

comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 8, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7266-7]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Gould Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Gould 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 Oregon Department of Environmental Quality (DEQ) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 23, 2002.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U. S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101.

Comprehensive information and the deletion docket for this Site are available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue,

Superfund Records Center, Seattle, Washington 98101.

Information on the site and a copy of the deletion docket are also available for viewing at the Information Repository which is located at: Multnomah County Library, 801 SW 10th Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT:

Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101, phone: (206) 553-1066, fax: (206) 553-0124, e-mail: gaines.beverly@epa.gov.

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I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Gould Site, which is located in the City of Portland, Oregon, 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 identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Oregon Department of Environmental Quality (DEQ) have determined that the remedial action for the site has been successfully executed.

EPA will accept comments on the proposal to delete this site 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 the procedures EPA is using for this action. Section IV discusses the Gould Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites 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 parties have implemented all appropriate response actions required; or

(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 site poses no significant threat to public health or the environment and, therefore, remedial measures are 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, 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. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this site, the selected remedy is protective of human health and the environment; however, the remedy will leave waste on site above levels that allow for unlimited use and unrestricted exposure. A review of the selected remedy will occur at least every five years from initiation of the remedial action. The next five-year review will be done before September 28, 2002.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) the State of Oregon has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers 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 in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, Sec. 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.

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 to address any significant public comments received.

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 proposal to delete this Site from the NPL.

Site Background and History

The Gould Site is located in the City of Portland, Oregon between NW Saint Helen's Road and NW Front Avenue in a heavily industrialized area northwest of downtown Portland known as the Doane lake area. The Site includes a 9.2 acre property currently owned by Gould Inc. that was the location of the former secondary lead smelter and battery recycle facility. Areas outside the property boundary is where battery casings and other residues from operations on the Gould property were placed.

A secondary lead smelting operation began at the Gould Site in 1949 under the ownership of Morris P. Kirk and Sons, a subsidiary of NL Industries, Inc. (NL). Facility operations included lead-acid battery recycling, lead smelting and refining, and lead oxide production. Gould purchased the property in 1979 and closed the facility in 1981. During facility operations, discarded battery casing materials and other lead smelter wastes were used as fill on the Gould Site and an adjacent property. Acid from batteries was drained to Doane Lake during several years of operation.

The Gould Site is adjacent to the former location of the Rhone-Poulenc Ag Company (Rhone-Poulenc) facility. Rhone-Poulenc is conducting an investigation under DEQ oversight and State authority of on-site and off-site contamination associated with their former pesticide and herbicide manufacturing facility.

The Gould Site is approximately one thousand feet southwest of the Willamette River. The Lower Willamette River, known as the Portland Harbor area, was recently added to the NPL

because of sediment contamination. A remedial investigation and feasibility study (RI/FS) of the Lower Willamette River is being conducted by a group of Potentially Responsible Parties (PRPs) under a Consent Order signed by EPA and the PRPs in September 2001.

In 1981 and 1982, a joint investigation of contamination at the Gould Site was conducted by EPA and Oregon Department of Environmental Quality). EPA included the site on the NPL in 1983 because of documented lead contamination. In 1985 NL and Gould signed a Consent Order with EPA under which the two companies conducted an RI/FS. The RI/FS was completed in February 1988. The RI/FS showed there were high levels of lead contamination in battery casings and other smelter waste, soil, debris and in East Doane Lake sediments at the Site.

Selected Remedy

Soil Operable Unit

In March 1988, EPA issued a Record of Decision (ROD) for the Soils Operable Unit. The selected remedy included excavating and treating battery casings, recovering lead for recycle, excavation of contaminated soil and East Doane Lake sediments followed by stabilization of material that exceeds Resource Conservation and Recovery Act (RCRA) characteristic hazardous waste levels, monitoring air, groundwater, and surface water quality. The 1988 ROD also included additional study of groundwater to determine whether action was needed because there was insufficient hydrogeologic information available to make a decision on the groundwater.

The selected remedy was expected to control the migration of contaminants from the Site by minimizing releases to the air and groundwater. Surface soil cleanup levels for lead of 1000 mg/kg were selected to be protective of human industrial exposures, including direct contact, inhalation, and ingestion. The intent was to recycle materials that could potentially be recycled (lead and casing materials).

Excavation and treatment of contaminated surface soils, battery casing piles, buried battery casings, matte (smelter waste), and other debris began in the summer of 1993. Excavated battery casings were processed through a treatment plant to separate materials (lead fines, metallic lead, clean plastic, and clean ebonite) for recycle. Contaminated soil and matte were stabilized to bind contaminants for backfilling on Site.

An estimated 24,000 tons of contaminated battery casings were

treated through the treatment/separation process, with 244 tons of plastic and 88 tons of coarse lead recycled. An estimated 20,000 blocks (each measuring one cubic yard) of stabilized material was produced. Several hundred tons of contaminated debris were shipped off site for disposal.

Approximately 15,000 cubic yards of contaminated material were stockpiled on Site.

The treatment/recycle process was suspended in 1994 because of operational problems, inconsistent results, and significantly increased costs. EPA subsequently determined that the selected remedy was no longer appropriate based on operating experience and conditions at the Site.

In June 1997, EPA issued a ROD Amendment for the Soils Operable Unit that changed the cleanup remedy previously selected at the Site. The modified selected remedy included the following:

- Excavation and dewatering of contaminated East Doane Lake remnant (EDLR) sediments followed by backfilling the EDLR with clean imported backfill;
- Excavation of the remaining battery casings on the Gould property;
- Treatment (stabilization or fixation) of the lead fines stockpile, the screened Gould excavation stockpile, and other lead contaminated material identified as principal threat waste;
- Construction of a lined and capped on-site containment facility (OCF), with leachate collection and treatment, on the Gould property;
- Consolidating contaminated material, including sediments, treated and untreated stockpiled materials, casings, soil and debris in the line and capped OCF;
- Filling the East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property;
- Performing groundwater monitoring to ensure the effectiveness of the cleanup, and that contaminants were not mobilized during its implementation.

Response Actions

The 1997 ROD Amendment also required mitigation/restoration to compensate for the loss of the estimated 3.1 acres of EDLR open water habitat. The ROD Amendment retained the surface soil cleanup level for lead at 1,000 mg/kg (the cleanup level selected in the 1988 ROD). Lead contamination was the principal threat addressed in the ROD and the primary contaminant of concern addressed in the 1997 ROD Amendment. The ROD Amendment modified the contaminated subsurface

material that would be excavated as part of the remedial action. Instead of requiring all subsurface material contaminated above RCRA characteristic waste levels to be excavated, it allowed some subsurface materials in excess of those levels to remain in place based on types of materials, location and updated information about groundwater contamination.

In the 1997 ROD Amendment, EPA determined that results of previous groundwater monitoring had not confirmed lead contamination in area groundwater. Data collected in 1995 and 1996 indicated that lead contamination was not widespread or significant in groundwater near the site. The ROD Amendment further concluded that although it did not appear there was a need for treatment of groundwater for lead, monitoring would be continued to further evaluate site conditions, and provide a basis for future cleanup or no action decisions for groundwater.

DEQ issued a Removal Action Decision Memorandum under State law in May 1998 that evaluated removal alternatives for organic contamination in portions of the East Doane lake remnant that could be performed in conjunction with the sediment removal action described in EPA's ROD Amendment for the Gould Site. DEQ's evaluation was based on additional sampling in the East Doane Lake remnant which indicated that sediments were also contaminated with organic chemicals that appeared to be related to past waste management practices at the Rhone-Poulenc Ag Company (Rhone-Poulenc) facility that was located adjacent to the Gould property. DEQ determined that removal of additional sediments in portions of East Doane Lake was warranted to address organic contamination and that the removal should occur in conjunction with sediment removal under the Gould Site remedial action. Rhone-Poulenc did not agree to perform the removal action and DEQ funded the removal of additional contaminated sediments.

Nine Gould Potentially Responsible Parties (PRPs) signed a Consent Decree with EPA that was lodged in U.S. District Court in Portland, Oregon in March, 1998. The PRPs began work in the summer of 1998 with the excavation, dewatering, and stockpiling of contaminated sediments from EDLR. Construction of the on-site containment facility, excavation and treatment of other contaminated materials, placement of the waste in the containment facility, and other cleanup actions required by the ROD

Amendment have been completed as described below:

- East Doane lake contaminated sediments: Dredging, mechanical dewatering and stockpiling an estimated 8,700 cubic yards of contaminated EDLR sediment (including sediment removed as part of the DEQ removal action) and debris was completed in November of 1999. In addition, 55 compressed gas cylinders that were buried in the east portion of EDLR sediments were recovered, overpacked, and transported to an off-site facility for treatment and disposal.
- Gould property battery casings—An estimated 3590 cubic yards of battery casings and other waste material were excavated from the south shoreline of EDLR.
- Treatment of principle threat/stockpiled material—An estimated 7850 cubic yards of stockpiled material, including the lead fines stockpile, were treated by fixation to pass RCRA characteristic waste levels.
- On-site containment facility—Construction of the 4.5 acre containment facility on the Gould property is complete. The OCF includes a double bottom liner, leachate collection and treatment, and a multi-media cap. The leachate collection and treatment system are operational. Leachate is pre-treated for metals prior to transport to the Rhone-Poulenc wastewater treatment facility for additional treatment prior to discharge to the Willamette River in accordance with Rhone-Poulenc's NPDES permit.
- Consolidating contaminant material in the OCF—An estimated 77,700 cubic yards of contaminated material have been placed in the OCF. The OCF was capped with a multimedia cap following materials placement. The final topsoil covering and seeding were completed in August 2000.
- East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property—backfilling the East Doane Lake remnant and the open excavation in the Lake Area of Rhone-Poulenc with clean material was completed in 1998 following excavation of the contaminated sediments.
- Groundwater monitoring—groundwater monitoring was carried out during remedial action to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and to gather additional information for the groundwater evaluation. Long-term groundwater monitoring will continue

as part of the remedial action requirements for the Soils Operable Unit and the operation and maintenance plan for the OCF.

Other cleanup activities performed as part of the remedial action included demolition of on-site structures, asbestos abatement and polychlorinated biphenyl (PCB) light ballast removal and disposal, and excavation of surface soils contaminated above the 1,000 ppm lead cleanup level established by the ROD Amendment. Extensive air monitoring of lead and particulate levels was conducted to ensure that fugitive dust from construction activities were adequately controlled. Perimeter security fencing was installed to restrict access to the OCF.

EPA has approved a wetlands mitigation plan which provides funding and requires acquisition of an off-site property as mitigation for the loss of East Doane lake wetland and open-water habitat. EPA will approve the specific property in consultation with U.S. Fish and Wildlife Service prior to acquisition.

Groundwater Operable Unit ROD

EPA released a proposed plan that described the agency's preferred alternative of no further action for the Gould Site Groundwater Operable Unit on August 10, 2000. No comments were received during the 30-day public comment period.

EPA issued a "No Action" ROD for the Groundwater Operable Unit on September 28, 2000. The ROD concluded that cleanup of the Gould Site Soils Operable Unit has addressed lead-contaminated waste, soil, debris, and other potential sources of groundwater contamination from the Gould site operations. Groundwater investigations and monitoring have not shown a need for additional cleanup of Gould site contaminants in groundwater. Long-term groundwater monitoring will continue as required by the ROD Amendment for the Soils Operable Unit.

Cleanup Standards

The remedial action cleanup activities at the Gould Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The major sources of contamination, including battery casings, smelter waste, and lead-contaminated waste, soil, and debris have been addressed.

Air monitoring for dust and lead was performed during remedial construction and non-construction activities. The action levels for the Site ranged from 0.5 to 1.5 ug/cubic meter with specific

corrective actions required at each level. Results for individual sampling events ranged from non-detect to 3.5 ug/cubic meter. Average quarterly lead concentrations for the Site did not exceed Federal and State of Oregon standard for lead (1.5 ug/cubic meter).

Groundwater samples were collected during six sampling events during construction activities from on-site and off-site wells. Sample results indicated that there were no exceedences of the 15 micrograms/liter action level for lead established under the Safe Drinking Water Act.

Surface soil (0 to 1ft depth) sampling was performed at the Site to identify soils exceeding 1,000 mg/kg total lead and confirm removal. Surface soils that required removal outside the footprint of the OCF were located in the lake area of the Rhone-Poulenc property and the eastern and southern portions of the Gould property. Surface soil inside the footprint of the OCF was also removed as part of the site preparation for the OCF. Contaminated surface soils from these areas were excavated and disposed of in the OCF. Confirmatory sampling was performed and sample analysis was conducted for areas outside the OCF footprint in accordance with the Quality Assurance Project Plan results were reviewed and approved by EPA representatives prior to backfilling with imported non-contaminated soil.

East Doane lake was divided into sampling quadrants and dredging depths were predetermined based on sample results. Post-dredging sampling was also conducted to evaluate whether dredging achieved the criteria of EP Toxicity for lead. Total lead levels were also collected for comparison purposes. Re-dredging of sediment in quadrants that did not meet the criteria was conducted until the sample results within the quadrant indicated the criteria was met and/or EPA approved backfilling the sample quadrant based on sample results in the quadrant and consideration of the practical limits of dredging. The East Doane lake remnant was then backfilled in accordance with the ROD and contract documents.

Two stockpiles of waste material were designated as principle threat waste, the lead fines stockpile and the screened excavation stockpile. This waste was treated by stabilization to achieve a RCRA waste characteristic level of less than 5 mg/l of lead. Quality control confirmatory samples were collected to verify that the results met the performance standard.

Operation and Maintenance

Operation and maintenance activities began in January 2000 in accordance

with the Final Remedial Design Report and Draft Operation and Maintenance Plan. The Final Operation and Maintenance Plan was completed November 6, 2001. It addresses activities, responsibilities and schedules for the following site components: OCF cover condition and stability, erosion and sedimentation controls, access roads, security fencing, storm water systems, leachate collection and removal, and groundwater monitoring. The plan also addresses monitoring and inspection frequency and responsibilities. Site inspections, maintenance and monitoring have been performed and will continue to be performed in accordance with the Operation and Maintenance Plan. EPA approved the Final Operation and Maintenance Plan on May 15, 2002.

Institutional Controls

Future use of the property is limited to industrial or other uses compatible with the cleanup under the terms of the Environmental Protection Restrictive Covenant and Easements that were granted by property owners to meet the requirements of the Consent Decree. EPA will evaluate the institutional controls at least every five years as part the five-year reviews that will be conducted at the Site.

Five-Year Review

Hazardous substances will remain at the Site above levels that allow unlimited use and unrestricted exposure after the completion of the remedial action. Pursuant to CERCLA Section 121(c) and provided in the current guidance on Five-Year Reviews, EPA must conduct a statutory five-year review to ensure that the remedy continues to provide adequate protection of human health and the environment. EPA conducted the first five-year review of the Gould Site on September 28, 1997, and the next five-year review is scheduled to be completed by September 28, 2002.

Community Involvement

EPA provided routine progress fact sheets to keep the public advised of site cleanup activities. There was not a great deal of interest in the excavation of waste materials and construction of the On-site Containment Facility (OCF) from the general public, but workers at an adjacent Metro waste transfer facility did raise concerns about the potential for off-site migration of lead-contaminated dust. Arrangements were made to provide air monitoring results directly to representatives from the transfer facility to keep workers advised

and provide assurances that lead levels were being adequately controlled.

Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties have implemented all appropriate response actions required." EPA, with the concurrence of the State of Oregon, believe that this criterion for deletion has been met. There is no significant threat to human 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 in the deletion docket at the information repositories.

State Concurrence

In a letter dated August 8, 2002, from the Oregon Department of Environmental Quality (DEQ), DEQ concurs with the proposed deletion of the Gould Superfund Site from the NPL.

Dated: August 15, 2002.

Ronald A. Kreizenbeck,
Acting Regional Administrator, U.S. EPA,
Region 10.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 72, Appendix A

RIN 0920-AA08

Interstate Shipment of Etiologic Agents; Select Agents

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of intent to issue regulations.

SUMMARY: On June 12, 2002, President George W. Bush signed Public Law 107-188, Public Health Safety and Bioterrorism Preparedness and Response Act of 2002. The Act specifies that the Secretary of the Department of Health and Human Services establish and maintain a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. The Secretary directed the Centers for Disease Control and Prevention (CDC) to convene an inter-agency work group to review the current list of biological agents and toxins found in 42 CFR part 72, Appendix A, and revise the list as necessary.

Prior to issuing the Interim Final Rule, as required by Public Law 107-