

16. Section 1.555 is revised to read as follows:

§ 1.555 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, and should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible.

(b) Under this section, information is material to patentability in a reexamination proceeding when it is not

cumulative to information of record or being made of record in the reexamination proceeding, and

(1) It is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the patent owner takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability of a claim pending in a reexamination proceeding is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

18. Section 10.23, paragraphs (c)(10) and (c)(11) are revised to read as follows:

§ 10.23 Misconduct.

* * *

(c) * * *

(10) Knowingly violating or causing to be violated the requirements of § 1.56 or § 1.555 of this subchapter.

(11) Knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers

Dated: January 9, 1992.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of
Patents and Trademarks.

[FR Doc. 91-1064 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-4094-7]

Ocean Dumping: Designation of Site, Brazos Island Harbor, TX

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 one time disposal of construction material dredged from the enlargement of the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the disposal of material from the Army Corps of Engineers 42-Foot Project at Brazos Island Harbor. This final site designation is for an indefinite period of time but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATES: This designation shall become effective February 18, 1992.

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, and Corps of Engineers, Galveston District, 444 Baracuda Avenue, Galveston, Texas.

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 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 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 42-Foot Project Ocean Dredged Material Disposal Site Designation." On November 22, 1991, 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 December 23, 1991. No comments on the Final EIS were received.

The action discussed in the EIS is designation 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 discusses the need for the action and examines 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 re-evaluated in EPA's EIS. The nearest available land disposal area is 82 acres in size and is located 5 miles away from the seaward end of the project. The volume of this disposal site is needed for construction and future maintenance of the inland portions of the channel and is not available for the disposal of construction material from offshore areas. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would likely result in a significant loss of

quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Five ocean disposal alternatives—three 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 safety risks 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 and the routine maintenance disposal site showed that both these nearshore sites were located within the navigational fairways and contained inappropriate grain-size regimes. Because of these reasons the historically-used and routine maintenance sites were not selected for disposal of the construction material. However, the routine maintenance material site, which was designated by EPA in September 1990, will receive routine maintenance material from the 42-Foot Project.

The selected ocean disposal site for the construction (virgin) material is located in the 60-foot isobath and in the sandy silt regime. The size of the virgin ocean dredged material disposal site (ODMDS) was determined, based on models of the ocean discharge of dredged material, to be 5,300 feet in a direction parallel to the channel (east/west) and 2,895 feet in a direction perpendicular to the channel (south/north).

EPA has determined that its site designation action will not adversely affect any listed endangered or threatened species. EPA is coordinating its determination with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirement under the Coastal Zone Management Act.

C. Site Designation

On June 10, 1991, EPA proposed designation of this site for the disposal of construction material from the Brazos Island Harbor 42-Foot Project. The public comment period on this proposed action closed on July 24, 1991. No

comments on the proposed rule were received.

The disposal site is located about four miles from the coast and occupies an area of 0.42 square nautical miles. Water depths within the area range from 60–67 feet. The coordinates of the rectangular-shaped site are as follows: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites. 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; Section 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 Draft and Final EISs, 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, 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 siting feasibility process and eliminated from consideration. To the west of the site, there is a fish haven which is excluded, as are the jetties, including buffer zones of 630 feet. The

jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are partially 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 4 miles from any beach or other amenity 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).]

Approximately 1,325,000 cubic yards of construction material will be discharged into the disposal site. Construction disposal is expected to last for a period of two years or less. This material will be transported by hopper dredges.

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

The site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program 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.

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, are to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, may 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).]

Chemical and bioassay testing of past maintenance material and material from the historically-used disposal site plus chemical analyses of water from the area concluded that 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. Based on current direction and modeling of the virgin material, the

site was situated to prevent discharged material from re-entering the channel and to ensure that any mounding poses no obstruction to navigation.

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 42-Foot Project 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 at other locations 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 area and there have been no long-term adverse impacts on water and sediment quality from past disposal operations. No long-term impacts on the benthos at the historically-used site were apparent.

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 maintenance material in the past has not and the disposal of construction material in the future 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 as is well within the buffer zone surrounding the jetties. Use of the site would not impact any known historical or cultural sites.

E. Action

Based on the Draft and Final EISs, EPA concludes that the site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Brazos Island Harbor 42-Foot Project 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 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: January 9, 1992.

Joe 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 adding paragraph (b)(91) to read as follows:

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

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6.

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 92-1412 Filed 1-16-92; 8:45 am]

BILLING CODE 8560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02 24 1A; Circular No. 2630]

RIN 1004-AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the *Federal Register* on November 23, 1990 (55 FR 48958).

EFFECTIVE DATES: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Hank Symanski.

The following typographical and editorial corrections are made in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide

Operations, published in the *Federal Register* on November 23, 1990 (55 FR 48958):

1. On page 48968, first column, in the Authority paragraph, the fifth line, the phrase "Act of May 31, 1930" is revised to read "Act of May 21, 1990."

1a. On page 48968, second column, second full paragraph, is revised to read: "The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NLT's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area-wide basis".

2. On page 48968, third column, line 11, is revised to read: "Upon release, could constitute a".

3. On page 48969, second column, under the definition of radius of exposure (item 1), change the exponent in the equation from "(0.625)" to "(0.825)".

4. On page 48969, second column, under the definition of radius of exposure (item 2), delete the term "(percent)".

5. On page 48969, second column, under the definition of radius of exposure (item 3), insert the word "and" between "complex terrain" and "other dispersion".

6. On page 48969, third column, under III. Requirements, line 4, insert the word "typically" between "as" and "major".

7. On page 48970, first column, first paragraph, line 6, insert the word "the" between "stream," and "H₂S".

8. On page 48970, third column, paragraph c., line 6, is revised to read: "under section III.A.2.a.",

9. On page 48971, first column, paragraph c., lines 3 and 4, are revised to read: "facilities or roads are principally maintained for public use".

10. On page 48971, third column, under paragraph c., change "(i)" to "I".

11. On page 48972, first column, last line, change "API-RP49" to "API RP-49".

12. On page 48972, third column, under section c. H₂S Detection and Monitoring Equipment, line 5, insert the word "of" between "air concentration" and "H₂S".

13. On page 48973, first column, paragraph iv., lines 5 and 6, are revised to read: "feet from the well site and at a location which allows vehicles to turn around at a safe".

14. On page 48973, second column, under section 4.a.i., line 10 revise to

read: "water- or oil-based mud and mud shall".

15. On page 48974, first column, paragraph b.i., lines 7 and 8, are revised to read: "conditions or mud types justify to the authorized officer a lesser pH level is necessary".

16. On page 48974, first column, last paragraph, line 11, change "MR-01-75" to "MR 0175-90".

17. On page 48974, third column, first paragraph c., violation section, line 1, is revised to read: "Major, if the authorized officer determines that a health or safety".

18. On page 48975, second column, paragraph c., line 1, is revised to read: "Fencing and gate(s), as specified in section".

19. On page 48975, second column, paragraph g., in line 2 change "a" to "the" and in line 4 change "MR-01-75" to "MR 0175-90".

Dated: December 18, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-1336 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 11]

RIN 2127-AE13

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114, *Theft Protection*, to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In March 1991, in response to petitions for reconsideration, the agency published a final rule amending certain of the requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented. This notice responds to petitions for reconsideration of the March 1991 final rule submitted by Toyota and Honda. In response to those petitions, the notice further amends the requirements to provide