



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2019-0592; FRL-10009-39-Region 4]

**Ocean Dumping: Cancellation of Final Designation for an Ocean Dredged Material
Disposal Site**

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) cancels the final designation of the original Wilmington, North Carolina Ocean Dredged Material Disposal Site (ODMDS), referred to as the 1987 Wilmington ODMDS, pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended. The 1987 Wilmington ODMDS, which was designated in 1987, is in the Atlantic Ocean offshore Wilmington, North Carolina. This action is being taken because the 1987 Wilmington ODMDS was previously replaced in 2002 by the existing New Wilmington ODMDS and is no longer needed. In addition, this action changes the name of New Wilmington ODMDS to the Wilmington, North Carolina ODMDS.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: *Docket:* All documents in the Docket are listed in the www.regulations.gov index, some information may not be publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available or in hard copy at the EPA Region 4 Office, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The file will be made available for public

inspection in the Region 4 library between the hours of 9:00 a.m. and 4:30 p.m. weekdays.

Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to make an appointment. If possible, please make your appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number: (404) 562-9395; e-mail: collins.garyw@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA (33 U.S.C. 1401 et seq.), 33 U.S.C. 1401 to 1445. The EPA's action would be relevant to persons, including organizations, and government bodies seeking to dispose of dredged material in ocean waters offshore of Wilmington, North Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government ...	U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments ...	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 102(c) of the MPRSA, 33 U.S.C. 1412(c), gives the Administrator of the EPA authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This cancellation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA at 40 CFR 228.11, state that modifications in disposal site use which involve withdrawal of disposal sites from use will be made by promulgation pursuant to 40 CFR part 228. This site cancellation is being published as final rulemaking in accordance with 40 CFR 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from use based upon changed circumstances concerning use of the site.

III. Action

The cancellation of the designation of the ODMDS, which was designated offshore Wilmington, North Carolina, in 1987 at 40 CFR 228.15(h)(2), is needed as a housekeeping measure. This 1987 Wilmington ODMDS is no longer a suitable disposal option and has no foreseeable need. The 1987 Wilmington ODMDS was replaced by the larger New Wilmington ODMDS, which was designated in 2002 at 40 CFR 228.15(h)(20), due to changes in alignment of the Federal navigation channel, which now cuts through the 1987 ODMDS, and for other

applicable reasons. In this action, the EPA also changes the name of the New Wilmington ODMDS to the Wilmington, North Carolina ODMDS.

On November 6, 2019, the EPA issued a draft rule for public review and comment in the Federal Register [84 FR 59744 (Nov. 6, 2019)] which proposed the cancelation of the designation of the 1987 Wilmington ODMDS and renaming the New Wilmington ODMDS to the Wilmington, North Carolina ODMDS. Four comments were received on the proposed rule. Of the four comments, two were not related to this action and do not need responses. Of the two remaining comments, one stated that ODMDS designations seem to trend toward a pattern of moving further and further offshore which the individual attributes to improper long-term planning by the EPA. The second comment stated that “[s]ome evidence showed that shrimpers have complained that wood debris attributed to dredged materials placed within the [1987 Wilmington ODMDS] interfere with shrimping.”

Regarding the issue of long-term planning, the EPA historically designates sites that are environmentally suitable, minimizes the haul distance and associated costs, and maximizes the feasibility and ease for monitoring while considering the known longer-term needs of federally authorized projects. With the recent improvements to the Panama Canal, nearly every port in the southeastern U.S. has proceeded with plans to deepen and widen navigation channels for federally authorized projects, as well as all the associated turning basins and terminal berthing areas. Prudent use of the Agency’s resources does not allow for planning beyond the known needs of the major site users at any given time and thus the site designated in 1987 was not designated with adequate capacity to meet the current need.

The EPA understands that the comment regarding wood debris in dredged material and its interference with shrimping is referencing historical events that occurred at shrimping

grounds that lie offshore of Frying Pan Shoals. In 1987-1988, shrimp fishermen operating in areas outside the 1987 Wilmington ODMDS had reported fouling and tearing of their nets with roots, tree limbs, and other natural origin wood debris. The fishermen attributed the wood debris to “short dumped” (i.e., outside the disposal area) ocean disposal of dredged material from the “river” reaches of the Wilmington Harbor navigation channel as well as reaches of the Military Ocean Terminal Sunny Point (MOTSU). To remedy this, the dredging contractor at the time conducted a cleanup of the impacted areas using heavy-duty scallop-style nets for 20 days (approximately 228 tows were made). In an effort to maximize the distance from the disposal location to the shrimp fishing area, between 1988 and 2002, dredged materials from river sources were placed in the most seaward (southern) half of the 1987 Wilmington ODMDS. However, in 1996, fishermen complaints regarding wood debris in areas near the 1987 Wilmington ODMDS were again received. In July 1996, the USACE Wilmington District employed two trawlers to drag heavy-duty nets in the shrimp-trawling areas in order to assess the wood debris problem. This USACE determined that wood debris was present in the traditional shrimping bottoms in sufficient amounts to interfere with shrimping but the USACE was unable to determine the source of the wood debris. The contention that the dredged material placed in the 1987 Wilmington ODMDS was a source of the wood debris impacting shrimpers’ towing bottoms was neither confirmed nor denied. Extreme weather events, including hurricanes, periodically pass over the 1987 Wilmington ODMDS and surrounding areas and may naturally redistribute debris on the sea floor, regardless of their source. The 1987 Wilmington ODMDS, currently inactive, has not received dredged material since 2002. There are no plans to remove any wood debris or other material from the 1987 Wilmington ODMDS; rather, the 1987 Wilmington ODMDS footprint will be allowed to continue its transition back to a more natural state as it has been for

the past 18 years. Since its designation in 2002, all dredged materials originating from Wilmington Harbor and MOTSU have been placed in the New Wilmington ODMDS. The New Wilmington ODMDS is located further seaward (south) than the 1987 Wilmington ODMDS, and was specifically sited to keep disposal operations and any wood debris that might be associated with the dredged material as far as possible from these shrimping grounds while maintaining the economic feasibility of federally authorized projects that require the transport and disposal of dredged material.

IV. Statutory and Executive Order Reviews

This action complies with applicable Executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This action does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 551 et seq., or any other statute

unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the U.S. Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

d. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 et seq., for state, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of Section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

e. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on States, on the relationship between the Federal Government and States, or on the distribution of power and responsibilities among various levels of government, as specified in

Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. The EPA specifically solicited comment on this action from State and local officials.

f. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the action will not have a direct effect on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicited additional comments on this action from tribal officials.

g. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

h. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355) because it is not a “significant regulatory action” as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113 (15 U.S.C. 3701 et seq.), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

j. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action is only cancelling the designation of an ODMDS which is no longer viable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1412.

Mary Walker,

Regional Administrator, Region 4.

For the reasons set out in the preamble, The EPA amends chapter I, title 40 of the Code of Federal Register as follows:

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

1. The authority citation for part 228 continues to read as follows:

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

2. Section 228.15 is amended by removing and reserving paragraph (h)(2) and revising paragraph (h)(20) introductory text to read as follows:

§ 228.15 Dumping sites designated on a final basis.

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(h) * * *

(20) Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

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