

Pub. L. 110-114, title V, §5046, Nov. 8, 2007, 121 Stat. 1209.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(4), means Pub. L. 92-532, which is classified generally to this chapter, chapter 41 (§2801 et seq.) of this title, and chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation.

AMENDMENTS

2007—Subsec. (c)(4). Pub. L. 110-114 substituted “January 1, 2011” for “January 1, 2003” in third sentence.

1999—Subsec. (c)(4). Pub. L. 106-53 substituted “January 1, 2003” for “January 1, 2000” in third sentence.

1996—Subsec. (e)(4). Pub. L. 104-303 inserted “(other than the site located off the coast of Newport Beach, California, which is known as ‘LA-3’)” after “for a site” and inserted at end “Beginning January 1, 2000, no permit for dumping pursuant to this Act or authorization for dumping under section 1413(e) of this title shall be issued for the site located off the coast of Newport Beach, California, which is known as ‘LA-3’, unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 1413(b) of this title.”

1992—Subsec. (c). Pub. L. 102-580 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.”

1988—Subsec. (a). Pub. L. 100-688 substituted “agents, high-level” for “agents and high-level” and inserted “and medical waste,” after “radioactive waste.”

1980—Subsec. (e). Pub. L. 96-572 inserted applicability to United States agency or instrumentality, and proviso respecting such agency or instrumentality.

1974—Subsec. (a). Pub. L. 93-254, §1(4)(A), substituted “for which no permit may be issued,” for “as provided for in section 1411 of this title,” inserted “or in the case of a vessel or aircraft registered in the United States or flying the United States flag,” after “instrumentality of the United States,” and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93-254, §1(4)(B), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-254, §2, Mar. 22, 1974, 88 Stat. 51, provided in part that: “The amendments made by subparagraph 1(4)(A)(iii) and paragraph 1(4)(B) of this Act [enacting provision of subsec. (a) respecting application of standards by Administrator and subsec. (e) of this section] shall become effective on the date that the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters enters into force for the United States.” [The Convention entered into force for the United States Aug. 30, 1975.]

Amendment of subsec. (a) of this section, other than last sentence, by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as a note under section 1401 of this title.

§ 1412a. Emergency dumping of industrial waste

(a) Issuance of emergency permits

Notwithstanding section 104B of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1414b], after December 31, 1981, the Administrator may issue emergency permits under title I of such Act [33 U.S.C. 1411 et seq.] for the dumping of industrial waste into ocean waters, or into waters described in such section

101(b) [33 U.S.C. 1411(b)], if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, “emergency” refers to situations requiring action with a marked degree of urgency.

(b) “Industrial waste” defined

For purposes of this section, the term “industrial waste” means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant.

(Pub. L. 95-153, §4, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 96-572, §2, Dec. 22, 1980, 94 Stat. 3344; Pub. L. 100-688, title I, §1003(a), Nov. 18, 1988, 102 Stat. 4149.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (a), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

Such section 101(b), referred to in subsec. (b), means section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972.

CODIFICATION

Section was not enacted as part of the Marine Protection, Research, and Sanctuaries Act of 1972 which comprises this chapter.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-688, §1003(a)(1), (3)–(5), redesignated subsec. (c) as (a), substituted “Notwithstanding section 104B of the Marine Protection, Research, and Sanctuaries Act of 1972 after” for “After”, and “title I of such Act” for “such title I”. Former subsec. (a), which related to cessation of dumping, with exceptions, was struck out.

Subsec. (b). Pub. L. 100-688, §1003(a)(2), (7), added subsec. (b). Former subsec. (b), which related to issuance of permits for dumping of industrial waste, was struck out.

Subsec. (c). Pub. L. 100-688, §1003(a)(3), redesignated subsec. (c) as (a).

Subsec. (d). Pub. L. 100-688, §1003(a)(6), struck out subsec. (d) which related to definitions.

1980—Subsec. (a). Pub. L. 96-572, §2(1), inserted applicability to industrial waste, exceptions respecting subsecs. (b) and (c) of this section, and conforming changes in phraseology.

Subsec. (b). Pub. L. 96-572, §2(2), added subsec. (b). Former subsec. (b), defining “sewage sludge”, was struck out.

Subsecs. (c), (d). Pub. L. 96-572, §2(2), added subsecs. (c) and (d).

§ 1413. Dumping permit program for dredged material

(a) Issuance by Secretary of the Army

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations; alternative sites

In making the determination required by subsection (a) of this section, the Secretary shall apply those criteria, established pursuant to section 1412(a) of this title, relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the maximum extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title. In any case in which the use of a designated site is not feasible, the Secretary may, with the concurrence of the Administrator, select an alternative site. The criteria and factors established in section 1412(a) of this title relating to site selection shall be used in selecting the alternative site in a manner consistent with the application of such factors and criteria pursuant to section 1412(c) of this title. Disposal at or in the vicinity of an alternative site shall be limited to a period of not greater than 5 years unless the site is subsequently designated pursuant to section 1412(c) of this title; except that an alternative site may continue to be used for an additional period of time that shall not exceed 5 years if—

- (1) no feasible disposal site has been designated by the Administrator;
- (2) the continued use of the alternative site is necessary to maintain navigation and facilitate interstate or international commerce; and
- (3) the Administrator determines that the continued use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment.

(c) Concurrence by Administrator

(1) Notification

Prior to issuing a permit to any person under this section, the Secretary shall first notify the Administrator of the Secretary's intention to do so and provide necessary and appropriate information concerning the permit to the Administrator. Within 30 days of receiving such information, the Administrator shall review the information and request any additional information the Administrator deems necessary to evaluate the proposed permit.

(2) Concurrence by Administrator

Within 45 days after receiving from the Secretary all information the Administrator considers to be necessary to evaluate the proposed permit, the Administrator shall, in writing, concur with (either entirely or with conditions) or decline to concur with the determination of the Secretary as to compliance with the criteria, conditions, and restrictions established pursuant to sections 1412(a) and 1412(c) of this title relating to the environ-

mental impact of the permit. The Administrator may request one 45-day extension in writing and the Secretary shall grant such request on receipt of the request.

(3) Effect of concurrence

In any case where the Administrator makes a determination to concur (with or without conditions) or to decline to concur within the time period specified in paragraph (2) the determination shall prevail. If the Administrator declines to concur in the determination of the Secretary no permit shall be issued. If the Administrator concurs with conditions the permit shall include such conditions. The Administrator shall state in writing the reasons for declining to concur or for the conditions of the concurrence.

(4) Failure to act

If no written documentation is made by the Administrator within the time period provided for in paragraph (2), the Secretary may issue the permit.

(5) Compliance with criteria and restrictions

Unless the Administrator grants a waiver pursuant to subsection (d) of this section, any permit issued by the Secretary shall require compliance with such criteria and restrictions.

(d) Waiver of requirements

If, in any case, the Secretary 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 non-compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) Federal projects involving dredged material

In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section and section 1414(a) and (d) of this title.

(Pub. L. 92-532, title I, § 103, Oct. 23, 1972, 86 Stat. 1055; Pub. L. 102-580, title V, §§ 504, 506(b), Oct. 31, 1992, 106 Stat. 4866, 4869.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-580, § 506(b), inserted “maximum” before “extent feasible” and inserted three sentences at end.

Subsec. (c). Pub. L. 102-580, § 504(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as

follows: "Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of the dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d) of this section, the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions."

Subsec. (e). Pub. L. 102-580, §504(b), inserted before period at end "and section 1414(a) and (d) of this title".

§ 1414. Permit conditions

(a) Designated and included conditions

Permits issued under this subchapter shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) such requirements, limitations, or conditions as are necessary to assure consistency with any site management plan approved pursuant to section 1412(c) of this title; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate. Permits issued under this subchapter shall be issued for a period of not to exceed 7 years.

(b) Permit processing fees; reporting requirements

The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.

(c) General permits

Consistent with the requirements of sections 1412 and 1413 of this title, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Review

Any permit issued under this subchapter shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this subchapter, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds, based upon monitoring data from the dump site and surrounding area, that such mate-

rials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) Information for review and evaluation of applications

The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this subchapter to provide such information as he may consider necessary to review and evaluate such application.

(f) Public information

Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) Display of issued permits

A copy of any permit issued under this subchapter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee.

(h) Low-level radioactive waste; research purposes

Notwithstanding any provision of this subchapter to the contrary, during the two-year period beginning on January 6, 1983, no permit may be issued under this subchapter that authorizes the dumping of any low-level radioactive waste unless the Administrator of the Environmental Protection Agency determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or

(B) to determine the degree to which the dumping of such substance will degrade the marine environment;

(2) that the scale of the proposed dumping is limited to the smallest amount of such material and the shortest duration of time that is necessary to fulfill the purposes of the research, such that the dumping will have minimal adverse impact upon human health, welfare, and amenities, and the marine environment, ecological systems, economic potentialities, and other legitimate uses;

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact; and

(4) that the proposed dumping will be preceded by appropriate baseline monitoring studies of the proposed dump site and its surrounding environment.

Each permit issued pursuant to this subsection shall be subject to such conditions and restric-