

RULES and REGULATIONS
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3828-6]

Ocean Dumping; Designation of a Site Located Offshore of Port Isabel, TX

Tuesday, September 11, 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Isabel, Texas for the continued disposal of material dredged from the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time. The site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This designation shall become effective October 11, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733. The file supporting this designation and the letters of comment are available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202, Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214-655-2260 or FTS-255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, [33 U.S.C. 1401 *37323](#) et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.). That list established the Brazos Island Harbor site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, [42 U.S.C. 4321](#) et seq. (“NEPA”) requires that Federal agencies prepare Environmental Impact Statements (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled “Environmental Impact Statement (EIS) for the Brazos Island Harbor Dredged Material Disposal Site Designation.” On July 13, 1990, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this Final EIS closed on August 13, 1990. No comment letters were received.

In accordance with the requirements of section 7 of the Endangered Species Act, EPA has prepared a biological assessment concerning the impact of site designation on endangered and threatened species that may be present in the project area. EPA has determined that no adverse effect will result and has provided its determination and assessment to the National Marine Fisheries Service (NMFS). By letter dated August 17, 1990, NMFS concurred with EPA's determination of no adverse effect.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and the analysis was updated in this Final EIS. The nearest available land disposal area is 82 acres in size and is located 3 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition, the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within two biologically sensitive area buffer zones. One of these buffer zones is associated with a fish haven and the other buffer zone with the migratory route for estuarine dependent species. Therefore, the interim-designated site is not being designated in its entirety. The new disposal site includes much of the area of historical impact of the interim site but excludes the two buffer zones referenced above.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On August 7, 1989, at (54 FR 32351) EPA proposed designation of this site for the continuing disposal of dredged materials from the Brazos Island Harbor Entrance Channel. The public comment period on this proposed action closed on September 21, 1989. No comment letters were received.

The site is located approximately 1.6 miles from the coast at its closest point. The water depth at the site range from 55 to 65 feet. The coordinates of the rectangular-shaped site are as follows: 26° 04' 32" N., 97° 07' 26" W., 26° 04' 32" N., 97° 06' 30" W., 26° 04' 02" N., 97° 06' 30" W., 26° 04' 02" N., 97° 07' 26" W. If at anytime disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping 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 are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. EPA has determined, based on the information presented in the Final EIS, that a site off the Continental Shelf is not feasible due to monitoring difficulties, increased transportation costs and greater safety risks. No environmental benefit would be obtained by selecting such a site. The characteristics of the selected site are reviewed below in terms of the eleven factors.

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

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

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))

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the site feasibility process and eliminated from consideration. To the north of the site, there is a fish haven which is excluded, as are the jetties, including one-mile buffer zones. The jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are non-~~37324~~ submerged shipwrecks which improve fishing.

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

The site is approximately 1.5 miles from any beach or other amenity area; e.g., Brazos Island State Recreation Area.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any. (40 CFR 228.6(a)(4))

Only maintenance material from the Brazos Island Harbor Entrance Channel will be disposed. Historically, an average of 350,000 cy/yr has been dredged from the channel at roughly 13-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

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

The site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses is proposed for the Brazos Island Harbor site.

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))

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the site. Predominant longshore currents, and thus predominant longshore transport, is to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

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

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR part 227. Studies at the interim-designated site and nearby areas, however, have indicated that grain size and composition of the benthos at and south of the interim-designated site are significantly different from that north and further offshore. The disposal site, which encompasses much of the interim-designated site, was placed as near shore as possible to take advantage of the fact that the nearshore substrate is sandier than that further offshore.

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))

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Brazos Island Harbor site designation. The site will not interfere with these or other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

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))

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased

chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the composition of the benthos at the interim-designated site.

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

With a disturbance to any benthic community, initial recolonization will be opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the site should not attract nor promote the development or recruitment of nuisance species.

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))

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties and is well within the buffer zone surrounding the jetties. Use of the site would not impact any known historical or cultural sites.

E. Action

The EIS concludes that the site may appropriately be designated for use. The existing site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Brazos Island Harbor site as an EPA approved ocean dumping site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which 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 site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under [Executive Order 12291](#), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork *37325 Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 27, 1990.

Robert E. Layton, Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the heading for Brazos Island Harbor and Disposal Area No. 1 and adding paragraph (b)(78) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(78) Brazos Island Harbor, Texas—Region 6.

Location: 26° 04' 32" N, 97° 07' 26" W; 26° 04' 32" N, 97° 06' 30" W; 26° 04' 02" N, 97° 06' 30" W; 26° 04' 02" N, 97° 07' 26" W. Size: 0.42 square nautical miles. Depth: Ranges from 55-65 feet. Primary Use: Dredged material. Period of Use: Indefinite period of time. Restriction: Disposal shall be limited to dredged material from the Brazos Island Harbor Entrance Channel, Texas.

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[FR Doc. 90-21162 Filed 9-10-90; 8:45 am]

55 FR 37322-02, 1990 WL 345843 (F.R.)

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