

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Motor vehicle pollution, Volatile organic compounds, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 05-3526 Filed 2-23-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL-7876-4]

#### Ocean Dumping; Proposed Site Designation

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Port Royal, South Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Port Royal, South Carolina vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

**DATES:** Comments must be received on or before April 11, 2005.

**ADDRESSES:** Submit your comments by one of the following methods:

(a) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

(b) E-mail: [collins.garyw@epa.gov](mailto:collins.garyw@epa.gov).

(c) Fax: (404) 562-9343.

(d) Mail: Coastal Section, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. ATTN: Gary W. Collins.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Department of the Army, Charleston District Corps of Engineers, 69A Hagood Ave., Charleston, South Carolina 29403-5107.

**FOR FURTHER INFORMATION CONTACT:** Gary W. Collins, (404) 562-9395.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a new site offshore Port Royal, South Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. This site designation is being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

##### B. Regulated Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Royal, South Carolina, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the U.S. Army Corps of Engineers (COE) to transport dredged material for the purpose of disposal into ocean waters and (b) to the COE itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal site may include:

| Category                                  | Examples of potentially regulated entities   |
|---|--|
| Federal Government .....                  | U.S. Army Corps of Engineers Civil Works Projects, U.S. Marine Corps, and Other Federal Agencies.  |
| Industry and General Public .....         | Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.  |
| State, local and tribal governments ..... | Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action, should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with section 103 of the MPRSA and the applicable regulations at 40 CFR parts 220 and 225, and whether you wish to use the sites subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### C. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (See 63 FR 58045 [October 29, 1998], "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.")

EPA, in cooperation with the Charleston District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled "Final Environmental Impact Statement for the Port Royal Ocean Dredged Material Disposal Site Designation." On June 25, 2004, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (69 FR 35597 (June 25, 2004)). Anyone desiring a copy of the EIS may

obtain one from the addresses given above. The public comment period on the final EIS closed on July 26, 2004.

EPA received one comment letter on the Final EIS from the South Carolina Department of Health and Environmental Control. This letter states their findings that the proposed ODMDS would be consistent with the S.C. Coastal Zone Management Program.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State of South Carolina's (the State) approved coastal management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. As stated above, the State agrees with this determination.

This rule proposes the permanent designation for continuing use of the ODMDS near Port Royal, South Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a Port Royal ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Port Royal Sound area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Port Royal ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220–229) and the COE regulations (33 CFR 209.120 and 33 CFR parts 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance

with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (section 102(a)) or conditions of designation (section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean and non-ocean disposal site alternatives to the proposed action. Specific alternatives considered were the two interim ocean sites, sites off the continental shelf, land disposal sites, and sites that might be used for shore protection.

### D. Proposed Site Designation

The proposed site is located approximately 7 nautical miles offshore Bay Point Island, South Carolina. The proposed ODMDS occupies an area of about 1.0 square nautical miles (nmi<sup>2</sup>). Water depths within the area average 36 feet (ft.). The coordinates of the New Port Royal site proposed for final designation are as follows:

|             |             |
|-------------|-------------|
| 32°05.00' N | 80°36.47' W |
| 32°05.00' N | 80°35.30' W |
| 32°04.00' N | 80°35.30' W |
| 32°04.00' N | 80°36.47' W |

### E. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. In this case, locations off the Continental Shelf are not feasible and no environmental benefit would be obtained by selecting such a site instead of that proposed in this action. Historical use of the proposed site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. If, at any time, disposal

operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5 and § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. *Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)).*

The boundary of the proposed site is given above. The northern boundary of the proposed site is located about 7 nmi offshore of Bay Point Island, South Carolina. The site is approximately 1.0 nmi<sup>2</sup> in area. The bottom topography is relatively flat and featureless, with water depths averaging 36 ft.

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)).*

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the proposed site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area. In a letter dated October 23, 2003, the Habitat Conservation Division of National Marine Fisheries Service concurred with our assessment that the proposed action would not have a substantial individual or cumulative adverse impact on essential fish habitat, or fishery resources.

3. *Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).*

The proposed site is located approximately 7 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

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(a)(4)).*

The type of materials to be disposed of within this proposed site is dredged

material as described in type and quantity by section 2 of the FEIS. Between the years 1992 and 2003, approximately 200,000 cubic yards (annual average) have been ocean disposed from this area. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, Appendix B).

5. *Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).*

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the Port Royal ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be reviewed and revised by EPA. A copy of the SMMP may be obtained at any of the addresses given above.

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)).*

A detailed current study, along with fate modelling of dredged material, was not deemed necessary and therefore was not conducted within the proposed site. Transport of disposed material should not present any adverse impacts. In summary, littoral drift is reported to be predominantly southwestward, while nearshore surface currents are derived primarily from wind stress, and are subject to extreme variability.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).*

The proposed ODMDS, as well as past interim sites nearby, has been used to dispose of the material from the Port Royal Sound area since 1956. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

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 location of the proposed ODMDS was selected to avoid interference with commercial shipping. It is not anticipated that the proposed site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)).*

Appropriate water quality and ecological assessments have been performed at the site. The most abundant benthic invertebrates found within the proposed site were the annelid *Polygrodus* sp., the bivalve *Ervilia concentrica*, the polychaete *Prionospio cristata*, annelids in the class Oligochaeta, and the bivalve *Crassinella lunulata*. These five taxa accounted for more than 40 percent of total number of individuals collected. More detailed information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).*

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)).*

There are no known such natural or cultural features of historical importance. As stated in the FEIS, this proposed action has fully complied with both the Archaeological and Historic Preservation Act and the National Historic Preservation Act, as amended.

## F. Site Management

Site management of the Port Royal ODMDS is the responsibility of EPA in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed Port Royal ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be reviewed and revised by the EPA.

## G. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the Port Royal site as an EPA-approved ODMDS is being

published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The Port Royal ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Port Royal, South Carolina vicinity.

## H. Regulatory Assessments

### 1. Executive Order 12866

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### 2. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain,

report, or publicly disclose information to or for a Federal agency.

### 3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, by publication of this Rule, the Regional Administrator certifies that this action will not have a significant impact on a substantial number of small entities and therefore does not necessitate preparation of a Regulatory Flexibility Analysis.

### 4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this proposed rule. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this proposed rule.

### 5. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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 the various levels of government."

This proposed rule does not have federalism implications. It will 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 the various levels of government, as specified in Executive Order 13132. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this proposed action and no concerns were raised.

### 6. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this proposed rule.

#### 7. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

#### 8. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### 9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing 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 rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### 10. Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

#### List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 7, 2005.

**J. I. Palmer, Jr.,**

*Regional Administrator for Region 4.*

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended 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 (h)(23) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(23) Port Royal, SC; Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 32°05.00' N., 80°36.47' W.; 32° 05.00' N., 80°35.30'

W.; 32°04.00' N., 80° 35.30' W.; 32°04.00' N., 80°36.47' W.

(ii) Size: Approximately 1.0 square nautical miles.

(iii) Depth: Averages 36 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Port Royal, South Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 05-3525 Filed 2-23-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7874-8]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion at the Peterson/Puritan, Inc. site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 1 announces its intent to delete a portion of the Peterson/Puritan, Inc. Superfund Site (the Site), owned by Macklands Realty, Inc. and Berkeley Realty, Co. (herein Macklands and Berkeley properties), from the National Priorities List (NPL). EPA requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion at Operable Unit Two (OU 2) of the Peterson/Puritan, Inc. Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List 60 FR 55466 (November 1, 1995).

The Site is made up of two formally designated operable units. This proposal for partial deletion pertains only to a portion of OU 2 consisting of 19.8 acres of the estimated 217 acres contained in OU 2. Macklands Realty, Inc. owns Plat 14, Lot 2 which consists of approximately 10.1 acres proposed for deletion while Berkeley Realty, Co. owns Plat 15, Lot 1 which consists of