

## § 227.16

## 40 CFR Ch. I (7–1–14 Edition)

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;

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(2) Consequences of not authorizing the dumping including without limitation, the impact on esthetic, recreational and economic values with respect to the municipalities and industries involved.

### § 227.18 Factors considered.

The assessment of the potential for impacts on esthetic, recreational and economic values will be based on an evaluation of the appropriate characteristics of the material to be dumped, allowing for conservative rates of dilution, dispersion, and biochemical degradation during movement of the materials from a disposal site to an area of significant recreational or commercial value. The following specific factors will be considered in making such an assessment:

(a) Nature and extent of present and potential recreational and commercial use of areas which might be affected by the proposed dumping;

(b) Existing water quality, and nature and extent of disposal activities, in the areas which might be affected by the proposed dumping;

(c) Applicable water quality standards;

(d) Visible characteristics of the materials (e.g., color, suspended particulates) which result in an unacceptable esthetic nuisance in recreational areas;

(e) Presence in the material of pathogenic organisms which may cause a public health hazard either directly or through contamination of fisheries or shellfisheries;

(f) Presence in the material of toxic chemical constituents released in volumes which may affect humans directly;

(g) Presence in the material of chemical constituents which may be bioaccumulated or persistent and may have an adverse effect on humans directly or through food chain interactions;

(h) Presence in the material of any constituents which might significantly affect living marine resources of recreational or commercial value.

### § 227.19 Assessment of impact.

An overall assessment of the proposed dumping and possible alternative methods of disposal or recycling will be

made based on the effect on esthetic, recreational and economic values based on the factors set forth in this subpart D, including where applicable, enhancement of these values, and the results of the assessment will be expressed, where possible, on a quantitative basis, such as percentage of a resource lost, reduction in use days of recreational areas, or dollars lost in commercial fishery profits or the profitability of other commercial enterprises.

## Subpart E—Impact of the Proposed Dumping on Other Uses of the Ocean

### § 227.20 Basis for determination.

(a) Based on current state of the art, consideration must be given to any possible long-range effects of even the most innocuous substances when dumped in the ocean on a continuing basis. Such a consideration is made in evaluating the relationship of each proposed disposal activity in relationship to its potential for long-range impact on other uses of the ocean.

(b) An evaluation will be made on an individual basis for each proposed dumping of material of the potential for effects on uses of the ocean for purposes other than material disposal. The factors to be considered in this evaluation include those stated in subpart D, but the evaluation of this subpart E will be based on the impact of the proposed dumping on specific uses of the ocean rather than on overall esthetic, recreational and economic values.

### § 227.21 Uses considered.

An appraisal will be made of the nature and extent of existing and potential uses of the disposal site itself and of any areas which might reasonably be expected to be affected by the proposed dumping, and a quantitative and qualitative evaluation made, where feasible, of the impact of the proposed dumping on each use. The uses considered shall include, but not be limited to:

(a) Commercial fishing in open ocean areas;

(b) Commercial fishing in coastal areas;

(c) Commercial fishing in estuarine areas;