

**LIBRARY OF CONGRESS****Copyright Office****37 CFR Chapter II****[Docket No. RM 96-3]****Notice and Recordkeeping for Subscription Digital Transmissions****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office of the Library of Congress is requesting comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works from subscription digital transmission services, and how records of such use shall be kept and made available to copyright owners. The regulations are required to be adopted by the Digital Performance Right in Sound Recordings Act of 1995, and are intended to ensure proper payment to copyright owners.

**DATES:** Comments are due July 12, 1996. Reply comments are due August 12, 1996.

**ADDRESSES:** An original and fifteen copies of the comments shall be delivered to: Office of General Counsel, The Copyright Office, LM-407, The Madison Building, 101 Independence Avenue SE., Washington, D.C., or mailed to: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, or William J. Roberts, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:****Background**

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995. Pub. L. 104-39, 109 Stat. 337 (1995). Among other things, it created a new compulsory copyright license that is paid by nonexempt subscription digital transmission services to the copyright owners of sound recordings. 17 U.S.C. 114(f). Congress directed the Librarian of Congress to establish regulations by which the entities availing themselves of this new license would keep records of their use, make the records available to the copyright owners, and give notice to the copyright owners of the use of their works.

The Sec. 114 License for Nonexempt Subscription Digital Transmissions Services

The Digital Performance Right in Sound Recordings Act gave to copyright owners of sound recordings an exclusive right to perform their works by means of a digital audio transmission. Certain digital transmissions were exempted from the scope of this right, 17 U.S.C. 114(d)(1), while certain subscription digital transmission services were given the opportunity to qualify for a compulsory license. 17 U.S.C. 114(d)(2).

A nonexempt subscription digital transmission qualifies for a compulsory license if the transmission is not part of an interactive service, does not exceed the sound recording performance complement, does not give an advance program schedule or prior announcements of the titles to be performed, does not automatically cause the receiving device to switch automatically from one program channel to another, and includes, if the copyright owner wants it, encoded information that identifies the title, the featured artist, and related information. 17 U.S.C. 114(d)(2).

If a service offering subscription digital transmissions qualifies for the compulsory license, it has the choice of reaching a voluntary agreement with the owners of the sound recordings it wishes to use, or, failing that, it may petition the Librarian of Congress to convene a copyright arbitration royalty panel (CARP) to set the rates and terms of the compulsory license. 17 U.S.C. 114(f). The terms and rates set by a CARP will be applicable to all subscription digital transmission services not subject to a voluntary agreement. However, the above mentioned requirements for notice and recordkeeping are to be set by the Librarian, not the CARP. 17 U.S.C. 114(f)(2).

On December 1, 1995, the Copyright Office and the Library of Congress initiated the six month period for negotiating the rates and terms for a compulsory license for subscription digital transmission services. 60 FR 61655 (Dec. 1, 1995). The period will run until June 1, 1996, after which the parties have 60 days to petition the Librarian to convene a CARP to set the rates and terms for those entities who have not reached voluntary agreements.

In the meantime, any person who wishes to perform a sound recording publicly by means of a nonexempt subscription transmission may do so without infringing the rights of the copyright owner of the sound recording

by complying with the notice requirements set by the Librarian of Congress and agreeing to pay the royalty fees as they are determined. 17 U.S.C. 114(f)(5).

This notice requirement, however, is an affirmative duty placed on the digital transmission subscription services to provide reasonable notice to the copyright owners of the use of their sound recordings. 17 U.S.C. 114(f)(2). Therefore, it is important for the Copyright Office and the Library of Congress to begin this rulemaking to establish the notice and recordkeeping requirements so that persons wishing to abide by section 114(f)(5) may do so.

Although we do not propose any specific regulatory language, commentators should consider both the adequacy of the notice to the copyright owners of the sound recordings and the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use.

Dated: May 3, 1996.

Recommended by:  
Marybeth Peters,  
*Register of Copyrights.*

Approved by:  
James H. Billington,  
*The Librarian of Congress.*  
[FR Doc. 96-11926 Filed 5-10-96; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300****[FRL-5504-2]****National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Alaskan Battery Enterprises Site from the National Priorities List Update: Request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Alaskan Battery Enterprises Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed 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 (CERCLA) of 1980, as amended. EPA and the State of Alaska Department of Environmental Conservation (ADEC) have determined that this Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning this Site may be submitted on or before June 12, 1996.

**ADDRESSES:** Comments may be mailed to: Keith Rose, U. S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: ECL-111, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the Alaskan Battery Enterprises Site information repositories at the following locations:

Alaska Department of Environmental Conservation, Attn: Jeffrey Peterson, 610 University Avenue, Fairbanks, Alaska 99709-3643

U.S. Environmental Protection Agency, Region 10, Environmental Cleanup Office—Records Center, Attn: Lynn Williams, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:**

Keith Rose, U.S. EPA, 1200 Sixth Avenue, Mail Stop: ECL-111, Seattle, Washington 98101, (206) 553-7721.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete a site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. Sites listed on the NPL are those which present a significant risk to human health or the environment. As described in Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Alaskan Battery Enterprises Site at 157 Old Richardson Highway, Fairbanks, Alaska 99709, from the NPL. EPA will accept comments on the plan to delete this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL.

Section III discusses procedures that EPA is using for this action. Section IV discusses the Alaskan Battery Enterprises Site and explains how this site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites, where a release of hazardous substances has occurred, may be deleted from, or recategorized on 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 responses under CERCLA have been implemented, and no further 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, 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 site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, where hazardous substances are not above health based levels and future access does not require restriction, operation and maintenance activities and five-year reviews will not be conducted. However, 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 may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 10 issued a Record of Decision (ROD) which documented that no further action was necessary because cleanup goals had been achieved through removal actions prior to the ROD; (2) ADEC concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-

day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary if any significant public comments are addressed.

A deletion occurs when the Regional Administrator places a final notice in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. *Site Background*

The Alaskan Battery Enterprises (ABE) facility was a 0.5 acre battery recycling facility located at 157 Old Richardson Highway at the southern edge of Fairbanks, Alaska. The area surrounding the site is primarily mixed residential and light commercial property.

B. *Site History*

The facility conducted battery recycling and manufacturing operations of automobile batteries from 1961 until about 1992. During its operation, crushed battery casings were used as fill material in low-lying areas of the ABE property and in the construction of the septic cribs along the southern property boundary. Used battery acid was also discharged directly to the ground on the ABE property.

Investigations conducted by the Alaska Department of Transportation (ADOT) in 1986, and by the EPA technical Assistance Team in 1988, identified high levels of lead contamination in soil on the ABE property and on the adjacent right-of-way owned by ADOT. In August 1988, EPA initiated an emergency removal action at the Site. Soils with lead

concentrations in excess of 1,000 mg/kg were excavated and disposed of at an off-site hazardous waste disposal facility. Excavation was completed in the summer of 1989 with a total of 3,760 cubic yards of contaminated soil removed and disposed off-site. Excavated areas were backfilled with clean soil.

In the summer of 1991 EPA initiated a Remedial Investigation (RI) for the Site. The results of the RI indicated that there were two locations in the surface soil and one location in the subsurface soil where lead concentrations still posed a potential human health risk. Groundwater sampling conducted during the RI found elevated lead concentrations in unfiltered samples, but lead was not detected in filtered samples, indicating that lead was bound to soil particles and not mobile in the groundwater.

In the spring of 1992 the ABE site was selected for the demonstration of an innovative soil washing technology by EPA's Superfund Innovative Technology Evaluation (SITE) Program. All soil containing lead concentrations exceeding 1,000 mg/kg, which was a total of about 130 cubic yards, was excavated and treated by the soil washing system. Treated soil which met the cleanup goal was backfilled into the excavated areas, and soil which did not meet the cleanup goal was sent to an off-site disposal facility.

EPA completed the RI, a Human Health Risk Assessment, and Feasibility Study (FS) for the Site in August, 1992. A Record of Decision (ROD) for the Site, which declared that no further action was necessary, was signed on March 2, 1993. However, the ROD specified that two years of groundwater monitoring would be required to verify that groundwater at the Site was not contaminated with lead at levels which would pose a human health risk. This groundwater monitoring program, which was completed in September 1995, determined that lead concentrations in the groundwater were below EPA's drinking water standard of 15 µg/kg, and therefore the groundwater did not pose a human health risk.

During the removal activities at this Site, EPA kept the community informed of its cleanup actions primarily through fact sheets, newspaper articles, and personal communications with EPA's On-Scene Coordinator. Following the removal action, EPA representatives met with local officials, congressional representatives, the facility owner, and members of the community on numerous occasions to identify community concerns to support development of a Community Relations

Plan, and to explain EPA's process for conducting a further investigation of the Site. EPA representatives also met several times with the Potentially Responsible Parties to discuss their potential liability for cleanup costs at the Site. A Proposed Plan for the Site, which called for no further cleanup action, was issued on October 29, 1992, and subject to public comment for 30 days. This Proposed Plan was mailed to individuals on EPA's mailing list and was also announced in a local newspaper notice. EPA also held a public meeting on the Proposed Plan in Fairbanks. In general, those who commented on the Proposed Plan supported EPA's no further action decision. EPA responded to all comments received in the Responsiveness Summary, which is attached to the ROD.

#### *C. Characterization of Site Risk*

Based on data collected during the RI, a risk assessment was conducted to identify exposure pathways and potential human health risks resulting from exposure to lead contamination remaining on-site after the removal actions conducted in 1988-89. The potential pathways for human health exposure to lead contamination at the Site were accidental ingestion of soil and ingestion of groundwater. A model was used to determine that a lead cleanup goal of 490 mg/kg for surface soil would be protective of potentially exposed children. For subsurface soils, EPA determined that a cleanup goal of 1,000 mg/kg, which was based on an industrial exposure, would be protective of workers who might be exposed to contaminated soil for a short duration. A risk assessment was not conducted for ingestion of lead in groundwater because a federal drinking water standard (15 µg/kg) already existed which was protective of human health.

Confirmational monitoring of soil and groundwater demonstrate that no significant risk to public health or the environment is posed by residual lead contamination remaining at the Site. Long-term operation and maintenance activities are not required at the Site. Based on the actions taken at the Site prior to the ROD, EPA and ADEC believe that hazardous substances have been removed from the Site so as to allow for unlimited use and unrestricted exposure within the Site, that conditions at the Site are protective of public health and the environment, and that no further remedial action or institutional controls are needed at the Site. Accordingly, EPA will not conduct "five-year reviews" at this Site.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate." EPA, with concurrence of ADEC, believes that this criterion for deletion has been met. The groundwater and soil data confirm that the ROD goals have been met. It is concluded that there is no significant threat to public health or the environment and, therefore, no further remedial action is necessary. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: April 30, 1996.

Chuck Clarke,

*Regional Administrator, Region 10.*

[FR Doc. 96-11757 Filed 5-10-96; 8:45 am]

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## **40 CFR Part 300**

[FRL-5504-1]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Intent to Delete Martin Marietta Aluminum Company from the National Priorities List Update: Request for Comments.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Martin Marietta Site from the National Priorities List (NPL) and requests public comment on this proposed 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 (CERCLA) of 1980, as amended. EPA and the State of Oregon Department of Environmental Quality (DEQ) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning this Site may be submitted on or before June 12, 1996.

**ADDRESSES:** Comments may be mailed to: Howard Orlean, Environmental Protection Agency, 1200 Sixth Avenue,