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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5551-1]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Whitewood Creek Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Whitewood Creek Site (Site) in Butte, Meade and Lawrence Counties, South Dakota, from the National Priorities List (NPL). The NPL is Appendix B of title 40 of the Code of Federal Regulations part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA in consultation with the state of South Dakota have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA, other than required operations and maintenance (O&M), are appropriate.

EFFECTIVE DATE: August 13, 1996.

FOR FURTHER INFORMATION CONTACT:

Michael H. McCeney, Remedial Project Manager, U. S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mailcode: 8EPR-SR, Denver, CO 80202, telephone (303)-312-7023.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: The Whitewood Creek Site in Butte, Meade, and Lawrence Counties, South Dakota.

A Notice of Intent to Delete for this site was published on November 30, 1995, (60 FR 61507). The closing date for comments on the Notice of Intent to Delete was January 2, 1996. Three comments were received during the comment period. Two of the comments received voiced support for the

proposed action. In response, EPA agrees that the Site should be deleted from the NPL.

The third comment was from a landowner and current resident at the Site. The commenter was concerned with two aspects of the remedy implemented at the Site: (1) The impacts that the remedy will have on property values at the Site, and (2) the long-term effectiveness of the remedy given the potential for re-contamination of remediated areas at the Site.

In response to the first concern, EPA recognizes that the Superfund law has inadvertently had adverse effects on real estate values and transactions. These problems typically arise as a result of concerns on the part of lending institutions. Three common concerns expressed by lenders are: (1) The uncertainty associated with not knowing what cleanup actions EPA might ultimately require at a site; (2) the fear that the lender may assume liability in the event that they take possession of a Superfund site through foreclosure of loans; and (3) the fear that the loan applicant might be held liable for cleanup costs at a site.

At the Whitewood Creek Site, the first lender concern probably does not apply since EPA has determined that the Site poses no significant threat to public health and the environment and that all required response actions, except for required O&M, have been completed at the Site. All O&M, except that related to future land development at the Site, is the responsibility of the Homestake Mining Company (Homestake) under the terms of a consent decree with EPA.

To help allay the second lender concern, EPA has implemented a policy whereby lenders will not be held liable as a result of foreclosures on loans. EPA set forth this policy in a memorandum entitled "Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily", dated September 22, 1995.

To help allay the third concern of lenders, in situations where a Superfund site is used for residential purposes, EPA implemented a policy whereby residential landowners will not be held responsible for response costs related to cleanup at their property. This policy is set forth in EPA Office of Solid Waste and Emergency Response directive number 9834.6, dated July 3, 1991.

EPA believes that these and other policies have successfully curtailed many of the effects that Superfund sites may have had on property values. If lenders do have concerns over granting loans on Whitewood Creek Superfund

Site property, EPA Region VIII staff are available to discuss those concerns and provide information necessary to help resolve the situation.

In response to the commenter's second concern, EPA acknowledges that, given the nature of the residual contamination which remains at the Whitewood Creek Site, there is a potential for recontamination to occur in residential areas that were cleaned up as part of the remedy. For this reason, EPA is required to assess the conditions at the Site no less often than once every five years following the start of remedial action at the Site. The first five year review at the Site will therefore take place in 1996. As part of the five year review, Homestake, under the terms of a consent decree with EPA, will conduct soil sampling in residential yards cleaned up as part of the remedy. Any yards that are found to be recontaminated above the action level set forth in the ROD (100 milligrams per kilogram arsenic) will be cleaned up again by Homestake. Deletion of the Site from the NPL does not affect this process nor does it affect Homestake's obligations under the Consent Decree.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future, NCP § 300.425(e)(3) of the NCP. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

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: August 1, 1996.

Max H. Dodson,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

For the reasons set out in the preamble, 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 for Whitewood Creek Site, CS, South Dakota.

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LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Non-LSC Funds

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the Legal Services Corporation's ("Corporation" or "LSC") regulation concerning the use of funds from a source other than the Corporation ("non-LSC funds"). The revisions are intended to implement the Corporation's FY 1996 appropriations act that applies most of the restrictions contained in that act to all of a recipient's funds and to make certain technical corrections to the regulation. Although this rule is effective upon publication, the Corporation solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: The interim rule is effective on August 13, 1996. Comments must be submitted on or before September 12, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, (202) 336-8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement Section 504 in the Corporation's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996), which applies most restrictions contained therein to any person or entity receiving LSC funds, effectively restricting all of a recipient's funds to the same degree that it restricts LSC funds. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted this

interim rule on July 20 for publication in the Federal Register.

The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation that is already effective and carries severe penalties for noncompliance. Because of this great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this interim rule is effective upon publication.

However, the Corporation also solicits comments on this interim rule for review and consideration by the Committee and Board. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

Part 1610 is completely revised by this interim rule. Generally, this rule serves two purposes. First, it incorporates the restrictions imposed by the Corporation's FY 1996 appropriations act, 110 Stat. 1321 (1996), which apply to both a recipient's LSC funds and its non-LSC funds. Past appropriations acts have applied restrictions contained in those acts only to the funds appropriated thereunder. In contrast, the FY 1996 appropriations act prohibits LSC from funding any recipient that engages in certain specified activities or that fails to act in a manner consistent with certain appropriations act requirements. This rule also makes several technical revisions to the prior rule to correct those provisions that were never revised to be consistent with longstanding amendments to the LSC Act.

A section-by-section discussion of this interim rule is provided below.

Section 1610.1 Purpose

The purpose of this rule is to implement statutory restrictions on a recipient's use of non-LSC funds. The statutory restrictions are found in the LSC Act, 42 U.S.C. 2996 *et seq.*, and the Corporation's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996).

Section 1610.2 Definitions

"Purposes prohibited by the LSC Act." The definition of "purposes prohibited by the LSC Act" has been revised in several ways. First, reference to a prohibition on the representation of

juveniles has been deleted because it is no longer in the LSC Act. Second, it is revised to reflect the fact that certain restrictions on activities in the LSC Act no longer reflect the law, because broader restrictions on those activities are included in the Corporation's FY 1996 appropriations act. Accordingly, references to the LSC Act's prohibitions on legislative and administrative representation, 42 U.S.C. 2996f(a)(5), and on advocacy training, 42 U.S.C. 2996f(b)(5), have been deleted from this definition and are incorporated instead into the definition of "activity prohibited by or inconsistent with Section 504" in § 1610.2(b). Third, the definition now references the Corporation's regulations which implement the various restrictions. Fourth, citations to the LSC Act for the restrictions on political activities, criminal proceedings, actions challenging criminal convictions, organizing activities, school desegregation, Selective Service and military desertion have been revised to correspond to the numbering changes that were made by amendments to the LSC Act. Fifth, this definition includes only those restrictions on private funds required by Section 1010(c) of the LSC Act which applies only to an activity identified as a "purpose prohibited by [the LSC Act]." Accordingly, the reference to fee-generating cases has been deleted because involvement in a fee-generating case is not a purpose prohibited by the LSC Act. Neither the LSC Act nor the appropriations act prohibits legal services programs from undertaking representation in fee-generating cases. The LSC Act simply requires that any fee-generating cases undertaken by a recipient must be "in accordance with guidelines promulgated by the Corporation." The Corporation's guidelines on fee-generating cases is 45 CFR Part 1609. With a few exceptions, this rule requires recipients to first determine whether private representation is available for any particular fee-generating case before accepting the case. This implements the Congressional intent that scarce Federal funds not be used for cases for which private representation is available. Recipients should note that the issue of attorneys' fees, which had been included in part 1609 is now the subject of section 504(a)(13) of the Corporation's FY 1996 appropriations act, and is dealt with in a new interim rule, 45 CFR Part 1642. In this rule, attorneys' fees are appropriately included in § 1610.2(b)(9).

"Activity prohibited by or inconsistent with Section 504" is a new