

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5951-1]

**40 CFR Part 300****National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of intent to delete the Berlin and Farro Liquid Incineration Site from the national priorities list; request for comments.

**SUMMARY:** The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Berlin and Farro Liquid Incineration Site (the 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 U.S. 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 U.S. EPA, because it has been determined that responsible parties have implemented all appropriate response actions required under CERCLA. U.S. EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, U.S. 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 February 20, 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: Gaines Township Hall, 9255 W. Grand Blanc Rd., Gaines, Michigan 48436. 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:** Robert Whippo at (312) 886-4759 (SR-6J), Remedial Project Manager or Gladys Beard (SR-6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-7253 or Don Deblasio, (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-4360.

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**I. Introduction**

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Berlin and Farro Liquid Incineration 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 Potentially Responsible Parties or 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 U.S. 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 U.S. 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 that 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, U.S. 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 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, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, 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 U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. 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 Berlin and Farro facility is a 40-acre site situated in a primarily rural area approximately 3½ miles south of the town of Swartz Creek in Gaines Township, Genesee County, Michigan. The Site is located at 8322 South Morrish Road, Swartz Creek, Michigan. Primary land use in the area consists of agricultural row crops and small deciduous woodlands. Residences are located within about 500 feet of the northeast and southeast boundaries of the Site. Approximately 80 permanent residences are located within a ½ mile radius of the Site. There are no known endangered species or critical habitats within close proximity of the Site.

Residents near the Site obtain groundwater from wells in glacial till aquifers and from the underlying bedrock. There are 115 residential wells within one mile of the Site.

Approximately 1/3 of the residential wells draw water from the glacial till aquifers. At least one well in the area draws water from the shallow portion of the aquifer. The remaining residential wells draw water from the bedrock.

Berlin and Farro Liquid Incineration, Inc. began operations at the site in April 1971. The facility was permitted to accept industrial waste for incineration, to store waste prior to incineration, and to operate an on-site 1.1 acre landfill for disposal of crushed used drums. Numerous violations of permit requirements were cited during the period of operation, until September 1975 when Berlin and Farro lost its operating incinerator permit for the incinerator. Permit violations included failure to comply with air emission standards and on-site storage volume limits, and failure to meet permit standards prohibiting on-site disposal of wastes other than solid wastes. The facility also operated two unauthorized waste storage lagoons and two unlined storage lagoons, illegally buried five tanks of waste water, buried liquid wastes, operated underground storage tanks, poured liquid wastes into subsurface agricultural drains and dumped large volumes of gallons of barreled waste into two pits. These permit violations and unpermitted activities led to the revocation of Berlin and Farro's incinerator and landfill permits on September 16, 1975. From 1975 until 1978, while the permit revocations were under appeal, Berlin and Farro was permitted by the State of Michigan (the State) to transport industrial waste for other generators, but not to transport wastes to its own site. Michigan Department of Environmental Quality (MDEQ) investigations indicated that illegal dumping of industrial wastes into the lagoons apparently continued after 1975. In 1978, Berlin and Farro's appeal of its permit revocation failed.

Limited cleanup activities were conducted by Berlin and Farro under a plan submitted to MDEQ from 1978 until 1980, when Berlin and Farro filed for chapter 11 Bankruptcy.

In 1978 and 1981, ownership of the property was transferred to the State for nonpayment of property taxes. Ten acres of the site remained under the jurisdiction of the Genesee County Circuit Court as a result of a lawsuit filed by the State. The site was proposal

for the National Priorities List (NPL) on July 16, 1992 and was placed on the NPL on September 8, 1983.

U.S. EPA identified more than 125 generators through review of site records. U.S. EPA, the State, and certain settling PRPs undertook surface cleanup actions intermittently from December 1981 through October 1984.

A Remedial Investigation (RI) was conducted from March 1986 through January 1989. A Remedial Investigation/Feasibility Study (RI/FS) Report and a Proposed Plan were released to the public on July 20, 1990. A fact sheet summarizing this Proposed Plan and remedial alternatives were released to the public on August 2, 1990. The notice of availability for the RI/FS Report and the Proposed Plan was published in the Flint Journal on July 20, 1990. A sixty-day public comment period was held from July 20, 1990 through September 19, 1990. On September 7, 1990, U.S. EPA sent a letter to all persons on the site mailing list informing them about a change in its preference among the various alternatives under consideration, subject to review of public comments.

At the start of the 1990 public comment period, U.S. EPA proposed a remedial alternative which addressed both groundwater and soil contamination at the Berlin and Farro Liquid Incineration Site, Swartz Creek, Michigan. The alternative, as specified in the proposed plan, called for on-site incineration of contaminated soils and for the extraction of contaminated groundwater with treatment via air stripping. On-site incineration was projected to last for approximately 1 year and extraction and treatment of the groundwater was projected to last for at least 30 years. In addition, the Berlin and Farro proposed planned required groundwater monitoring and long-term maintenance of the air stripper.

Initial written comments received by the U.S. EPA and those voiced at the August 9, 1990 public meeting in Swartz Creek indicated that most concerned members of the public were strongly opposed to on-site incineration.

The strong opposition to the proposed plan expressed early in the comment period, especially those comments offered at the public meeting, led the U.S. EPA and the MDEQ to alter the preferred soil cleanup plan. This opposition was based on the short term risk presented by the estimated 380 days of operation of the on-site incinerator. In addition, information was provided indicating that much of the volume of soil proposed to be remediated was to be treated based only on metal, contamination. Incineration is not generally considered an effective

treatment for metals, and in fact may produce treatment residuals that could require significant additional treatment. The new plan called for the removal of excavated soils to a licensed off-site facility for treatment and disposal. This plan retained the use of an air stripper for treatment of contaminated groundwater.

A second public meeting was held on September 12, 1990. At this meeting representatives from U.S. EPA and MDEQ discussed the changes that the Agencies were considering based on public comments. During this 1990 public comment period U.S. EPA continued negotiations with PRPs regarding cleanup options at Berlin and Farro as required under the terms of the RI/FS Consent Decree (Decree). U.S. EPA made it clear that at the end of the public comment period, following response to all comments, the terms of the Decree would be met and it intended to sign a ROD as early as the last week of September 1990. PRPs filed for and were granted an order which enjoined the U.S. EPA from issuing a ROD as planned. The Court ruled on September 27, 1990 that terms of the Decree would not be fulfilled and a ROD could not be issued, until an additional sixty-day period of negotiations had been held.

U.S. EPA and MDEQ determined, based on information developed and clarified during these extended negotiations that remedial action to address soil contamination other than the previously proposed options is most appropriate for Berlin and Farro.

A Proposed Plan for this remedial alternative was released July 11, 1991. The notice of availability for the Proposed Plan was published in the Flint Journal on July 8, 1991. A sixty-day public comment period was held from July 11, 1991 through September 9, 1991. In addition, a public meeting was held on August 8, 1991. At this meeting, representatives of the U.S. EPA and MDEQ answered questions about problems at the site and the remedial alternatives under consideration and accepted formal comments from the Public regarding the proposed alternative and other alternatives analyzed in the FS.

On September 30, 1991, U.S. EPA signed a Record of Decision (ROD) for the final remedy at the Site. The ROD required: (1) excavation of on-site soil and sediment and sediments from Slocum Drain where levels of contamination exceed ROD cleanup standards; (2) disposal of these materials in an on-site hazardous waste disposal cell; and (3) extraction and treatment by air stripping of ground water with

contaminant levels above the ROD cleanup standards. Following completion of these elements of the cleanup, permanent deed and land use restrictions were to be implemented to control land use, to restrict development of the Site and to prohibit installation of ground water wells.

U.S. EPA issued a Unilateral Administrative Order (UAO) to PRPs September 24, 1993. During an October 28, 1994 meeting attended by representatives of U.S. EPA, MDEQ and the PRP technical committee and by follow-up letter dated December 2, 1994 responsible party representatives requested U.S. EPA and MDEQ to consider an alternate cleanup option for remediation of contaminated soil and sediment and contaminated groundwater. In addition, the Predesign Report submitted in March 1995 included a contingency proposal for modification of the groundwater remedy, if necessary, following assessment of monitoring results.

Following public review of and comment upon the proposed changes to remedial action at the Site, the ROD was amended on October 24, 1995. The amended ROD specified a revised Remedial Action (RA) for the Site soils/sediments and groundwater based on the RI and predesign data and reevaluation of the cleanup standards for soil and groundwater.

An Amended ROD was signed on October 24, 1995. The major components of this remedy include:

- Excavation of contaminated soil and sediment from the central site area and Slocum Drain and transportation to an off-site facility for appropriate treatment/disposal.
- Excavation of the water-bearing zones in the area of highest groundwater contamination and off-site disposal of the excavated materials.
- Implementation of a groundwater monitoring program and implementation of site deed restrictions on the installation of drinking water wells until all cleanup standards have been met and maintained.

Activities at the Site were consistent with the amended ROD and the RD/RA statement of work for design and construction. The RD Report, including a Quality Assurance Project Plan (QAPP), incorporated all necessary U.S. EPA and State quality assurance and quality control (QA/QC) procedures and protocol. U.S. EPA analytical methods were used for all validation and monitoring samples during RA activities. All procedures and protocol followed for soil, groundwater, and air sample during the RA are documented in the RD Report and were conducted

through a participating Contract Laboratory Program (CLP) in accordance with the statement of work.

A Close Out Report was signed on September 18, 1996, which stated that the Site meets all site completion requirements as specified in OSWER Directive 9320.2-3c, *Procedures for Completion and Deletion of National Priorities Sites and Update*. Specifically, confirmatory sampling verifies that the Site has achieved the ROD cleanup objective, that all soil, sediment, and groundwater cleanup standards have been met and that all cleanup actions specified in the amended ROD have been implemented. Furthermore, U.S. EPA has removed all other contamination detected to acceptable levels. Confirmatory groundwater sampling and backfilling and grading the Site with unaffected Site soils provide further assurance that the Site no longer poses unacceptable threats to human health or the environment. No further activity is planned at the Site.

A five-year review pursuant to OSWER Directive 9355.7-02 ("Structure and Components of Five-Year Reviews") will not be conducted at the Site. There are no hazardous Substances that remain at the Site above health-based levels, U.S. EPA will not conduct a five-year review.

EPA, with concurrence from the State of Michigan, has determined that responsible parties have implemented all appropriate responses under CERCLA at the Berlin and Farro Liquid Incineration Site, and no further CERCLA response actions are appropriate in order to provide protection of human health and environment. Therefore, EPA proposes to delete the Site from the NPL.

Dated: December 9, 1997.

**David A. Ullrich,**

*Acting Regional Administrator, Region V.*

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-7243]

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood

elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.