

## Environmental Protection Agency

## § 223.3

(5) The quantity of the material to be dumped expressed in tons;

(6) The disposal site;

(7) The times at which the permitted dumping may occur and the effective date and expiration date of the permit;

(8) Special provisions which, after consultation with the Coast Guard, are deemed necessary for monitoring or surveillance of the transportation or dumping;

(9) Such monitoring relevant to the assessment of the impact of permitted dumping activities on the marine environment at the disposal site as the Administrator or Regional Administrator, as the case may be, determine to be necessary or appropriate; and

(10) Any other terms and conditions determined by the Administrator, or Regional Administrator, as the case may be, to be necessary or appropriate, including, without limitation, release procedures and requirements for the continued investigation or development of alternatives to ocean dumping.

(b) General permits shall contain such terms and conditions as the Administrator deems necessary or appropriate.

(c) [Reserved]

[42 FR 60702, Nov. 28, 1977, as amended at 73 FR 74986, Dec. 10, 2008]

### Subpart B—Procedures for Revision, Revocation or Limitation of Ocean Dumping Permits Under Section 104(d) of the Act

#### § 223.2 Scope of these rules.

(a) These rules of practice shall govern all proceedings under section 104(d) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1414(d)), to revise, revoke or limit the terms and conditions of any permit issued pursuant to section 102 of the Act. Section 104(d) provides that “the Administrator \* \* \* may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or for the dumping, or both of specified materials or classes of materials, where he finds that such materials cannot be dumped consist-

ently with the criteria and other factors required to be applied in evaluating the permit application.”

(b) In the absence of specific provisions in these rules, and where appropriate, questions arising at any stage of the proceedings shall be resolved at the discretion of the Presiding Officer, the Regional Administrator, or the Administrator, as appropriate.

#### § 223.3 Preliminary determination; notice.

(a) *General.* Any general, special, emergency, or research permit issued pursuant to section 102 of the Act shall be subject to revision, revocation or limitation, in whole or in part, as the result of a determination by the Administrator or Regional Administrator that:

(1) The cumulative impact of the permittee's dumping activities or the aggregate impact of all dumping activities at the dump site designated in the permit should be categorized as Impact Category I, as defined in § 228.10(c)(1) of this subchapter; or

(2) There has been a change in circumstances relating to the management of the disposal site designated in the permit; or

(3) The dumping authorized by the permit would violate applicable water quality standards; or

(4) The dumping authorized by the permit can no longer be carried out consistent with the criteria set forth in parts 227 and 228.

(b) *Preliminary determination.* Whenever any person authorized by the Administrator or Regional Administrator to (1) periodically review permits pursuant to section 104(d) of the Act or (2) otherwise assess the need for revision, revocation or limitation of a permit makes any of the determinations listed in paragraph (a) of this section with respect to a permit issued pursuant to section 102 of the Act, and additionally determines that revision, revocation or limitation of such permit is warranted, the Administrator or Regional Administrator, as the case may be, shall provide notification of such proposed revision, revocation or limitation to the permittee named in the permit, if any, the public, and any cognizant Federal/

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State agencies pursuant to paragraph (c) of this section.

(c) *Form of notification.* Notice of any proposed revision, revocation or limitation of a permit shall be sent to the permittee by certified mail, return receipt requested, and shall be published and otherwise disseminated in the manner described in § 222.3 (b) through (h).

(d) *Contents of notice.* The notice of any proposed revision, revocation or limitation of a permit issued pursuant to paragraph (b) of this section shall include, in addition to any other materials, the following:

(1) A brief description of the contents of the permit, as set forth in § 223.1;

(2) A description of the proposed revision, revocation, or limitation;

(3) A statement of the reason for such proposed revision, revocation, or limitation; and

(4) A statement that within thirty (30) days of the date of dissemination of the notice, any person may request a public hearing on the proposed revision, revocation or limitation.

[42 FR 60702, Nov. 28, 1977, as amended at 73 FR 74986, Dec. 10, 2008]

#### **§ 223.4 Request for, scheduling and conduct of public hearing; determination.**

(a) *Request for hearing.* Within thirty (30) days of the date of the dissemination of any notice required by § 223.2(b), any person may request the Administrator or Regional Administrator, as appropriate, to hold a public hearing on the proposed revision, revocation or limitation by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the proposed revision, revocation or limitation or to any facts or reasons identified as supporting such revision, revocation or limitation; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received, and the Administrator or Re-

gional Administrator, as appropriate, determines that such request presents genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or Regional Administrator, as the case may be, will set a time and place for a public hearing in accordance with paragraph (c) of this section and will give notice of such hearing by publication in accordance with § 223.3(c). In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of paragraph (a) or that such request does not present genuine issues, he shall advise, in writing, the person requesting the hearing of his determination.

(c) *Time and place of hearing.* Any hearing authorized pursuant to this Section by the Administrator or Regional Administrator, as the case may be, shall be held in the city in which the Environmental Protection Agency Regional Office which issued the permit is located, whenever practicable, and shall be set for the earliest practicable date, but in no event less than thirty (30) days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

(d) *Presiding Officer.* Any hearing convened pursuant to this part shall be conducted by a Presiding Officer, who shall be either a Regional Judicial Officer or a person having the qualifications of the members of the Environmental Appeals Board (described in 40 CFR 1.25(e)) if assigned by the Administrator or the qualifications of a Regional Judicial Officer if assigned by the Regional Administrator, as appropriate. Such person shall be an attorney who is a permanent or temporary employee of the Agency, who is not employed by the Region's or Headquarters's Water Programs Division, Surveillance and Analysis Division, or Enforcement Division, and who has had no connection with the preparation or