

**§ 2675.42 Method of distribution.**

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 2675.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

**§ 2675.43 Benefit forms.**

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of benefits attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay benefits attributable to employer contributions in a form other than an annuity under any of the following circumstances:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under Subpart C of Part 2619, does not exceed \$3,500.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

**§ 2675.44 Cessation of withdrawal liability.**

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

Issued at Washington, DC on this 18th day of March, 1989.

Elizabeth Dole,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this final regulation and authorizing its chairman to issue same.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 228**

[FRL-3613-4]

**Ocean Dumping; Designation of Site**

**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 Aransas, Texas for the continued disposal of material dredged from the Corpus Christi Ship Channel. This action is necessary to provide an environmentally acceptable ocean dumping site alternative for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to future site management and monitoring to insure that unacceptable adverse impacts do not occur.

**DATE:** This designation shall become effective on August 10, 1989.

**ADDRESSES:** Information supporting this designation is available for public inspection at the following locations: EPA, Region 6 (6E-FF), 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 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 Corpus Christi Ship Channel 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 (EISs) 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 EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

In September 1988, EPA distributed a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Corpus Christi Ship Channel Ocean Dredged Material Disposal Site Designation," to interested agencies and the public for a 45-day review and comment period. Seven comment letters were received on the Draft EIS. The Agency responded to these comments in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On April 21, 1989, a Notice of Availability of the Final EIS for public review and comment was published in the *Federal Register*. The public comment period on the Final EIS closed on May 22, 1989.

One comment letter was received on the Final EIS from the National Marine Fisheries Service (NMFS). The NMFS stated that EPA's site designation did not give adequate consideration to deepwater and upland disposal alternatives since these options were eliminated early in the review process due to costs. NMFS also requested additional information regarding EPA's preference of nearshore disposal to offshore or upland disposal. In response to NMFS's comments, EPA recognizes that some federal agencies do evaluate an environmental quality ("EQ") alternative irrespective of costs. Nevertheless, consideration of costs is a necessary factor in EPA's evaluation of "reasonable" ocean disposal site alternatives. Site designation in itself does not preclude the consideration of other disposal options. However, once an alternative is determined to be economically infeasible or unimplementable, it becomes fruitless to continue to evaluate any additional or more specific environmental merits.

The federal action discussed in the EISs is designation of an ocean disposal site for dredged material. The purpose of the site designation is to provide an environmentally acceptable ocean disposal alternative for dredged material. 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. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in the draft EIS. The nearest available land disposal area was 48 acres in size and located 4 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 was 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.

Four ocean disposal alternatives—two nearshore sites, a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites involved limited feasibility for monitoring, increased transportation costs and increased safety risks. Because of safety and economic disadvantages, monitoring limits and the lack of environmental benefit, the mid-shelf site and the deepwater site were eliminated from further consideration. Those portions of the interim-designated site located within the navigational buffer zone, the jetty buffer zone and the beach buffer zone were eliminated from consideration. The disposal site includes much of the area of historical impact but excludes these three buffer zones.

In accordance with the requirements of the Endangered Species Act, EPA completed a biological assessment and determined that no adverse impacts on listed endangered or threatened species would result from site designation. The National Marine Fisheries Service concurred with this determination.

This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for federal actions subject to NEPA.

### C. Site Designation

On November 4, 1988, EPA proposed designation of the Corpus Christi Ship Channel disposal site for the continued disposal of materials dredged from the Corpus Christi Ship Channel. The public comment period on this proposed rule

closed on December 19, 1988. No comments were received on the proposed rule.

The disposal site is located approximately 1.5 miles from the coast at its closest point. The water depths at the proposed site range from 35 to 50 feet. The coordinates of the site are as follows: 27°49'10" N, 97°01'09" W; 27°48'42" N, 97°00'21" W; 27°48'06" N, 97°00'48" W; 27°48'33" N, 97°01'36" W.

### 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 disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the disposal site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are presented below in terms of the eleven specific criteria.

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 in paragraph C 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 siting feasibility process and eliminated from consideration. Approximately 3.5 miles to the southeast and 8 miles to the east southeast of the preferred site, there are fish havens

which are excluded, including one mile buffer zones. The pass between the jetties serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a one-mile buffer zone, was excluded as a migratory passage. Also excluded were lighted platforms and non-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 Mustang Island and San Jose Island beaches or other amenity areas; e.g., Mustang Island State Park and Caldwell Pier.

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 Corpus Christi Ship Channel that conforms to EPA's Ocean Dumping Regulations [40 CFR Part 227] will be disposed of at the site. Historically, an average of 955,000 cubic yards per year has been dredged from the channel at roughly 18-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline.

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

The disposal site is amenable to surveillance and monitoring. Based on historic data, an intense monitoring program is not warranted. However, a site management plan consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, will be developed for the Corpus Christi Ship Channel site by EPA and the COE.

6. *Dispersion, 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 dispersion, 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 disposal site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. 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 of the benthos at the interim-designated site and nearby areas indicated that the composition of the benthos was different from that in nearby "natural bottom" areas. This was because the substrate at the interim-designated site was almost pure sand versus the mixed grain size of the "natural bottom". The disposal site was placed as near shore as possible to take advantage of the nearshore substrate which was sandier than the substrate 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 on shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites were evaluated for the Corpus Christi Ship Channel site designation. The disposal site was determined not to interfere with other legitimate uses of the ocean based on the siting feasibility process and because 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 demonstrated only short-term water-column perturbations of turbidity, and some increased chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality was 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 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).]

Past disposal of dredged material has not resulted in the development or recruitment of nuisance species. 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 was located within the buffer zone surrounding the jetties. Use of the site would not adversely impact any known historical or cultural sites.

#### E. Action

Based on the completed EIS process and available data, EPA concludes that the Corpus Christi Ship Channel ocean dredged material disposal site may appropriately be designated for use. The site is compatible with the five general and eleven specific criteria used for site evaluation. The designation of the Corpus Christi Ship Channel Site as an EPA approved ocean dumping site for disposal of dredged material is being published as a final rulemaking. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. 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 at the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

#### 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 Reduction Act of 1980, 44 U.S.C. 3501 et seq.

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

Water pollution control.

Date: June 28, 1989.

Philip Charles,

Acting Regional Administrator, 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. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Corpus Christi Ship Channel and adding paragraph (b)(39) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

(b) \* \* \*

(39) Corpus Christi Ship Channel, Texas—Region 6 Location: 27° 49' 10" N., 97° 01' 09" W.; 27° 48' 42" N., 97° 00' 21" W.; 27° 48' 06" N., 97° 00' 48" W.; 27° 48' 33" N., 97° 01' 36" W.

Size: 0.63 square nautical miles.

Depth: Ranges from 35–50 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Corpus Christi Ship Channel, Texas.

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#### FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 88-19]

#### Rule on Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Stay of Final Rule.

SUMMARY: The effective date of the Final Rule in Docket No. 88-19 concerning the effective date of tariff changes is stayed pending decision on a recently filed petition for reconsideration.