

Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

**1. Executive Order 12866: Regulatory Planning Review**

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866.

**2. Paperwork Reduction Act**

This rule does not impose an information collection burden under the Paperwork Reduction Act.

**3. Regulatory Flexibility Act**

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

**4. Unfunded Mandates Reform Act**

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act.

**5. Executive Order 13132: Federalism**

Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).

**6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

**7. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks**

This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

**8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866.

**9. National Technology Transfer Advancement Act**

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

**10. Congressional Review Act**

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on September 24, 2004.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 12, 2004.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 04-16944 Filed 7-23-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-7790-3]**

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

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

**ACTION:** Direct final notice of deletion of the Mid-America Tanning Co. site from the National Priorities List (NPL).

**SUMMARY:** The EPA, Region VII, is publishing a direct final notice of deletion of the Mid-America Tanning Co. site (site), located near Sergeant Bluff, Iowa, from the NPL.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the state of Iowa, through the Iowa Department of Natural Resources (IDNR) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective September 24, 2004 unless EPA receives adverse comments by August 25, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to Bob Stewart, Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, 901 North 5th Street, Kansas City, KS 66101.

**Information Repositories:** Comprehensive information on the site is available for viewing in the Deletion Docket at the information repositories located at: U.S. EPA Region VII, Superfund Division Records Center, 901 North 5th Street, Kansas City, KS 66101; and the IDNR, Henry A. Wallace Building, 900 East Grand, Des Moines, IA 50319.

**FOR FURTHER INFORMATION CONTACT:** Bob Stewart, Remedial Project Manager, U.S. EPA, Superfund Division, 901 North 5th Street, Kansas City, KS 66101, fax (913) 551-9654, or 1-800-223-0425.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

**I. Introduction**

The EPA, Region VII, is publishing this direct final notice of deletion of the Mid-America Tanning Co. Superfund site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in the § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 24, 2004 unless EPA receives adverse comments by August 25, 2004 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

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 Mid-America Tanning Superfund site and demonstrates how it meets the deletion criteria. Section V states EPA's action to delete the site from the NPL unless adverse comments are received during the comment period.

## II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall 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.
- ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted

exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the remedy remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the site.

- (1) The EPA consulted with the State of Iowa on the deletion of the site from the NPL prior to developing this direct final notice of deletion.
- (2) The State of Iowa concurred with deletion of the site from the NPL.
- (3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the site and is being distributed to appropriate Federal, State, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the site from the NPL.

- (4) The EPA placed copies of documents supporting the deletion in the Deletion Docket at the site information repositories identified above.

- (5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of the site 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 EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions,

should future conditions warrant such actions.

## IV. Basis for Intended Site Deletion

The following information provides EPA's rationale for deleting the site from the NPL.

### Site Location

The Mid-America Tanning Co. site is located in Woodbury County, Iowa, and is a 98.7-acre site which lies near the Missouri River in the Port Neal Industrial District four miles south of the town of Sergeant Bluff.

### Site History

The Mid-America Tanning Co. facility was a leather tannery which operated from 1970 to 1989. In 1973, the plant began using a chrome tanning process. Process wastewater containing debris, chromium, and other chemicals was discharged to onsite surface impoundments. Chromium contaminated sludge accumulated at the bottom of the surface impoundments and was disposed of on site in trenches and in surface soil. When the facility ceased operations in 1989, there was an estimated 5,000 gallons of chromium tanning solution on site along with 525 gallons of sulfuric acid used in the tanning process.

The site was proposed to the NPL in June 1988 and became final in March 1989 (54 FR 13296). The site posed a threat to the public health through direct contact and through potential migration of chromium into the surrounding groundwater that is the primary drinking water source for approximately 850 individuals who live in the surrounding three-mile radius of the site. This determination was made based on evidence of repeated discharges of chromium at the site and groundwater samples in exceedance of drinking water standards.

### Remedial Investigation and Feasibility Study (RI/FS)

In December 1989, the EPA issued an administrative order to the owner and operator of the MAT facility, the U.S. Tanning Co. (UST), requiring UST to perform an investigation and removal action at the site to determine the nature and extent of the contamination problem. Having previously filed bankruptcy, the company failed to comply with the order. Because of imminent health threats, EPA initiated a removal action in 1990. The EPA removal action was directed toward immediate site stabilization measures and included excavation and stockpiling of contaminated sludge from the onsite burial trench, containment

and treatment of chromium tanning solutions, containment and neutralization of sulfuric acids, and cursory decontamination of the buildings.

In conjunction with the removal activities, EPA conducted an investigation into the nature and extent of the contamination at the site. During EPA's investigation of the site in 1991, 18 wells located in shallow, intermediate, and deep water-bearing zones were sampled. The data obtained from the wells indicated that the direction of groundwater flow at the site is west to southwest toward the Missouri River. The results of analysis of the groundwater samples indicated the presence of chromium, lead, arsenic, and barium in the groundwater. The extent of contaminated soil was determined from borings. Wastes and liquids in the impoundments, treatment units, sludge disposal areas, and Oxbow Lake were also sampled.

#### *Record of Decision Findings*

In September 1991, EPA decided on a cleanup plan which was explained in a "Record of Decision" (ROD). The cleanup plan included onsite stabilization of contaminated wastes followed by installation of a soil cap and continued monitoring of the groundwater. The ROD stated that the groundwater at the site will be addressed as a separate operable unit and recommended further monitoring of the groundwater. Subsequently, the EPA determined that the sludge in the surface impoundment was emitting hydrogen sulfide gas and that the implementation of the stabilization component of the cleanup plan would likely result in the release of this gas at concentrations which would pose a threat to public health and the environment. In response to the new data regarding the hydrogen sulfide emissions, the EPA modified the cleanup plan for the site in an amended ROD dated July 1996. The modified plan included dewatering the impoundment areas; treating and discharging the impoundment waters; excavating contaminated soils and combining them with the contaminated impoundment sludge; capping the impoundment soil/sludge; and decontaminating various cement structures and a portion of one building.

A further assessment of the groundwater at the site was completed in December 1997 in accordance with the sampling plan approved by EPA. Twenty-one monitoring wells were sampled, obtaining water from both shallow and deep water-bearing zones at the site. These samples were analyzed

for 19 analytes. The assessment showed that the groundwater flow direction was consistent with that previously determined and also found that upward hydraulic gradients were present. These upward gradients are important because they prevent downward contaminant migration and help limit migration at the site. Metals detected in groundwater samples including arsenic, barium, and chromium, were well below Maximum Contaminant Levels (MCL); the highest chromium levels were less than 10 percent of the MCL. Lead, aluminum, and arsenic were below Iowa Aquatic Standards as well. A ROD was issued in September 2000 following a public notice period and public meeting, which determined that no further action was necessary for the groundwater at the site.

#### *Characterization of Risk*

A baseline risk assessment was prepared by the EPA for the site. A human health baseline risk assessment was prepared and was described in the 1991 ROD. For groundwater, the risk assessment assumed that residents would use the groundwater as a drinking water source. The EPA believed that future uses of the site will be industrial only; we, however, evaluated contaminant levels in the groundwater against drinking water standards for residential consumption as a conservative first step.

The primary contaminant of concern at the site was chromium. This chemical may pose adverse health effects at high concentrations or exposures, and is considered to be a probable human carcinogen in the hexavalent form if inhaled. Hexavalent chromium has not been found in site groundwater. The volatilization of chromium dissolved in groundwater should not occur during typical residential use. Trivalent chromium, the form found at the site, is much less toxic.

To ensure protection of human health, the risk assessment assumed that no action was taken on the groundwater at the site to remove the contamination, and the highest exposure reasonably expected to occur at the site was evaluated. Additionally, the EPA assumed that a future resident drills a new well within the area of the groundwater contamination and then drinks and bathes with contaminated groundwater. Even under residential conditions, the highest concentration of chromium in the groundwater would not pose adverse health effects.

In its 1991 ROD, the EPA concluded that the only other contaminant in the groundwater at levels of concern was manganese, and that it would naturally

reduce in concentration as a result of the removal and remedial actions at the site. The results of the 1997 sampling confirmed that expectation and indicated that no contaminants are present in the groundwater at levels of concern.

The ecological assessment in the 1991 ROD concluded that only minimal impacts from site contaminants would be expected, and that a response action based on human health risks would also reduce this minimal threat to the environment. Based on the lack of any substantial concentrations of contaminants in the groundwater and on the remedial actions planned at the site, EPA decided that a threat to the surface environment does not exist. Therefore, further actions taken solely to protect surface environmental receptors were found to be unnecessary.

#### *Response Actions*

Following the initial removal action performed by EPA in 1990, site conditions deteriorated due to vandalism and areas of the site were re-contaminated. In 1994, EPA issued an Administrative Order to Foxley Cattle Company, a Potentially Responsible Party (PRP), to perform a second removal action to address re-contamination concerns, address the hydrogen sulfide problem and provide for site security. The removal action performed by Foxley was completed in 1995 and consisted of decontaminating buildings, removal and disposal of drummed wastes, and securing the site buildings and man-holes.

The EPA implemented remedial design efforts which included the following work:

- Excavation and relocation of onsite contaminated soil, sediment, and sludge materials;
- Coverage of those materials with multi-media landfill cap structures;
- Treatment of free wastewaters located in several site impoundments;
- Installation of floating geosynthetic covers on existing site lagoons;
- Decontamination by steam cleaning of selected site facilities;
- Decontamination of selected buildings;
- Transfer of wastewaters from and to selected surface impoundments and installation of chain link fencing.

This work was carried out and a final inspection was conducted on May 19, 2000. On August 1, 2000, a Remedial Action (RA) Report was completed, demonstrating successful completion of construction activities. The site will remain suitable for industrial and commercial uses. Institutional controls

have been placed on the site through the State of Iowa's Registry of Hazardous Waste or Hazardous Substance Disposal Sites, which prevents changes in land ownership or use without State approval. In addition, a notice has been placed on the deed.

#### *Cleanup Standards*

Soil cleanup standards were set in the ROD at 2000 milligrams per kilogram (mg/kg) total chromium. This standard was met and exceeded in the site excavation work. The site work was considered to be completed when the groundwater monitoring revealed no exceedance of MCLs, or State action levels, for CERCLA contaminants of concern. All facets of the ROD and amended ROD have been met as well. Because wastes remain at the site in two capped landfills and in the covered impoundments, some residual risks remain at the site that require continued operation and maintenance activities, institutional controls, and five-year reviews.

#### *Operations and Maintenance*

The State of Iowa has provided in the State Superfund Contract with EPA an adequate assurance to assume responsibility for operation and maintenance activities, including institutional controls. The state is conducting operation and maintenance activities pursuant to the Surveillance and Maintenance Plan that was approved by EPA on September 12, 2000. Operation and maintenance of the landfill caps, floating covers, and fences is required and will continue after site deletion, since waste was left in place as part of the final source control remedy. The Plan, dated September 1998 and revised by technical memorandum of June 19, 2000, lists the activities to be performed, including inspections every six months to ensure erosion control, floating cover maintenance, mowing, and fence maintenance. Institutional controls will also be maintained. No major problems have been encountered.

#### *Five-Year Review*

A statutory Five-Year Review Report was completed on July 11, 2003, pursuant to CERCLA 121 (c) and to § 300.430(f)(4)(ii) of the NCP. The report concluded that the remedy is protective of human health and the environment, all threats at the site have been addressed, and contaminants of concern in the groundwater have been shown to be below drinking water standards. Another five-year review report is scheduled for 2008.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Mailing lists were developed, fact sheets mailed out, and public notices placed in newspapers in July 1991, May 1996, and July 2000 to support the proposed plans. Public meetings were held on July 30, 1991, and July 24, 2000; opportunity for a hearing was provided in May 1996 but none was requested. In addition, a public notice for the Five-Year Review was placed in June 2003. Documents in the Deletion Docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories. A public notice for this action will also be published in the *Sergeant Bluff Advocate*.

#### **V. Deletion Action**

The EPA, with concurrence of the State of Iowa, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, are necessary. The State concurrence letter dated May 11, 2004, states that IDNR concurs with the proposed removal of the site from the NPL. It notes that such removal will not disqualify the site for Superfund funds if additional remedial work is deemed necessary in the future. The EPA agrees with the State comment; therefore, EPA is deleting the site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 24, 2004 unless EPA receives adverse comments by August 25, 2004. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 21, 2004.

**James B. Gulliford,**

*Regional Administrator, Region VII.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

#### **Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to part 300 is amended by removing the site, “Mid-America Tanning Co., Sergeant Bluff, IA.”

[FR Doc. 04–16726 Filed 7–23–04; 8:45 am]

BILLING CODE 6560–50–P

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

[DA 04–1736; MB Docket No. 03–244, RM–10825]

#### **Radio Broadcasting Services; New Market, Alabama and Tullahoma, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Tennessee Valley Radio, Inc., licensee of FM Station WHRP, Tullahoma, Tennessee, deletes Tullahoma, Tennessee, Channel 227C1, from the FM Table of Allotments, and allots Channel 227C2 at New Market, Tennessee, as the community's first local FM service, and modifies the license of FM Station WHRP to specify operation on Channel 227C2 at New Market. Previously, the Audio Division granted Station WHRP a license to specify operation on Channel 227C1 in lieu of Channel 227C. See BLH–19890717KC Channel 227C2 can be allotted to New Market, Alabama, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 km (3.2 miles) south of New Market. The coordinates for Channel 227C2 at New Market, Alabama, are 34–51–48 North Latitude and 86–25–38 West Longitude.

**DATES:** Effective August 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.