

whether, under section 103(d) of the Act, there is an economically feasible alternative method or site available other than the proposed dumping in ocean waters. If the District Engineer makes any such preliminary determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator setting forth his reasons for such determination and shall submit a report of such determination to the Chief of Engineers in accordance with 33 CFR 209.120 and 209.145.

(b) If the decision of the Chief of Engineers is that ocean dumping at the designated site is required because of the unavailability of feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator of the Criteria or of the critical site designation in accordance with §225.4.

§225.4 Waiver by Administrator.

The Administrator shall grant the requested waiver unless within 30 days of his receipt of the notice, certificate and request in accordance with paragraph (b) of §225.3 he determines in accordance with this section that the proposed dumping will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Notice of the Administrator's final determination under this section shall be given to the Secretary of the Army.

PART 227—CRITERIA FOR THE EVALUATION OF PERMIT APPLICATIONS FOR OCEAN DUMPING OF MATERIALS

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AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2476, Jan. 11, 1977, unless otherwise noted.

Subpart A—General

§ 227.1 Applicability.

(a) Section 102 of the Act requires that criteria for the issuance of ocean disposal permits be promulgated after consideration of the environmental effect of the proposed dumping operation, the need for ocean dumping, alternatives to ocean dumping, and the effect of the proposed action on esthetic, recreational and economic values and on other uses of the ocean. These parts 227 and 228 of this subchapter H together constitute the criteria established pursuant to section 102 of the Act. The decision of the Administrator, Regional Administrator or the District Engineer, as the case may be, to issue or deny a permit and to impose specific conditions on any permit issued will be based on an evaluation of the permit application pursuant to the criteria set forth in this part 227 and upon the requirements for disposal site management pursuant to the criteria set forth in part 228 of this subchapter H.

(b) With respect to the criteria to be used in evaluating disposal of dredged materials, this section and subparts C, D, E, and G apply in their entirety. To determine whether the proposed dumping of dredged material complies with subpart B, only §§ 227.4, 227.5, 227.6, 227.9, 227.10 and 227.13 apply. An applicant for a permit to dump dredged material must comply with all of subparts C, D, E, G and applicable sections of B, to be deemed to have met the EPA criteria for dredged material dumping promulgated pursuant to section 102(a) of the Act. If, in any case, the Chief of Engineers finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site, the utilization of which would result in noncompliance with the criteria established pursuant to subpart B relating to the effects of dumping or with the restrictions established pursuant to section 102(c) of the Act relating to critical areas, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator pursuant to part 225.

(c) The Criteria of this part 227 are established pursuant to section 102 of

the Act and apply to the evaluation of proposed dumping of materials under title I of the Act. The Criteria of this part 227 deal with the evaluation of proposed dumping of materials on a case-by-case basis from information supplied by the applicant or otherwise available to EPA or the Corps of Engineers concerning the characteristics of the waste and other considerations relating to the proposed dumping.

(d) After consideration of the provisions of §§ 227.28 and 227.29, no permit will be issued when the dumping would result in a violation of applicable water quality standards.

§ 227.2 Materials which satisfy the environmental impact criteria of subpart B.

(a) If the applicant satisfactorily demonstrates that the material proposed for ocean dumping satisfies the environmental impact criteria set forth in subpart B, a permit for ocean dumping will be issued unless:

(1) There is no need for the dumping, and alternative means of disposal are available, as determined in accordance with the criteria set forth in subpart C; or

(2) There are unacceptable adverse effects on esthetic, recreational or economic values as determined in accordance with the criteria set forth in subpart D; or

(3) There are unacceptable adverse effects on other uses of the ocean as determined in accordance with the criteria set forth in subpart E.

(b) If the material proposed for ocean dumping satisfies the environmental impact criteria set forth in subpart B, but the Administrator or the Regional Administrator, as the case may be, determines that any one of the considerations set forth in paragraph (a)(1), (2) or (3) of this section applies, he will deny the permit application; provided however, that he may issue an interim permit for ocean dumping pursuant to paragraph (d) of § 220.3 and subpart F of this part 227 when he determines that:

(1) The material proposed for ocean dumping does not contain any of the materials listed in § 227.5 or listed in § 227.6, except as trace contaminants; and