

enhanced I/M testing in the District by April 30, 1999, EPA would notify the District by letter that the condition has not been met and that any final conditional approval has converted to a disapproval, and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the **Federal Register** announcing that the SIP revision has been disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and a subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the proposed conditional approval is promulgated and subsequently is converted to a disapproval under

section 110(k), based on the District's failure to meet the condition committed to in its submittal, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the conditional approval action being proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action only proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the District's enhanced I/M SIP revision will be based on whether it meets the requirements of the federal enhanced I/M regulations, section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–4]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the H & K Sales Superfund site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA) Region V announces its intent to delete the H & K Sales Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 29, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604.

Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Alvah N. Belding Library, 302 East Main Street, Belding, Michigan 48809. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional

Docket Officer is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

FOR FURTHER INFORMATION CONTACT: Kevin Adler, Remedial Project Manager at (312) 886-7078 or Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR-6J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-7253 or Denise Gawlinski (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-9859.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) Region V announces its intent to delete the H & K Sales Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the

NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time Critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The H & K Sales site is located at 100 East Main Street in Belding, Michigan. The site is the portion of the Belding Warehouse facility in which World War II (WWII) era military-surplus aircraft components had been stored since 1994. Some of the aircraft components are marked with paint containing radium-226, which is a naturally occurring, but hazardous, radioactive material.

The Belding Warehouse facility is located on several acres of land in a commercial section of town. The property is bounded by the Flat River on the north, Bridge Street on the west, and adjacent industrial buildings on the east

and south. Several schools, a hospital, and many residences are located within a one-mile radius of the site, almost 6000 people live within this area.

The Belding Warehouse facility is privately owned and consists of two main buildings. The site is a single-story building consisting of three large rooms, each approximately 10,000 square feet in area. This building has a concrete floor and foundation, brick and block walls, and a metal roof. Two of the three rooms were packed with crates of the WWII surplus material; the third room was empty. Evidence of cracks in the concrete floor, leaks in the roof, and floor drains with an uncertain discharge location pointed towards the potential for release of radium-226 into the environment. The building is attached to a separate, three-story building that was not used for storage of the surplus material and thus was not contaminated.

In the late 1940s, Aircraft Components, Inc., of Benton Harbor, Michigan, purchased the radium-paint aircraft components as military surplus for resale. Aircraft Components stored the surplus material in several Benton Harbor locations, including in its main warehouse building which is now also a Superfund cleanup site. After the owners of the company died in the early 1990s the main warehouse building in Benton Harbor was sold along with its contents. The new owners of the Benton Harbor warehouse sold some of the surplus material to a salvage facility in Arkansas whose radiation alarm was tripped during a delivery of the material. The facility notified the Arkansas Department of Health, which traced the shipment to Michigan and then notified the Michigan Department of Public Health's Division of Radiological Protection. The Division of Radiological Protection is now called the Drinking Water and Radiological Protection Division and is a part of the Michigan Department of Environmental Quality (MDEQ).

MDEQ staff determined that the origin of the material was the Aircraft Components Inc., warehouse in Benton Harbor. The MDEQ interviewed the new owners of the warehouse and determined that a large portion of their inventory had been sold to another Michigan firm (H & K Sales) and moved to Belding, Michigan. The MDEQ investigated the Belding Warehouse facility in late September 1994 and estimated that thousands of radium-painted gauges and other aircraft components were packed in wooden crates inside part of the warehouse facility. Using radiation detection equipment, the MDEQ measured

ambient gamma ray dose rate readings within the building at more than 700 times the level that naturally occurs in Michigan. In October 1994, the EPA and the MDEQ conducted a radiological survey at the site and confirmed the MDEQ's initial findings.

In June 1995, the Agency for Toxic Substances and Disease Registry issued a public health advisory and recommended that the site be addressed by the EPA without delay. ATSDR was concerned that a fire at the warehouse could result in the widespread dispersal of radium into the environment by the smoke plume and by water runoff into the adjacent Flat River. In September 1995, the site was nominated for inclusion on the EPA's National Priorities List (NPL), which made it eligible for study and cleanup under the Superfund law. The site was added to the NPL in July 1996.

In October 1995, the EPA met with officials from the U. S. Air Force in Washington, D.C. and requested that they undertake the cleanup of the radium-226-painted materials. The EPA considers the Air Force, which originally sold the radium-painted gauges and other materials to Aircraft Components, to be a potentially responsible party as defined by the Superfund Law. The Air Force declined to participate in a cleanup at that time, citing budgetary and logistical reasons.

In February 1996, the EPA, with assistance from the MDEQ, conducted a detailed inspection of the site and prepared a document called an Engineering Evaluation/Cost Analysis (EE/CA). An EE/CA is a type of study that the EPA uses to evaluate removal program cleanup alternatives and to request Superfund money for cleanup of sites that pose immediate threats to public health and the environment. A site risk evaluation performed as part of the EE/CA by the U.S. EPA concluded that people working in the warehouse buildings could be exposed to harmful levels of radiation from radium and/or radon gas, which is generated by the radioactive decay of radium. EPA and MDEQ shared ATSDR's concern that radium could be released to the environment should there be a fire, or as the result of other events such as vandalism or theft.

The EPA began the planning stage of the cleanup in September 1996. At that time, the EPA contracted with another federal agency, the U.S. Department of the Interior's Bureau of Reclamation (USBR), to manage the cleanup. Onsite cleanup work began in January 1997 and included the following activities:

- The building was secured to prevent release of radiation to the environment during the handling of the radium-painted materials and to prevent entrance to the clean-up areas by untrained persons;

- A detailed, base-line radiation survey using radiation-detection devices was performed in the buildings: (1) To determine where "hotspots" existed to alert site clean-up workers and prevent exposure to high doses of radiation during the cleanup; and (2) to more accurately predict where radium-painted items were stored (before the large number of storage crates were opened for sorting);

- Radium-painted materials were segregated and packed into proper containers for shipment to a disposal facility in the state of Washington. Two shipments, each containing an average of 85 containers of radium painted materials, were sent off-site for disposal. Each container held between 200 and 300 radium-painted components, which means more than 34,000 radium-painted aircraft components were transported off-site for disposal;

- A waste shredder was set up in the building to process packaging materials and other non-hazardous items for disposal in a local landfill. These materials were tested to ensure that they did not exceed the federal or state criterion for disposal of radioactive items in municipal landfills. Approximately 56 loads of material were sent to the local landfill; each load contained about 540 cubic feet (averaging about 4.5 tons) of shredded wastes, for a total of 30,240 cubic feet (252 tons). Using the local landfill was a safe and cost-effective alternative to sending the non-hazardous wastes to a disposal facility in Utah;

- Approximately 1,000 cubic feet of material was packaged and shipped to a low-level radioactive waste disposal facility in Utah. This material was not painted with radium-226, but had enough radium-226 dust in it to exceed the federal criterion for disposal in the local landfill;

- More than 4,500 cubic feet of aircraft components and other materials were subjected to radiation surveys, cleaned if necessary, and then released back to the original owners (H&K Sales, Inc.) for unrestricted use, including resale to collectors, etc. Items such as airplane propellers, nuts and bolts, and certain pieces of heavy machinery were reclaimed by the owners, saving the U.S. EPA substantial sums in disposal costs; and

- Smaller amounts of other hazardous items, including radium-226-painted components containing such materials as mercury and diesel fuel, were properly packaged and shipped off-site for disposal. For example, the mercury-containing components were shipped to a processing facility in Texas where the mercury will be reclaimed for re-use. The radium 226-painted components will then be sent to the disposal facility in the state of Washington.

EPA has determined that no further remedial action needs to take place at the site for the following reasons:

- The site no longer contains radium-226 above standards or above naturally-occurring levels.

- The warehouse buildings have been emptied of the radium-painted materials, thus the risk of release of radium-226 to the environment (air, ground water, surface water, or soil) ended.

- There are several floor drains in Rooms 1 and 2 however, these drains had been plugged prior to the placement of the radium-painted materials at the site and thus were not a potential conduit for radium-226 to be released to the environment. During the final radiation survey, the drains were found not to have radium-226-contamination in them.

- Radiation survey data from certain areas outside of the site building ensured that no radium was tracked off-site by site cleanup workers and that no radium had been released to the environment in the short time that the materials had been stored at the warehouse.

- Radon gas levels are at a level below the acceptable criteria of 4 pCi/L inside the buildings.

All risks to human health and the environment posed by the site have been removed.

EPA, with concurrence from the State of Michigan, has determined that all appropriate Fund-financed responses under CERCLA at the H & K Sales Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: March 13, 1998.

David Ullrich,

Acting Regional Administrator, Region V.
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