

notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, participated in their development.

### List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

### PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

**Paragraph 1.** The authority citation for part 48 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** In § 48.4081–1, paragraph (b), the definition of *Enterer* is revised to read as follows:

#### § 48.4081–1 Taxable fuel; definitions.

(The text of the proposed amendment to § 48.4081–1(b) is the same as the text of § 48.4081–1T(b), definition of *enterer*, published elsewhere in this issue of the **Federal Register**.)

**Par. 3.** Section 48.4081–3 is amended by adding paragraphs (c)(2)(ii) through (c)(2)(iv) to read as follows:

#### § 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

(The text of the proposed amendment to § 48.4081–3(c)(2)(ii) through (iv) is the same as the text of § 48.4081–3T(c)(2)(ii) through (iv) published elsewhere in this issue of the **Federal Register**.)

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 228

[FRL–7792–7]

#### Ocean Dumping; Proposed Designation of Sites Offshore Palm Beach Harbor, FL and Offshore Port Everglades Harbor, FL

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to designate two Ocean Dredged Material Disposal Sites (ODMDSs) in the Atlantic Ocean offshore Southeast Florida, as EPA-approved ocean dumping sites for the disposal of suitable dredged material. One site will be located offshore Palm Beach Harbor, Florida and the other offshore Port Everglades Harbor, Florida. This proposed action is necessary to provide acceptable ocean disposal sites for consideration as an option for dredged material disposal projects in the vicinity of Palm Beach Harbor and Port Everglades Harbor. These proposed site designations are for an indefinite period of time, but the sites will be subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

**DATES:** Comments must be received on or before September 13, 2004.

**ADDRESSES:** Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail:

[mcarthur.christopher@epa.gov](mailto:mcarthur.christopher@epa.gov)

- Fax: (404) 562–9343
- Mail: Coastal Section, EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303. Attn: Christopher McArthur.

The file supporting this proposed designation is available for public inspection at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Department of the Army, Jacksonville District Corps of Engineers, 701 San Marco Blvd., Jacksonville, FL 32207.

#### FOR FURTHER INFORMATION CONTACT:

Christopher J. McArthur, Ocean Dumping Program Coordinator, U.S. Environmental Protection Agency, Region 4, Coastal Section, 61 Forsyth Street, SW, Atlanta, GA 30303, telephone: (404)562–9391, e-mail: [mcarthur.christopher@epa.gov](mailto:mcarthur.christopher@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the 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. These proposed designations are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. These site designations are being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

##### B. Regulated Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Everglades Harbor and Palm Beach Harbor, Florida, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the U.S. Army Corps of Engineers (COE) to transport dredged material for the purpose of disposal into ocean waters and (b) to the COE itself for its own dredged material disposal projects. Potentially regulated categories and

entities that may seek to use the proposed dredged material disposal sites may include:

Category	Examples of potentially regulated entities
Federal Government ..... Industry and General Public ..... State, local and tribal governments .....	U.S. Army Corps of Engineers Civil Works Projects, U.S. Navy, and Other Federal Agencies. Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners. 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 entities likely to be affected by this action, should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with Section 103 of the MPRSA and the applicable regulations at 40 CFR parts 220 and 225, and whether you wish to use the sites subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### C. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (See 63 FR 58045 [October 29, 1998], "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.").

EPA, in cooperation with the COE, has prepared a Draft EIS (DEIS) entitled "Draft Environmental Impact Statement for Designation of the Palm Beach Harbor Ocean Dredged Material Disposal Site and the Port Everglades Harbor Ocean Dredged Material Disposal Site." On March 26, 2004, the Notice of Availability (NOA) of the DEIS for public review and comment was

published in the **Federal Register** (69 FR 15830 [March 26, 2004]). Anyone desiring a copy of the DEIS may obtain one from the addresses given above. The public comment period on the DEIS closed on May 10, 2004.

EPA received 12 comment letters on the DEIS. There were six main concerns expressed in those letters: (1) There is an inadequate discussion of alternatives to ocean disposal; (2) the volume of material to be disposed and number of projects to use the sites is unclear; (3) the data on the benthic habitat within and near the proposed ODMDSs is inadequate; (4) updated information on cumulative impacts of activities in the area is needed; (5) potential adverse impacts to essential fish habitat and in particular the habitat of the blue-line tilefish have not been addressed; and (6) the potential of Florida Current spin-off eddies to transport disposed dredged material to important marine habitats has not been adequately addressed. No objections to the ODMDS locations were received and three letters of support for the need for the ODMDS were received. The concerns identified above will be addressed in the Final EIS.

The DEIS also contained a Biological Assessment, prepared pursuant to the requirements of Section 7 of the Endangered Species Act (ESA), 16 U.S.C. Section 1536, and the applicable implementing regulations. The Assessment set forth EPA's preliminary determination that the site designation of the Palm Beach Harbor ODMDS and Port Everglades Harbor ODMDS will not affect any threatened or endangered species under the purview of the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (FWS). EPA sought comments from NOAA Fisheries regarding the site designation and EPA's preliminary determination. In a May 24, 2004 letter, NOAA Fisheries concluded that adverse effects to whales are unlikely to occur from this project and that no effects to the shortnose sturgeon or smalltooth sawfish are likely to occur from the project.

In addition, the DEIS contained an assessment of the potential impacts on Essential Fish Habitat (EFH). Pursuant to Section 305 of the Magnuson-Stevens

Fishery Conservation and Management Act 16 U.S.C. Section 1855, EPA provided NOAA Fisheries a copy of the EFH Assessment thereby initiating official consultation. In a May 6, 2004 letter, NOAA Fisheries provided comments on the EFH Assessment and requested a revised EFH Assessment prior to providing EFH conservation recommendations. EPA will develop a revised EFH Assessment following NOAA Fisheries recommendations and include it as an appendix to the Final EIS.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designations for consistency with the State of Florida's (the State) approved coastal management program. EPA has determined that the designation of the proposed sites is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the proposed sites on the State's coastal zone. EPA will take the State's comments into account in preparing the final EIS for the sites, in determining whether the proposed sites should be designated, and in determining whether restrictions or limitations should be placed on the use of the sites, if they are designated.

In a letter dated June 7, 2004, the Florida Department of State agreed that it is unlikely that the proposed designations will affect any archaeological or historic resources listed, or eligible for listing, in the *National Register of Historic Places*, or otherwise of significance in accordance with the National Preservation Act of 1966 (Public Law 89-6654), as amended.

The proposed action discussed in the DEIS is the permanent designation for continuing use of ocean disposal sites offshore Palm Beach Harbor and Port Everglades Harbor, Florida. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation

of the ODMDSs is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the Palm Beach Harbor and Port Everglades Harbor area. The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for its own actions. This will include an evaluation of disposal alternatives.

For the proposed ODMDSs, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria set forth in the Ocean Dumping Regulations (40 CFR 220–229) and the COE regulations (33 CFR 209.120 and 335–338). The COE issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits to applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The DEIS discusses the need for these site designations and examines ocean disposal site alternatives to the proposed actions. Non-ocean disposal options have also been examined in the Disposal Area Studies for Palm Beach Harbor and Port Everglades Harbor, prepared by the COE and included as appendices to the DEIS. Alternatives to ocean disposal may include upland disposal within the port areas, or utilization of dredged material for beneficial use such as beach re-nourishment. The studies concluded that upland disposal in the intensively developed port areas is not feasible. Undeveloped areas within cost-effective haul distances are environmentally valuable in their own right. Beach placement is limited to predominately sandy material.

The following ocean disposal alternatives were evaluated in the DEIS:

#### *1. Alternative Sites on the Continental Shelf*

In the Palm Beach Harbor and Port Everglades Harbor nearshore area, hardgrounds supporting coral and algal communities are concentrated on the continental shelf. Disposal operations on the shelf could adversely impact this reef habitat. Because the shelf is narrow, the transport of dredged materials for disposal beyond the shelf is both

practical and economically feasible. Therefore, alternative sites on the continental shelf are not desirable.

#### *2. Designated Interim Sites*

Two interim sites were designated for Palm Beach Harbor, one of which is located nearshore at the port entrance and the other is located approximately 2.9 nmi (4.5 km) offshore. Following discussions with the State of Florida, a zone of siting feasibility was established, eliminating from consideration any areas within 3 nautical miles of shore to avoid direct impact to natural reefs in the area. As a result, both Palm Beach Harbor interim sites were not considered further.

The interim site for Port Everglades is located 1.7 nmi (3.2 km) offshore. A 1984 survey conducted by the EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred due to the movement of fine grained material associated with disposed dredged material. In light of the survey findings, disposal at the Port Everglades interim site was discontinued and the site was eliminated from further consideration.

#### *3. Alternative Sites Beyond the Continental Shelf*

Alternative sites beyond the continental shelf considered for Palm Beach Harbor include the 3 mile site, the 4.5 mile site and the 9 mile site. The 4.5 mile site is approximately one square mile in size and is located within the eastern portion of the 3 mile site. The 3 mile site is four square miles in size. The 3 mile site was dropped from further consideration in favor of the 4.5 mile site as it was determined that a site four square miles in size was not necessary at the depths at this location. The 9 mile site is 4 square miles in size. The deeper depths at the 9 mile site result in a larger disposal footprint, due to greater dispersion, necessitating a larger 4 square mile disposal site. Both the 4.5 mile site and the 9 mile site were considered in the DEIS.

Alternative sites beyond the continental shelf considered for the Port Everglades Harbor include the 4 mile site and the 7 mile site. The 4 mile site is approximately one square mile in size whereas the 7 mile site is two square miles in size. The deeper depths at the 7 mile site result in a larger disposal footprint necessitating a larger 4 square mile disposal site. Both the 4 mile site and the 7 mile site were considered in the DEIS.

#### *4. No Action*

The No-Action Alternative would not provide acceptable EPA-designated ocean disposal sites for use by the COE or other entities for the disposal of dredged material. Without final-designated disposal sites, the maintenance of the existing Federal Navigation Projects at Palm Beach Harbor and Port Everglades Harbor would be adversely impacted with subsequent effects upon the local and regional economies. Interim designated ODMDSs are not available. Alternative dredged material disposal methods would be required or the dredging and dredged material disposal discontinued. In the absence of an EPA designated ocean dredged material disposal site, the COE could select an alternative pursuant to Section 103 of MPRSA. In such cases, the ocean site selected for disposal would be evaluated according to the criteria specified in Section 102(a) of MPRSA and EPA's Ocean Dumping Regulation and Criteria 40 CFR part 228, and EPA concurrence is required. A site so selected can be used for five years without EPA designation, and can continue to be used for another five years under limited conditions. Accordingly, the No-Action alternative would not provide a long-term management option for dredged material disposal.

#### *5. Preferred Alternative*

The preferred site near Palm Beach Harbor proposed for ODMDS designation is an area approximately 1 square nautical mile (nmi<sup>2</sup>) located east northeast of the Lake Worth Inlet and approximately 4.5 nmi offshore. The preferred site at Port Everglades Harbor proposed for ODMDS designation is an area approximately 1 nmi<sup>2</sup> located east northeast of Port Everglades and approximately 4 nmi offshore. These sites were found to comply with the criteria for evaluation of ocean disposal sites established in 40 CFR Sections 228.5 and 228.6 of EPA's Ocean Dumping Regulations. No significant impacts to critical resource areas are expected to result from designation of either of these sites. Similar types of impacts are expected from these sites as those located further offshore. However, these sites are expected to result in less areal impact as a result of their shallower depth. The preferred sites would require significantly less consumption of resources and would result in significantly less air emissions than the offshore sites. In addition, monitoring of the preferred sites would be less costly to the federal government and less difficult than the offshore sites.

Therefore, these sites were selected as the preferred alternatives.

The DEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

#### D. Proposed Site Designations

The proposed site for Palm Beach Harbor is located east of Palm Beach, Florida, the western boundary being 4.3 nmi offshore. The proposed ODMDS occupies an area of about 1 nmi<sup>2</sup>, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 525 to 625 feet. The coordinates of the Palm Beach Harbor ODMDS proposed for final designation are as follows:

26°47'30" N.	79°57'09" W.;
26°47'30" N.	79°56'02" W.;
26°46'30" N.	79°57'09" W.; and
26°46'30" N.	79°56'02" W.

Center coordinates are 26°47'00" N. and 79°56'35" W.

The proposed site for Port Everglades Harbor is located east of Fort Lauderdale, Florida, the western boundary being 3.8 nmi offshore. The proposed ODMDS occupies an area of about 1 nmi<sup>2</sup>, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 640 to 705 feet. The coordinates of the Port Everglades Harbor ODMDS proposed for final designation are as follows:

26°07'30" N.	80°02'00" W.;
26°07'30" N.	80°01'00" W.;
26°06'30" N.	80°02'00" W.; and
26°06'30" N.	80°01'00" W.

Center coordinates are 26°07'00" N. and 80°01'30" W. All coordinates utilize the North American Datum of 1983 (NAD83).

#### E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where

feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed sites conform to the five general criteria.

In addition to these general criteria in §§ 228.5 and 228.6 lists the eleven specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these eleven criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed sites are reviewed below in terms of these eleven criteria (the DEIS may be consulted for additional information).

##### 1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary, center coordinates, water depth and distance from coast of the proposed sites are given above.

##### 2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The most active breeding and nursery areas are located in inshore waters, along adjacent beaches, or in nearshore reef areas. While breeding, spawning, and feeding activities may take place near the proposed ODMDSs, these activities are not believed to be confined to, or concentrated in, these areas. While many marine species may pass through the proposed ODMDSs, passage is not geographically restricted to these areas.

##### 3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed disposal sites for Palm Beach Harbor and Port Everglades are located approximately 4.5 nmi and 4.0 nmi offshore, respectively. The nearest beaches are located on the shorelines west of the sites. Because of the distance of the proposed sites from the shoreline and the expected localized effects at the disposal sites, it is unlikely that dredged material disposal at either of the proposed sites would adversely affect coastal beaches. Amenity areas in the vicinity of the proposed sites include artificial and natural reefs. The proposed disposal sites for Palm Beach Harbor and Port Everglades are located approximately 2.6 nmi and 3.0 nmi from the outer reef, respectively. Both proposed sites are located at least 2.3 nmi from the nearest artificial reef.

Currents in the vicinity trend alongshore in a general north-south orientation. Modeling performed by the COE indicates that disposed material will not impact these natural 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 (40 CFR 228(a)(4))

The only material to be placed at the proposed ODMDSs will be dredged material that meets the EPA Ocean Dumping Criteria in 40 CFR parts 220 through 229. No beach quality material is proposed to be transported to the proposed ODMDSs. The proposed sites are expected to be used for routine maintenance of the respective Harbor Projects. Annual average disposal volumes of 50,000 cubic yards of material are expected at each site. Dredged material from Port Everglades Harbor is expected to have a solids content of 60 to 70 percent solids by weight with a grain size of 38 to 5 percent of the grains finer than sand by weight. Dredged material from Palm Beach Harbor is expected to have solids content of 80 to 85 percent solids by weight with a grain size of 6 percent finer than sand. It has been demonstrated by the COE that the most cost effective method of dredging is clamshell/barge dredging for Palm Beach Harbor and hopper dredging for Port Everglades Harbor. Additional foreseen use of the Port Everglades Harbor site could be the Federal Port Everglades Deepening Project or use by the U.S. Navy in Port Everglades. The Deepening Project has not yet been authorized and the Navy project has not yet been permitted. The disposal of dredge material at the proposed sites will be conducted using a near instantaneous dumping type barge or scow.

##### 5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance and monitoring of the proposed sites is feasible. Survey vessels, aircraft overflights, or automated Geographic Positioning Systems (GPS) surveillance systems are feasible surveillance methods. The depths at these sites make conventional ODMDS monitoring techniques difficult to utilize. A draft Site Management and Monitoring Plan (SMMP) for each ODMDS has been developed and was included in an appendix in the DEIS. The SMMPs establish a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMPs may be modified for cause by EPA.

**6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))**

Prevailing currents parallel the coast and are generally oriented along a north-south axis. Northerly flow predominates. Mean surface currents range from 10 to 100 cm/sec depending on direction with maximum velocities up to 530 cm/sec. Current speeds are lower and current reversals more common in near-bottom waters. Mean velocities of 20 cm/sec and maximum velocities of 130 cm/sec have been measured for near-bottom waters in the area. Dredged material dispersion studies conducted by the COE for both short (hours) and long-term (months) transport of material disposed at the proposed Palm Beach Harbor and Port Everglades Harbor sites indicate little possibility of disposed material affecting near-shore reefs in the areas of the disposal sites.

**7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))**

There are no current or previous discharges within the proposed ODMDSs. There are two formerly designated interim-designated ODMDSs near Palm Beach Harbor. Use of these sites was discontinued by the implementation of the Water Resources Development Act of 1992. The disposal of 5.2 million cubic yards of dredged material from Palm Beach Harbor occurred between 1950 and 1983 in the interim sites. The characteristics of the dredged material were poorly graded sand with traces of shell fragments. The existing EPA interim-designated ODMDS at Port Everglades Harbor is located approximately 2.5 nmi west-southwest of the proposed site. The disposal of 220,000 cubic yards of dredged material occurred in this site between 1952 and 1982. The characteristics of the disposed dredged material were organic silt with some clay. A 1984 survey conducted by EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred because of the movement of fine material associated with the disposal of dredged material at the site. In light of the survey findings, disposal at the Port Everglades interim site was discontinued.

There are two wastewater ocean outfall discharges in the vicinity of each proposed ODMDS. The nearest outfall to either of the proposed sites is 11 miles. The effluent from wastewater outfalls

has undergone secondary treatment and chlorination. Significant adverse impacts to the marine environment have not been documented in association with either of these offshore wastewater outfalls. Any effects from these discharges would be local and predominately in a north-south direction due to prevailing currents. Therefore, these discharges should not have any effect within the proposed sites.

**8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))**

The infrequent use of the proposed sites should not significantly disrupt either commercial shipping or recreational boating. Commercial and recreational fishing activities are concentrated in inshore and nearshore waters. No mineral extraction, desalination, or mariculture activities occur in the immediate area. Scientific resources present near the Port Everglades Harbor site include the South Florida Ocean Measurement Center (SFOMC, formerly the South Florida Testing Facility). The SFOMC is located 1.5 nmi south of the proposed site. Interference with activities at the SFOMC is not expected.

**9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))**

Baseline surveys conducted for the Palm Beach Harbor and the Port Everglades Harbor ODMDSs show the water quality and other environmental characteristics of the proposed ODMDSs to be typical of the Atlantic Ocean. Salinity, dissolved oxygen, and transmissivity (water clarity) data indicated water masses over the sites were similar to water masses in open ocean waters and deviated little between sites. Macroinfaunal samples were dominated in numbers by annelids and arthropods. Water quality at the proposed ODMDSs is variable and is influenced by frequent Florida Current intrusions of offshore oceanic waters, and periodic upwelling of deep ocean waters. The proposed disposal sites lie on the continental slope in an area traversed by the western edge of the Florida Current. The location of the western edge of the current determines to a large extent whether waters at the site are predominantly coastal or oceanic. Frequent intrusions or eddies of the Florida Current transport oceanic waters over the continental shelf in the

vicinity of the proposed ODMDSs. Periodic upwelling/downwelling events associated with wind stress also influence waters in the area.

No critical habitat or unique ecological communities have been identified within or adjacent to the proposed sites.

**10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))**

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity of either proposed sites.

**11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))**

Due to the proximity of proposed sites to entrance channels, the cultural resource that has the greatest potential for impact would be shipwrecks. Sidescan sonar surveys of the proposed sites were conducted which should have identified any potential shipwrecks. No such features were noted in sidescan sonar or video surveys of the proposed disposal sites. No natural or cultural features of historical importance have been identified at either site proposed for designation in this rule. The Florida Department of State Division of Historical Resources was consulted and they determined that it is unlikely that designation of the ODMDSs would affect archaeological or historical resources eligible for listing in the *National Register of Historic Places*, or otherwise of significance.

**F. Site Management**

Site management of the proposed ODMDSs is the responsibility of EPA in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA Region 4 assumes overall responsibility for site management. Development of Site Management Plans is required by the MPRSA prior to final designation. Draft Site Management and Monitoring Plans (SMMPs) for the proposed ODMDS were developed as a part of the process of completing the DEIS. The plans provide procedures for both site management and for the monitoring of effects of disposal activities. The SMMPs are intended to be flexible and may be modified by the EPA for cause.

**G. Proposed Action**

The DEIS concludes that the proposed sites may appropriately be designated

for use. The proposed sites are consistent with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Palm Beach Harbor and Port Everglades Harbor sites as EPA-approved ODMDSs is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

## H. Statutory and Executive Order Reviews

### 1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed action does not meet the definition of a "significant regulatory action" under E.O. 12866 as described above and is therefore not subject to OMB review.

### 2. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501,

*et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

### 3. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act 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. For the purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (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. EPA has determined that this action will not have a significant adverse economic impact on small entities because the proposed ocean disposal site designation does not regulate small entities. The site designations will only have the effect of providing a long term, environmentally acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis.

### 4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not

apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this proposed rule. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this proposed rule.

### 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that 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 the various levels of government."

This proposed rule does not have federalism implications. It will 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 the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the designation of two

ocean disposal sites for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. However, EPA did consult with State and local government representatives in the development of the DEIS and through solicitation of comments on the DEIS. In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

**6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. This proposed rule designates ocean dredged material disposal sites and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal officials. Thus, Executive Order 13175 does not apply to this rule.

**7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks**

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a

disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

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

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing 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 EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment

in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

**List of Subjects in 40 CFR Part 228**

Environmental Protection, Water Pollution Control.

Dated: July 12, 2004.

**J.I. Palmer, Jr.,**

*Regional Administrator for Region 4.*

In consideration of the foregoing, Subchapter H of chapter I of title 40 is proposed to be amended as set forth below:

**PART 228—[AMENDED]**

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

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

2. Section 228.14 is amended by removing and reserving paragraphs (h)(3), (h)(4), and (h)(5).

3. Section 228.15 is amended by adding paragraphs (h)(21) and (h)(22) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(h) \* \* \*

(21) Palm Beach Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°47'30"N., 79°57'09"W.; 26°47'30"N., 79°56'02"W.; 26°46'30"N., 79°57'09"W.; 26°46'30"N., 79°56'02"W. Center coordinates are 26°47'00"N and 79°56'35"W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 525 to 625 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(22) Port Everglades Harbor, FL Ocean Dredged Material Disposal Site.



(i) Location (NAD83): 26°07'30"N., 80°02'00"W.; 26°07'30"N., 80°01'00"W.; 26°06'30"N., 80°02'00"W.; 26°06'30"N., 80°01'00"W. Center coordinates are 26°07'00"N and 80°01'30"W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 640 to 705 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 04-17375 Filed 7-29-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7793-5]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed notice of intent to delete the South 8th Street Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the South 8th Street Landfill Superfund Site (Site) located in West Memphis, Crittenden County, Arkansas, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the South 8th Street Landfill Superfund Site without prior notice of intent to delete because we

view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by August 30, 2004.

**ADDRESSES:** Written comments should be addressed to: Vincent Malott, Remedial Project Manager, U.S. EPA Region 6 (6SF-AP), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-8313 or 1-800-533-3508 ([malott.vincent@epa.gov](mailto:malott.vincent@epa.gov)).

**FOR FURTHER INFORMATION CONTACT:** Vincent Malott, Remedial Project Manager, EPA Region 6 (6SF-AP), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-8313 or 1-800-533-3508 ([malott.vincent@epa.gov](mailto:malott.vincent@epa.gov)).

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region 6, Seventh Floor Reception Area, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202-2733, Appointments: (214) 665-6548, Monday-Friday—7:30 a.m. to 4:30 p.m.; West Memphis Public Library, 213 North Avalon, West Memphis, AR 72301, (870) 732-7590, Monday 10 a.m.–8 p.m., Tuesday–Thursday 10 a.m.–7 p.m., Friday 10 a.m.–5 p.m., Saturday 10 a.m.–3 p.m., closed on Sunday; Arkansas Department of Environmental Quality, attention: Masoud Arjmandi, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682-0852, Monday-Friday, excluding holidays, 8 a.m. to 4:30 p.m.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous

waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 20, 2004.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 04-17300 Filed 7-29-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7792-9]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Ralph Gray Trucking Company Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region IX is issuing a notice of intent to delete Ralph Gray Trucking Company Superfund Site (Site) located in Westminster, California, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the California Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under CERCLA.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of Ralph Gray Trucking Company Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct