



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R10-OW-2024-0123; FRL-11819-01-R10]

### Ocean Dumping; Withdrawal of Designated Disposal Sites; Nome, Alaska

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to withdraw from EPA regulation and management two designated ocean dredged material disposal sites, the Nome East and Nome West Sites (Sites), located near Nome, Alaska, pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended. The EPA is taking this action because the United States Army Corps of Engineers (USACE) has not used the Sites for disposal of dredged material since 2009, has no plans to use the Sites for any future disposal of dredged material, and the Sites are no longer suitable for USACE's needs. This action will withdraw these sites from the regulations.

**DATES:** This rule is effective on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless the EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives adverse comment, the Agency will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OW-2024-0123; FRL-11819-01-R10, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the <https://www.regulations.gov/> index.

Although listed in the 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 only in hard copy.

Publicly available docket materials are available either electronically in

<https://www.regulations.gov/> or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue Seattle, Washington 98101. The EPA Region 10 Library is open from 9 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding Federal holidays. The EPA Region 10 Library telephone number is (206) 553-1289.

**FOR FURTHER INFORMATION CONTACT:** Betsy McCracken, Water Division, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 W. 7<sup>th</sup>, Avenue, #19, Anchorage, AK, 99513; (907) 271-1206, [mccracken.betsy@epa.gov](mailto:mccracken.betsy@epa.gov)

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Why is the EPA Using a Direct Final Rule?**

The EPA is publishing this rule without a prior proposed rulemaking because we view this as a noncontroversial action and anticipate no adverse comment. In 1989, the EPA designated the Sites for the disposal of dredged material removed from the Nome Channel and harbor areas (54 FR 23481 June 1, 1989). The Sites have not been used since 2009 because the USACE has

instead placed dredged material from the Nome Channel and harbor area onshore for the beneficial use of beach nourishment. The USACE intends to continue to place such dredged material onshore for the beneficial use of beach nourishment. Placement of dredged material onshore for the beneficial use of beach nourishment is not affected by this withdrawal and will continue to be available for the disposal of suitable dredged material. The ability of the USACE, the Port of Nome, and other interested parties to find suitable dredged material disposal options will not be changed by this action. Environmental assessments conducted by the USACE indicates that there will be no unacceptable adverse impacts to the marine environment once the EPA relinquishes management of the Sites. Therefore, the EPA is now taking the administrative action of withdrawing the Sites from regulation and relinquishing future management of the Sites.

## **II. Does This Action Apply to Me?**

In 1989, the EPA designated the Sites to be used for dredged material from the Nome channel and harbor area. The USACE is most affected by this action because it had used the Sites for disposal of Nome channel and harbor area operations and maintenance (O&M) dredged material. However, since 2009, the USACE has placed dredged material from Nome channel and harbor O&M dredging onshore for the beneficial use of beach nourishment. The USACE intends to continue to place such dredged material onshore for the beneficial use of beach nourishment. Placement of dredged material onshore for the beneficial use of beach nourishment is not affected by this withdrawal and will continue to be available for the disposal of suitable dredged material. For any questions regarding the applicability of this action to a particular person or entity, please refer to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

## **III. What is the legal authority of this final rule?**

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1402(c), provides that the Administrator of the EPA may, in a manner consistent with established criteria, designate sites

for ocean dumping. 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 withdrawal is made pursuant to that authority.

The EPA Ocean Dumping Regulations provide that modifications in disposal site use that involve 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 40 CFR part 228 and will be based on the results of the analyses of impact described in 40 CFR 228.10 or upon changed circumstances concerning use of the site (40 CFR 228.11(a)). This site withdrawal is made in accordance with 40 CFR 228.11(a) based upon changed circumstances concerning use of the Sites.

#### **IV. Background**

##### *A. History of Disposal Sites near Nome, Alaska*

The USACE began to dispose of dredged material offshore of Nome, Alaska around 1923. The disposal of dredged material offshore was necessary to keep navigation open to the Snake River and the City of Nome from Norton Sound. On January 11, 1977, the EPA published a list of “Approved and Final Ocean Dumping Sites” that established the Nome East and Nome West Sites as interim sites (42 FR 2461, January 11, 1977) The interim Sites were used by the USACE for disposal of dredged material as part of harbor maintenance. The EPA designated the Sites as final sites on June 1, 1989 (54 FR 23481).

The Nome East and Nome West Sites extend 1.75 nautical miles (2 statute miles) offshore of the coast east of the entrance to the Port of Nome (Please see map of Nome West and Nome East disposal Sites in the docket for this action). The Nome East Site covers an area of approximately 0.49 square miles (0.37 square nautical miles) and the Nome West Site covers an area of approximately 0.40 square miles (0.30 square nautical miles). Water depths at the Nome West Site ranges from 1-11 meters mean lower low water (MLLW). Water depths at the Nome East

Site range from 1-12 meters MLLW. Prior to the harbor expansion, the Sites were situated in an open, dynamic ocean environment. The seafloor is characterized as relatively uniform and featureless with highly active shifting sands grading to shifting silts as it slopes along the southern boundary of the Sites into deeper water.

The Sites are trapezoidal with the following corner coordinates based upon the North American Datum of 1927:

Nome East Site:

64°29'54" N, 165°24'41" W  
64°29'45" N, 165°23'27" W  
64°28'57" N, 165°23'29" W  
64°29'07" N, 165°24'25" W

Nome West Site:

64°30'04" N, 165°25'52" W  
64°29'18" N, 165°26'04" W  
64°29'13" N, 165°25'22" W  
64°29'54" N, 165°24'45" W

Disposal at the Nome East Site was limited to dredged material from Nome, Alaska, and adjacent areas. Disposal at the Nome West Site was also limited to material dredged from Nome, Alaska, and adjacent areas with preference given to placement of materials in the inner third of the Site to compliment littoral drift patterns and prevent significant build-up or erosion of sediments. Coordination with the City of Nome prior to dredging was required for use of both Sites.

The Sites were used routinely for disposal of dredged material from USACE O&M dredging until the USACE opted to alter the location of the Nome harbor entrance. In 2005, the USACE began major adjustments to the harbor including re-routing the entrance to the Snake River. The old entrance was filled in and a 3,025-foot breakwater was added to the existing causeway along with a 270-foot spur. The Nome City dock was expanded, and the new harbor entrance was widened to 500 feet. As part of the harbor entrance project, the USACE also changed its method for managing dredged material. In 2009, the USACE used the dredged material for onshore placement east of the breakwater for beach nourishment. These major changes spatially overlapped with a portion of the Nome West Site, reducing the availability of the Site to receive dredged material while also altering the need for the use of the Nome East Site.

## *B. Relevant Recent Events*

In 2020, the USACE released an Environmental Assessment and Finding of No Significant Impact (FONSI) for modification to the entrance to the Port of Nome.<sup>1</sup> In the 2019 FONSI, the USACE stated that they would continue to place dredged material onshore for beach nourishment, which has contributed to widening of the beach in front of the Nome seawall. The USACE does not plan to dispose of dredged material in the EPA-designated Nome East Site or Nome West Site. Based on the FONSI and communication with the USACE (email from Mr. Matthew Ferguson, October 31, 2023), the USACE does not use the Sites because they are no longer suitable for its needs.

## **V. Final Action**

This action is an administrative procedure to formally remove the Nome East and Nome West Sites from regulation (40 CFR 228.15(n)(12) and (13) and EPA management. The withdrawal of the Sites is necessary to remove the oversight of these Sites from EPA management. The USACE has not used the Sites for disposal of dredged material since 2009 and has no foreseeable need to use the Sites as they are no longer suitable.

The two Sites proposed for withdrawal are trapezoidal with the following corner coordinates based upon the North American Datum of 1927:

Nome East Site:

64°29'54" N, 165°24'41" W

64°29'45" N, 165°23'27" W

64°28'57" N, 165°23'29" W

64°29'07" N, 165°24'25" W

Nome West Site:

64°30'04" N, 165°25'52" W

64°29'18" N, 165°26'04" W

64°29'13" N, 165°25'22" W

64°29'54" N, 165°24'45" W

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<sup>1</sup> US Army Corps of Engineers. March 2020. Integrated Feasibility Report and Final Environmental Assessment. Port of Nome Modification Feasibility Study Nome, Alaska.

If finalized, the Sites will not exist and will not be available for the disposal of dredged material under the MPRSA from any person or for any purpose. The USACE and EPA will coordinate, consistent with the MPRSA and EPA's Ocean Dumping regulations, should the USACE decide in the future that ocean disposal of dredged material is needed for dredged material from Nome, Alaska, and/or adjacent areas.

## **VI. Environmental Statutory Review**

### *A. National Environmental Policy Act of 1969*

Section 102 of the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321) requires Federal agencies to prepare an Environmental Impact Statement for major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to this action because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, may be appropriate. The EPA has determined that no environmental review document is necessary for withdrawal of the Nome East and Nome West Sites.

### *B. Coastal Zone Management Act*

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the maximum extent practicable with the enforceable policies of approved state programs. By operation of Alaska State law, the federally approved Alaska Coastal Management Program expired on July 1, 2011, resulting in a withdrawal from participation in the CZMA's National Coastal Management Program. The CZMA Federal consistency provision, Section 307, no longer applies in Alaska.

### *C. National Historic Preservation Act*

The National Historic Preservation Act (NHPA), as amended, 16 U.S.C. 470 to 470a-2, requires Federal agencies to account for the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. Withdrawal of the Sites will not affect any historic properties.

## **VII. Statutory and Executive Order Review**

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 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 Small Business Administration’s size regulations at 13 CFR part 121; (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 small entities as they were formally used only by the USACE for dredged material removed from the Nome channel and harbor area. The USACE has not used the Sites since 2009 and has no foreseeable need to use the Sites as they are no longer suitable.

*D. Unfunded Mandates Reform Act*

This action does not contain any unfunded mandates as described in the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, and does not significantly affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.

*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 withdrawal of the Sites 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. Although Executive Order 13175 does not apply to this action, the EPA provided electronic notification of the proposed withdrawal, including a Fact Sheet about the Sites, to the Nome Eskimo Community and the Bering Straits Native Corporation in the development of this action. EPA received no comments as a result of the electronic notification.

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

This action is not subject to Executive Order 13045 because it is not “economically significant” as defined in Executive Order 12866 and does not concern an environmental health or safety risk that the EPA believes may disproportionately affect children.

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

This action is not subject to Executive Order 13211 because it is not a “significant regulatory action” under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rule does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All*

Executive Order 12898 (59 FR 7629; February 16, 1994) 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 communities with environmental justice concerns. Executive Order 14096 (88 FR 25251, April 21, 2023) supplements the foundational efforts of Executive Order 12898 to address environmental justice.

The EPA recognizes that the burdens of environmental pollution and climate change often fall disproportionately on communities with environmental justice concerns. Climate change will exacerbate the existing risks faced by communities with environmental justice concerns.

However, the EPA does not believe that this action will have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629; February 16, 1994).

*K. Congressional Review Act*

This action is subject to the Congressional Review Act. The EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. A “major rule” cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless the EPA receives adverse comment.

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### **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. 1401, 1411, 1412.

Dated: April 25, 2024.

Casey Sixkiller,  
*Regional Administrator, Region 10*

For the reasons set out in the preamble, the EPA amends 40 CFR part 228 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.

**Section 228.15 [Amended]**

2. Section 228.15 is amended by removing and reserving paragraphs (n)(12) and (13).