

Mexico Administrative Code Title 20, Chapter 11, Part 49, Excess Emissions (20.11.49 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities. We are proposing to approve the September 23, 2009 SIP submittal in accordance with the requirements of section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before *March 8, 2010*.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6691, fax (214) 665-7263, e-mail address [shar.alan@epa.gov](mailto:shar.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the Rules Section of this **Federal Register**.

Dated: January 25, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2010-2394 Filed 2-3-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R10-OW-2010-0086; FRL-9109-4]

### Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of the Siuslaw River, OR

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to designate two new ocean dredged material disposal sites near the mouth of the Siuslaw River, Oregon, pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Siuslaw River navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated sites will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

**DATES:** Comments on this proposed rule must be received no later than March 8, 2010.

**ADDRESSES:** For more information on this proposed rule, Docket ID No. EPA-R10-OW-2010-0086 use one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for accessing the

docket and materials related to this proposed rule.

- *E-mail:* [Winkler.Jessica@epa.gov](mailto:Winkler.Jessica@epa.gov).
- *Mail:* Jessica Winkler, U.S.

Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy during normal business hours for the regional library at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553-1289, between the hours of 9 a.m. to 12 p.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-083), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553-7369, e-mail: [winkler.jessica@epa.gov](mailto:winkler.jessica@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### 1. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material in ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of the Siuslaw River, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government .....	U.S. Army Corps of Engineers Civil Works Projects, 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.
Industry and General Public .....	
State, local and tribal governments .....	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to

be affected by this action. For any questions regarding the applicability of this action to a particular person, please

refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## 2. Background

### *a. History of Disposal Sites Offshore of the Siuslaw River, Oregon*

Historically, three ocean dredged material disposal sites, an Interim Site and two selected sites were used by the U.S. Army Corps of Engineers (Corps) for the disposal of sediments dredged from the Siuslaw River navigation project. The "Interim Site," former Site A, was included in the list of approved interim ocean disposal sites for dredged material in the **Federal Register** in 1977 (42 FR 2461), a status superseded by later statutory changes to the MPRSA. Mounding at Site A and concern over the potential for ocean currents to move sediments from Site A back into the dredged channel resulted in a selection of disposal Sites B and C by the Corps pursuant to Section 103 of the MPRSA. That authority allows the Corps to select a site or sites for disposal when a site has not been designated by EPA. The selection of Sites B and C was intended to reduce potential hazards associated with mounding at Site A. The selection of Sites B and C was also intended to increase long-term disposal site capacity near the mouth of the Siuslaw River.

EPA concurred on the selection and approved the Corps' request to continue to use Sites B and C through the end of the 2009 dredging season. Sites B and C, as selected, are not suitable for designation by EPA pursuant to Section 102 of the MPRSA because of mounding taking place in both sites. To provide for sufficient disposal capacity over the long term, EPA proposes to designate two sites, a North Site and a South Site, for the ocean disposal of dredged material near the Siuslaw River in the vicinity of former Sites A, B and C.

The proposed designation of the two ocean disposal sites for dredged material does not mean the Corps or EPA has approved of the use of the sites for open water disposal of dredged material from any specific project. Before disposal of dredged material at either of the proposed Siuslaw River Sites can commence by any person, EPA and the Corps must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if EPA determines that environmental

requirements under the MPRSA have not been met.

### *b. Location and Configuration of Siuslaw River Ocean Dredged Material Disposal Sites*

This action proposes the designation of two Siuslaw River ocean dredged material sites to the north and south, respectively, of the mouth of the Siuslaw River. The coordinates, listed below, and Figure 1, below, show the location of the two proposed Siuslaw River ocean dredged material disposal sites (Siuslaw River ODMD Sites, North and South Sites, or Sites). The configuration of the North Site is expected to allow dredged material disposed in shallower portions of the Site to naturally disperse into the littoral zone and augment shoreline building processes. The proposed designation of two Sites will allow EPA to adaptively manage the Sites to avoid creating mounding conditions that could contribute to adverse impacts to navigation.

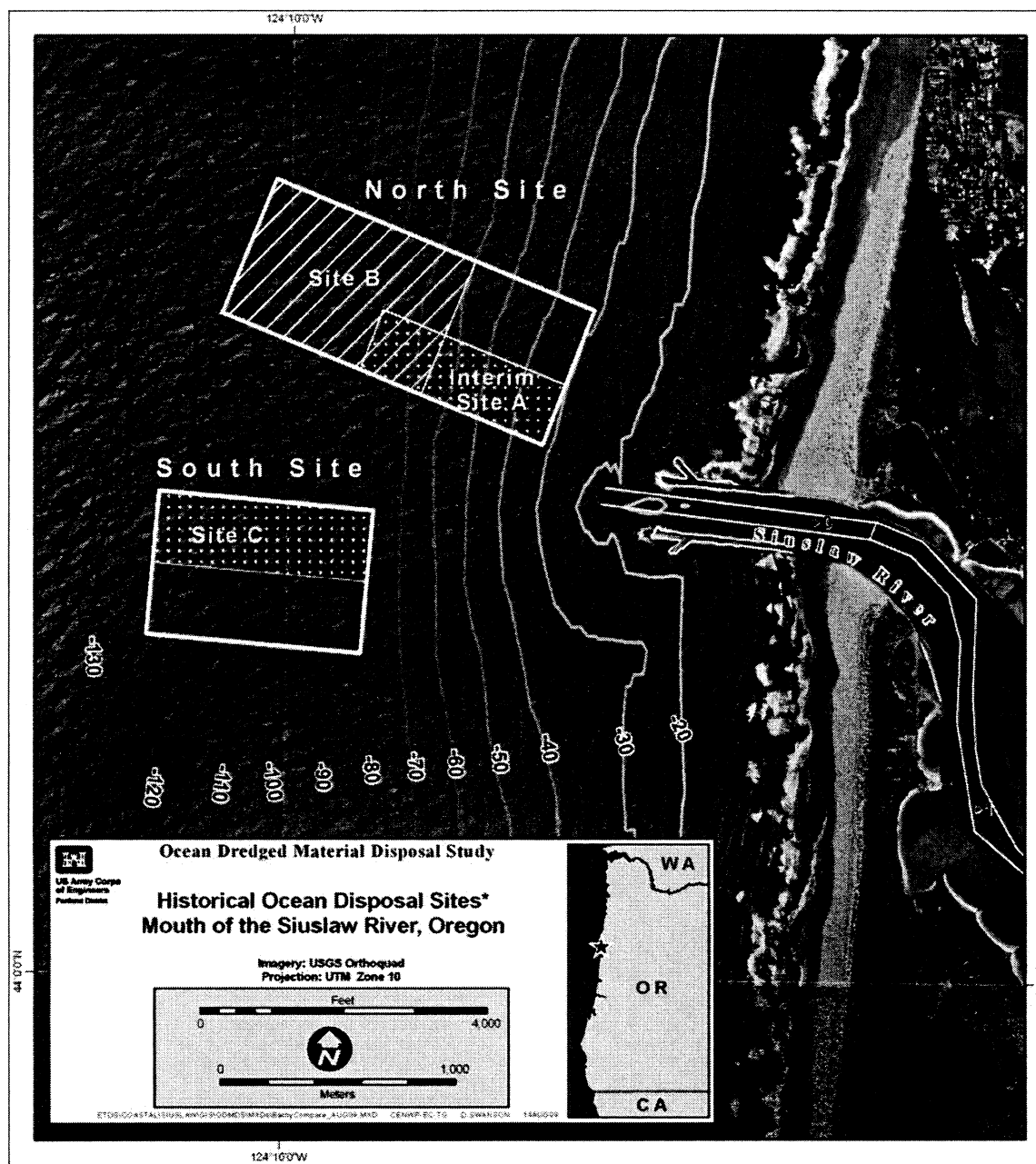
The coordinates for the two Siuslaw River ODMD Sites are, in North American Datum 83 (NAD 83):

North Siuslaw ODMD site	South Siuslaw ODMD site
44°01'31.03" N, 124°10'12.92" W .....	44°00'46.72" N, 124°10'26.55" W.
44°01'49.39" N, 124°10'02.85" W .....	44°01'06.41" N, 124°10'24.45" W.
44°01'31.97" N, 124°09'01.86" W .....	44°01'04.12" N, 124°09'43.52" W.
44°01'13.45" N, 124°09'11.41" W .....	44°00'44.45" N, 124°09'45.63" W.

The two Sites would be situated in approximately 30 to 125 feet of water located to the north and south of the

entrance to the Siuslaw River on the southern Oregon Coast (see Figure 1). The dimensions of the proposed Sites

are 4,800 by 2,000 feet and 3,000 by 2,000 feet, respectively.



**Figure 1. Proposed North and South Siuslaw Sites**

*c. Management and Monitoring of the Sites*

The proposed Siuslaw Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Siuslaw River, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. All persons using the Sites are required to follow a Site Management and Monitoring Plan (SMMP) for the Sites. The SMMP includes management and monitoring requirements to ensure that

dredged materials disposed at the Sites are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the Siuslaw River Sites, in addition to the aforementioned, also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events are timed to minimize interference with other uses of ocean waters in the vicinity of the proposed Sites. The SMMP is available as a draft document for review and comment at this time. The public is

encouraged to take advantage of this opportunity to read and submit comments on the draft SMMP.

*d. MPRSA Criteria*

In proposing to designate these Sites, EPA assessed the proposed Sites against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designations satisfy those criteria. EPA's draft *Siuslaw River, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment (EA)*,

provides an extensive evaluation of the criteria and other related factors for the designation of these Sites. The EA is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft EA.

#### General Criteria (40 CFR 228.5)

(1) *Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).*

EPA reviewed the potential for the Sites to interfere with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The proposed Sites would be located close to the approach to the Siuslaw River entrance channel but are unlikely to cause interference with navigation or other uses near the mouth of the Siuslaw River provided close communication and coordination is maintained with other users, vessel traffic control and the U.S. Coast Guard (USCG). Based on the past history of fishing and disposal operations near the mouth of the Siuslaw River use conflicts are not expected to occur. There is the potential for other recreational users, for example, surfers, boaters, boarders, and divers, to use the near-shore area in the vicinity of the Sites, but EPA does not expect disposal operations at the Sites to conflict with recreationists. The draft SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, site use could be modified according to the SMMP to minimize that conflict.

(2) *Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).*

Based on EPA's review of modeling, monitoring data, analysis of sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach or shoreline from disposal activities at the Sites. The primary impact of

disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c).

Disposal of suitable material meeting the regulatory criteria and deemed environmentally acceptable for ocean dumping will be allowed at the proposed Sites. Most of the dredged material (approximately 97%) to be disposed of at the Sites is expected to be sandy material, while a small amount of material (up to 3% of the material) would be classified as fine-grained. Occasionally, naturally occurring debris may be present in the dredged material. Hopper dredges, which are used for the Corps' annual navigational dredging, are not capable of removing debris from the dredge site. However, specific projects may utilize a clamshell dredge, in which case there is the potential for the occasional placement of naturally occurring debris at the disposal Sites.

Sediment movement in the littoral zone consists of two mechanisms depending upon the size of the sediment. Material that is finer than sand size is carried in suspension in the water and moves offshore relatively quickly. Sediments sand size or coarser may be occasionally suspended by wave action near the bottom, and are moved by bottom currents or directly as bedload. Tidal, wind and wave forces contribute to generating bottom currents, which act in relation to the sediment grain size and water depth to transport sediment.

(3) *The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).*

To ensure site managers can be responsive to the specifics of each dredging season based on dredge schedules and recorded seasonal sediment transport patterns north and south along the Oregon coast, EPA proposes to designate two Sites which nearly double the footprints of former

Section 103 sites B and C. The larger Site footprints are needed to include nearshore areas where material can disperse into the active littoral zone, limit wave effects due to mounding, and keep material from reentering the navigation channel. Use of the shallower portion of the North Site will facilitate increased sediment transport thereby increasing long-term site capacity. Preferential utilization of the shallow portions of the North Site also meets the management goal of keeping material in the littoral system. However, as seen in the 1977 Interim Site, mounding could occur if too much material is placed too quickly in shallow water. The designation of multiple sites with deeper areas within the sites, allows site managers to be responsive to annual and long-term sediment transport patterns. Effective monitoring of the Sites is necessary and required. EPA will require annual bathymetric surveys for each Site to monitor each Site for site capacity and potential mounding concerns. These surveys will inform the active management of the proposed Sites.

(4) *EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).*

Locations off the continental shelf in the Pacific Ocean are generally inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to the type of frequent disturbance events that are typical of dredged material disposal in ocean waters. The proposed Sites will incorporate historic disposal locations within the footprint of each Site and will not be located off the continental shelf. Disposal off the continental shelf would remove natural sediments from the nearshore littoral transport system, a system that functions with largely non-renewable quantities of sand in Oregon. Some of the material disposed at the proposed Sites is expected to be available to the littoral system. The loss of the present volumes of Siuslaw River dredged material if disposed off of the continental shelf would be unlikely to result in disruption of the mass balance of the existing littoral system but keeping this material in the littoral system with the potential to sustain a dynamic equilibrium along the Oregon coast is considered a benefit.

#### Specific Criteria (40 CFR 228.6)

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

EPA does not anticipate that the geographical position, including the depth, bottom topography and distance from the coastline in the vicinity of the proposed Sites will cause adverse effects to the marine environment. As EPA understands the currents at the proposed Sites and the influence of those currents on the movement of material in the area, there is a high likelihood that some of the material disposed at the Sites, especially within the shallower portion of the North site, will be transported to the littoral sediment circulation system.

To help avoid adverse mounding at the Sites, site management may include establishing "cells" along the nearshore portions of each Site and assigning numbers of "dumps" to each cell to minimize material accumulation and avoid excessive or persistent mounding. Disposal may also alternate as necessary between the two Sites to allow for maximum dispersal of material and minimal impact to each Site.

(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 proposed Sites are not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. Near the Sites, a variety of pelagic and demersal fish species, including salmon, as well as shellfish, are found. The benthic fauna at the sites is common to nearshore, sandy, wave-influenced regions of the Pacific Coast in Oregon and Washington.

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

The Sites, although located in close proximity to the Siuslaw River navigation channel, and near the northern boundary of the Oregon Dunes National Recreation Area, are located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. Two public recreation areas located to the north of the Siuslaw River, Heceta Beach Park and Harbor Vista Park, are not expected to be impacted by the designation of the Sites. Transportation of dredges or barges to and from the Sites to dispose of dredged material will be coordinated to avoid disturbance of other activities near the Siuslaw River entrance channel. There are no rocks or pinnacles in the vicinity of either Site. The Sites are sized and located to provide long-term capacity for the disposal of dredged material without causing any impacts to the wave environment at, or near, the Sites. Site monitoring and adaptive

management are components of the proposed SMMP.

(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 228.6(a)(4)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material or characterized by chemical and biological testing and found suitable for disposal into ocean waters will be the only material allowed to be disposed of at the Sites. No material defined as "waste" under the MPRSA will be allowed to be disposed of at the Sites. The dredged material to be disposed of at the Sites will be predominantly marine sand, far removed from known sources of contamination. Generally, disposal is expected to occur from a hopper dredge, in which case, material will be released just below the surface and the disposal vessel will be required to be under power and to slowly transit the disposal location during disposal. This method of release is expected to spread material at the Sites to minimize mounding and to minimize impacts to the benthic community and to species at the Sites at the time of a disposal event.

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

EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small surface research vessels. The Sites are accessible for bathymetric and side-scan sonar surveys. At a minimum, annual bathymetric surveys will be conducted at each of the Sites to confirm that no unacceptable mounding is taking place within the Sites or in their immediate vicinity.

(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)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the Sites indicate that the marine sands and fluvial gravels from the Siuslaw River distribute away from the river mouth rapidly. The beaches do not show significant accretion or loss. The bottom current records suggest a bias in transport to the north. Fine grained material tends to remain in suspension and to experience rapid offshore transport compared to other sediment sizes. Sediment transport of sand-sized or coarser material tends to move directly as bedload, but is occasionally suspended by wave action near the seafloor. The proposed Sites are not expected to change these characteristics.

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

Portions of the two proposed Sites have been historically used for disposal activity. Disposal of dredged material is not expected to result in unacceptable environmental degradation at the Sites or in the vicinity of the Sites, however mounding will be closely monitored in those previously used portions and preferential use of the shallower portions of the North Site is expected. The proposed SMMP includes monitoring and adaptive management measures to address potential mounding issues.

(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 proposed Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Disposals at the Sites will be managed according to the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the Sites. Commercial and recreational fishing and commercial navigation are the primary concerns for which such timing will be needed. EPA is not aware of any plans for mineral extraction offshore of the Siuslaw River at this time. EPA would expect to revise the SMMP if necessary in the event wave energy projects or other renewable or traditional energy projects were proposed and potential conflicts seemed likely. Fish and shellfish culture operations are not under consideration for the area. There are no known areas of scientific importance in the vicinity of the Sites.

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

EPA has not identified any potential adverse water quality impacts from the proposed ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites and based on experience with past disposals near the mouth of the Siuslaw River. Fisheries and benthic data show the ecology of the area to be that of a mobile sand community typical of the Oregon Coast.

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

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been

observed at, or in the vicinity of, the Sites. Material expected to be disposed at the Sites will be uncontaminated marine sands similar to the sediment present at the Sites. Some fine-grained material, finer than natural background, may also be disposed. While this finer-grained material could have the potential to attract nuisance species to the Sites, no such recruitment is known to have taken place in the former Interim Site A or in the 103-selected sites B and C. The proposed SMMP includes biological monitoring requirements, which will act to identify any nuisance species and allow EPA to direct special studies and/or operational changes to address the issue if it arises.

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

No significant cultural features have been identified at, or in the vicinity of, the proposed Sites at this time. EPA is coordinating with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features. EPA expects to complete that coordination effort before making a final decision on the proposed Sites. No shipwrecks have been observed or documented within the proposed Sites or their immediate vicinity.

### 3. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

#### a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the

policy and procedures EPA uses when preparing such environmental review documents. EPA's primary voluntary NEPA document for designating the Sites is the draft *Siuslaw River, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, December 2009* (EA), jointly prepared by EPA and the Corps. The draft EA and its Technical Appendices, which are part of the docket for this action, provide the threshold environmental review for designation of the two Sites. The information from the proposed EA is used extensively, above, in the discussion of the ocean dumping criteria.

#### b. MSA and MMPA

EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service in July, 2009. NMFS is reviewing EPA's EFH assessment and an Endangered Species Act (ESA) Biological Assessment and addendum thereto for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. EPA will not take final action on the proposed Sites until the NMFS review is complete.

#### c. CZMA

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 with the enforceable policies of approved state programs. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP), the approved state program in Oregon, to meet the requirements of the CZMA and submitted that determination to the Oregon Department of Land Conservation and Development (DLCD) for review on January 19, 2010. EPA will not take final action on the proposed Sites until the DLCD review of EPA's consistency determination is complete.

#### d. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or

threatened species or result in the destruction or adverse modification of any critical habitat. EPA prepared a Biological Assessment (BA) to assess the potential effects of designating the two Siuslaw River Sites on aquatic and wildlife species and submitted that BA to the NMFS and USFWS in July, 2009. Subsequent to preparation of the BA, EPA prepared an addendum to the BA, which was submitted in December, 2009. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new Sites and an accumulation of material on the ocean floor when material was disposed at the Sites. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species or critical habitat. EPA will not take final action on the proposed Sites until consultation under the ESA is complete.

#### e. NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) on November 24, 2009, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. EPA did not find any historic properties within the geographic area of the Sites. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the Sites. EPA will not take final action on the proposed Sites until the coordination with the SHPO is complete.

### 4. Statutory and Executive Order Reviews

This rule proposes the designation of two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

*a. Executive Order 12866*

This proposed 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 the Executive Order. We welcome comments on the assessment of this EO.

*b. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community.

*c. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) 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 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 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*d. Unfunded Mandates Reform Act*

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this

action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

*e. Executive Order 13132: Federalism*

This proposed 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the designation of the two ocean dredged material disposal 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 proposed action EPA consulted with tribal officials in the development of this action, particularly as the action relates to potential impacts to historic or cultural resources. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

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

proposed action concerns the designation of two ocean dredged material disposal Sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA. We welcome comments on this proposed action related to this Executive Order.

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

This proposed action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355) because it is not a “significant regulatory action” as defined under Executive Order 12866. We welcome comments on this proposed action related to this Executive Order.

*i. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA’s proposed SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the proposed SMMP. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.



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

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this proposed action related to this Executive Order.

**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: January 25, 2010.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

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

**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 228.15 is amended by adding paragraph (n)(14) to read as follows:

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

\* \* \* \* \*

(n) \* \* \*

(14) Siuslaw River, OR—North and South Dredged Material Disposal Sites.

(i) North Siuslaw River Site.

(A) *Location:* 44°01'31.03" N, 124°10'12.92" W

44°01'49.39" N, 124°10'02.85" W

44°01'31.97" N, 124°09'01.86" W

44°01'13.45" N, 124°09'11.41" W

(B) *Size:* Approximately 1.5 kilometers long and 0.6 kilometers wide.

(C) *Depth:* Ranges from approximately 9 to 35 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13 from the Siuslaw River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(3) Monitoring, as specified in the SMMP, is required.

(ii) South Siuslaw River Site.

(A) *Location:* 44°00'46.72" N, 124°10'26.55" W

44°01'06.41" N, 124°10'24.45" W

44°01'04.12" N, 124°09'43.52" W

44°00'44.45" N, 124°09'45.63" W

(B) *Size:* Approximately 0.9 kilometers long and 0.6 kilometers wide.

(C) *Depth:* Ranges from approximately 24 to 38 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Siuslaw River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(3) Monitoring, as specified in the SMMP, is required.

\* \* \* \* \*

[FR Doc. 2010-2395 Filed 2-3-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 320**

[EPA-HQ-SFUND-2009-0834; FRL-9109-5]

**RIN 2050-AG56**

**Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements Under CERCLA Section 108(b)**

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM); extension of comment period and correction of docket identification number.

**SUMMARY:** EPA is extending, until April 6, 2010, the comment period for the Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on January 6, 2010. In the ANPRM, the Agency identified the classes of facilities within three industries—the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211)—as those for which the Agency plans to develop, as necessary, proposed regulations identifying appropriate financial responsibility requirements under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, the Agency identified the Waste Management and Remediation Services industry (NAICS 562), the Wood Product Manufacturing industry (NAICS 321), the Fabricated Metal Product Manufacturing industry (NAICS 332), the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335), as well as facilities engaged in the recycling of materials containing CERCLA hazardous substances as requiring further study before EPA decides whether to begin the regulatory development process. EPA also wants to clarify the proper Docket Identification Number for the January 2010 ANPRM.

**DATES:** Submit comments on or before April 6, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2009-0834, by one of the following methods:

• *Electronic docket at:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

• *E-mail:* Comments may be sent by electronic mail (e-mail) to [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov), Attention Docket ID No. EPA-HQ-SFUND-2009-0834. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.