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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

(CGD 89-014)

RIN 2115-AD23

Implementation of the Shore Protection Act of 1968

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is publishing an interim rule to implement permitting the numbering requirements of the Shore Protection Act of 1968. The Coast Guard is issuing these requirements as an interim rule because the Shore Protection Act requires that permits be in place 240 days after the Act's enactment, which will occur on July 15, 1989. By issuing an interim rule, the Coast Guard and the public will be able to meet this mandated deadline.

DATE: *Effective Date:* 1. May 24, 1989.

2. The Coast Guard will accept comments on this interim rule until August 24, 1989.

ADDRESS: Comments should be submitted to the Executive secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be delivered to and will be available for copying at that address. The Categorical Exclusion from the requirements of the National Environmental Policy Act (NEPA) is available for inspection and copying at the same address.

Persons wishing to comment on the information collection requirements should submit their comments to: Office of Regulatory Policy, office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. **FOR FURTHER INFORMATION CONTACT:** Lieutenant James H. McDowell, Office of Marine Safety, Security and Environmental Protection (G-MPS-3) (202) 267-0491, between 7:00 a.m. and 3:00 pm, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this interim rule (CGD 89-014) and the specific section of the interim rule to which each comment applies and give the reasons for the comment. If an

acknowledgment of receipt is desired, a stamped, self-addressed postcard should be enclosed.

All comments received before the expiration date of the comment period will be considered before any action is taken on this interim rule. They will also be considered in preparing the notice of proposed rulemaking for the second regulatory project described below in the paragraphs under Regulatory Approach.

Drafting Information

The principal persons involved in drafting this rule are: Lieutenant James H. McDowell, Project Manager, and Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Interim Rule**I. Background**

On November 16, 1968, Congress enacted the Shore Protection Act (33 U.S.C. 2501 et seq.), hereafter referred to as the Act, to help prevent trash, medical debris and other unsightly and potential harmful materials from being deposited into the coastal waters of the United States as a result of sloppy waste handling procedures. The Conference Report on the Ocean Dumping Ban Act (Report 100-1090) stated that landfills and attendant barging operations are a major source of floatable waste in harbor areas. The report concluded that this type of waste has fouled the beaches of this country over the last two summers, reducing the quality of coastal waters, endangering the health of humans, marine mammals, waterfowl and fish, and causing severe decline in coastal economies dependent upon tourism and recreational uses.

Section 4103(a)(1) of the Act requires owners or operators of waste sources, vessels transporting waste and waste reception facilities to take reasonable steps to minimize the amount of municipal or commercial waste deposited into coastal waters during vessel loading and unloading operations and during vessel transportation from a waste source to receiving facilities. The Act prohibits vessels from transporting municipal and commercial waste unless they have a permit and display a number of other prescribed marking 240 days after enactment, which will occur on July 15, 1989. The Act also outlines provisions for enforcing these requirements.

The Environmental Protection Agency (EPA) and the Department of Transportation (DOT) have been assigned responsibility for implementing the provisions of the Act. DOT is responsible for issuing permits,

prescribing the number or marking which vessels must display, and enforcing regulations implementing the Act. On January 12, 1989, the Secretary of Transportation delegated these responsibilities to the Coast Guard

I. Regulatory Approach

These interim regulations amend Part 151 of Title 33, Code of Federal Regulations. This part is concerned with shipboard requirements to prevent pollution. Existing regulation in this part implement Annexes I, II and V of MARPOL 73/78. There are no new requirements in the regulations in this document which change Annexes I, II or V requirements. This interim rule reorganizes Part 151 into 2 Subparts. Subpart A will contain the existing regulations in Part 151. Existing Subparts A, B, C, and D will be reorganized as undesignated hearings under Subpart A. The new Subpart B will contain the regulations implementing the Act.

Due to the July 15, 1989 statutory implementation date, the Coast Guard has decided to issue two regulatory projects implementing the responsibilities delegated under the Act. The first regulatory project, which is this document, is being initiated in the public interest as expeditiously as possible, to meet this deadline and allow vessels to continue to operate without interrupting the flow of waste removal. It establishes the requirement for the owner or operator of each vessel, whose purpose is to transport municipal or commercial waste, to apply for a conditional permit and to display a vessel number. It details the procedure to apply for a conditional permit and requirements for displaying the vessel number. It establishes the procedures for issuing conditional permits and the conditions for denying issuance and withdrawing a conditional permit.

At a later date, procedures for applications and issuance of a regular permit will be proposed. These procedures will continue, modify or replace the procedures contained in this document. Regulations implementing the suspension and revocation provisions of the Act will also be proposed

III. Vessels Effected By This Rule:

This rule applies to vessels whose purpose is to transport municipal or commercial waste in the coastal waters of the United States. The conference report on the Ocean Dumping Ban Act (Report 100-1090) states that the Act was intended "only to apply to vessels whose purpose is the transportation of municipal or commercial waste, not all

vessels. It was not intended to apply to vessels that may generate waste during their normal operations". They are many vessels which transport some quantities of municipal or commercial waste incidentally to the predominant business or purpose of the vessel, e.g., a ferry which transports a garbage truck loaded with municipal or commercial waste. In this example, the ferry is not required to apply for a permit, since the ferry's predominant business or purpose is not waste transportation. However, a vessel which regularly transports miscellaneous cargo but is hired to transport waste for a specific voyage would be required to hold a permit to transport waste for that voyage, since the predominant business or purpose of the vessel for that voyage is waste transportation.

IV. What Constitutes Municipal or Commercial Waste

Section 151.1006 defines the term "municipal or commercial waste", which is the same definition provided by section 4101(3) of the Act. This definition includes solid waste regulated under the Solid Waste Disposal Act (42 U.S.C. 6903) and transported for disposal on land, including municipal garbage, commercial refuse, medical wastes, and wood debris. However, in accordance with the Act, the term specifically excludes hazardous wastes identified and listed under the Solid Waste Disposal Act (42 U.S.C. 6921), waste generated by the vessel during normal operations, construction debris, sewage sludge as permitted by the EPA, and dredge spoil or fill materials subject to regulation under title I of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC; 1401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), or the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).

V. Applying For a Permit

In order to receive a conditional permit to transport municipal or commercial waste, the owner or operator of a vessel must apply by letter to commandant (G-MPS-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20583-0001, Attn: Shorn Protection Act Desk. Applications must include the information required by § 151.1012, which is also required by section 4102(b) of the Act and an acknowledgment that the information provided on the application is true and correct. After reviewing the application for completeness, the Coast Guard will determine whether or not to issue the conditional permit. A vessel number and the termination date of the conditional

permit will be added to the application. A copy of the application will be returned to the owner or operator to serve as the conditional permit for the vessel to transport municipal or commercial waste after July 15, 1989. This expeditious method of issuance is being implemented in the public interest to avoid the interruption of waste removal or any unnecessary accumulation of waste on vessels or shore structures.

Under the provisions of the Act, it will be unlawful to transport municipal or commercial waste after July 15, 1989 without a permit. To allow the continued transportation of municipal and commercial waste and to avoid the health hazards that would occur if waste accumulate & this interim rule provides for the issuance of conditional permits, which will be effective immediately. These conditional permits are subject to being withdrawn if further inquiry or consultation with Environmental Protection Agency (EPA) officials indicates the vessel would not qualify for a regular permit. As required by the Act, regular permits will not be effective until 30 days after they are issued.

Conditional permits will be valid for 18 months, unless a shorter period is specified on the permit. The Coast Guard may deny issuance of a conditional permit if the application for the conditional permit does not contain the required information or if the Coast Guard has reason to believe the information provided is not true or correct. The Coast Guard will notify the owner or operator in writing of the denial, the reason for the denial and the procedures for appealing this decision.

After issuing the conditional permit, the Coast Guard will consult with the regional director of the EPA, as required by 4102(d) of the Act, to determine whether or not the owner or operator of the vessel has a record or a pattern of serious violations of the Act the Solid Waste Disposal Act (*supra*), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*), the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 401 *et seq.*), or the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

A conditional permit may be withdrawn at any time after issuance if the Administrator of the EPA requests withdrawal because the Administrator has determined that the owner or operator of the vessel has a record or a pattern of serious violations of the statutes listed under section 4102(d) (1) through (5) of the Act and described above. The Coast Guard will notify the

owner or operator in writing of the withdrawal, the reason for the withdrawal and the procedures for appealing this decision.

Owners or operators of vessels which have been denied issuance of a conditional permit or have had a conditional permit withdrawn may request reconsideration by the issuing authority. Owners or operators who are not satisfied with a ruling after it has been reconsidered may appeal this decision to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, Washington, DC 20583-0001. Appeals must be in writing and contain complete supporting documentation and evidence which the appellant wishes to have considered.

VI. Displaying a Vessel Number

Vessels under the Act are required to display a number or other marking on the vessel as prescribed by the Secretary of Transportation. The purpose of this marking is to aid in identification. The number assigned to the vessel will be stated on the conditional permit as described above.

The vessel number must be displayed on the vessel so that it is readily visible from either side. The vessel number must be clearly legible, displayed against a contrasting background and in block figures that are at least 18 inches in height.

Regulatory Evaluation

There are approximately 400 vessels whose purpose is the transportation of municipal and commercial waste in coastal waters. As explained above, the owner or operator of each of these vessels will be required to apply by letter for a permit to transport municipal and commercial waste in coastal waters and to display a number on the vessel. Conditional permits issued under this rule are in effect for a period no longer than 18 months. At the end of this period, vessel owners or operators who intend to transport municipal or commercial waste will be required to reapply for a permit. The Coast Guard estimates the total cost to the public for completing the application and displaying the vessel number will amount to less than \$15,000.00. Appeals, when utilized, are estimated to cost less than \$2,000.00. The cost of this regulatory project is so low that no further regulatory evaluation is considered necessary.

The Coast Guard concludes that these regulations are non-major under Executive Order 12291 and nonsignificant under DOT regulatory

policies and procedures (44 FR 11034; February 28, 1979).

Regulatory Flexibility Act

The Coast Guard has considered the impact of these regulations on small entities. The Coast Guard has adopted the Small Business Administration's (SBA) definition of "small business" used when considering SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.10(f)) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed \$1.5 million.

These regulations contain only minimal reporting requirements. Respondents are required to complete an application containing only the minimum information necessary for the Coast Guard to fulfill its obligation under the Act. They are also required to display a number on the vessel. The cost of complying with these requirements will be minimal. These costs are proportionally lower for small entities than for larger ones because a small entity will have fewer vessels and therefore will have fewer applications to complete and numbers to display. Since these costs are so low, the cost to any individual small entity will be negligible. Therefore, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule will add the new information reporting requirement that all vessels whose purpose is the transportation of municipal and commercial waste apply for a conditional permit. The information reporting requirements have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB Control Number 2115-0579 *ha.*, been assigned under the provisions CFR 1320.18.

Environmental Impact

The permit and numbering system, prescribed by the interim rule, are a part of a regulatory program intended to minimize the amount of municipal or commercial waste entering the coastal waters of the U.S. However, the proposed regulations are administrative in nature and do not prescribe any operational requirements which would have an impact on the environment. The interim rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation as provided for in 10

CFR 51.22(c)(3). Therefore, neither an Environmental Assessment or Environmental Impact Statement has been prepared for this interim rule. The categorical exclusion determination is available in the docket for examination and copying as indicated under "ADDRESSES".

Federalism Assessment

This interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and will be listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to follow the progress of this action in the Unified Agenda.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

In consideration of the preceding, the Coast Guard amends Part 151 of Title 33, Code of Federal Regulations, as follows:

PART 151—[AMENDED]

1. By removing the authority citation for Part 151 and adding the authority citation for Subpart A to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. By revising the title of Part 151 to read as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

3. By removing all subpart designations but leaving the headings of those removed subparts and adding a new Subpart A above the undesignated "General" heading to read as follows:

Subpart A—Implementation of MARPOL 73/78

4. By adding a new Subpart B to read as follows:

Subpart B—Transportation of Municipal and Commercial Waste

Sec.

- 151.1000 Purpose.
- 151.1003 Applicability.
- 151.1006 Definitions.
- 151.1009 Transportation of municipal or commercial waste.
- 151.1012 Applying for a conditional permit.
- 151.1015 Issuing or denying the issuance of a conditional permit.
- 151.1018 Withdrawal of a conditional permit.
- 151.1021 Appeals.
- 151.1024 Display of vessel number.

Subpart B—Transportation of Municipal and Commercial Waste

Authority: 33 U.S.C. 2602; 49 CFR 1.46.

§ 151.1000 Purpose.

The purpose of this subpart is to implement the permit provisions of the shore Protection Act of 1988, (33 U.S.C. 2601 *et seq.*).

§ 151.1003 Applicability.

(a) Except as provided by paragraph (b) of this section, this subpart applies to each vessel whose purpose is the transportation of municipal or commercial waste in coastal waters.

(b) This subpart does not apply to public vessels.

§ 151.1006 Definitions.

As used in this subpart—
"Coastal Waters" means—

- (1) The territorial sea of the United States;
- (2) The Great Lakes and their connecting waters;
- (3) The marine and estuarine waters of the United States up to the head of tidal influence; and
- (4) The Exclusive Economic Zone as established by Presidential Proclamation Number 5030, dated March 10, 1983.

Note: The Exclusive Economic Zone extends from the baseline of the territorial sea of the United States seaward 200 miles.

"Municipal and commercial waste" means solid waste as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) except—

- (1) Solid waste identified and listed under section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921);
- (2) Waste generated by a vessel during normal operations;
- (3) Debris solely from construction activities;
- (4) Sewage sludge subject to regulation under title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*); and

(5) Dredge or fill material subject to regulation under title I of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), or the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).

"Public vessel" means a vessel that—

(1) Is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(2) Is not engaged in commercial service.

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 151.1009 Transportation of municipal or commercial waste.

A vessel may not transport municipal or commercial waste in coastal waters without—

(a) A conditional permit to transport municipal or commercial waste issued under this subpart; and

(b) Displaying a number in accordance with § 151.104.

§ 151.1012 Applying for a conditional permit.

(a) The owner or operator of each vessel to which this subpart applies shall apply by letter for a conditional permit required by § 151.1009.

Applications must be submitted to Commandant (G-MPS-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, Attn: Shore Protection Act Desk and include the following:

(1) The name, address, and telephone number of the vessel owner and operator.

(2) The vessel's name and official number, if any.

(3) The vessel's area of operation.

(4) The vessel's transport capacity.

(5) A history of the types of cargo transported by the vessel during the previous year, including identifying the type of municipal or commercial waste transported as—

(i) Municipal waste;

(ii) Commercial waste;

(iii) Medical waste; or

(iv) Waste of another character.

(6) The types of cargo to be transported by the vessel during the effective period of the conditional permit, including identifying the type of municipal or commercial waste as it is

identified in paragraphs (a)(S)(i) through (iv) of this section.

(7) A statement of whether the application for a conditional permit is for a single voyage, a short term operation or a continuing operation. If the application is for a single voyage or a short term operation, the statement must include the duration of the voyage or operation.

(8) An acknowledgment that certifies as to the truthfulness and accuracy of the information provided.

(b) The owner or operator under paragraph (a) of this section shall provide any additional information the Coast Guard may require.

§ 151.1015 Issuing or denying the issuance of a conditional permit.

(a) After reviewing the application made under § 151.1012, the Coast Guard either—

(1) Issues the conditional permit for a vessel under this section; or

(2) Denies the issuance of the conditional permit to the vessel in accordance with paragraph (c) of this section. On denying the issuance of the permit, the Coast Guard notifies the applicant of the—

(i) Denial and the reason for the denial; and

(ii) Procedures under § 151.1021 for appealing the denial.

(b) Each conditional permit issued under this section is effective—

(1) On the date it is issued; and

(2) Until the expiration date stated on the conditional permit unless it is—

(i) Withdrawn under § 151.1018;

(ii) Terminated be—

(A) The vessel is sold; or

(B) This subpart no longer applies to the vessel.

(c) The Coast Guard may deny the issuance of a conditional permit if—

(i) The application does not contain the information required under § 151.1012; or

(ii) There is reason to believe that the information contained on the application is not true and correct.

§ 151.1018 Withdrawal of a conditional permit.

(a) The Coast Guard may withdraw a conditional permit if the Administrator of the EPA requests withdrawal because the Administrator has determined that the owner or operator of the vessel has a record or a pattern of serious violations of—

(1) Subtitle A of the Shore Protection Act of 1988 (33 U.S.C. 2801 *et seq.*);

(2) The Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*);

(3) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*);

(4) The Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 1401 *et seq.*); or

(5) The Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Upon reaching a determination to withdraw a conditional permit, the Coast Guard notifies the owner or operator of—

(1) The withdrawal and the reason for the withdrawal;

(2) The procedures for appealing the withdrawal.

(c) After receiving the notice under paragraph (b) of this section, the owner or operator shall ensure that—

(1) The vessel immediately ceases transporting municipal or commercial waste and the marking required by § 151.1024 is removed; and

(2) The conditional permit is returned to the Coast Guard within 5 days after receiving the notice.

§ 151.1021 Appeals.

(a) Any person directly affected by an action taken under this subpart may request reconsideration by the Coast Guard officer responsible for that action.

(b) The person affected who is not satisfied with a ruling after having it reconsidered under paragraph (a) of this section may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593-0001; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) After reviewing the appeal submitted under paragraph (b) of this section, the Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling which is final agency action.

(d) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 151.1024 Display of number.

(a) The owner or operator of each vessel under this subpart must ensure that the vessel number stated on the conditional permit issued under § 151.1015 is displayed so that it—

- (1) Is clearly legible;
- (2) Has a contrasting background;
- (3) Is readily visible from either side of the vessel; and
- (4) Is in block figures that are at least 18 inches in height.

(b) No person may tamper with or falsify a number required under this section.

J.D. Stipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

April 28, 1989.

[FR Doc. 89-12386 Filed 5-23-89; 8:45 am]

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