



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0531]**

**RIN 1625-AA11**

**Regulated Navigation Area; NW Natural PGM Site, Willamette River, Portland OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a regulated navigation area (RNA) at the NW Natural PGM Site on the Willamette River in Portland, OR. This action is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This proposed rulemaking would prohibit activities in the RNA that could disturb or damage the engineered sediment cap. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0531 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail D13-SMB-MSUPortlandWWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PGM	Portland Gas Manufacturing
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Coast Guard is proposing to establish a regulated navigation area to protect the engineered sediment cap located at the NW Natural PGM Site on the Willamette River in Portland, OR. This sediment cap is part of an Oregon Department of Environmental Quality (DEQ) required remedial action. The engineered sediment cap is designed to be compatible with normal vessel operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and soil in these areas.

The purpose of this rulemaking is to prevent disruption of the sediment cap which may result in hazardous conditions and harm to the marine environment. As such, this RNA is necessary to help ensure the sediment cap is protected and will do so by

prohibiting maritime activities that could disturb or damage it. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The proposed rule would create a RNA adjacent to the NW Natural PGM Site on the Willamette River in Portland, OR encompassing all waters above the sediment cap. The RNA would prohibit activities which could disrupt or damage the sediment cap on the riverbed such as anchoring, dragging, dredging, trawling, or other related activities. The proposed rule would also specify that operators who wish to engage in dredging, spudding, and vessel anchoring within the regulated navigation area must consult with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap. For convenience, the contact information for the Oregon Department of Environmental Quality would be included in the regulations.

Additionally, this proposed rule would allow vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site to engage in dredging and related activities, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the Oregon Department of Environmental Quality. We also propose to include the COTP's contact information for reporting suspected violations of the regulations in proposed paragraph (b).

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment cap. Additionally, operators who wish to engage in dredging, spudding, and vessel anchoring within the regulated navigation area must consult with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security

Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the creation of a RNA that prohibits certain maritime activities to protect an engineered sediment cap. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:



Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1343 to read as follows:

**§ 165.1343 Regulated navigation area; NW Natural PGM Site, Willamette River, Portland, OR.**

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Willamette River adjacent to the NW Natural Portland Gas Manufacturing (PGM) site, encompassed by a line connecting the following points beginning at 45°31'33.8" N, 122°40'11.6" W; thence to 45°31'33.9" N, 122°40'11.2" W; thence to 45°31'32.7" N, 122°40'10.7" W; thence to 45°31'32.9" N, 122°40'09.4" W; thence to 45°31'32.2" N, 122°40'08.8" W; thence to 45°31'32.2" N, 122°40'07.9" W; thence to 45°31'31.4" N, 122°40'07.6" W; thence to 45°31'30.9" N, 122°40'10.7" W; and along the shoreline back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83). Geographically this location starts on the west bank of the Willamette River at approximately river mile 12.2, 100 yards south of the Steel Bridge.

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Sediment disturbance activities including dredging, spudding, and vessel anchoring require advance consultation with the Oregon Department of Environmental Quality and obtain prior approval from the Coast Guard Captain of the Port Sector Columbia River (COTP) to prevent exposure of buried contamination and/or damage to the remedial cap. Contact the Oregon Department of Environmental Quality at 503-229-

5245, or alternatively, call 811 prior to any sediment disturbance activity. Any work within 10 feet of the seawall is prohibited unless there is advance consultation and approval by the City of Portland, DEQ and the Coast Guard Captain of the Port Sector Columbia River (COTP). All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area. Vessels may otherwise transit or navigate within this area.

(2) The regulations described in paragraph (b)(1) of this section do not apply to vessels or persons engaged in activities associated with remediation efforts in the NW Natural PGM Site, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the Oregon Department of Environmental Quality.

(c) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at D13-SMB-MSUPortlandWWM@uscg.mil.

Dated: October 1, 2020.

A.J. Vogt,  
RADM, U.S. Coast Guard,  
Commander, Thirteenth Coast Guard District.