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Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-16481 Filed 7-13-89; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL-3615-5]

#### Ocean Dumping: Designation of Site—Gulf of Mexico, Mississippi River Gulf Outlet Canal, Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Mississippi River Gulf Outlet (MRGO) Canal for the continued disposal of dredged material removed from the MRGO. 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 and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

**DATE:** This designation shall become effective on August 14, 1989.

**ADDRESSES:** Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations: 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

**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 MRGO site for the disposal of material dredged from the MRGO. In January 1980, the interim status of the MRGO 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 ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Mississippi River Gulf Outlet Ocean Dredged Material Disposal Site Designation." On January 19, 1989, a notice of availability of the Draft EIS for public review and comment was published in the *Federal Register*. The public comment period on the Draft EIS closed on March 6, 1989. Three comment letters were received on the Draft EIS. EPA and the COE responded to these comments in the Final EIS. On May 26, 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 June 26, 1989. No comment letters were received on the Final EIS.

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. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

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 and the analysis was updated in the Draft and Final EISs based on information from the COE. A land disposal area does exist about 25 miles west of the disposal site. However, use of this upland site for material which has traditionally been dumped at sea would quickly decrease the lifetime of the site. Additionally, because of the distance involved, the cost would increase considerably. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with MRGO material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located immediately north of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. EPA has also coordinated with the State of Louisiana concerning the Coastal Zone Management Act. The State of Louisiana has concurred with EPA's determination that final designation of the MRGO disposal site is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

The EIS evaluated the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being



conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

### C. Site Designation

On February 17, 1989 (54 FR 7211), EPA proposed designation of the MRGO disposal site for the continuing disposal of dredged materials from the MRGO. The public comment period on this proposed action closed on April 3, 1989. One comment letter from the Department of the Interior (DOI) was received. DOI indicated that the disposal site is located on portions of at least five oil and gas leases and that special care should be exercised during dumping operations to insure that no adverse effects on existing oil and gas facilities result. DOI also stated that oil barging operations are conducted nearby and shoaling associated with disposal of dredged material could result in accidental groundings and oil spills. Based on past experience, EPA and the COE do not anticipate that dredged material disposal will unduly interfere with mineral development activities. However, contractors will be notified of the existing oil and gas facilities. Also, in order to avoid barge groundings, the material will be spread as evenly as possible so that bottom elevations are not increased by more than 0.5 feet.

The southern side of the existing site is located about twelve miles north of the Plaquemines Parish mainland. The northwest end of the site is about 2.2 miles from the Breton Islands to the northwest and 2.3 miles from the Grand Cossier Islands to the northeast. The site extends approximately sixteen miles offshore. Water depths at the site range from 20 to 40 feet. The coordinates of the site are as follows: 29°32' 35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24'51" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29°32'15" N., 89°12'57" W.; thence to the point of beginning.

### 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 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 factors 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 existing 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 existing 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 proposed site are reviewed below in terms of the eleven specific 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 gently slopes to the southeast (8.0 feet per mile).

#### 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).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The MRGO ocean disposal site represents a small area of the total range of the fisheries resource.

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

The MRGO ocean disposal site is about 2.2 miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are small and accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

#### 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).)

The dredged material to be disposed is from the adjacent area of the MRGO and consists of various mixtures of sand, silt and clay. Sediment grain size generally increases in the offshore

direction, with sands being predominant throughout the disposal site.

Approximately three million cubic yards of material are disposed of in the site annually. The material is removed with a hopper dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

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

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is near shore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

#### 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).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Breton Islands are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. During June 1981, waters were nearly saturated or supersaturated with oxygen down to about twenty-one feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current near the west side of the barrier islands in Breton Sound is toward the north. Data on currents along the Gulf side are lacking.

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



Dredged materials from the construction and maintenance of the MRGO have been disposed of at the site since 1958, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

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).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the MRGO. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the MRGO during dredging and disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The MRGO site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.5 feet, which should not result in vessel groundings.

The nearest oyster lease is in the Jack Bay estuarine area about 15 miles southwest of the site. Designation of the disposal site would not impact this or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located within the Breton National Wildlife Refuge, which is a major wintering area for redhead ducks. There has been no apparent impact to the refuge from use of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

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).)

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980-1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays within Breton Sound. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by polychaete worms, lancelet worms, and the little surf clam. Several of the dominant organisms, inside and outside the site, were well adapted to the transitional area between Breton Sound and the shallow shelf east of the islands. There was a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from the eastern Mississippi delta. Although there was a minor accumulation of mercury in oysters exposed to disposal site sediment, oysters do not occur in the disposal area.

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 at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such 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).)

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

#### E. Action

Based on the completed EIS process and available data, EPA concludes that the Mississippi River Gulf Outlet ocean dredged material disposal site may appropriately be designated for use. The existing site is compatible with the general criteria and specific factors used

for site evaluation. The designation of the MRGO site as an approved ocean dumping site is being published as final rulemaking.

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. 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.

Dated: June 30, 1989.

Joseph D. Winkle,

Acting 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. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River Gulf Outlet, Louisiana-Breton Sound and Bar Channel and



adding paragraph (b)(75) to read as follows:

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

(b) \* \* \*

(75) Mississippi River Gulf Outlet, Louisiana—Region 6 Location: 29°32'35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24'32" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29°32'15" N., 89°12'57" W.; thence to the point of beginning.

Size: 6.03 square nautical miles.

Depth: Ranges from 20–40 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Mississippi River Gulf Outlet.

[FR Doc. 89-16538 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS—46020; FRL—3616-1]

**40 CFR Parts 796 and 797**

**Toxic Substances Control Act Test Guidelines; Technical Amendments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA is issuing this technical amendment to correct three of the test guidelines promulgated under the Toxic Substances Control Act (TSCA). Because these guidelines are not enforceable until they are imposed as a test standard in a specific test rule, these amendments are made without public comment. EPA is correcting the concentrations of dimethyl formamide or acetone carriers that should not be exceeded during the test and the test temperature for bluegill, fathead minnows and rainbow trout in § 797.1400. In § 796.2750 EPA is correcting the solid/solution ratio for a test chemical in sediment or soil. In § 796.3400 EPA is adding the number "10" which was inadvertently omitted at the time the test guidelines were promulgated.

**DATES:** These technical amendments are effective July 14, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Michael M. Stahl, Director, TSCA Assistance Office, Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 27, 1985 (50 FR 39252), EPA issued as a final

regulation test guidelines that were previously available through the National Technical Information Service (NTIS). These guidelines are used in the testing of chemicals under section 4 of TSCA. The guidelines, which are codified at 40 CFR Parts 796 and 797, were amended in the Federal Register of May 20, 1987 (52 FR 19056).

This document is correcting § 796.2750(b)(1)(vii)(A), sediment and soil adsorption isotherm, to change the phrase "solid/solution ratio not exceeding 1/10", so that the phrase reads "solid/solution ratio equal to or greater than 1/10".

Section 796.3400, inherent biodegradability is being corrected by revising paragraph (b)(2)(i)(B)(3)(ii) to add the number "10" prior to the phrase "percent cation exchange capacity", which was inadvertently omitted at the time the test guidelines were promulgated in the Federal Register.

In § 797.1400, the fish acute toxicity test, paragraph (d)(2)(vi)(B) is being corrected to change the concentration of dimethyl formamide or acetone carriers from "5.0 mg/l" to "5.0 mg/l".

In § 797.1400, the fish acute toxicity test, paragraph (d)(3)(iii) is being corrected to change the sentence "The test temperature shall be 22 °C for rainbow trout.", so that the sentence reads "The test temperature shall be 22 °C for bluegill and fathead minnows and 12 °C for rainbow trout." Since these amendments revise §§ 796.2750(b)(1)(vii)(A), 796.3400(b)(2)(i)(B) (3)(ii), 797.1400(d)(2)(vii)(B), and 797.1400(d)(3)(iii), the amended paragraphs are shown in their entirety in this document. This is done solely for the convenience of the user. There are no additional changes being made to these guidelines.

**Lists of Subjects in 40 CFR Parts 796 and 797**

Chemical fate, Chemicals, Environmental protection, Environmental effects, Hazardous substances, Laboratories, Testing.

Dated: June 29, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Parts 796 and 797 are amended as set forth below:

**PART 796—[AMENDED]**

**1. In Part 796:**

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 796.2750 by revising paragraph (b)(1)(vii)(A) to read as follows:

**§ 796.2750 Sediment and soil adsorption isotherm.**

\* \* \*

(b) \* \* \*

(1) \* \* \*

(vii) \* \* \*

(A) Equilibrate one solution containing a known concentration of the test chemical with the sediment or soil in a solid/solution ratio equal to or greater than 1/10 and preferably equal to or greater than 1/5. It is important that the concentration of the test chemical in the equilibrating solution (1) does not exceed one-half of its solubility and (2) should be 10 ppm or less at the end of the equilibration period.

\* \* \*

c. In § 796.3400 by revising paragraph (b)(2)(i)(B)(3)(ii) to read as follows:

**§ 796.3400 Inherent biodegradability in soil.**

\* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) \* \* \*

(3) \* \* \*

(ii) Spodosol: pH between 4.0 and 5.0 organic C content between 1.5 and 3.5 percent clay content < 10 percent cation exchange capacity < 10 mval.

\* \* \*

**PART 797—[AMENDED]**

**2. In Part 797**

a. The authority citation for Part 797 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 797.1400 by revising paragraphs (d)(2)(vii)(B) and (d)(3)(iii) to read as follows:

**§ 797.1400 Fish acute toxicity test.**

\* \* \*

(d) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(B) Triethylene glycol and dimethyl formamide are the preferred carriers, but acetone may also be used. The concentration of triethylene glycol in the test solution should not exceed 80 mg/l. The concentration of dimethyl formamide or acetone in the test solution should not exceed 5.0 mg/l.

(3) \* \* \*

(iii) *Temperature.* The test temperature shall be 22 °C for bluegill and fathead minnow and 12 °C for rainbow trout. Excursions from the test temperature shall be no greater than ±2