

(c) *Notice.* The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect via Broadcast Notice to Mariners.

Dated: October 15, 1996.

E.E. Page,

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.*

[FR Doc. 96-30066 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 165

[CGD01-95-141]

RIN 2115-AA97

#### **Safety Zone: Sunken Vessel EMPIRE KNIGHT, Boon Island, Maine**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the regulations to establish a permanent safety zone. This action is necessary to ensure that the stern portion of the sunken M/V EMPIRE KNIGHT, and its cargo of mercury, is not disturbed by dredging, diving, salvage, anchoring, fishing, or other activity. This rulemaking is needed to protect the environment, the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck.

**EFFECTIVE DATE:** This final rule is effective August 23, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Chief, Response & Planning Department, U.S. Coast Guard Marine Safety Office, 312 Fore Street, Portland, Maine between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (207) 780-3251, extension 114.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Jeff Gafkjen, Response & Planning Department, U.S. Coast Guard Marine Safety Office, P.O. Box 108, Portland, Maine 04112-0108 at (207) 780-3251, extension 114.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Purpose**

In February of 1944, the M/V EMPIRE KNIGHT, a 428 foot British freight ship ran aground on Boon Island Ledge, Maine, and later broke into two sections. The stern section, which includes the ship's cargo holds, sank in approximately 260 feet of water, one and one-half miles from Boon Island Ledge. In August of 1990, the Coast

Guard Captain of the Port, Portland, Maine (COTP) became aware of the existence of a "Proposed" Plan of Stowage for the wreck of the M/V EMPIRE KNIGHT which indicated that 221 flasks containing mercury may have been loaded into cargo hold number 5. The COTP issued a Captain of the Port Order to a company then conducting salvage operations, requiring them to refrain from further salvage activity until the situation could be more thoroughly assessed.

Over the next year, the COTP convened an Incident Specific Regional Response Team (RRT) consisting of representatives from the Maine Department of Environmental Protection, the New Hampshire Department of Environmental Services, the Maine Department of Marine Resources, the New Hampshire Department of Fish and Game, the U.S. Environmental Protection Agency, the U.S. National Oceanic and Atmospheric Administration, and the U.S. Coast Guard to gather information about the M/V EMPIRE KNIGHT and its cargo, and to identify possible courses of action.

During the summer of 1991, the Maine Department of Marine Resources collected samples of bottom sediment around the stern portion of the EMPIRE KNIGHT to determine if mercury was present and, if so, to what extent. Laboratory analyses of the samples revealed levels of mercury consistent with background levels with some exceptions, rendering them inconclusive on whether mercury had been on board the M/V EMPIRE KNIGHT at the time of its sinking.

In the spring of 1993, the COTP, in consultation with the RRT, determined that the possible presence of mercury on board the M/V EMPIRE KNIGHT constituted an imminent and substantial threat to the environment. The RRT agreed that an on site assessment of the stern section of the EMPIRE KNIGHT was necessary to determine the presence of the mercury, and to assess whether it would be necessary, feasible, and safe to remove it if on board.

In August, 1993, the COTP, as the Federal On Scene Coordinator, initiated a \$6.8 million emergency site assessment and removal operation. The presence of mercury on board was quickly confirmed. All 221 manifested mercury flasks were located in cargo hold number 5 and subsequently recovered, but they were found in badly deteriorated condition and were nearly empty. Loose mercury was discovered throughout cargo hold number 5, and approximately 1,230 pounds were recovered. Nearly 2,200 pounds of

mercury-contaminated debris and cargo residue were also recovered.

Extensive sampling and analysis was conducted throughout the operation. Samples included bottom sediments in the vicinity of the stern section of the wreck and various species of fish and shellfish from the area around the vessel. From within cargo hold number 5, samples of the sediment, scrapings off the cargo, and fish and shellfish were taken.

In October, 1993, the operation was suspended due to deteriorating weather conditions. At that time, an estimated 15,000 pounds of mercury remained unaccounted for and is believed to have settled into the sediment, and may have come to rest at a low point of cargo hold number 5.

In February, 1994, the RRT was reconvened by the COTP to consider the results of the sample analyses and to determine the best course of action. The sample analysis results showed that concentrations of mercury were elevated inside cargo hold number 5, but dropped off quickly to background levels in the bottom sediments outside the hold. No contamination of fish or shellfish was identified with the exception of those specimens collected from within cargo hold number 5. The key issue then became the long term fate of mercury in a marine environment. The RRT decided to submit the sample results to NOAA and an independent scientist with a request for an analysis of the available data and scientific literature and to develop a forecast of the long term behavior of the mercury on site.

In August, 1994, a commercial salvage company that had remained prohibited from conducting salvage operations by the Captain of the Port Order, submitted to the COTP a request to lift the order. The company also submitted a request to conduct salvage operations on the wreck of the EMPIRE KNIGHT.

In September, 1994, the RRT was reconvened to consider the reports submitted by NOAA and the independent scientist. While the reports differed in details, they both concluded that the site was currently stable and that the mercury did not pose a substantial threat to the environment. Both reports were written, however, under the presumption that the wreck of the EMPIRE KNIGHT would remain essentially undisturbed with the exception of its gradual decomposition from natural forces. Both reports further agreed that the probability of a catastrophic release of mercury to the environment as a result of activity on or near the EMPIRE KNIGHT was low. The RRT reached the conclusion that the

wreck of the EMPIRE KNIGHT did not meet the condition of "imminent and substantial" threat under CERCLA and that additional emergency response operations would not be conducted. The RRT further agreed to develop a plan for long-term monitoring of the site with the intent of detecting any changing conditions.

In August, 1995, the RRT reconvened to discuss the issue of allowing any type of activity on or near the wreck of the EMPIRE KNIGHT. Consensus was reached that all information currently before the RRT indicated that the predictable risk of activity on the wreck resulting in mercury contamination of the environment was low. It was further agreed that, although the risk of a release was low, the foreseeable consequences of that release could be devastating to the local environment, the public health, and the economy of the region's fisheries. The unanimous recommendation of the RRT was to prohibit any activity on or near the stern section of the wreck of the EMPIRE KNIGHT. The establishment of the safety zone is a result of that meeting.

#### Regulatory History

On November 13, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "SAFETY ZONE: Sunken Vessel EMPIRE KNIGHT, Boon Island, Maine" in the Federal Register (60 FR 56968). This NPRM proposed the establishment of a Safety Zone in the waters of the State of Maine prohibiting all vessels and persons from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations within a 1000 yard radius of the stern portion of the wreck of the M/V EMPIRE KNIGHT except as authorized by the Captain of the Port, Portland, Maine. The NPRM included a request for comments from interested parties. Comments were received and are discussed below. The final rule does not differ from the NPRM.

Good cause exists for providing for this rule to become effective in less than 30 days after Federal Register publication. Any delay encountered in making this rule would be contrary to the public interest as the rule is needed to protect the environment, the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck. It is in the public interest that this final rule is being made effective in less than 30 days after publication.

#### Discussion of Comments and Changes

The Coast Guard received four letters in response to the NPRM. Three of the letters were comments in support of the rulemaking. Two of these supportive comments were from State of Maine intermediaries stating that any activity which would alter conditions of the M/V EMPIRE KNIGHT and which could consequently increase the threat of the spread of the mercury cargo on board should be prevented. The third comment, submitted by a salvage company, expressed concern that the rule did not address future long-term monitoring of the M/V EMPIRE KNIGHT site. Their concurrence with the rule is contingent upon the establishment of a long-term regular sampling program to monitor the inevitable changes over time to conditions at the site and their effect on the containment of the mercury. The Coast Guard agrees that conditions at the site will change over time and that there is a need to monitor those changes and their effect on the fate of the mercury. Accordingly, a sampling and monitoring program has been developed for the site and is in the process of being implemented.

The only objection to the rule, submitted by a salvage company, raised the following issues:

One comment suggested the reports the Coast Guard reviewed provided no scientific basis in support of a permanent safety zone. The Coast Guard disagrees. The scientific reports concluded that for now, the site was stable and the mercury "did not pose a substantial threat" to the environment. The scientific conclusions were based on the presumption that the wreck of the M/V EMPIRE KNIGHT would remain undisturbed with the exception of its gradual decomposition from natural forces. In addition to the scientific reports, the Coast Guard also considered the negative effects on the local economy if consumer confidence in the safety of the area's fisheries was lost. As a result, access to the vessel needs to be regulated. In addition, the injuries that may result from unrestricted recreational and commercial diving in the area due to the attractive nuisance of a copper-laden sunken vessel present a significant safety concern. The Coast Guard has determined a safety zone is necessary to protect the general public from the potential hazards and restrict access to the area.

Therefore, the United States Coast Guard, in consultation with the Incident Specific Regional Response Team, has determined that, although the current level of threat from the mercury cargo is

low, any disturbance of the wreck site, intentional or unintentional, poses an unacceptable risk to the public health, New England area fisheries, actual or perceptual, and the local environment.

Second, the salvage company stated that establishing a permanent safety zone around the wreck of the M/V EMPIRE KNIGHT would cause irreparable harm to the firm by prohibiting them from conducting any future salvage. While the Coast Guard recognizes that its action may impede the ability of this company to conduct salvage, it was necessary to balance that against the potential risk to the environment, human health, and the local economy. The safety zone will continue in force until rescinded by the Captain of the Port (COTP), Portland, Maine.

#### Regulatory Evaluation

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the rulemaking has no significant effect on shipping as it is not located in a shipping channel, and its impact on fishing is minimal because it restricts less than one square mile of the available fishing grounds.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities if a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have significant impact on a substantial number of small entities.

## Collection of Information

This rulemaking contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2.(e) of Commandant Instruction M16474.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new section 165.141 is added to read as follows:

### **§ 165.141 Safety Zone: Sunken vessel EMPIRE KNIGHT, Boon Island, ME.**

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within a 1,000 yard radius of the stern section of the sunken vessel EMPIRE KNIGHT, in approximate position 43°06'19" N, 70°27'09" W, (NAD 1983) and extending from the water's surface to the seabed floor.

(b) *Effective date.* This section is effective on August 23, 1996, twenty-four hours a day, seven days a week.

#### *(c) Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port, Portland, Maine. Innocent transit through the area within the

safety zone is not affected by this regulation and does not require the authorization of the Captain of the Port.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Burton S. Russell,

*Commander U.S. Coast Guard, Captain of the Port, Portland, Maine.*

[FR Doc. 96-30228 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[NM003; AD-FRL-5654-8]

### **Clean Air Act Final Full Approval of Operating Permits Program; the State of New Mexico and Albuquerque/Bernalillo County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is promulgating full approval of the Operating Permits program submitted by the New Mexico Environment Department (NMED) under the signature of the Governor, and separately by the City of Albuquerque/Bernalillo County (the City), for the purpose of complying with Federal requirements for approvable State and local programs to issue operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

**DATES:** This action is effective on January 27, 1997, unless adverse or critical comments are received by December 26, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the submittals and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6PD-R),

1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

New Mexico Environment Department, Harold Runnels Building, room So. 2100, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

City of Albuquerque/Bernalillo County, Environmental Health Department, One Civic Plaza, NW., room 3023, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Wm. Nicholas Stone, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733, telephone 214-665-7226.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Purpose**

#### *Introduction*

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (the Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit Operating Permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On May 19, 1994, EPA proposed interim approval of the Operating Permits program for the State of New Mexico, (See 59 FR 26158 (May 19, 1994)). The EPA received public comment on the proposal and compiled a final Technical Support Document (TSD) responding to those comments and briefly describing and clarifying aspects of the Operating Permits program. The EPA granted final interim approval to the New Mexico program on December 19, 1994. This final interim approval, published November 18, 1994, required the State to correct the statutory defect in criminal fine authority.

On January 10, 1995, EPA proposed interim approval of the Operating Permits program for the City (See 60 FR 2570 (January 10, 1995)). The EPA received public comment on the proposal and compiled a final TSD