 will be charged in connection with each application for a permit for dumping in an existing dump site designated in this Subchapter H.

(b) A processing fee of an additional \$3,000 will be charged in connection with each application for a permit for dumping in a dump site other than a dump site designated in this Subchapter H.

(c) Notwithstanding any other provision of this § 221.5, no agency or instrumentality of the United States or of a State or local government will be required to pay the processing fees specified in paragraphs (a) and (b) of this section.

4. 40 Part 222 is revised to read as follows:

PART 222—ACTION ON OCEAN DUMPING PERMIT APPLICATIONS UNDER SECTION 102 OF THE ACT

Sec.	
222.1	General.
222.2	Tentative determinations.
222.3	Notice of applications.
222.4	Initiation of hearings.
222.5	Time and place of hearings.
222.6	Presiding Officer.
222.7	Conduct of public hearing.
222.8	Recommendations of Presiding Officer.
222.9	Issuance of permits.
222.10	Appeal to adjudicatory hearings.
222.11	Conduct of adjudicatory hearings.
222.12	Appeal to Administrator.

Authority: 33 U.S.C. 1421 and 1418.

§ 222.1 General.

Decisions as to the issuance, denial, or imposition of conditions on general, special, emergency, interim and research permits under section 102 of the Act will be made by application of the criteria of Parts 227 and 228. Final action on any application for a permit will, to the extent practicable, be taken within 180 days from the date a complete application is filed.

§ 222.2 Tentative determinations.

(a) Within 30 days of the receipt of his initial application, an applicant shall be issued notification of whether his application is complete and what, if any, additional information is required. No such notification shall be deemed to foreclose the Administrator or the Regional Administrator, as the case may be, from requiring additional information at any time pursuant to § 221.2.

(b) Within 30 days after receipt of a completed permit application, the Administrator or the Regional Administrator, as the case may be, shall publish notice of such application including a tentative determination with respect to issuance or denial of the permit. If such tentative determination is to issue the permit, the following additional tentative determinations will be made:

- (1) Proposed time limitations, if any;
- (2) Proposed rate of discharge from the barge or vessel transporting the waste;
- (3) Proposed dumping site; and
- (4) A brief description of any other proposed conditions determined to be appropriate for inclusion in the permit in question.

(c) *Copies of notice sent to specific persons.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed by the Administrator or the Regional Administrator, as the case may be, to any person, group or Federal, State or local agency upon request. Any such request may be a standing request for copies of such notices and shall be submitted in writing to the Administrator or to any Regional Administrator and shall relate to all or any class of permit applications which may be acted upon by the Administrator or such Regional Administrator, as the case may be.

§ 222.3 Notice of applications.

(a) *Contents.* Notice of every complete application for a general, special, interim, emergency and research permit shall, in addition to any other material, include the following:

- (1) A summary of the information information included in the permit application;
- (2) any tentative determinations made pursuant to paragraph (b) of § 222.2;
- (3) a brief description of the procedures set forth in § 222.5 for requesting a public hearing on the application including specification of the date by which requests for a public hearing must be filed;

(4) A brief statement of the factors considered in reaching the tentative determination with respect to the permit and, in the case of a tentative determination to issue the permit, the reasons for the choice of the particular permit conditions selected; and

(5) The location at which interested persons may obtain further information on the proposed dumping, including copies of any relevant documents.

(b) *Publication.* (1) *Special, interim and research permits.* Notice of every complete application for special, interim and research permits shall be given by:

(i) Publication in a daily newspaper of general circulation in the State in closest proximity to the proposed dump site; and

(ii) Publication in a daily newspaper of general circulation in the city in which is located the office of the Administrator or the Regional Administrator, as the case may be, giving notice of the permit application.

(2) *General permits.* Notice of every complete application for a general permit or notice of action proposed to be taken by the Administrator to issue a general permit, without an application, shall be given by publication in the FEDERAL REGISTER.

(3) *Emergency permits.* Notice of every complete application for an emergency permit shall be given by publication in accordance with paragraphs (b)(1)(i) and (ii) of this section; *provided, however,* That no such notice and no tentative determination in accordance with § 222.2 shall be required in any case in which the Administrator determines:

- (i) That an emergency, as defined in paragraph (c) of § 220.3 exists;
- (ii) That the emergency poses an unacceptable risk relating to human health;
- (iii) That the emergency admits of no other feasible solution; and
- (iv) That the public interest requires the issuance of an emergency permit as soon as possible.

Notice of any determination made by the Administrator pursuant to paragraph (b)(3) of this section shall be given as soon as practicable after the issuance of the emergency permit by publication in accordance with paragraphs (b)(1)(i) and (ii) and with paragraphs (a), (c)-(i) of this section.

(c) *Copies of notice sent to specific persons.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed by the Administrator or the Regional Administrator, as the case may be, to any person, group or Federal, State or local agency upon request. Any such request may be a standing request for copies of such notices and shall be submitted in writing to the Administrator or to any Regional Administrator and shall relate to all or any class of permit applications which may be acted upon by the Administrator or such Regional Administrator, as the case may be.

(d) *Copies of notice sent to States.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the

State water pollution control agency for each coastal State within 500 miles of the proposed dumping site.

(e) *Copies of notice sent to Corps of Engineers.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the office of the appropriate District Engineer of the U.S. Army Corps of Engineers for purposes of section 106(c) of the Act (pertaining to navigation, harbor approaches, and artificial islands on the outer continental shelf).

(f) *Copies of notice sent to Coast Guard.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be sent to the appropriate district office of the U.S. Coast Guard for review and possible suggestion of additional conditions to be included in the permit to facilitate surveillance and enforcement.

(g) *Fish and Wildlife Coordination Act.* The Fish and Wildlife Coordination Act, Reorganization Plan No. 4 of 1970, and the Act require that the Administrator or the Regional Administrator, as the case may be, consult with appropriate regional officials of the Departments of Commerce and Interior, the Regional Director of the NMFS-NOAA, and the agency exercising administrative jurisdiction over the fish and wildlife resources of the States subject to any dumping prior to the issuance of a permit under this Subchapter H.

(h) *Copies of notice sent to Food and Drug Administration.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to Food and Drug Administration, Shellfish Sanitation Branch (HF-417), 200 C Street SW., Washington, D.C. 20204.

(i) *Failure to give certain notices.* Failure to send copies of any public notice in accordance with paragraphs (c) through (h) of this section shall not invalidate any notice given pursuant to this section nor shall such failure invalidate any subsequent administrative proceeding.

(j) *Failure of consulted agency to respond.* Unless advice to the contrary is received from the appropriate Federal or State agency within 30 days of the date copies of any public notice were dispatched to such agency, such agency will be deemed to have no objection to the issuance of the permit identified in the public notice.

§ 222.4 Initiation of hearings.

(a) In the case of any permit application for which public notice in advance of permit issuance is required in accordance with paragraph (b) of § 222.3, any person may, within 30 days of the date on which all provisions of paragraph (b) of § 222.3 have been complied with, request a public hearing to consider the issuance or denial of, or the conditions to be imposed upon, such permit. Any such request for a public hearing shall be in writing, shall identify the person requesting the hearing, shall state with particularity any objections to the issuance or denial of, or to the conditions to

be imposed upon, the proposed permit, and shall state the issues which are proposed to be raised by such person for consideration at a hearing.

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents substantial issues of public interest, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or the Regional Administrator, as the case may be, will set a time and place for a public hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the hearing of his determination.

§ 222.5 Time and place of hearings.

Hearings shall be held in the State in closest proximity to the proposed dump site, whenever practicable, and shall be set for the earliest practicable date no less than 30 days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

§ 222.6 Presiding Officer.

A hearing convened pursuant to this Subchapter H shall be conducted by a Presiding Officer. The Administrator or Regional Administrator, as the case may be, may designate a Presiding Officer. For adjudicatory hearings held pursuant to § 222.11, the Presiding Officer shall be an EPA employee who has had no prior connection with the permit application in question, including without limitation, the performance of investigative or prosecuting functions or any other functions, and who is not employed in the enforcement division or any regional enforcement office.

§ 222.7 Conduct of public hearing.

The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to § 222.5 whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer is authorized to set forth reason-

able restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

§ 222.8 Recommendations of Presiding Officer.

Within 30 days following the adjournment of a public hearing convened pursuant to § 222.5, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the issuance or denial of, or conditions to be imposed upon, the proposed permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis for the recommendations. Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record will be provided in accordance with 40 CFR 2.

§ 222.9 Issuance of permits.

(a) Within 30 days following receipt of the Presiding Officer's recommendations or, where no hearing has been held, following the close of the 30-day period for requesting a hearing as provided in § 222.4, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the issuance, denial, or imposition of conditions on, any permit applied for under this Subchapter H and shall give notice to the applicant and to all persons who registered their attendance at the hearing by providing their name and mailing address, if any, by mailing a letter stating the determination and stating therefor in terms of the Criteria.

(b) Any determination to issue or deny any permit after a hearing held pursuant to § 222.7 shall take effect no sooner than:

(1) 10 days after notice of such determination is given if no request for an adjudicatory hearing is filed in accordance with § 222.10(a) and the Administrator or the Regional Administrator, as the case may be, determines not to hold such a hearing; or

(2) 20 days after notice of such determination is given if a request for an adjudicatory hearing is filed in accordance with § 222.10(a) and the Administrator or the Regional Administrator, as the case may be, denies such request in accordance with § 222.10(c); or

(3) The date on which a final determination has been made following an adjudicatory hearing held pursuant to § 222.11.

§ 222.10 Appeal to adjudicatory hearing.

(a) Within 10 days following the dispatch of notice of the issuance or denial of any permit pursuant to § 222.9 after

a hearing held pursuant to § 222.7, any interested person who participated in such hearing may request that an adjudicatory hearing be held pursuant to § 222.11 for the purpose of reviewing such determination, or any part thereof. Any such request for an adjudicatory hearing shall be filed with the Administrator or the Regional Administrator, as the case may be, and shall be in writing, shall identify the person requesting the adjudicatory hearing and shall state with particularity the objections to the determination, the basis therefor and the modification requested.

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents substantial issues of public interest, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that an adjudicatory hearing is necessary or appropriate, the Administrator or the Regional Administrator, as the case may be, will set a time and place for an adjudicatory hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) In any case where determination has been made under § 222.9 to reissue a currently valid permit, but such reissuance is contested in a request for an adjudicatory hearing, the Administrator or the Regional Administrator, as the case may be, in his discretion may extend the duration of such currently valid permit until a final determination has been made pursuant to § 222.11 or 222.12.

(d) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the adjudicatory hearing of his determination.

(e) Any person requesting an adjudicatory hearing or requesting admission as a party to an adjudicatory hearing shall state in his written request, and shall be filing such request consent, that he and his employees and agents shall submit themselves to direct and cross-examination at any such hearing and to the taking of an oath administered by the Presiding Officer.

§ 222.11 Conduct of adjudicatory hearings.

(a) *Parties.* Any interested person may at any time prior to the commencement of the hearing submit to the Presiding Officer a request to be admitted as a party. Such request shall be in writing and shall set forth the information which would be required to be submitted by such person if he were requesting an adjudicatory hearing. Any such request to be admitted as a party which satisfies the requirements of this paragraph shall be granted and all parties shall be in-

formed at the commencement of the adjudicatory hearing of the parties involved. Any party may be represented by counsel or other authorized representative.

(b) *Filing and service.* (1) An original and two (2) copies of all documents or papers required or permitted to be filed shall be filed with the Presiding Officer.

(2) Copies of all documents and papers filed with the Presiding Officer shall be served upon all other parties to the adjudicatory hearing.

(c) *Consolidation.* The Administrator, or the Regional Administrator in the case of a hearing arising within his Region and for which he has been delegated authority hereunder, may, in his discretion, order consolidation of any adjudicatory hearings held pursuant to this section whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. The Administrator may, in his discretion, order consolidation and designate one Region to be responsible for the conduct of any hearings held pursuant to this section which arise in different Regions whenever he determines that consolidation will expedite or simplify the consideration of the issues presented.

(d) *Pre-hearing conference.* The Presiding Officer may hold one or more pre-hearing conferences and may issue a pre-hearing order which may include without limitation, requirements with respect to any or all of the following:

- (1) Stipulations and admissions;
- (2) Disputed issues of fact;
- (3) Disputed issues of law;
- (4) Admissibility of any evidence;
- (5) Hearing procedures including submission of oral or written direct testimony, conduct of cross-examination, and the opportunity for oral arguments;
- (6) Pre-hearing discovery; and
- (7) Any other matter which may expedite the hearing or aid in disposition of any issues raised therein.

(e) *Adjudicatory hearing procedures.* (1) The burden of proof and of going forward with the evidence shall:

(i) In the case of any adjudicatory hearing held pursuant to § 222.10, be on the applicant; and

(ii) In the case of any adjudicatory hearing held pursuant to § 223.2 or pursuant to Part 226, be on the Environmental Protection Agency.

(2) The Presiding Officer shall have the duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He shall have all powers necessary or appropriate to that end, including without limitation, the following:

- (i) To administer oaths and affirmations;
- (ii) To rule upon offers of proof and receive evidence;
- (iii) To regulate the course of the hearing and the conduct of the parties and their counsel;

(iv) To consider and rule upon all procedural and other motions appropriate to the proceedings, and

(v) To take any action authorized by these regulations and in conformance with law.

(3) Parties shall have the right to cross-examine a witness who appears at an adjudicatory hearing to the extent that such cross-examination is necessary or appropriate for a full disclosure of the facts. In multiparty proceedings the Presiding Officer may limit cross-examination to one party on each side if he is satisfied that the cross-examination by one party will adequately protect the interests of other parties.

(4) When a party will not be unfairly prejudiced thereby, the Presiding Officer may order all or part of the evidence to be submitted in written form.

(5) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of cross-examination, and other procedural matters, shall be final and shall appear in the record.

(6) Interlocutory appeals may not be taken.

(7) Parties shall be presumed to have taken exception to an adverse ruling.

(8) The proceedings of all hearings shall be recorded by such means as the Presiding Officer may determine. The original transcript of the hearing shall be a part of the record and the sole official transcript. Copies of the transcript shall be available from the Environmental Protection Agency in accordance with 40 CFR 2.

(9) The rules of evidence shall not apply.

(f) *Decision after adjudicatory hearing.* (1) Within 30 days after the conclusion of the adjudicatory hearing, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, the Presiding Officer shall submit to the Administrator or the Regional Administrator, as the case may be, proposed findings of fact and conclusions of law, his recommendation with respect to any and all issues raised at the hearing, and the record of the hearing. Such findings, conclusions and recommendations shall contain a brief statement of the basis for the recommendations. Copies of the Presiding Officer's proposed findings of fact, conclusions of law and recommendations shall be provided to all parties to the adjudicatory hearing on request, without charge.

(2) Within 20 days following submission of the Presiding Officer's proposed findings of fact, conclusions of law and recommendations, any party may submit written exceptions, no more than 20 pages in length, to such proposed findings, conclusions and recommendations and within 30 days following the submission of the Presiding Officer's proposed findings, conclusions and recommendations any party may file written comments, no more than 10 pages in length, on another party's exceptions.

Within 45 days following the submission of the Presiding Officer's proposed findings, conclusions and recommendations, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to all issues raised at such hearing and shall affirm, reverse or modify the previous or proposed determination, as the case may be. Notice of such determination shall set forth the determination for each such issue, shall briefly state the basis therefor and shall be given by mail to all parties to the adjudicatory hearing.

§ 222.12 Appeal to Administrator.

(a) Within 10 days following the determination of the Regional Administrator pursuant to paragraph (f) (2) of § 222.11, any party to an adjudicatory hearing held in accordance with § 222.11 may appeal such determination to the Administrator by filing a written notice of appeal, or the Administrator may, on his own initiative, review any prior determination.

(b) The notice of appeal shall be no more than 30 pages in length and shall contain:

- (1) The name and address of the person filing the notice of appeal;
- (2) A concise statement of the facts on which the person relies and appropriate citations to the record of the adjudicatory hearing;
- (3) A concise statement of the legal basis on which the person relies;
- (4) A concise statement setting forth the action which the person proposes that the Administrator take; and
- (5) A certificate of service of the notice of appeal on all other parties to the adjudicatory hearing.

(c) The effective date of any determination made pursuant to paragraph (f) (2) of § 222.11 shall be stayed by the Administrator pending final determination by him pursuant to this § 222.12 upon the filing of a notice of appeal which satisfies the requirements of paragraph (b) of this section or upon initiation by the Administrator of review of any determination in the absence of such notice of appeal.

(d) Within 20 days following the filing of a notice of appeal in accordance with this section, any party to the adjudicatory hearing may file a written memorandum, no more than 15 pages in length, in response thereto.

(e) Within 45 days following the filing of a notice of appeal in accordance with this section, the Administrator shall render his final determination with respect to all issues raised in the appeal to the Administrator and shall affirm, reverse, or modify the previous determination and briefly state the basis for his determination.

(f) In accordance with 5 U.S.C. section 704, the filing of an appeal to the Administrator pursuant to this section shall be a prerequisite to judicial review of any determination to issue, deny or impose conditions upon any permit, or

to modify, revoke or suspend any permit, or to take any other enforcement action, under this subchapter H.

5. Part 223 is revised to read as follows:

PART 223—CONTENTS, MODIFICATION, REVOCATION AND SUSPENSION OF OCEAN DUMPING PERMITS UNDER SECTION 102 OF THE ACT

Sec.

223.1 Contents of permits.

223.2 Modification, revocation and suspension.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 223.1 Contents of permits.

(a) All special, interim, emergency and research permits shall be displayed on the vessel engaged in dumping, and shall include the following:

(1) Name of permittee;

(2) Means of conveyance and methods and procedures for release of the material to be dumped;

(3) The port through or from which such material will be transported for dumping;

(4) A description of relevant physical and chemical properties of the material to be dumped;

(5) The quantity of the material to be dumped expressed in tons;

(6) The disposal site;

(7) The times at which the permitted dumping may occur and the effective date and expiration date of the permit;

(8) Special provisions deemed necessary, after consultation with the Coast Guard, for monitoring or surveillance of the transportation or dumping;

(9) Such monitoring relevant to the assessment of the impact of permitted dumping activities on the marine environment at the disposal site as the Administrator or Regional Administrator, as the case may be, may determine to be necessary or appropriate; and

(10) Any other terms and conditions determined by the Administrator or the Regional Administrator, as the case may be, to be necessary or appropriate, including without limitation, requirements for the continued investigation or development of alternatives to ocean disposal.

(b) General permits shall contain such terms and conditions as the Administrator deems necessary or appropriate.

(c) Interim permits shall, in addition to the information required or permitted to be included in the permit pursuant to paragraph (a) of this section, include terms and conditions which satisfy the requirements of § 220.3(d), and § 227.8.

§ 223.2 Modification, revocation and suspension.

(a) *Modification, revocation and suspension.* Any permit issued under section 102 of the Act shall be subject to modification, revocation or suspension, in whole or in part, at any time by the Administrator or Regional Administrator, as the case may be, as a result of any of the following:

(1) Violation of any term or condition of the permit; or

(2) Misrepresentation, inaccuracy, or failure to disclose all relevant facts in the permit application; or

(3) A determination by the EPA management authority that the cumulative impact of the permittee's dumping activities or the aggregate impact of all dumping activities at the dump site designated in the permit be categorized as Impact Category I; or

(4) Changed circumstances concerning management of the disposal site; or

(5) Failure to keep the records, and to notify appropriate officials of dumping activities, as required by §§ 224.1 and 224.2.

(b) *Notice of modification, revocation or suspension.* The Administrator or the Regional Administrator, as the case may be, shall give notice of any modification, revocation or suspension pursuant to paragraph (a) of this section to the permittee by certified mail, return receipt requested, and to the public and appropriate Federal/State agencies in accordance with paragraphs (b) through (g) of § 222.3. Such notice shall state the modification, revocation or suspension and the reasons therefor.

(c) *Requests for hearings.* (1) Within 30 days after publication of notice of any modification, revocation or suspension pursuant to paragraph (b) of this section, a permittee or any other interested person may request an adjudicatory hearing on the issues raised by any such modification, revocation or suspension. Any such request shall be in writing, shall identify the person requesting the hearing, shall state with particularity such person's objections to the modification, revocation or suspension and shall state the issues which are proposed to be raised by such person for consideration at the hearing.

(2) Whenever (i) a written request satisfying the requirements of paragraph (c) (1) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents substantial issues of public interest, or (ii) the Administrator or Regional Administrator, as the case may be, determines in his discretion that an adjudicatory hearing is appropriate, the Administrator or the Regional Administrator, as the case may be, will set a time and place for an adjudicatory hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(3) Any person requesting an adjudicatory hearing or requesting admission as a party shall state in his written request, and shall by filing such request consent, that he and his employees and agents shall submit themselves to cross-examination at any such hearing and to the taking of an oath administered by the Presiding Officer.

(4) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (c) (1) of this section does not comply with the require-

ments of such paragraph (c) (1) or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the hearing of his determination.

(d) *Conduct of hearing.* An adjudicatory hearing held pursuant to this section shall be conducted by a Presiding Officer and a determination rendered in accordance with § 222.11. Any determination made after such hearing by the Administrator or the Regional Administrator, as the case may be, may be appealed to the Administrator in accordance with and shall be subject to the provisions of § 222.12.

6. Part 224 is revised to read as follows:

PART 224—RECORDS AND REPORTS REQUIRED OF OCEAN DUMPING PERMITTEES UNDER SECTION 102 OF THE ACT

Sec.

224.1 Records of permittees.

224.2 Reports.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 224.1 Records of permittees.

Each permittee named in a special, interim, emergency or research permit under section 102 of the Act and each person availing himself of the privilege conferred by a general permit, shall maintain complete records of the following information, which will be available for inspection by the Administrator, Regional Administrator, the Commandant of the U.S. Coast Guard, or their respective designees:

(a) The physical and chemical characteristics of the material dumped pursuant to the permit;

(b) The precise times and locations of dumping;

(c) Any other information required as a condition of a permit by the Administrator or the Regional Administrators, as the case may be.

§ 224.2 Reports.

(a) *Periodic reports.* Information required to be recorded pursuant to § 224.1 shall be reported to the Administrator or the Regional Administrator, as the case may be, for the periods indicated within 30 days of the expiration of such periods:

(1) For each six-month period, if any, following the effective date of the permit;

(2) For any other period of less than six months ending on the expiration date of the permit; and

(3) As otherwise required in the conditions of the permit.

(b) *Reports of emergency dumping.* If material is dumped without a permit pursuant to paragraph (c) (5) of § 220.1, the owner or operator of the vessel or aircraft from which such dumping occurs shall as soon as feasible inform the Administrator, Regional Administrator, or the nearest Coast Guard district of the incident by radio, telephone, or telegraph and shall within 10 days file a written report with the Administrator or Regional Administrator containing

the information required under § 224.1 and a complete description of the circumstances under which the dumping occurred. Notification shall also be given to the Food and Drug Administration, Shellfish Sanitation Branch, Washington, D.C. 20204, as soon as possible.

7. Part 225 is revised to read as follows:

**PART 225—CORPS OF ENGINEERS
DREDGED MATERIAL PERMITS**

Sec.

- 225.1 General.
- 225.2 Review of Dredged Material Permits.
- 225.3 Procedure for invoking economic impact.
- 225.4 Waiver by Administrator.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 225.1 General.

Applications and authorizations for Dredged Material Permits under section 103 of the Act for the transportation of dredge material for the purpose of dumping it in ocean waters will be evaluated by the U.S. Army Corps of Engineers in accordance with the Criteria set forth in Part 227 and processed in accordance with 33 CFR 209.120 with special attention to § 209.120(g)(17) and 33 CFR 209.145.

§ 225.2 Review of Dredged Material Permits.

(a) The District Engineer shall send a copy of the public notice to the appropriate Regional Administrator, and set forth in writing all of the following information:

(1) The location of the proposed disposal site and its physical boundaries;

(2) A statement as to whether the site has been designated for use by the Administrator pursuant to section 102(c) of the Act;

(3) If the proposed disposal site has not been designated by the Administrator, a statement of the basis for the proposed determination that no designated site is feasible and a description of the characteristics of the proposed disposal site necessary for its designation pursuant to Part 228 of this Subchapter H;

(4) The history of previous dredged material discharges authorized at the proposed disposal site;

(5) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content);

(6) An estimate of the length of time during which disposal will continue at the proposed site;

(7) Characteristics and composition of the dredged material; and

(8) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(b) The Regional Administrator will within 15 days of the date the public notice and other information required to be submitted by 225.2(a) are received by him, review the information submit-

ted and request from the District Engineer any additional information he deems necessary or appropriate to evaluate the proposed dumping.

(c) Using the information submitted by the District Engineer, and any other information available to him, the Regional Administrator will within 15 days after receipt of all requested information and notice of intent to issue a permit by the District Engineer, make an independent evaluation of the proposed dumping in accordance with the Criteria and respond to the District Engineer pursuant to paragraphs (d) or (e) of this section. The Regional Administrator may request an extension of this 15 day period to 30 days from the District Engineer.

(d) When the Regional Administrator determines that the proposed dumping will comply with the Criteria, he will so inform the District Engineer in writing.

(e) When the Regional Administrator determines that the proposed dumping will not comply with the Criteria he shall so inform the District Engineer in writing within 15 days of receipt of notice of intent to issue the permit. In such cases, no Dredged Material Permit for such dumping shall be issued unless and until the Administrator grants a waiver of the Criteria pursuant to § 225.4.

§ 225.3 Procedure for invoking economic impact.

(a) When a District Engineer's determination to issue a Dredged Material Permit for the dumping of dredged material into ocean waters has been rejected by a Regional Administrator upon application of the Criteria, the District Engineer may determine whether, under section 103(d) of the Act, there is an economically feasible alternative method or site available other than the proposed dumping in ocean waters. If the District Engineer makes any such preliminary determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator setting forth his reasons for such determination and shall submit a report of such determination to the Chief of Engineers in accordance with 33 CFR 209.120 and 209.145.

(b) If the decision of the Chief of Engineers is that ocean dumping at the designated site is required because of the unavailability of feasible alternatives, he shall so certify and request, that the Secretary of the Army seek a waiver from the Administrator of the Criteria or of the critical site designation in accordance with § 225.4.

§ 225.4 Waiver by Administrator.

The Administrator shall grant the requested waiver unless within 30 days of his receipt of the notice, certificate and request in accordance with paragraph (b) of § 225.3 he determines in accordance with this section that the proposed dumping will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wild-

life, or recreational areas. Notice of the Administrator's final determination under this section shall be given to the Secretary of the Army.

PART 226—ENFORCEMENT OF THE ACT

Sec.

- 226.1 Civil penalties.
- 226.2 Conduct of adjudicatory hearings.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 226.1 Civil penalties.

(a) In addition to the criminal penalties provided for in section 105(b) of the Act, the Administrator or the Regional Administrator, as the case may be, may assess a civil penalty of not more than \$50,000 for each violation of the Act, of this Subchapter H, and for each violation of a permit issued under this Title.

(b) A separate violation shall be deemed to occur for each day of a continuing violation and for the dumping from each of several vessels or other sources.

(c) Subject to the proviso in paragraph (a) of this section upon receipt of information that any person has violated any provision of the Act or of this Subchapter H, the Administrator or the Regional Administrator, as the case may be, may initiate an action to assess a civil penalty for such violation by sending by certified mail, return receipt requested, to such person notice in writing setting forth the violation with which he is charged.

(d) In assessing any civil penalty under this Subchapter H the amount assessed shall be determined after consideration of the gravity of the violation, prior-violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(e) Any person receiving notice of a violation issued in accordance with paragraph (c) of this section may within 30 days of the date of such notice request an adjudicatory hearing to consider whether a violation occurred and the appropriate penalty to be assessed. Any such request for an adjudicatory hearing shall be in writing, shall identify the person requesting the hearing, shall state with particularity any objections to the notice of violation or the civil penalty assessed and shall state the issues which are proposed to be raised by such person for consideration at the hearing.

(f) Whenever a written request for an adjudicatory hearing satisfying the requirements of paragraph (e) of this section has been received, the Administrator or the Regional Administrator, as the case may be, will set a time and place for an adjudicatory hearing in accordance with § 222.5 and will give notice by certified mail, return receipt requested, of such hearing to the person requesting the hearing.

(g) Any person requesting an adjudicatory hearing shall state in his written request, and shall by filing such request consent, that he and his employees

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and agents shall submit themselves to cross-examination at any such hearing and to the taking of an oath administered by the Presiding Officer.

(h) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (e) of this section does not comply with the requirements of such paragraph (e), he shall advise, in writing, the person requesting the hearing of his determination.

§ 226.2 Conduct of adjudicatory hearings.

An adjudicatory hearing held pursuant to this Part 226 shall be conducted by a Presiding Officer and a determination rendered in accordance with § 222.11. Any determination made after such hearing by the Administrator or the Regional Administrator, as the case may be, may be appealed to the Administrator in accordance with, and shall be subject to the provisions of § 222.12.

9. Part 227 is revised to read as follows:

PART 227—CRITERIA FOR THE EVALUATION OF PERMIT APPLICATIONS FOR OCEAN DUMPING OF MATERIALS

Subpart A—General

- Sec.
227.1 Applicability.
227.2 Materials which satisfy the environmental impact criteria of Subpart B.
227.3 Materials which do not satisfy the environmental impact criteria of Subpart B.
- #### Subpart B—Environmental Impact
- 227.4 Criteria for evaluating environmental impact.
227.5 Prohibited materials.
227.6 Constituents prohibited as other than trace contaminants.
227.7 Limits established for specific wastes or waste constituents.
227.8 Limitations on the disposal rates of toxic wastes.
227.9 Limitations on quantities of waste materials.
227.10 Hazards to fishing, navigation, shorelines or beaches.
227.11 Containerized wastes.
227.12 Insoluble wastes.
227.13 Dredged materials.

Subpart C—Need for Ocean Dumping

- 227.14 Criteria for evaluating the need for ocean dumping and alternatives to ocean dumping.
227.15 Factors considered.
227.16 Basis for determination of need for ocean dumping.

Subpart D—Impact of the Proposed Dumping on Esthetic, Recreational and Economic Values

- 227.17 Basis for determination.
227.18 Factors considered.
227.19 Assessment of impact.

Subpart E—Impact of the Proposed Dumping on Other Uses of the Ocean

- 227.20 Basis for determination.
227.21 Uses considered.
227.22 Assessment of impact.

Subpart F—Special Requirements for Interim Permits Under Section 102 of the Act

- 227.23 General requirement.
227.24 Contents of environmental assessment.
227.25 Contents of plans.
227.26 Implementation of plans.

Subpart G—Definitions

- Sec.
227.27 Limiting permissible concentration (LPC).
227.28 Release zone.
227.29 Initial mixing.
227.30 High-level radioactive material.

AUTHORITY: 33 U.S.C. 1421 and 1418.

Subpart A—General

§ 227.1 Applicability.

(a) Section 102 of the Act requires that criteria for the issuance of ocean disposal permits be promulgated after consideration of the environmental effect of the proposed dumping operation, the need for ocean dumping, alternatives to ocean dumping, and the effect of the proposed action on esthetic, recreational and economic values and on other uses of the ocean. This Part 227 and Part 228 of this Subchapter H together constitute the criteria established pursuant to section 102 of the Act. The decision of the Administrator, Regional Administrator or the District Engineer, as the case may be, to issue or deny a permit and to impose specific conditions on any permit issued will be based on an evaluation of the permit application pursuant to the Criteria set forth in this Part 227 and upon the requirements for disposal site management pursuant to the criteria set forth in Part 228 of this Subchapter H.

(b) With respect to the criteria to be used in evaluating disposal of dredged materials, this section and Subparts C, D, E, and G apply in their entirety. To determine whether the proposed dumping of dredged material complies with Subpart B, only §§ 227.4, 227.5, 227.6 (a), (c) and (d) and § 227.13 apply. An applicant for a permit to dump dredged material must comply with all of Subparts C, D, E and applicable sections of B, to be deemed to have met the EPA criteria for dredged material dumping promulgated pursuant to section 102(a) of the Act. If, in any case, the Chief of Engineers finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site, the utilization of which would result in noncompliance with the criteria established pursuant to Subpart B relating to the effects of dumping or with the restrictions established pursuant to section 102(c) of the Act relating to critical areas, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator pursuant to Part 225.

(c) The Criteria of this Part 227 are established pursuant to Section 102 of the Act and apply to the evaluation of proposed dumping of materials under Title I of the Act. The Criteria of this Part 227 deal with the evaluation of proposed dumping of materials on a case-by-case basis from information supplied by the applicant or otherwise available to EPA or the Corps of Engineers concerning the characteristics of the waste and other considerations relating to the proposed dumping.

(d) Notwithstanding any other provisions of these Criteria, no permit will be

issued when the dumping would result in a violation of applicable water quality standards.

§ 227.2 Materials which satisfy the environmental impact criteria of Subpart B.

(a) If the applicant satisfactorily demonstrates that the material proposed for ocean dumping satisfies the environmental impact criteria set forth in Subpart B, a permit for ocean dumping will be issued unless:

(1) There is no need for the dumping, or alternative means of disposal are available, as determined in accordance with the criteria set forth in Subpart C; or

(2) There are unacceptable adverse effects on esthetic, recreational or economic values as determined in accordance with the criteria set forth in Subpart D; or

(3) There are unacceptable adverse effects on other uses of the ocean as determined in accordance with the criteria set forth in Subpart E.

(b) If the material proposed for ocean dumping satisfies the environmental impact criteria set forth in Subpart B, but the Administrator or the Regional Administrator, as the case may be, determines that any one of the considerations set forth in paragraphs (a) (1), (2) or (3) of this section applies, he will deny the permit application; provided however, that he may issue an interim permit for ocean dumping pursuant to paragraph (d) of § 220.3 and Subpart F of this Part 227 when he determines that:

(1) The material proposed for ocean dumping does not contain any of the materials listed in § 227.5 or listed in § 227.6, except as trace contaminants; and

(2) In accordance with Subpart C there is a need to ocean dump the material and no alternatives are available to such dumping; and

(3) The need for the dumping and the unavailability of alternatives, as determined in accordance with Subpart C, are of greater significance to the public interest than the potential for adverse effect on esthetic, recreational or economic values, or on other uses of the ocean, as determined in accordance with Subparts D and E, respectively.

§ 227.3 Materials which do not satisfy the environmental impact criteria set forth in Subpart B.

If the material proposed for ocean dumping does not satisfy the environmental impact criteria of Subpart B, the Administrator or the Regional Administrator, as the case may be, will deny the permit application; provided however, that he may issue an interim permit pursuant to paragraph (d) of § 220.3 and Subpart F of this Part 227 when he determines that:

(a) The material proposed for dumping does not contain any of the materials listed in § 227.6 except as trace contaminants, or any of the materials listed in § 227.5;

(b) In accordance with Subpart C there is a need to ocean dump the material; and

(c) Any one of the following factors is of greater significance to the public interest than the potential for adverse impact on the marine environment, as determined in accordance with Subpart B;

(1) The need for the dumping, as determined in accordance with Subpart C; or

(2) The adverse effects of denial of the permit on recreational or economic values as determined in accordance with Subpart D; or

(3) The adverse effects of denial of the permit on other uses of the ocean, as determined in accordance with Subpart E.

Subpart B—Environmental Impact

§ 227.4 Criteria for evaluating environmental impact.

This Subpart B sets specific environmental impact prohibitions, limits, and conditions for the dumping of materials into ocean waters. If the applicable prohibitions, limits, and conditions are satisfied, it is the determination of EPA that the proposed disposal will not unduly degrade or endanger the marine environment and that the disposal will present:

(a) No unacceptable adverse effects on human health and no significant damage to the resources of the marine environment;

(b) No unacceptable adverse effect on the marine ecosystem;

(c) No unacceptable adverse persistent or permanent effects due to the dumping of the particular volumes or concentrations of these materials; and

(d) No unacceptable adverse effect on the ocean for other uses as a result of direct environmental impact.

§ 227.5 Prohibited materials.

The ocean dumping of the following materials will not be approved by EPA or the Corps of Engineers under any circumstances:

(a) High-level radioactivity wastes as defined in § 227.30;

(b) Materials in whatever form (including without limitation, solids, liquids, semi-liquids, gases or organisms) produced or used for radiological, chemical or biological warfare;

(c) Materials insufficiently described by the applicant in terms of their compositions and properties to permit application of the environmental impact criteria of this Subpart B;

(d) Persistent inert synthetic or natural materials which may float or remain in suspension in the ocean in such a manner that they may interfere materially with fishing, navigation, or other legitimate uses of the ocean.

§ 227.6 Constituents prohibited as other than trace contaminants.

(a) Subject to the exclusions of paragraphs (d) and (e) of this section, the ocean dumping, or transportation for dumping, of materials containing the following constituents as other than

trace contaminants will not be approved by EPA:

(1) Organohalogen compounds;

(2) Mercury and mercury compounds;

(3) Cadmium and cadmium compounds;

(4) Oil of any kind or in any form, including but not limited to petroleum, oil sludge, oil refuse, crude oil, fuel oil, heavy diesel oil, lubricating oils, hydraulic fluids, and any mixtures containing these, transported for the primary purpose of dumping insofar as these are not regulated under the FWPCA;

(5) Known or suspected carcinogens.

(b) A material, other than dredged material, containing any of the constituents listed in paragraph (a) of this section may be dumped pursuant to a special permit when the following requirements are satisfied:

(1) Mercury and its compounds are present in any solid phase of a material in concentrations less than 0.75 mg/kg, and the total concentration of mercury in the liquid phase of a material is less than 1.5 mg/kg;

(2) Cadmium and its compounds are present in any solid phase of a material in concentrations less than 0.6 mg/kg, and the total concentration of cadmium in the liquid phase of a material is less than 3.0 mg/kg;

(3) The total concentration of any or all organohalogen constituents in the waste as transported for dumping without regard to allowance for initial mixing, is less than a concentration of such constituents known to be toxic to marine organisms. The determination of the toxicity value will be based on existing scientific data or developed by the use of bioassay methods conducted in accordance with approved EPA procedures.

(4) The total amounts of oils and greases as identified in paragraph (a) (4) of this section do not produce a visible surface sheen in an undisturbed water sample when added at a ratio of one part waste material to 100 parts of water.

(c) When the Administrator, Regional Administrator or District Engineer, as the case may be, has reasonable cause to believe that a material proposed for ocean dumping contains the compounds identified as carcinogens, mutagens, or teratogens, he may require special studies to be done prior to issuance of a permit to determine their impact on human health and/or marine ecosystems.

(d) The prohibitions and limitations of this section do not apply to the constituents identified in paragraph (a) of this section when the applicant can demonstrate that such constituents are (1) present in the material only as chemical compounds or forms (e.g., inert insoluble solid materials) non-toxic to marine life and nonbioaccumulative in the marine environment, or (2) present in the material only as chemical compounds or forms which, within four hours after disposal, will be rendered non-toxic to marine life and non-bioaccumulative in the marine environment by chemical or

biological degradation in the sea; provided they will not make edible marine organisms unpalatable; or will not endanger human health or that of domestic animals, fish, shellfish, and wildlife.

(e) The prohibition and limitations of this section do not apply to the constituents identified in paragraph (a) of this section for the granting of research permits if the substances are rapidly rendered harmless by physical, chemical or biological processes in the sea; provided they will not make edible marine organisms unpalatable and will not endanger human health or that of domestic animals.

§ 227.7 Limits established for specific wastes or waste constituents.

Materials containing the following constituents must meet the additional limitations specified in this section to be deemed acceptable for ocean dumping:

(a) Liquid waste constituents immiscible with or slightly soluble in seawater, such as benzene, xylene, carbon disulfide and toluene, may be dumped only when they are present in the waste in concentrations below their solubility limits in seawater;

(b) Radioactive materials, other than those prohibited by § 227.5, must be contained in accordance with the provisions of § 227.11 to prevent their direct dispersion or dilution in ocean waters;

(c) Wastes containing living organisms may not be dumped if the organisms present would

(1) Extend the range of biological pests, viruses, pathogenic microorganisms or other agents capable of infesting, infecting or extensively and permanently altering the normal populations of organisms;

(2) Degrade uninfected areas; or

(3) Introduce viable species not indigenous to an area.

(d) In the dumping of wastes of highly acidic or alkaline nature into the ocean, consideration shall be given to: (1) The effects of any change in acidity or alkalinity of the water at the disposal site; and (2) the potential for synergistic effects or for the formation of toxic compounds at or near the disposal site. Allowance may be made in the permit conditions for the capability of ocean waters to neutralize acid or alkaline wastes; provided, however, that dumping conditions must be such that the average total alkalinity or total acidity of the ocean water after allowance for initial mixing, as defined in § 227.29, may be changed, based on stoichiometric calculations, by no more than 10 percent during all dumping operations at a site.

(e) Wastes containing biodegradable constituents, or constituents which consume oxygen in any fashion, may be dumped in the ocean only under conditions in which the dissolved oxygen after allowance for initial mixing, as defined in § 227.29, will not be depressed by more than 25 percent below the normally anticipated ambient conditions in the disposal area at the time of dumping.

§ 227.8 Limitations on the disposal rates of toxic wastes.

No wastes will be deemed acceptable for ocean dumping unless such wastes can be dumped so as not to exceed the limiting permissible concentration as defined in § 227.27; provided that this does not apply to those wastes for which specific criteria are established in §§ 227.11 or 227.12. Total quantities of wastes dumped at a site may be limited as described in § 228.8.

§ 227.9 Limitations on quantities of waste materials.

Substances which may damage the ocean environment due to the quantities in which they are dumped, or which may seriously reduce amenities, may be dumped only when the quantities to be dumped at a single time and place are controlled to prevent damage to the environment or to amenities.

§ 227.10 Hazards to fishing, navigation, shorelines or beaches.

(a) Wastes which may present a serious obstacle to fishing or navigation may be dumped only at disposal sites and under conditions which will ensure no interference with fishing or navigation.

(b) Wastes which may present a hazard to shorelines or beaches may be dumped only at sites and under conditions which will insure no danger to shorelines or beaches.

§ 227.11 Containerized wastes.

(a) Wastes containerized solely for transport to the dumping site and expected to rupture or leak on impact or shortly thereafter must meet the appropriate requirements of §§ 227.6, 227.7, 227.8, 227.9 and 227.10.

(b) Other containerized wastes will be approved for dumping only under the following conditions:

(1) The materials to be disposed of decay, decompose or radiodecay to environmentally innocuous materials within the life expectancy of the containers and/or their inert matrix; and

(2) Materials to be dumped are present in such quantities and are of such nature that only short-term localized adverse effects will occur should the containers rupture at any time; and

(3) Containers are dumped at depths and locations where they will cause no threat to navigation, fishing, shorelines, or beaches.

§ 227.12 Insoluble wastes.

(a) Solid wastes consisting of natural minerals or materials compatible with the ocean environment may be generally approved for ocean dumping provided they are insoluble above the applicable trace or limiting permissible concentrations and are rapidly and completely settleable, and they are of a particle size and density that they would be deposited or rapidly dispersed without damage to benthic, demersal, or pelagic biota.

(b) Persistent inert synthetic or natural materials which may float or remain in suspension in the ocean as prohibited in § 227.5(d) may be dumped in the ocean

only when they have been processed in such a fashion that they will sink to the bottom and remain in place.

§ 227.13 Dredged materials.

(a) Dredged materials are bottom sediments that have been dredged or excavated from the navigable waters of the United States, and their disposal into ocean waters is regulated by the U.S. Army Corps of Engineers using the criteria of applicable sections of Parts 227 and 228. Sediments normally contain constituents that exist in different chemical forms and are found in various concentrations in several locations within the sediments. The potential bioavailable fraction of a sediment is dissolved in the sediment interstitial water or in a loosely bound form that is present in the sediment. Evaluation of the significance of chemical-biological interactive effects resulting from the discharge of dredged material is extremely complex and demands procedures which are at the forefront of the current state-of-the-art. Changes in the concentration of dissolved chemical constituents affiliated with sediments may best be estimated by use of an elutriate test. To the extent permitted by the state-of-the-art, expected effects such as toxicity, stimulation, inhibition, or bioaccumulation may best be estimated by appropriate bioassays.

(b) Dredged material may be excluded from the evaluative procedures specified in paragraphs (c) and (d) of this section and considered environmentally acceptable for ocean dumping if any of the following conditions is determined to exist:

(1) Dredged material is composed predominantly of sand, gravel, or any other naturally occurring sedimentary material with particle sizes larger than silt, characteristic of and generally found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels;

(2) Dredged material is for beach nourishment or restoration and is composed predominantly of sand, gravel or shell with particle sizes compatible with material on receiving shores; or

(3) When: (i) The material proposed for dumping is substantially the same as the substrate at the proposed disposal site; and

(ii) The site from which the material proposed for dumping is to be taken is sufficiently removed from sources of pollution to provide reasonable assurance that such material has not been contaminated by such pollution; and

(iii) Adequate terms and conditions are imposed on the dumping of dredged material to provide reasonable assurance that the material proposed for dumping will not be moved by currents or otherwise in the manner that is damaging to the environment outside the disposal site.

(c) In order to predict the effect on water quality due to the release of contaminants from the sediment, an elutriate test may be used. The elutriate is the supernatant resulting from a vigorous 30-minute agitation of one part bottom

sediment from the dredging site with four parts water (vol/vol) collected from the dredging site followed by one hour settling time and appropriate centrifugation and a 0.45µ filtration. Major constituents to be analyzed in the elutriate are those deemed critical by the District Engineer, after evaluating and considering any comments received from the Regional Administrator, and considering known sources of discharges in the area. Consideration should also be given to the possible presence in the sediments of the specific constituents identified in § 227.6 (a) and significant amounts of arsenic, lead, copper, zinc, organosilicon compounds, cyanides, fluorides, pesticides and their by-products not covered in § 227.6, (a) and radioactive materials. Particular attention should be given to the possible presence of major constituents that could cause an unacceptable oxygen demand or adverse chemical-biological interactive effects and known characteristics of the extraction and disposal sites. The dredged material will be considered as environmentally acceptable for ocean dumping if elutriate concentrations, after allowance is made for dilution in accordance with § 227.29 and consideration of the volume and rate of the proposed dumping, do not exceed the limiting permissible concentration as defined in § 227.27.

(d) If such elutriate concentrations are found to exceed limiting permissible concentrations, the District Engineer may, after considering comment from the Regional Administrator, specify bioassays when such procedures will be of value in establishing dumping conditions or in determining if the dredged material is environmentally acceptable for ocean dumping. In addition, when the specific constituents listed in § 227.6(a) are present as other than trace contaminants the District Engineer will require the applicant to use such procedures to demonstrate that these constituents are (1) present in the wastes only as chemical compounds or forms (e.g., inert insoluble solid materials) non-toxic to marine life and non-bioaccumulative in the marine environment, or (2) present in the material only as chemical compounds or forms which, within four hours after disposal, will be rendered non-toxic to marine life and non-bioaccumulative in the marine environment by chemical or biological degradation in the sea; provided they will not make edible marine organisms unpalatable; or will not endanger human health or that of domestic animals, fish, shellfish, and wildlife. The procedure followed in the performance of any such bioassay will incorporate exposure times and concentrations determined from a knowledge of the proposed dumping rate and volume and of the hydrodynamics of the intended dumping area.

Subpart C—Need for Ocean Dumping

§ 227.14 Criteria for evaluating the need for ocean dumping and alternatives to ocean dumping.

This Subpart C states the basis on which an evaluation will be made of the

need for ocean dumping, and alternatives to ocean dumping. The nature of these factors does not permit the promulgation of specific quantitative criteria of each permit application. These factors will therefore be evaluated if applicable for each proposed dumping on an individual basis using the guidelines specified in this Subpart C.

§ 227.15 Factors considered.

The need for dumping will be determined by evaluation of the following factors:

(a) Degree of treatment feasible for the waste to be dumped, and whether or not the waste material has been or will be treated to this degree before dumping;

(b) Raw materials and manufacturing or other processes resulting in the waste, and whether or not these materials or processes are essential to the provision of the applicant's goods or services, or if other less polluting materials or processes could be used;

(c) The relative environmental impact and cost for ocean dumping as opposed to other feasible alternatives including but not limited to:

(1) Land fill;

(2) Well injection;

(3) Incineration;

(4) Spread of material over open ground;

(5) Recycling of material for reuse;

(6) Additional biological, chemical, or physical treatment of intermediate or final waste streams;

(7) Storage.

(d) Irreversible or irretrievable consequences of the use of alternatives to ocean dumping.

§ 227.16 Basis for determination of need for ocean dumping.

(a) A need for ocean dumping will be considered to have been demonstrated when a thorough evaluation of the factors listed in § 227.15 has been made by EPA, and the Administrator, Regional Administrator or District Engineer, as the case may be, has determined that the following conditions exist where applicable:

(1) There are no practicable improvements which can be made in process technology or in overall waste treatment to reduce the adverse impacts of the waste on the total environment;

(2) There are no practicable alternative locations and methods of disposal or recycling available, including without limitation, storage until treatment facilities are completed, which have less adverse environmental impact than ocean dumping.

(b) For purposes of paragraph (a) of this section, waste treatment or improvements in processes and alternative methods of disposal are practicable when they are available at reasonable incremental cost and energy expenditures, which need not be competitive with the costs of ocean dumping, taking into account the environmental benefits derived from such activity.

(c) The duration of permits issued under Subchapter H and other terms and

conditions imposed in those permits shall be determined after taking into account the factors set forth in this section. Notwithstanding compliance with Subparts B, D, and E of this Part 227 permittees may, on the basis of the need for and alternatives to ocean dumping, be required to terminate all ocean dumping by a specified date, to phase out all ocean dumping over a specified period or periods, to continue research and development of alternative methods of disposal and make periodic reports of such research and development in order to provide additional information for periodic review of the need for and alternatives to ocean dumping, or to take such other action as the Administrator or the Regional Administrator, as the case may be, determines to be necessary or appropriate.

Subpart D—Impact of the Proposed Dumping on Esthetic, Recreational and Economic Values

§ 227.17 Basis for determination.

(a) The impact of dumping on esthetic recreational and economic values will be evaluated on an individual basis using the following considerations:

(1) Potential for affecting recreational use and values of ocean waters, inshore waters, beaches, or shorelines;

(2) Potential for affecting the recreational and commercial values of living marine resources.

(b) For all proposed dumping, full consideration will be given to such non-quantifiable aspects of esthetic, recreational and economic impact as:

(1) Responsible public concern for the consequences of the proposed dumping;

(2) Consequences of not authorizing the dumping including without limitation, the impact on esthetic, recreational and economic values with respect to the municipalities and industries involved.

§ 227.18 Factors considered.

The assessment of the potential for impacts on esthetic, recreational and economic values will be based on an evaluation of the appropriate characteristics of the material to be dumped, allowing for conservative rates of dilution, dispersion, and biochemical degradation during movement of the materials from a disposal site to an area of significant recreational or commercial value. The following specific factors will be considered in making such an assessment:

(a) Nature and extent of present recreational and commercial use of areas which might be affected by the proposed dumping;

(b) Existing water quality, and nature and extent of disposal activities, in the areas which might be affected by the proposed dumping;

(c) Applicable water quality standards;

(d) Visible characteristics of the materials (e.g., color, suspended particulates) which result in an unacceptable esthetic nuisance in recreational areas;

(e) Presence in the material of pathogenic organisms which may cause a public health hazard either directly or

through contamination of fisheries or shellfisheries;

(f) Presence in the material of toxic chemical constituents released in volumes which may affect humans directly;

(g) Presence in the material of chemical constituents which may be bioaccumulated or persistent and may have an adverse effect on humans directly or through food chain interactions;

(h) Presence in the material or any constituents which might significantly affect living marine resources of recreational or commercial value.

§ 227.19 Assessment of impact.

An overall assessment of the proposed dumping will be made based on the effect on esthetic, recreational and economic values based on the factors set forth in this Subpart D, including where applicable, enhancement of these values, and the results of the assessment will be expressed, where possible, on a quantitative basis, such as percentage of a resource lost, reduction in user days of recreational areas, or dollars lost in commercial fishery profits.

Subpart E—Impact of the Proposed Dumping on Other Uses of the Ocean

§ 227.20 Basis for determination.

(a) Based on current state-of-the-art, consideration must be given to any possible long-range effects of even the most innocuous substances when dumped in the ocean on a continuing basis. Such a consideration is made in evaluating the relationship of each proposed disposal activity in relationship to its potential for long-range impact on other uses of the ocean.

(b) An evaluation will be made on an individual basis for each proposed dumping of material of the potential for effects on uses of the ocean for purposes other than material disposal. The factors to be considered in this evaluation include those stated in Subpart D, but the evaluation of this Subpart E will be based on the impact of the proposed dumping on specific uses of the ocean rather than on overall esthetic, recreational and economic values.

§ 227.21 Uses considered.

An appraisal will be made of the nature and extent of existing and potential uses of the disposal site itself and of any areas which might reasonably be expected to be affected by the proposed dumping, and a quantitative and qualitative evaluation made, where feasible, of the impact of the proposed dumping on each use. The uses considered shall include, but not be limited to:

(a) Commercial fishing in open ocean areas;

(b) Commercial fishing in coastal areas;

(c) Commercial fishing in estuarine areas;

(d) Recreational fishing in open ocean areas;

(e) Recreational fishing in coastal areas;

(f) Recreational fishing in estuarine areas;

(g) Recreational use of shorelines and beaches;

(h) Commercial navigation;

(i) Recreational navigation;

(j) Actual or anticipated exploitation of living marine resources;

(k) Actual or anticipated exploitation of non-living resources, including without limitation, sand and gravel places and other mineral deposits, oil and gas exploration and development and offshore marine terminal or other structure development; and

(l) Scientific research and study.

§ 227.22 Assessment of impact.

The assessment of impact on other uses of the ocean will consider both temporary and long-range effects within the state of the art, but particular emphasis will be placed on any irreversible or irretrievable commitment of resources that would result from the proposed dumping.

Subpart F—Special Requirements for Interim Permits Under Section 102 of the Act

§ 227.23 General requirement.

Each interim permit issued under section 102 of the Act will include a requirement for the development and implementation, as soon as practicable, of a plan which requires, at the discretion of the Administrator or Regional Administrator, as the case may be, either:

(a) Elimination of ocean disposal of the waste, or

(b) Bringing the waste into compliance with all the criteria for acceptable ocean disposal.

§ 227.24 Contents of environmental assessment.

A plan developed pursuant to this Subpart F must include an environmental assessment of the proposed action, including without limitation:

(a) Description of the proposed action;

(b) A thorough review of the actual need for dumping;

(c) Environmental impact of the proposed action;

(d) Adverse impacts which cannot be avoided should the proposal be implemented;

(e) Alternatives to the proposed action;

(f) Relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(g) Irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(h) A discussion of problems and objections raised by other Federal, State and local agencies and by interested persons in the review process.

§ 227.25 Contents of plans.

In addition to the environmental assessment required by § 227.24, a plan developed pursuant to this Subpart F must include a schedule for eliminating ocean

dumping or bringing the wastes into compliance with the environmental impact criteria of Subpart B, including without limitation, the following:

(a) If the waste is treated to the degree necessary to bring it into compliance with the ocean dumping criteria, the applicant should provide a description of the treatment and a scheduled program for treatment and a subsequent analysis of treated material to prove the effectiveness of the process.

(b) If treatment cannot be effected by post-process techniques the applicant should, determining the offending constituents, examine his raw materials and his total process to determine the origin of the pollutant. If the offending constituents are found in the raw material the applicant should consider a new supplier and provide an analysis of the new material to prove compliance. Raw materials are to include all water used in the process. Water from municipal sources complying with drinking water standards is acceptable. Water from other sources such as private wells should be analyzed for contaminants. Water that has been used in the process should be considered for treatment and recycling as an additional source of process water.

(c) If offending constituents are a result of the process, the applicant should investigate and describe the source of the constituents. A report of this information will be submitted to EPA and the applicant will then submit a proposal describing possible alternatives to the existing process or processes and level of cost and effectiveness.

(d) If an acceptable alternative to ocean dumping or additional control technology is required, a schedule and documentation for implementation of the alternative or approved control process shall be submitted and shall include, without limitation:

- (1) Engineering plan;
- (2) Financing approval;
- (3) Starting date for change;
- (4) Completion date;
- (5) Operation starting date.

(e) If an acceptable alternative does not exist at the time the application is submitted, the applicant will submit an acceptable in-house research program or employ a competent research institution to study the problem. The program of research must be approved by the Administrator or Regional Administrator, as the case may be, before the initiation of the research. The schedule and documentation for implementation of a research program will include, without limitation:

- (1) Approaches;
- (2) Experimental design;
- (3) Starting date;
- (4) Reporting intervals;
- (5) Proposed completion date;
- (6) Date for submission of final report.

§ 227.26 Implementation of plans.

Implementation of each phase of a plan shall be initiated as soon as it is approved by the Administrator or Regional Administrator, as the case may be.

Subpart G—Definitions

§ 227.27 Limiting permissible concentration (LPC).

(a) The limiting permissible concentration is:

(1) That concentration of a material or chemical constituent in the receiving water which, after reasonable allowance for initial mixing, as specified in § 227.29, will not exceed a toxicity threshold defined as 0.01 of a concentration shown to be toxic to appropriate sensitive marine organisms in a bioassay carried out in accordance with approved EPA procedures; or

(2) 0.01 of a concentration of a waste material or chemical constituent otherwise shown to be detrimental to the marine environment.

(3) With respect to dredged material, that concentration of a major constituent in the elutriate which, after allowance for initial mixing as provided in § 227.29, does not exceed applicable water quality criteria.

(b) "Appropriate sensitive marine organisms" shall mean at least one species representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms for the anticipated impact on the ecosystem at the disposal site. Bioassays, except on phytoplankton or zooplankton, shall be run for a minimum of 96 hours under temperature, salinity, and dissolved oxygen conditions representing the extremes of environmental stress at the disposal site. Bioassays on phytoplankton or zooplankton may be run for shorter periods of time as appropriate for the organisms tested at the discretion of EPA.

§ 227.28 Release zone.

The release zone is the area swept out by the locus of points constantly 100 meters from the perimeter of the conveyance engaged in dumping activities, beginning at the first movement in which dumping is scheduled to occur and ending at the last moment in which dumping is scheduled to occur. No release zone shall exceed the total surface area of the dumpsite.

§ 227.29 Initial mixing.

(a) Initial mixing is defined to be that dispersion or diffusion of a waste which occurs within four hours after dumping. The limiting permissible concentration shall not be exceeded at any point in the marine environment after initial mixing.

(b) The maximum concentration of a dumped material after initial mixing shall be estimated by one of these methods, in order of preference:

(1) When field data on the proposed dumping are adequate to predict initial dispersion and diffusion of the waste, these shall be used in conjunction with an appropriate mathematical model ac-

ceptable to EPA or the District Engineer, as appropriate.

(2) When field data on the dispersion and diffusion of a waste of characteristics similar to that proposed for discharge are available, these shall be used in conjunction with an appropriate mathematical model acceptable to EPA or the District Engineer, as appropriate.

(3) When no field data are available, theoretical oceanic turbulent diffusion relationships may be applied to known characteristics of the waste and the disposal site.

(4) When no other means of estimation are feasible, the dumped waste may be assumed to be evenly distributed after four hours over a column of water 20 meters deep bounded on the surface by the release zone.

§ 227.30 High-level radioactive material.

High-level radioactive material means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels or irradiated fuel from nuclear power reactors.

10. Part 228 is added to read as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

Sec.	
228.1	Applicability.
228.2	Definitions.
228.3	Disposal site management responsibilities.
228.4	Procedures for designation of sites.
228.5	General criteria for the selection of sites.
228.6	Specific criteria for site selection.
228.7	Regulation of disposal site use.
228.8	Limitations on times and rates of disposal.
228.9	Disposal site monitoring.
228.10	Evaluating disposal impact.
228.11	Modification in disposal site use.
228.12	Delegation of management authority for interim ocean dumping sites.
228.13	Guidelines for ocean disposal site baseline and trend assessment surveys under section 102 of the Act.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 228.1 Applicability.

The criteria of this Part 228 are established pursuant to section 102 of the Act and apply to the evaluation of proposed ocean dumping under Title I of the Act. The criteria of this Part 228 deal with the evaluation of the proposed dumping of material in ocean waters in relation to continuing requirements for effective management of ocean disposal sites to prevent unreasonable degradation of the marine environment from all wastes being dumped in the ocean. This Part 228 is applicable to dredged material disposal sites only as specified in § 228.4(e).

§ 228.2 Definitions.

(a) The term "disposal site" means a designated and precise geographical area within which ocean dumping of wastes is permitted under conditions specified

in permits issued under sections 102 and 103 of the Act. Such sites are identified by boundaries established by (1) coordinates of latitude and longitude for each corner, or by (2) coordinates of latitude and longitude for the center point and a radius in nautical miles from that point. Boundary coordinates shall be identified as precisely as is warranted by the accuracy with which the site can be located with existing navigational aids or by the implantation of transponders, buoys or other means of marking the site.

(b) The term "baseline" or "trend assessment" survey means the planned sampling or measurement of parameters at set stations or in set areas in and near disposal sites for a period of time sufficient to provide synoptic data for determining water quality, benthic, or biological conditions as a result of ocean disposal operations. The minimum requirements for such surveys are given in § 228.13.

(c) The term "disposal site evaluation study" means the collection, analysis, and interpretation of all pertinent information available concerning an existing disposal site, including but not limited to, data and information from trend assessment surveys, monitoring surveys, special purpose surveys of other Federal agencies, public data archives, and social and economic studies and records of affected areas.

(d) The term "disposal site designation study" means the collection, analysis and interpretation of all available pertinent data and information on a proposed disposal site prior to use, including but not limited to, that from baseline surveys, special purpose surveys of other Federal agencies, public data archives, and social and economic studies and records of areas which would be affected by use of the proposed site.

(e) The term "management authority" means the EPA organizational entity assigned responsibility for implementing the management functions identified in § 228.3.

(f) "Statistical significance" shall mean the statistical significance determined by using appropriate standard techniques of multivariate analysis with results interpreted at the 95 percent confidence level and based on data relating species which are present in sufficient numbers at control areas to permit a valid statistical comparison with the areas being tested.

(g) "Valuable commercial and recreational species" shall mean those species for which catch statistics are compiled on a routine basis by the Federal or State agency responsible for compiling such statistics for the general geographical area impacted, or which are under current study by such Federal or State agencies for potential development for commercial or recreational use.

(h) "Normal ambient value" means that concentration of a chemical species reasonably anticipated to be present in the water column, sediments, or biota in the absence of disposal activities at the disposal site in question.

§ 228.3 Disposal site management responsibilities.

(a) Management of a site consists of regulating times, rates, and methods of disposal and quantities and types of materials disposed of; developing and maintaining effective ambient monitoring programs for the site; conducting disposal site evaluation and designation studies; and recommending modifications in site use and/or designation (e.g., termination of use of the site for general use or for disposal of specific wastes).

(b) Each site, upon interim or continuing use designation, will be assigned to either an EPA Regional office or to EPA Headquarters for management. These designations will be consistent with the delegation of authority in § 220.4. The designated management authority is fully responsible for all aspects of the management of sites within the general requirements specified in § 220.4 and this Section. Specific requirements for meeting the management responsibilities assigned to the designated management authority for each site are outlined in §§ 228.5 and 228.6.

§ 228.4 Procedures for designation of sites.

(a) *General Permits.* Geographical areas or regions within which materials may be dumped under a general permit will be published as part of the promulgation of each general permit.

(b) *Special and Interim Permits.* Areas where ocean dumping is permitted subject to the specific conditions of individual special or interim permits, will be designated by promulgation in this Part 228, and such designation will be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of waste disposal on areas similar to such sites in physical, chemical, and biological characteristics. All studies for the evaluation and potential selection of dumping sites will be conducted in accordance with the requirements of §§ 228.5 and 228.6. The Administrator may, from time to time, designate specific locations for temporary use for disposal of small amounts of materials under a special permit only without disposal site designation studies when such materials satisfy the Criteria and the Administrator determines that the quantities to be disposed of at such sites will not result in significant impact on the environment. Such designations will be done by promulgation in this Part 228, and will be for a specified period of time and for specified quantities of materials.

(c) *Emergency Permits.* Dumping sites for materials disposed of under an emergency permit will be specified by the Administrator as a permit condition and will be based on an individual appraisal of the characteristics of the waste and the safest means for its disposal.

(d) *Research Permits.* Dumping sites for research permits will be determined by the nature of the proposed study. Dumping sites will be specified by the Administrator as a permit condition.

(e) *Dredged Material Disposal.* Dredged material disposal sites may be used only for the disposal of dredged material being dumped under Dredged Material Permits issued by the U.S. Army Corps of Engineers. Site selection will be made based on historic uses of the site, and on historic knowledge of the impact of disposal in areas similar in physical, chemical and biological characteristics. Studies for the evaluation and potential selection of dumping sites will be conducted in accordance with the requirements of §§ 228.5 and 228.6(a), except that:

(1) Baseline and trend assessment requirements may be developed on a case-by-case basis from the results of research, including that now in progress by the Corps of Engineers.

(2) A joint environmental impact assessment for all sites within a particular geographic area may be prepared based on complete disposal site designation or evaluation studies on a typical site or sites in that area. In such cases, sufficient studies to demonstrate the generic similarity of all sites within such a geographic area will be conducted.

(3) Disposal sites will be areas where benthic life which might be damaged by the dumping is minimal.

(4) Disposal sites will be located such that disposal operations will cause no unacceptable adverse effects to known nursery or productive fishing areas. Where prevailing currents exist, the currents should be such that any suspended or dissolved matter would not be carried into known nursery or productive fishing areas or populated or protected shoreline areas.

(5) Disposal sites will be selected whose physical environmental characteristics are most amenable to the type of dispersion desired.

(6) To minimize the possibility of any harmful effects, disposal conditions must be carefully set, with particular attention being given to the following factors:

(i) Times of dumping, where applicable, should be chosen, where possible, to avoid interference with the seasonal reproductive and migratory cycles of aquatic life in the disposal area.

(ii) If the type of material involved and the environmental characteristics of the disposal site should make either maximum or minimum dispersion desirable, the discharge from and movement of the vessel during dumping should be in such a manner as to obtain the desired result to the fullest extent feasible.

§ 228.5 General criteria for the selection of sites.

(a) The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

(b) Locations and boundaries of disposal sites will be so chosen that tempo-

rary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

(c) If at anytime during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in §§ 228.5-228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

(d) The sizes of ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

(e) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

§ 228.6 Specific criteria for site selection.

(a) In the selection of disposal sites, in addition to other necessary or appropriate factors determined by the Administrator, the following factors will be considered:

(1) Geographical position, depth of water, bottom topography and distance from coast;

(2) Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases;

(3) Location in relation to beaches and other amenity 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;

(5) Feasibility of surveillance and monitoring;

(6) Dispersion, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any;

(7) Existence and effects of current and previous discharges and dumping in the area (including 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;

(9) The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys as described in § 228.13;

(10) Potentiality for the development or recruitment of nuisance species in the disposal site;

(11) Existence at or in close proximity to the site of any significant natural or

cultural features of historical importance.

(b) The results of a disposal site evaluation and/or designation study based on the criteria stated in paragraphs (a) (1)-(11) of this section will be presented in support of the site designation promulgation as an environmental assessment of the impact of the use of the site for disposal, and will be used in the preparation of an environmental impact statement for each site where such a statement is required by the National Environmental Policy Act or EPA policy. By publication of a notice in accordance with this Part 228, an environmental impact statement, in draft form, will be made available for public comment not later than the time of publication of the site designation as proposed rulemaking, and a final EIS will be made available at the time of final rulemaking.

§ 228.7 Regulation of disposal site use.

Where necessary, disposal site use will be regulated by setting limitations on times of dumping and rates of discharge, and establishing a disposal site monitoring program.

§ 228.8 Limitations on times and rates of disposal.

Limitations as to time for and rates of dumping may be stated as part of the promulgation of site designation. The times and the quantities of permitted material disposal will be regulated by the EPA management authority so that the limits for the site as specified in the site designation are not exceeded. This will be accomplished by the denial of permits for the disposal of some materials, by the imposition of appropriate conditions on other permits and, if necessary, the designation of new disposal sites under the procedures of § 228.4. In no case may the total volume of material disposed of at any site under special or interim permits cause the concentration of the total materials or any constituent of any of the materials being disposed of at the site to exceed limits specified in the site designation.

§ 228.9 Disposal site monitoring.

The monitoring program, if deemed necessary by the Regional Administrator or the District Engineer, as appropriate, may include baseline or trend assessment surveys by EPA, NOAA, other Federal agencies, or contractors, special studies by permittees, and the analysis and interpretation of data from remote or automatic sampling and/or sensing devices. The primary purpose of the monitoring program is to evaluate the impact of disposal on the marine environment by referencing the monitoring results to a set of baseline conditions. When disposal sites are being used on a continuing basis, such programs may consist of the following components:

(a) Trend assessment surveys conducted at intervals frequent enough to assess the extent and trends of environmental impact. Until survey data or other information are adequate to show that changes in frequency or scope are necessary or desirable, trend assessment

and baseline surveys should generally conform to the applicable requirements of § 228.13. These surveys shall be the responsibility of the Federal government.

(b) Special studies conducted by the permittee to identify immediate and short-term impacts of disposal operations.

These surveys may be supplemented, where feasible and useful, by data collected from the use of automatic sampling buoys, satellites or in situ platforms, and from experimental programs. EPA will require the full participation of permittees, and encourage the full participation of other Federal and State and local agencies in the development and implementation of disposal site monitoring programs. The monitoring and research programs presently supported by permittees may be incorporated into the overall monitoring program insofar as feasible.

§ 228.10 Evaluating disposal impact.

(a) Impact of the disposal at each site designated under section 102 of the Act will be evaluated periodically and a report will be submitted as appropriate as part of the Annual Report to Congress. Such reports will be prepared by or under the direction of the EPA management authority for a specific site and will be based on an evaluation of all data available from baseline and trend assessment surveys, monitoring surveys, and other data pertinent to conditions at and near a site.

(b) The following types of effects, in addition to other necessary or appropriate considerations, will be considered in determining to what extent the marine environment has been impacted by materials disposed of at an ocean disposal site:

(1) Movement of materials into estuaries or marine sanctuaries, or onto oceanfront beaches, or shorelines;

(2) Movement of materials toward productive fishery or shellfishery areas;

(3) Absence from the disposal site of pollution-sensitive biota characteristic of the general area;

(4) Progressive, non-seasonal, changes in water quality or sediment composition at the disposal site, when these changes are attributable to materials disposed of at the site;

(5) Progressive, non-seasonal, changes in composition or numbers of pelagic, demersal, or benthic biota at or near the disposal site, when these changes can be attributed to the effects of materials disposed of at the site;

(6) Accumulation of material constituents (including without limitation, human pathogens) in marine biota at or near the site.

(c) The determination of the overall severity of disposal at the site on the marine environment, including without limitation, the disposal site and adjacent areas, will be based on the evaluation of the entire body of pertinent data using appropriate methods of data analysis for the quantity and type of data available. Impacts will be categorized according to the overall condition of the environment of the disposal site and adjacent areas based on the determination by the EPA management authority assessing the nature and extent of the effects identified in § 228.10(b) in addition to other necessary or appropriate considerations. The following categories shall be used:

(1) *Impact Category I*: The effects of activities at the disposal site shall be categorized in Impact Category I when one or more of the following conditions is present:

(i) There is identifiable progressive movement or accumulation, in detectable concentrations above normal ambient values, of any waste or waste constituent from the disposal site within 12 nautical miles of any shoreline, marine sanctuary designated under Title III of the Act, or critical area designated under section 102(c) of the Act; or

(ii) The biota, sediments, or water column of the disposal site, or of any area outside the disposal site where any waste or waste constituent from the disposal site is present in detectable concentrations above normal ambient values, are adversely affected to the extent that there are statistically significant decreases in the populations of valuable commercial or recreational species, or of specific species of biota essential to the propagation of such species, within the disposal site and such other area as compared to populations of the same organisms in comparable locations outside such site and area; or

(iii) Solid waste material disposed of at the site has accumulated at the site or in areas adjacent to it, to such an extent that major uses of the site or of adjacent areas are significantly impaired and the Federal or State agency responsible for regulating such uses certifies that such significant impairment has occurred and states in its certificate the basis for its determination of such impairment; or

(iv) There are adverse effects on the taste or odor of valuable commercial or recreational species as a result of disposal activities; or

(v) When any toxic waste, toxic waste constituent, or toxic byproduct of waste interaction, is identified in toxic concentrations above normal ambient values outside the disposal site more than four hours after disposal.

(2) *Impact Category II*: The effects of activities at the disposal site which are

not categorized in Impact Category I shall be categorized in Impact Category II.

§ 228.11 Modification in disposal site use.

(a) Modifications in disposal site use which involve the withdrawal of designated disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made through promulgation of an amendment to the disposal site designation set forth in this Part 228 and will be based on the results of the analyses of impact described in § 228.10 or upon changed circumstances concerning use of the site.

(b) Modifications in disposal site use promulgated pursuant to paragraph (a) of this section shall not automatically modify conditions of any outstanding permit issued pursuant to this Subchapter H, and provided further that unless the EPA management authority for such site modifies, revokes or suspends such permit or any of the terms or conditions of such permit in accordance with the provisions of § 223.2 based on the results of impact analyses as described in § 228.10 or upon changed circumstances concerning use of the site, such permit will remain in force until its expiration date.

(c) When the EPA management authority determines that activities at a disposal site have placed the site in Impact Category I, the Administrator or the Regional Administrator, as the case may be, shall place such limitations on the use of the site as necessary to reduce the impacts to acceptable levels.

(d) The determination of the Administrator as to whether to terminate or limit use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria.

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

The following sites are approved for dumping the indicated materials on an interim basis pending completion of baseline or trend assessment surveys and designation for continuing use or termination of use. Management authority for all sites is delegated to the EPA organizational entity under which each site is listed. The sizes and use specifications are based on historical usage and do not necessarily meet the criteria stated in this Part. This list of interim sites will remain in force for a period not to exceed three years from the date of final promulgation of this Part 228, except for those sites approved for continuing use or disapproved for use by promulgation in this Part during that period of time.

PROPOSED RULES

Present location (latitude, longitude)	Proposed location (latitude, longitude)	Loran-C time delay, lines of proposed site boundaries	EPA region	Primary use
43°33' N., 69°55' W., 1 nmi radius.....	43°33'44" N., 69°54'40" W.; 43°32'02" N., 69°52'52" W.; 43°31'09" N., 69°54'51" W.; 43°22'51" N., 69°56'39" W.	9930-X, 36720 to 36740; 9930-Z, 69415 to 69425.	I	Industrial wastes. Do.
42°26' N., 70°35' W., 1 nmi radius.....	42°26'44" N., 70°34'38" W.; 42°25'09" N., 70°32'51" W.; 42°24'19" N., 70°34'48" W.; 42°25'54" N., 70°36'24" W.	9930-X, 37490 to 37510; 9930-Z, 69620 to 69630.	I	Do.
40°22'30" N. to 40°25'00" N.; 73°41'30" W. to 73°45'00" N.	40°25'28" N., 73°42'35" W.; 40°22'59" N., 73°39'59" W.; 40°21'41" N., 73°42'57" W.; 40°24'08" N., 73°45'35" W.	9930-Y, 50970 to 51000; 9930-Z, 69820 to 69840.	II	Sludge site.
40°16'00" N. to 40°20'00" N.; 73°36'00" W. to 73°40'00" W.	40°20'32" N., 73°37'18" W.; 40°17'27" N., 73°33'58" W.; 40°15'40" N., 73°37'57" W.; 40°18'49" N., 73°41'16" W.	9930-Y, 50970 to 51010; 9930-Z, 69860 to 69885.	II	Waste acid.
38°40'00" N. to 39°00'00" N.; 72°00'00" W. to 72°30'00" W.	39°04'03" N., 72°11'00" W.; 38°47'30" N., 71°46'30" W.; 38°40'38" N., 72°17'00" W.; 38°56'32" N., 72°40'24" W.	9930-Y, 51050 to 51300; 9930-Z, 70440 to 70560.	II	Chemical wastes. Celler dirt.
40°23'00" N., 73°49'00" W., 0.6 nmi radius.....	40°23'25" N., 73°49'14" W.; 40°22'50" N., 73°48'33" W.; 40°22'23" N., 73°49'34" W.; 40°22'59" N., 73°50'13" W.	9930-Y, 51030 to 51040; 9930-Z, 69815 to 69820.	II	Wrecks. Chemical wastes.
40°13'00" N., 73°46'00" W., 0.6 nmi radius.....	40°10'00" N., 73°42'00" W., 0.5 nmi radius.....		II	Wrecks. Chemical wastes.
19°10'00" N. to 19°20'00" N., 66°35'00" W. to 66°45'00" W.	38°36'00" N., 74°22'54" W.; 38°29'26" N., 74°13'30" W.; 38°27'45" N., 74°19'06" W.; 38°34'15" N., 74°28'12" W.	9930-Y, 52150 to 52200; 9930-Z, 70380 to 70440.	III	Waste acid.
38°30'00" N. to 38°35'00" N., 74°15'00" W. to 74°25'00" W.	38°25'34" N., 74°15'56" W.; 38°18'54" N., 74°06'20" W.; 38°17'15" N., 74°11'40" W.; 38°23'50" N., 74°21'15" W.	9930-Y, 52200 to 52250; 9930-Z, 70460 to 70520.	III	Sludge.
31°46'00" N. to 80°30'00" W., 31°47'06" N. to 80°29'00" W., 31°48'00" N. to 80°30'30" W., 31°46'30" N. to 80°32'00" W.	31°48'00" N., 80°30'00" W.; 31°46'50" N., 80°26'15" W.; 31°44'30" N., 80°26'30" W.; 31°45'40" N., 80°30'20" W.	9930-W, 14275 to 14300; 9930-Z, 71050 to 71075.	IV	Industrial wastes.
27°12'00" N., 94°24'00" W., 94°28'00" W. to 27°29'14" N., 94°31'3" W.; 27°14'24" N., 94°25'30" W.; 27°13'28" N., 94°41'00" W.; 27°26'11" N., 94°46'33" W.		(1).....	VI	Do.
28°30'00" N. to 28°10'00" N., 89°15'00" W. to 28°08'30" N., 89°10'00" W.; 28°08'30" N., 89°10'00" W.; 28°12'00" N., 89°19'00" W.		(1).....	VI	Do.
26°20'00" N. to 27°00'00" N., 93°20'00" W. to 27°04'00" N., 93°24'15" W.; 26°29'10" N., 93°12'30" W.; 26°19'30" N., 93°54'00" W.; 26°56'10" N., 94°08'45" W.		(1).....	VI	Ocean incineration.

1 Loran-C coordinates for proposed sites in Gulf of Mexico to be developed upon implementation of the Gulf Coast Loran-C chain.

§ 228.13 Guidelines for ocean disposal site baseline and trend assessment surveys under section 102 of the Act.

The purpose of a baseline or trend assessment survey is to determine the physical, chemical, geological, and biological structure of a proposed or existing disposal site at the time of the survey. A baseline or trend assessment survey is to be regarded as a comprehensive synoptic and representative picture of existing conditions; each such survey is to be planned as part of a continual monitoring program through which changes in conditions at a disposal site can be documented and assessed. Surveys will be planned in coordination with the ongoing programs of NOAA and other Federal, State, local, or private agencies with missions in the marine environment. The field survey data collection phase of a disposal site evaluation or designation study shall be planned and conducted to obtain a body of information both representative of the site at the time of study and obtained by techniques reproducible in precision and accuracy in future studies. A full plan of study which will provide a record of sampling, analytical, and data reduction procedures must be developed, documented and approved by the EPA management authority. Plans for all surveys which will produce information to be used in the preparation of environmental impact statements will be approved by the Administrator or his designee. This plan of study also shall be incorporated as an appendix into a technical report on the study, together with notations describing deviations from the plan required in actual operations. Relative emphasis on individual aspects of the environment at each site will depend on the type of wastes disposed of at the site and the manner in which such wastes are likely to affect the local environment, but no major feature of the disposal site may be neglected. The observations made and the data obtained are to be based on the informa-

tion necessary to evaluate the site for ocean dumping. The parameters measured will be those indicative, either directly or indirectly, of the immediate and long-term impact of pollutants on the environment at the disposal site and adjacent land or water areas. An initial disposal site evaluation or designation study should provide an immediate baseline appraisal of a particular site, but it should also be regarded as the first of a series of studies to be continued as long as the site is used for waste disposal.

(a) *Timing.* Baseline or trend assessment surveys will be conducted with due regard for climatic and seasonal impact on stratification and other conditions in the upper layers of the water column. Where a choice of season is feasible, trend assessment surveys should be made during those months when pollutant accumulation within disposal sites is likely to be most severe, or when pollutant impacts within disposal sites is likely to be most noticeable.

(1) Where disposal sites are near large riverine inflows to the ocean, surveys will be done with due regard for the seasonal variation in river flow. In some cases several surveys at various river flows may be necessary before a site can be approved.

(2) When initial surveys show that seasonal variation is not significant and surveys at greater than seasonal intervals are adequate for characterizing a site, resurveys shall be carried out in climatic conditions as similar to those of the original surveys as possible, particularly in depths less than 200 meters.

(b) *Duration.* The actual duration of a field survey will depend upon the size and depth of the site, weather conditions during the survey, and the types of data to be collected. For example, for a survey of an area of 100 square miles on the continental shelf, including an average dump site and the region contiguous to it, an on-site operation would be scheduled for completion within one week of weather suitable for on-site

operations. More on-site operating time may be scheduled for larger or highly complex sites.

(c) *Numbers and Locations of Sampling Stations.* The numbers and locations of sampling stations will depend in part on the local bathymetry with minimum numbers of stations per site fixed as specified in the following sections. Where the bottom is smooth or evenly sloping, stations for water column measurements and benthic sampling and collections, other than trawls, shall be spaced throughout the survey area in a manner planned to provide maximum coverage of both the disposal site and contiguous control areas, considering known water movement characteristics. Where there are major irregularities in the bottom topography, such as canyons or gullies, or in the nature of the bottom, sampling stations for sediments and benthic communities shall be spaced to provide representative sampling of the major different features. Sampling shall be done within the dump site itself and in the contiguous area. Sufficient control stations outside a disposal site shall be occupied to characterize the control area environment at least as well as the disposal site itself. Where there are known persistent currents, sampling in contiguous areas shall include at least two stations downcurrent of the dump site, and at least two stations upcurrent of the site.

(d) *Measurements in the Water Column at and Near the Dump Site.*

(1) *Water Quality Parameters Measured.* These shall include the major indicators of water quality, particularly those likely to be affected by the waste proposed to be dumped. Specifically included at all stations are measurements of temperature, dissolved oxygen, salinity, suspended solids, turbidity, total organic carbon, pH, inorganic nutrients, and chlorophyll a.

(i) At one station near the center of the disposal site, samples of the water column shall be taken for the analysis of

the following parameters: mercury, cadmium, copper, chromium, zinc, lead, arsenic, selenium, vanadium, beryllium, nickel, pesticides, petroleum hydrocarbons, and persistent organohalogenes. These samples shall be preserved for subsequent analysis by or under the direct supervision of EPA laboratories in accordance with the approved plan of study.

(i) These parameters are the basic requirements for all sites. For the evaluation of any specific disposal site additional measurements may be required, depending on the present or intended use of the site. Additional parameters may be selected based on the materials likely to be in wastes dumped at the site, and on parameters likely to be affected by constituents of such wastes. Analysis for other constituents characteristic of wastes discharged to a particular disposal site, or of the impact of such wastes on water quality will be included in accordance with the approved plan of study.

(2) *Water Quality Sampling Requirements.* The number of samples collected from the water column should be sufficient to identify representative changes throughout the water column such as to avoid short-term impact due to disposal activities. The following key locations should be considered in selecting water column depths for sampling:

- (i) Surface, below interference from surface waves;
- (ii) Middle of the surface layer;
- (iii) Bottom of the surface layer;
- (iv) Middle of the thermocline or halocline, or both if present;
- (v) Near the top of the stable layer beneath a thermocline or halocline;
- (vi) Near the middle of the stable layer;
- (vii) As near the bottom as feasible;
- (viii) Near the center of any zone showing pronounced biological activity or lack thereof.

In very shallow waters where only a few of these would be pertinent, as a minimum, surface, mid-depth and bottom samples shall be taken, with samples at additional depths being added as indicated by local conditions. At disposal sites far enough away from the influence of major river inflows, ocean or coastal currents, or other features which might cause local perturbations in water chemistry, a minimum of 5 water chemistry stations should be occupied within the boundaries of a site. Additional stations should be added when the area to be covered in the survey is more than 20 square miles or when local perturbations in water chemistry may be expected because of the presence of one of the features mentioned above. In zones where such impacts are likely, stations shall be distributed so that at least 3 stations are occupied in the transition from one stable regime to another. Each water column chemistry station shall be replicated a minimum of 3 times during a survey except in waters over 200 meters deep. This may be done by three separate casts during one occupation of a station.

(3) *Water Column Biota.* Sampling stations for the biota in the water column shall be as near as feasible to stations used for water quality; in addition at least two night-time stations in the disposal site and contiguous area are required. At each station vertical or oblique tows with appropriately-meshed nets shall be used to assess the microzooplankton, the nekton, and the macrozooplankton, and a bottom trawl shall be used to assess demersal biota. Towing times and distances shall be sufficient to obtain representative samples of organisms near water quality stations. Organisms shall be sorted and identified to taxonomic levels necessary to identify dominant organisms, sensitive or indicator organisms, and organism diversity. Tissue samples of representative species shall be analyzed for pesticides, persistent organohalogenes, and heavy metals. Discrete water samples shall also be used to quantitatively assess the phytoplankton at each station. These requirements are the minimum necessary in all cases. Where there are discontinuities present, such as thermoclines, haloclines, convergences, or upwelling, additional tows shall be made in each water mass as appropriate.

(e) *Measurements of the Benthic Region.* (1) *Bottom Sampling.* Samples of the bottom shall be taken for both sediment composition and structure, and to determine the nature and numbers of benthic biota.

(i) At each station sampling may consist of core samples, grab samples, dredge samples, trawls, and bottom photography or television, where available and feasible, depending on the nature of the bottom and the type of disposal site. Each type of sampling shall be replicated sufficiently to obtain a representative set of samples. The minimum numbers of replicates of successful samples at each continental shelf station for each type of device mentioned above are as follows:

Cores	3
Grabs	5
Dredge	3
Trawl	120
Phototrawl	60

¹ Minute tow.

Lesser numbers of replicates may be allowed in water deeper than 200 meters, at those sites where pollution impacts on the bottom are unlikely in the judgment of the EPA management authority.

(ii) Selection of bottom stations will be based to a large extent on the bottom topography and hydrography as determined by the bathymetric survey. On the continental shelf, where the bottom has no significant discontinuities, a bottom station density of at least three times the water column stations shall be used, depending on the type of site being evaluated. Where there are significant differences in bottom topography, additional stations shall be occupied near the discontinuity and on each side of it. Beyond the continental shelf, lesser densities may be used.

(2) *Bathymetric Survey.* Sufficient tracklines shall be run to develop com-

plete bottom coverage of bathymetry with assurance, with trackline direction and spacing as close as available control allows. The site itself is to be developed at the greatest density possible, with data to be collected to a suitable distance about the site as is required to identify major changes in bathymetry which might affect the site. Specifications for each bathymetric survey will vary, depending on control, bottom complexity, depths, equipment, and map scale required. In most cases, a bathymetric map at a scale of 1:25,000 to 1:10,000 will be required, with a minimum of 1-5 meter contour interval except in very flat areas. When the foregoing bathymetric detail is available from recent surveys of the disposal site, bathymetry during a baseline or trend assessment survey may be limited to sonar profiles of bathymetry on transects between sampling stations.

(3) *Nature of Bottom.* The size distribution of sediments, mineral character and chemical quality of the bottom will be determined to a depth appropriate for the type of bottom. The following parameters will be measured at all stations: particle size distribution, major mineral constituents, texture, settling rate, and organic carbon.

(i) At several stations near the center of the disposal site, samples of sediments shall be taken for the analysis of the following parameters: mercury, cadmium, copper, chromium, zinc, lead, arsenic, selenium, vanadium, beryllium, nickel, pesticides, persistent organohalogenes, and petroleum hydrocarbons. These samples shall be preserved for subsequent analysis by or under the direct supervision of EPA laboratories in accordance with the approved plan of study.

(ii) These parameters are the basic requirements for all sites. For the evaluation of any specific disposal site additional measurements may be required, depending on the present or intended use of the site. Additional parameters may be selected based on the materials likely to be in wastes dumped at the site, and on parameters likely to be affected by constituents of such wastes. Such additional parameters will be selected by the EPA management authority.

(4) *Benthic Biota.* This shall consist of a quantitative and qualitative evaluation of benthic communities including macrobenthos, meiobenthos, and microbenthos, and should include an appraisal, based on existing information, of the sensitivity of indigenous species to the waste proposed to be discharged. Organisms shall be sorted and identified to taxonomic levels necessary to identify dominant organisms, sensitive or indicator organisms, and organism diversity. Tissue samples of representative species shall be analyzed for persistent organohalogenes, pesticides, and heavy metals.

(f) *Other Measurements.* (1) *Hydrodynamic Features.* The direction and speed of water movement shall be characterized at levels appropriate for the site and type of waste to be dumped. Where depths and climatic conditions are great enough for a thermocline or halocline to exist, the relationship of

water movement to such a feature shall be characterized.

(1) *Current Measurements.* When current meters are used as the primary source of hydrodynamic data, at least 4 current meter stations with at least 3 meters at depths appropriate for the observed or expected discontinuities in the water column should be operated for as long as possible during the survey. Where feasible, current meters should be deployed at the initiation of the survey and recovered after its completion. Stations should be at least a mile apart, and should be placed along the long axis of the dumping site. For dumping sites more than 10 miles along the long axis, one current meter station every 5 miles should be operated. Where there are discontinuities in surface layers, e.g., due to land runoff, stations should be operated in each water mass.

(1) *Water Mass Movement.* Acceptable methods include: dye, drogues, surface drifters, side scan sonar, bottom drifters, and bottom photography or television. When such techniques are the primary source of hydrodynamic data, coverage should be such that all significant hydrodynamic features likely to affect waste movement are measured.

(2) *Sea State.* Observations of sea state and of standard meteorological parameters shall be made at 8-hour intervals.

(3) *Surface Phenomena.* Observations shall be made of oil slicks, floating materials, and other visible evidence of pollution; and, where possible, collections of floating materials shall be made.

(g) *Survey Procedures and Techniques.* Standard procedures for oceanographic surveys and sampling methods are given in the H.O. 607, "Instruction Manual for Obtaining Oceanographic Data," 3rd Ed., 1968, reprint 1970. These are to be used as guidance for general procedures, but it is recognized that survey techniques must be flexible in order to accommodate advances in technology, differences in local conditions, and equipment malfunctions. Special considerations in water and sediment sampling are discussed in the EPA "Analytical Methods Manual for the Ocean Disposal Permit Program" of EPA. When more stringent requirements are specified in the EPA Manual, these take precedence over those in the H.O. 607 publication. Techniques for sampling and analysis in the benthic region are found in the Ocean Disposal Manual, which supplements procedures in the IBP Handbook, No. 16, "Methods for the Study of the Marine Benthos," edited by N. A. Holme and A. D. McIntyre.

(i) Standard oceanographic laboratory procedures as found in the H.O. 607 publication should be used for shipboard analyses. Samples to be run at a later time should be preserved as described in the Ocean Disposal Manual to prevent decay, extraction, or contamination.

(ii) Samples analyzed in shore-based laboratories will be analyzed in accordance with procedures in the Ocean Disposal Methods Manual.

(h) *Quality Assurance.* The EPA management authority may require that certain samples be submitted on a routine basis to EPA laboratories for analysis as well as being analyzed by the surveyor, and that EPA personnel participate in some field surveys.

11. Part 229 is added to read as follows:

PART 229—GENERAL PERMITS

Sec.

229.1 Burial at sea.

229.2 Transport of target vessels.

229.3 Transportation and disposal of vessels.

AUTHORITY: 33 U.S.C. 1421 and 1418.

§ 229.1 Burial at sea.

(a) All persons subject to Title I of the Act are hereby granted a general permit to transport human remains from the United States and all persons owning or operating a vessel or aircraft registered in the United States or flying the United States flag and all departments, agencies, or instrumentalities of the United States are hereby granted a general permit to transport human remains from any location for the purpose of burial at sea and to bury such remains at sea subject to the following conditions:

(1) Except as herein otherwise provided, human remains shall be prepared for burial at sea and shall be buried in accordance with accepted practices and requirements as may be deemed appropriate and desirable by the United States Navy, United States Coast Guard, or civil authority charged with the responsibility for making such arrangements;

(2) Burial at sea of human remains which are not cremated shall take place no closer than three nautical miles from land and in water no less than one hundred fathoms (six hundred feet) deep and all necessary measures shall be taken to ensure that the remains sink to the bottom rapidly and permanently; and

(3) Cremated remains shall be buried in or on ocean waters without regard to the depth limitations specified in paragraph (a)(2) of this section provided that such burial shall take place no closer than three nautical miles from land.

(b) For purposes of this section and § 229.2, "land" means that portion of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, which is in closest proximity to the proposed disposal site.

(c) Flowers and wreaths consisting of materials which are readily decomposable in the marine environment may be disposed of under the general permit set forth in this Section at the site at which disposal of human remains is authorized.

§ 229.2 Transport of target vessels.

(a) The United States Navy is hereby granted a general permit to transport vessels from the United States or from any other location for the purpose of sinking such vessels in ocean waters in testing ordnance and providing related data subject to the following conditions:

(1) Such vessels may be sunk at times determined by the appropriate Navy official;

(2) Necessary measures shall be taken to ensure that the vessel sinks to the bottom rapidly and permanently, and that marine navigation is not otherwise impaired by the sunk vessel;

(3) All such vessel sinkings shall be conducted in water at least 1000 fathoms (6000 feet) deep and at least 50 nautical miles from land, as defined in § 229.1(b); and

(4) Before sinking, appropriate measures shall be taken by qualified personnel at a Navy or other certified facility to remove to the maximum extent practicable all materials which may degrade the marine environment, including without limitation, (i) emptying of all fuel tanks and fuel lines to the lowest point practicable, flushing of such tanks and lines with water, and again emptying such tanks and lines to the lowest point practicable so that such tanks and lines are essentially free of petroleum, and (ii) removing from the hulls other pollutants and all readily detachable material capable of creating debris or contributing to chemical pollution.

(b) An annual report will be made to the Administrator of the Environmental Protection Agency setting forth the name of each vessel used as a target vessel, its approximate tonnage, and the location and date of sinking.

§ 229.3 Transportation and disposal of vessels.

(a) All persons subject to Title I of the Act are hereby granted a general permit to transport vessels from the United States, and all departments, agencies, or instrumentalities of the United States are hereby granted a general permit to transport vessels from any location for the purpose of disposal in the ocean subject to the following conditions:

(1) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, the person desiring to dispose of a vessel under this general permit shall, no later than one month prior to the proposed disposal date, provide the following information in writing to the EPA Regional Administrator for the Region in which the proposed disposal will take place:

(i) A statement detailing the need for the disposal of the vessel;

(ii) Type and description of vessel(s) to be disposed of and type of cargo normally carried;

(iii) Detailed description of the proposed disposal procedures;

(iv) Information on the potential effect of the vessel disposal on the marine environment; and

(v) Documentation of an adequate evaluation of alternatives to ocean disposal (i.e., scrap, salvage and reclamation).

(2) Transportation for the purpose of ocean disposal may be accomplished under the supervision of the District Commander of the U.S. Coast Guard or his designee.

(3) Except in emergency situations, as determined by the U.S. Army Corps of

Engineers and/or the District Commander of the U.S. Coast Guard, appropriate measures shall be taken, prior to disposal, by qualified personnel to remove to the maximum extent practicable all materials which may degrade the marine environment, including without limitation, (i) emptying of all fuel lines and fuel tanks to the lowest point practicable, flushing of such lines and tanks with water, and again emptying such lines and tanks to the lowest point practicable so that such lines and tanks are essentially free of petroleum, and (ii) removing from the hulls other pollutants and all readily detachable material capable of creating debris or contributing to chemical pollution.

(4) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, the dumper shall notify the EPA Regional Administrator and the District Commander of the U.S. Coast Guard that the vessel has been cleaned and is available for inspection; the vessel may be transported for dumping only after EPA and the Coast Guard agree that the

requirements of paragraph (a) (3) of this section have been met.

(5) Disposal of these vessels shall take place in a site designated on current nautical charts for the disposal of wrecks or no closer than twenty-two kilometers (twelve miles) from the nearest land and in water no less than fifty fathoms (three hundred feet) deep, and all necessary measures shall be taken to ensure that the vessels sink to the bottom rapidly and that marine navigation is not otherwise impaired.

(6) Disposal shall not take place in established shipping lanes unless at a designated wreck site, nor in a designated marine sanctuary, nor in a location where the hulk may present a hazard to commercial trawling or national defense (see 33 CFR 205).

(7) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, disposal of these vessels shall be performed during daylight hours only.

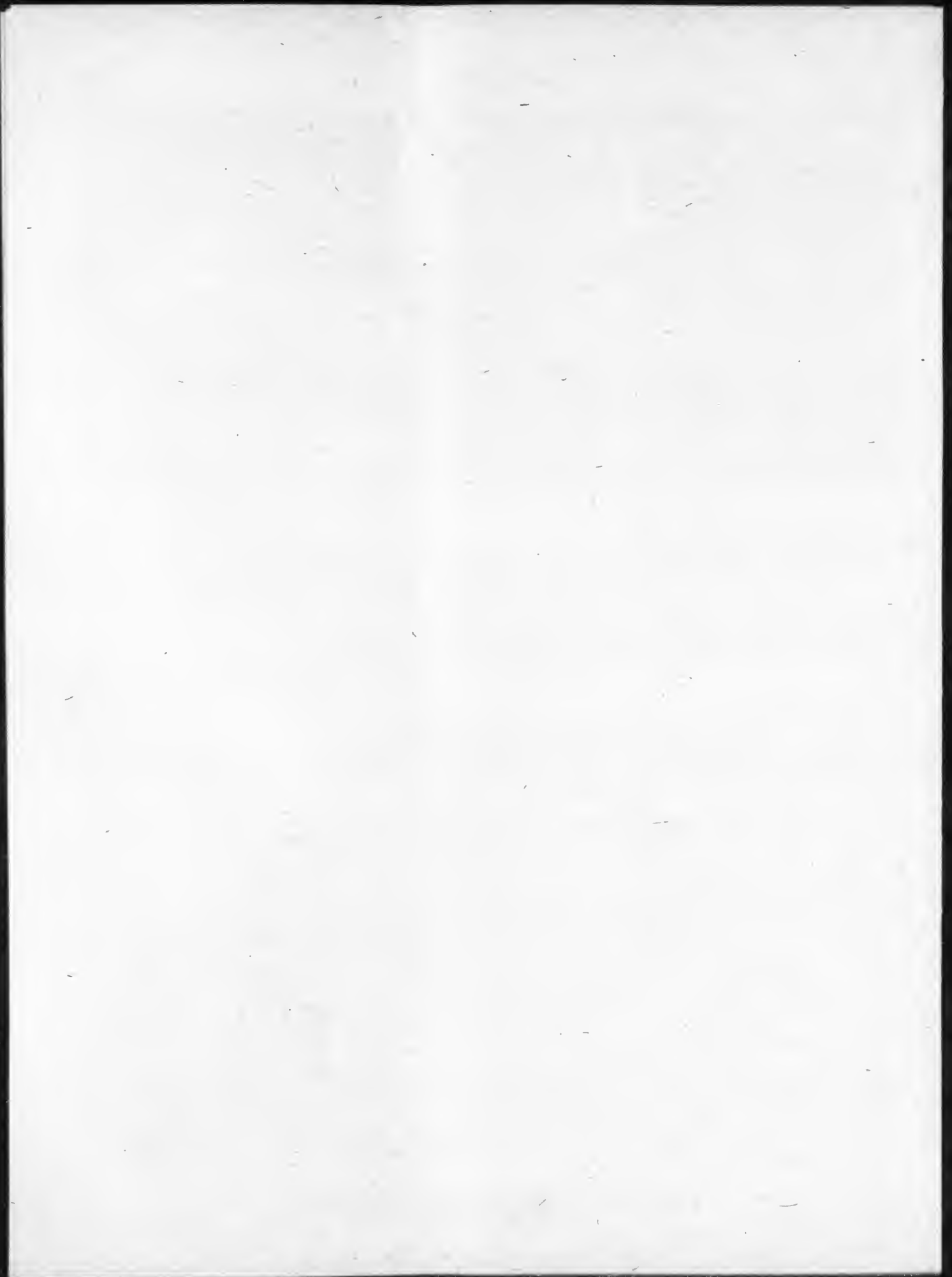
(8) The Captain-of-the-Port (COTP), U.S. Coast Guard, and the EPA Regional Administrator shall be notified forty-

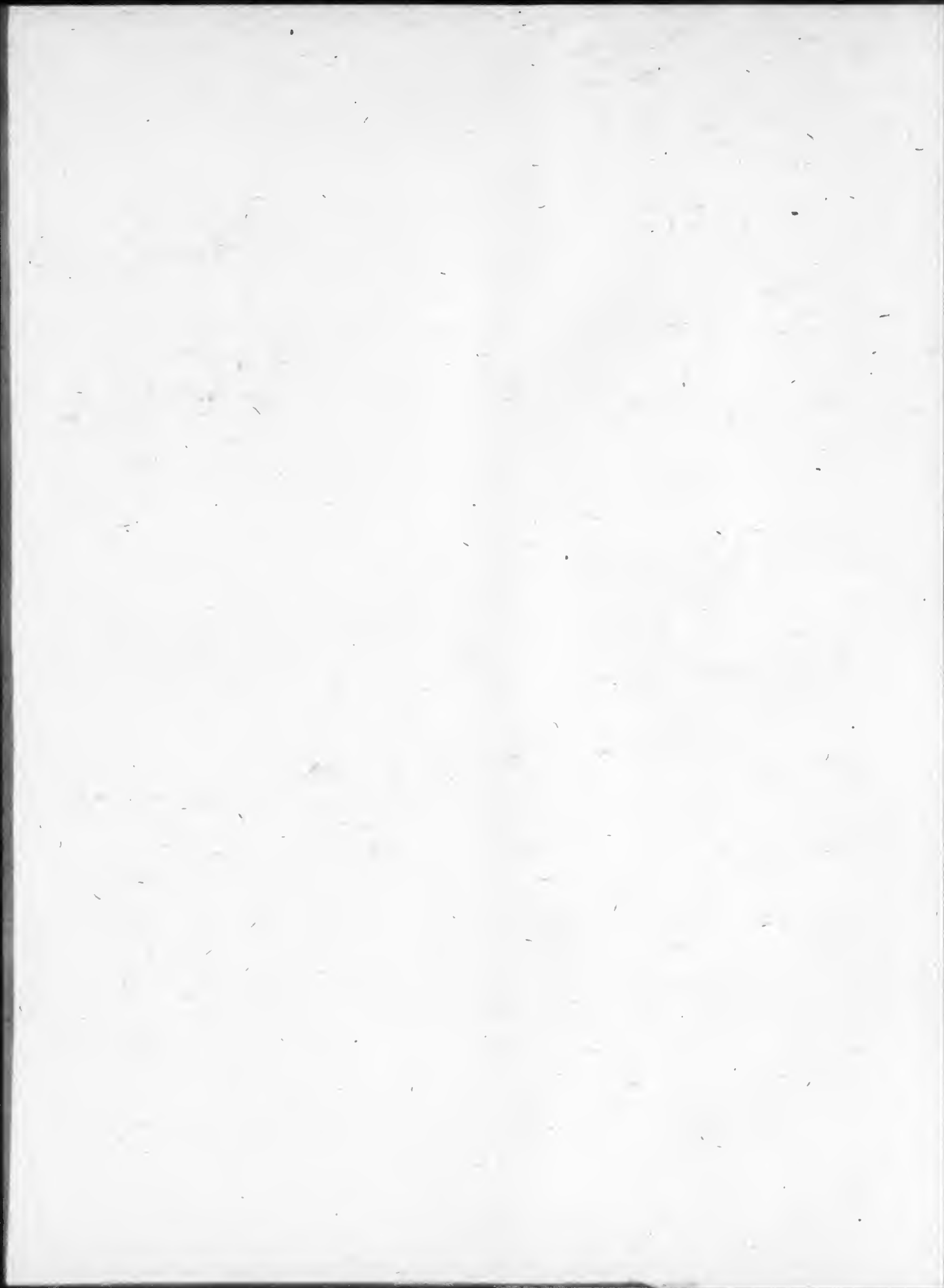
eight (48) hours in advance of the proposed disposal. In addition, the COTP and the EPA Regional Administrator shall be notified by telephone at least twelve (12) hours in advance of the vessel's departure from port with such details as the proposed departure time and place, disposal site location, estimated time of arrival on site, and the name and communication capability of the towing vessel. Schedule changes are to be reported to the COTP as rapidly as possible.

(9) The National Ocean Survey, NOAA, 6010 Executive Blvd., Rockville, MD 20852, shall be notified in writing, within one week, of the exact coordinates of the disposal site so that it may be marked on appropriate charts.

(b) For purposes of this Section, "land" means that portion of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, which is in closest proximity to the proposed disposal site.

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