

## Environmental Protection Agency

## § 227.15

that they will sink to the bottom and remain in place.

### § 227.13 Dredged materials.

(a) Dredged materials are bottom sediments or materials that have been dredged or excavated from the navigable waters of the United States, and their disposal into ocean waters is regulated by the U.S. Army Corps of Engineers using the criteria of applicable sections of parts 227 and 228. Dredged material consists primarily of natural sediments or materials which may be contaminated by municipal or industrial wastes or by runoff from terrestrial sources such as agricultural lands.

(b) Dredged material which meets the criteria set forth in the following paragraphs (b)(1), (2), or (3) of this section is environmentally acceptable for ocean dumping without further testing under this section:

(1) Dredged material is composed predominantly of sand, gravel, rock, or any other naturally occurring bottom material with particle sizes larger than silt, and the material is found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels; or

(2) Dredged material is for beach nourishment or restoration and is composed predominantly of sand, gravel or shell with particle sizes compatible with material on the receiving beaches; or

(3) *When:* (i) The material proposed for dumping is substantially the same as the substrate at the proposed disposal site; and

(ii) The site from which the material proposed for dumping is to be taken is far removed from known existing and historical sources of pollution so as to provide reasonable assurance that such material has not been contaminated by such pollution.

(c) When dredged material proposed for ocean dumping does not meet the criteria of paragraph (b) of this section, further testing of the liquid, suspended particulate, and solid phases, as defined in § 227.32, is required. Based on the results of such testing, dredged material can be considered to be environ-

mentally acceptable for ocean dumping only under the following conditions:

(1) The material is in compliance with the requirements of § 227.6; and

(2)(i) All major constituents of the liquid phase are in compliance with the applicable marine water quality criteria after allowance for initial mixing; or

(ii) When the liquid phase contains major constituents not included in the applicable marine water quality criteria, or there is reason to suspect synergistic effects of certain contaminants, bioassays on the liquid phase of the dredged material show that it can be discharged so as not to exceed the limiting permissible concentration as defined in paragraph (a) of § 227.27; and

(3) Bioassays on the suspended particulate and solid phases show that it can be discharged so as not to exceed the limiting permissible concentration as defined in paragraph (b) of § 227.27.

(d) For the purposes of paragraph (c)(2) of this section, major constituents to be analyzed in the liquid phase are those deemed critical by the District Engineer, after evaluating and considering any comments received from the Regional Administrator, and considering known sources of discharges in the area.

## Subpart C—Need for Ocean Dumping

### § 227.14 Criteria for evaluating the need for ocean dumping and alternatives to ocean dumping.

This subpart C states the basis on which an evaluation will be made of the need for ocean dumping, and alternatives to ocean dumping. The nature of these factors does not permit the promulgation of specific quantitative criteria of each permit application. These factors will therefore be evaluated if applicable for each proposed dumping on an individual basis using the guidelines specified in this subpart C.

### § 227.15 Factors considered.

The need for dumping will be determined by evaluation of the following factors:

(a) Degree of treatment useful and feasible for the waste to be dumped,

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and whether or not the waste material has been or will be treated to this degree before dumping;

(b) Raw materials and manufacturing or other processes resulting in the waste, and whether or not these materials or processes are essential to the provision of the applicant's goods or services, or if other less polluting materials or processes could be used;

(c) The relative environmental risks, impact and cost for ocean dumping as opposed to other feasible alternatives including but not limited to:

- (1) Land fill;
- (2) Well injection;
- (3) Incineration;
- (4) Spread of material over open ground;
- (5) Recycling of material for reuse;
- (6) Additional biological, chemical, or physical treatment of intermediate or final waste streams;
- (7) Storage.

(d) Irreversible or irretrievable consequences of the use of alternatives to ocean dumping.

### **§ 227.16 Basis for determination of need for ocean dumping.**

(a) A need for ocean dumping will be considered to have been demonstrated when a thorough evaluation of the factors listed in § 227.15 has been made, and the Administrator, Regional Administrator or District Engineer, as the case may be, has determined that the following conditions exist where applicable:

- (1) There are no practicable improvements which can be made in process technology or in overall waste treatment to reduce the adverse impacts of the waste on the total environment;
- (2) There are no practicable alternative locations and methods of disposal or recycling available, including without limitation, storage until treatment facilities are completed, which have less adverse environmental impact or potential risk to other parts of the environment than ocean dumping.

(b) For purposes of paragraph (a) of this section, waste treatment or improvements in processes and alternative methods of disposal are practicable when they are available at reasonable incremental cost and energy expenditures, which need not be com-

petitive with the costs of ocean dumping, taking into account the environmental benefits derived from such activity, including the relative adverse environmental impacts associated with the use of alternatives to ocean dumping.

(c) The duration of permits issued under subchapter H and other terms and conditions imposed in those permits shall be determined after taking into account the factors set forth in this section. Notwithstanding compliance with subparts B, D, and E of this part 227 permittees may, on the basis of the need for and alternatives to ocean dumping, be required to terminate all ocean dumping by a specified date, to phase out all ocean dumping over a specified period or periods, to continue research and development of alternative methods of disposal and make periodic reports of such research and development in order to provide additional information for periodic review of the need for and alternatives to ocean dumping, or to take such other action as the Administrator, the Regional Administrator, or District Engineer, as the case may be, determines to be necessary or appropriate.

### **Subpart D—Impact of the Proposed Dumping on Esthetic, Recreational and Economic Values**

#### **§ 227.17 Basis for determination.**

(a) The impact of dumping on esthetic, recreational and economic values will be evaluated on an individual basis using the following considerations:

- (1) Potential for affecting recreational use and values of ocean waters, inshore waters, beaches, or shorelines;
- (2) Potential for affecting the recreational and commercial values of living marine resources.

(b) For all proposed dumping, full consideration will be given to such nonquantifiable aspects of esthetic, recreational and economic impact as:

- (1) Responsible public concern for the consequences of the proposed dumping;