

Dated: January 9, 1990.

Basil G. Constantelos,
Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of the Federal Regulations, Chapter 1, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2570 Identification of plan.

(c) * * *

(55) On January 28, 1985, Wisconsin submitted its Rothschild (Marathon County) SO₂ plan, which contains emission limits for sources in the City of Rothschild and the Town of Weston, specifically for the Weyerhaeuser Paper Company and the Reed-Lignin Company, respectively. USEPA is approving NR 418.08 because this revision meets the requirements of part D of the Clean Air Act, 42 U.S.C. 7501-7508. The Wisconsin SIP, however, contains additional existing requirements for SO₂. Today's action on NR 418.08 has been integrated within Wisconsin's existing SIP regulations, and does not eliminate a source's obligation to comply with all existing SO₂ SIP requirements. Specifically, today's action in no way affects the terms and conditions of a Federal Consent Decree entered into by USEPA and the Weyerhaeuser Company located in Rothschild, Wisconsin No. 89-C-0973-C (W.D. Wis., filed November 1, 1989). This Consent Decree resolves USEPA's enforcement action against Weyerhaeuser Company for violations of SIP rule NR 154.12(1) (now recodified as 418.08). In that Decree, Weyerhaeuser committed to comply with NR 154.12(1) by installing a desulfurization scrubber. August 15, 1989, the WDNR issued a construction permit to Weyerhaeuser which limit the combined emissions of Weyerhaeuser's acid plant and desulfurization scrubber to 28 pounds of SO₂ per hour. The conditions and terms of this construction permit and of the Consent Decree remain federally enforceable. On May 9, 1987, 18 months past the effective date of USEPA's designation of Marathon County as a primary SO₂ non-attainment area (October 9, 1985, [50 FR 41139]), a

construction moratorium was imposed in Marathon County under section 110(a)(2)(I) of the Clean Air Act because the county did not have a USEPA approved plan which assured the attainment and maintenance of the SO₂ NAAQS. However, USEPA final approval of Rothschild's SO₂ SIP will lift the section 110(a)(2)(I) construction ban in Marathon County.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Natural Resources 418.08, Rothschild RACT sulfur limitations, as published in the (Wisconsin) Register, September, 1986, number 369, effective October 1, 1986.

(ii) Additional information.

(A) Weyerhaeuser Company, Federal Consent Decree No. 89-C-0973-C (W.D. Wis., filed November 1, 1989).

[FR Doc. 90-6917 Filed 3-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3749-4]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates two new dredged material disposal sites located in the Gulf of Mexico offshore of Freeport Harbor, Texas. One site is for the one time disposal of 5.1 million cubic yards (mcy) of construction material; the other site is for the disposal of 2.1 mcy of future maintenance material dredged annually from the expanded and relocated Freeport Harbor Entrance and Jetty Channels. This action is necessary to provide acceptable ocean dumping sites for the disposal of material from the Army Corps of Engineers 45-Foot Project at Freeport Harbor, Texas. This final site designation is for an indefinite period of time, and is subject to continued monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective April 26, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. E.P.A., 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 75202-2733, 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. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

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 (39 CFR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Freeport Harbor, Texas (45-Foot Project) Ocean Dredged Material Disposal Site Designation." On January 12, 1990, a notice of availability of the Final EIS for public review and comment was published in the *Federal Register*. The public comment period of this Final EIS closed on February 12, 1990. Two letters concerning the Final EIS were received. The Public Health Service sent a "no comment" letter. The second letter was sent by the Sierra Club, Lone Star Chapter. The Sierra Club considered the Final EIS to be unacceptable stating that the alternatives analysis was inadequate and the purpose and use was confused. The Sierra Club also stated that the consideration of cost in site selection was inappropriate and that the Draft EIS was not adequately distributed to

environmental groups. In response to these comments, EPA provides the following information. EPA agrees that the Final EIS includes only a summary of the alternatives evaluated. As described in the Preface, the Final EIS must be viewed along with the Draft EIS for a complete environmental overview. EPA believes that the alternative analysis described in detail in the Draft EIS and summarized in the Final EIS is adequate. EPA's purpose and need was clearly stated in Chapter 1 of the Draft EIS. Site designation by EPA does not authorize any dredging project nor permit disposal of any dredged material. In designating ocean disposal sites, EPA is providing acceptable locations should ocean disposal be the preferred disposal option for a particular dredging project. Site designation in itself does not preclude the consideration of other disposal options. The determination of feasibility for selecting an acceptable site is based on many factors, of which cost is one. EPA believes that the Draft EIS was adequately distributed. Approximately 30 agencies and organizations, 11 of which were environmental groups, were sent copies of the Draft EIS for review and comment.

The action discussed in the EIS is designation of two ocean disposal sites for dredged material. The purpose of the designation is to provide environmentally acceptable locations 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. The general alternatives examined were the no action alternative; upland disposal; and ocean disposal, including a mid-shelf site, a continental slope site, and three near-shore sites. The existing, historically-used site was one of the near-shore sites evaluated. The no action alternative would require the Corps to develop an alternative disposal method (e.g., land based) or modify or cancel the project. The no action alternative was not considered feasible. Upland disposal was determined not practicable because there are not sufficient upland sites available to accommodate both the virgin and maintenance material from the 45-Foot Project.

The mid-shelf and continental slope alternatives were not considered feasible because of safety and economic considerations, limits on monitoring and surveillance, and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sensitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site, which has been utilized by the Corps for disposal of routine maintenance material, showed the site to be located in the biological buffer zone area. Also the grain-size regime was inappropriate for disposal of the construction material. Because of these reasons the existing, historically-used site is not being proposed for designation.

Based on comments received from the National Ocean Service on the Draft EIS, the virgin material disposal site has been moved 3000 feet shoreward in order to avoid impacts to existing oil and gas platforms. It is located in the 55-foot isobath and in the silty-clay regime. The size of the virgin material disposal site was determined, based on models of the ocean discharge of dredged material, to be 5,280 feet in a direction parallel to the Channel (northwest/southeast) and 11,380 feet in a direction perpendicular to the Channel (northeast/southwest). The maintenance material disposal site is located in a silty-sand regime closer to shore. The size of the maintenance material site is 4,500 feet parallel to the Channel and 12,500 feet perpendicular to the Channel.

In accordance with the requirements of the Endangered Species Act, as amended, 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 has 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 March 13, 1989, EPA proposed designation of the Freeport Harbor (45-Foot Project) disposal sites. The public comment period on this proposed rule closed on April 27, 1989. No comments were received on the proposed rule. The virgin material disposal site is located about six miles from the coast and occupies an area of 2.64 square nautical miles. The coordinates of the site are as follows:

28°50'51" N, 95°13'54" W; 28°51'44" N, 95°14'49" W;

28°50'15" N, 95°16'40" W; 28°49'22" N, 95°15'45" W;

The maintenance material disposal site is located about three miles from the coast and occupies an area of 1.53 square nautical miles. The coordinates of the site are as follows:

28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W;

28°52'00" N, 95°16'59" W; 28°52'32" N, 95°17'32" 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 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 disposal sites are acceptable under the five general criteria. A Continental Shelf location is not feasible and no environmental benefits would be obtained by selecting such a site. The characteristics of the proposed sites 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)). The geographical positions of the sites are given above. The water depth at the site for the construction material is from 54 to 61 feet; the topography is flat; and the site is located about six miles from the coast at its closest point. The water depth at the site for the maintenance material ranges from 31 to 38 feet; the topography is flat; and the site is located about three miles from shore at its closest point.

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)). At the southeast border of the ZSF, there is a white shrimp breeding area, a sport and commercial fishing harvest area, and a reef area. At the northeast border, there is a small collection of coral heads

(reefs), providing habitat which improves fishing. This area and the jetties, plus buffer zones are excluded from consideration. Also excluded are 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 virgin and maintenance material disposal sites are roughly six miles and three miles, respectively, from beaches or other amenity areas.

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)). Virgin construction material (5.1 mcy) only will be discharged into the virgin material disposal site. Only maintenance dredged material from the Freeport Harbor Entrance and Jetty Channels will be disposed in the maintenance material disposal site. Historically, an average of one mcy/yr is dredged from the channel at roughly ten-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. With the proposed modifications, it is anticipated that future maintenance material will equal 2.1 mcy annually.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)). The proposed sites are amenable to surveillance and monitoring. The proposed monitoring and surveillance program for the virgin material site consists of: (1) A method for recording the location of each discharge; (2) bathymetric surveys; and (3) grain size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations. For future maintenance material, the program consists of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses.

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)). Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site. Both proposed disposal sites were sized on the basis of modeling of short-term transport.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)). The discussion of 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 concluded that there were no indications of water or sediment quality problems in the ZSF, including the proposed sites. Testing of past maintenance material indicates that it was acceptable for ocean disposal under 40 CFR part 227. Studies of the benthos at the existing site and nearby areas have not indicated any significant decrease or change in composition of the benthos.

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)). Legitimate uses of the ocean which are pertinent to the Freeport disposal areas are shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites. The proposed sites were selected so that their use would not interfere with other legitimate uses of the ocean since the alternative screening process was designed to prevent the selection of sites 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 indicated only short-term water column perturbations or turbidity, and perhaps Chemical Oxygen Demand (COD), have resulted from disposal operations. No short-term sediment quality perturbation could be directly related to disposal operations. In general, the water and sediment quality is good throughout the ZSF, including the historically-used disposal site. This indicates that there have been no long-term impacts on water and sediment quality. There also appear to be no long-term impacts on the benthos at the existing 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 by 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. The disposal of virgin or maintenance material in the past has not, and disposal of the proposed material should not, attract or 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)). The nearest site of historical importance to the virgin material disposal site is approximately 1.0 mile away from the edge of this site in a cross-current direction. For the maintenance material site, the nearest site of historical importance is roughly 1.2 miles from the edge of the site in a cross-current direction. Therefore, use of the proposed sites would not adversely impact known sites of historical importance.

E. Action

Based on the completed EIS process, EPA concludes that the two new Freeport Harbor (45-Foot Project) sites may appropriately be designated for use. The sites are compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Freeport Harbor (45-Foot Project) disposal sites as EPA approved ocean dumping sites is being published as final rulemaking.

Before ocean dumping of dredged material at the sites may occur, the Corps of Engineers must evaluate the project according to EPA's ocean dumping criteria. EPA has the authority 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 Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 20, 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) the entry for Freeport Harbor, Texas and adding paragraph (b) (76) and (77) to read as follows:

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

* * *

(b) * * *

(76) Freeport Harbor New Work (45-Foot Project), Texas—Region 6

Location:

28°50'51" N, 95°13'54" W; 28°51'44" N, 95°14'49" W;

28°50'15" N, 95°16'40" W; 28°49'22" N, 95°15'45" W.

Size: 2.64 square nautical miles.

Depth: 54 to 61 feet.

Primary Use: Construction (new work) dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

(77) Freeport Harbor Maintenance (45-Foot Project), Texas—Region 6

Location:

28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W;

28°52'00" N, 95°16'59" W; 28°52'32" N, 95°17'32" W.

Size: 1.53 square nautical miles.

Depth: 31 to 38 feet.

Primary Use: Maintenance dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

[FR Doc. 90-6921 Filed 3-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3749-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, for a specific waste located at the Boeing Commercial Airplane Company, Auburn, Washington. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 27, 1990.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W. (Room M2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-BAEF-FFFF". The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to allow EPA to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it is

listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of This Rulemaking

Boeing Commercial Airplane Company (Boeing), located in Auburn, Washington, petitioned the Agency to exclude from hazardous waste control a volume of soil contaminated by a specific waste that Boeing generates. After evaluating the petition, EPA proposed, on December 2, 1988, to exclude Boeing's contaminated soils from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 48655).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

A. Boeing Commercial Airplane Company, Auburn, Washington

1. Proposed Exclusion

Boeing petitioned the Agency to exclude its residually-contaminated soils remaining after the excavation of a sludge pile and soils containing EPA Hazardous Waste No. F006. Boeing based its petition on the claim that the previous management of F006 wastes at this site did not leave significant quantities of contaminants in the underlying soil, and that the constituents of concern that were present in the soil were in an essentially immobile form.

To support its claim that both the non-listed constituents of concern are not present in the soils above levels of concern, Boeing submitted (1) results from total constituent analyses for all the EP toxic metals, nickel, and cyanide; (2) results from EP toxicity analysis for all the EP toxic metals, nickel, and cyanide; (3) and results from total constituent analyses for the EPA priority pollutants and formaldehyde.

The Agency evaluated the information and analytical data provided by Boeing in support of its petition and tentatively determined that the hazardous constituents found in the petitioned soils would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned soils. The Agency also evaluated ground-water monitoring information submitted in support of Boeing's petition. Based on these evaluations, the Agency tentatively determined that the constituents in Boeing's petitioned soils would not leach and migrate at