

valid written agreement between the transferor spouse and the nontransferor spouse, expressly provides that—

(i) Both spouses or former spouses intend for the redemption to be treated, for Federal income tax purposes, as resulting in a constructive distribution to the nontransferor spouse; and

(ii) Such instrument or agreement supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption.

(3) *Execution of agreements.* For purposes of this paragraph (c), a divorce or separation instrument must be effective, or a valid written agreement must be executed by both spouses or former spouses, prior to the date on which the transferor spouse (in the case of paragraph (c)(1) of this section) or the nontransferor spouse (in the case of paragraph (c)(2) of this section) files such spouse's first timely filed Federal income tax return for the year that includes the date of the stock redemption, but no later than the date such return is due (including extensions).

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* Corporation X has 100 shares outstanding. A and B each own 50 shares. A and B divorce. The divorce instrument requires B to purchase A's shares, and A to sell A's shares to B, in exchange for \$100x. Corporation X redeems A's shares for \$100x. Assume that, under applicable tax law, B has a primary and unconditional obligation to purchase A's stock, and therefore the stock redemption results in a constructive distribution to B. Also assume that the special rule of paragraph (c)(1) of this section does not apply. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, A shall be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied), B shall be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for \$100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B shall be treated as transferring the \$100x to A in a transfer to which section 1041 applies.

*Example 2.* Assume the same facts as *Example 1*, except that the divorce instrument provides as follows: "A and B agree that the redemption will be treated for Federal income tax purposes as a redemption distribution to A." The divorce instrument further provides that it "supersedes all other instruments or agreements concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption." By virtue of the special rule of paragraph (c)(1) of this section and under paragraphs (a)(1) and (b)(1) of this section,

the tax consequences of the redemption shall be determined in accordance with its form as a redemption of A's shares by Corporation X and shall not be treated as resulting in a constructive distribution to B. See section 302.

*Example 3.* Assume the same facts as *Example 1*, except that the divorce instrument requires A to sell A's shares to Corporation X in exchange for a note. B guarantees Corporation X's payment of the note. Assume that, under applicable tax law, B does not have a primary and unconditional obligation to purchase A's stock, and therefore the stock redemption does not result in a constructive distribution to B. Also assume that the special rule of paragraph (c)(2) of this section does not apply. Accordingly, under paragraphs (a)(1) and (b)(1) of this section, the tax consequences of the redemption shall be determined in accordance with its form as a redemption of A's shares by Corporation X. See section 302.

*Example 4.* Assume the same facts as *Example 3*, except that the divorce instrument provides as follows: "A and B agree the redemption shall be treated, for Federal income tax purposes, as resulting in a constructive distribution to B." The divorce instrument further provides that it "supersedes any other instrument or agreement concerning the purchase, sale, redemption, or other disposition of the stock that is the subject of the redemption." By virtue of the special rule of paragraph (c)(2) of this section, the redemption is treated as resulting in a constructive distribution to B for purposes of paragraph (a)(2) of this section. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, A shall be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied), B shall be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for a note in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B shall be treated as transferring the note to A in a transfer to which section 1041 applies.

(e) *Effective date.* Except as otherwise provided in this paragraph, this section is applicable to redemptions of stock on or after January 13, 2003, except for redemptions of stock that are pursuant to instruments in effect before January 13, 2003. For redemptions of stock before January 13, 2003 and redemptions of stock that are pursuant to instruments in effect before January 13, 2003, see § 1.1041-1T(c), A-9. However, these regulations will be applicable to redemptions described in the preceding sentence of this paragraph (e) if the spouses or former spouses execute a written agreement on or after August 3, 2001 that satisfies the requirements of one of the special rules in paragraph (c) of this section with respect to such redemption. A divorce or separation instrument or valid

written agreement executed on or after August 3, 2001, and before May 13, 2003 that meets the requirements of the special rule in Regulations Project REG-107151-00 published in 2001-2 C.B. 370 (see § 601.601(d)(2) of this chapter) will be treated as also meeting the requirements of the special rule in paragraph (c)(2) of this section.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*  
(b) \* \* \*

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| * * * * *  | * * * * *               |
| 1.1041-2 .....                                     | 1545-1751               |
| * * * * *  | * * * * *               |

**David A. Mader,**  
*Assistant Deputy Commissioner of Internal Revenue.*

Approved: December 30, 2002.

**Pamela F. Olson,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 03-646 Filed 1-10-03; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-7436-7]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Wildcat Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Wildcat Landfill Superfund Site (Site), located in Kent County, near Dover, Delaware, from the National Priorities List (NPL). The NPL, promulgated

pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA because EPA, with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control, has determined that responsible parties or other persons have implemented all appropriate response actions required under CERCLA and, therefore, no further response action pursuant to CERCLA is appropriate.

**DATES:** This direct final deletion will be effective March 14, 2003 unless EPA receives adverse comments by February 12, 2003. 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: Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3323.

#### *Information Repositories:*

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Delaware at the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720, (302) 395-2600, Monday through Friday, 8 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hilary M. Thornton, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3323 or 1-800-553-2509.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents:**

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

#### **I. Introduction**

EPA Region III is publishing this direct final notice of deletion of the

Wildcat Landfill Superfund Site from the NPL.

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 § 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 March 14, 2003 unless EPA receives adverse comments by February 12, 2003 on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. 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 Wildcat Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public 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 release from the NPL, EPA, in consultation with the State, shall consider 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 under CERCLA has 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, 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 § 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 action 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 deleted site may be restored to the NPL without application of the hazard ranking system.

#### **III. Deletion Procedures**

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Delaware on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Delaware 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) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, 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 a 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 further Fund-financed remedial actions, should future conditions warrant such actions.

#### IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

##### *Site Location and History*

The Wildcat Landfill Superfund Site is a 44-acre landfill situated on the west bank of the St. Jones River in Kent County, Delaware approximately two and one-half miles southeast of the city of Dover. The Site was operated as a permitted sanitary landfill between 1962 and 1973, accepting both municipal and industrial wastes. Industrial wastes suspected to have been disposed of include latex waste and paint sludges. Throughout its 11 years of operation the landfill routinely violated operating and other permits issued by regulating agencies.

EPA conducted the initial Site Investigation in May 1982. EPA proposed the Site to the NPL on December 30, 1982, and added it to the NPL on September 8, 1983 (48 FR 40673).

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

The Delaware Department of Natural Resources and Environmental Control (DNREC) began the remedial investigation (RI) in September 1985 and began the feasibility study (FS) in November 1987. EPA and DNREC issued the RI/FS report in May 1988. The results of the RI were generally as follows:

- The primary contaminants of concern at the Site were trace metals and organic contaminants in on-site groundwater, and inorganics in surface water and sediments in the northwest pond and leachate seeps near the pond.
- The landfill contained some buried, intact drums; the contents of the drums had relatively high concentrations of organic contaminants, primarily styrene.
- Nearby domestic and commercial wells are all to the west or southwest of the Site; none of these wells was contaminated by the landfill. However, wells immediately southwest of the Site were thought to be susceptible to contamination.
- A net loss of 29 acres of wetland environment resulted from placement

of the landfill on pre-existing wetlands.

The FS provided an in-depth analysis of several potential remedial alternatives. The FS concluded that if no action were taken there would be a potential threat to human health and the environment through dermal contact with landfill contents or leachate seeps. There were also potential risks associated with future releases of contaminants from the landfill into the groundwater and, subsequently, into the surface water. The FS provided a detailed analysis of the following alternatives: (1) No action; (2) institutional controls and monitoring; (3) institutional and surface controls; (4a) containment with a soil cap; and (4b) containment with a soil/clay cap. The FS also analyzed EPA and DNREC's preferred alternative, which was a combination of certain elements of the above alternatives. No response activities using CERCLA removal authority were conducted at the Site.

##### *Record of Decision (ROD) Findings*

The Site was divided into two Operable Units, with Operable Unit 1 (OU1) including the landfill proper, and Operable Unit 2 (OU2) including the northwest pond and the so-called racetrack pond or replacement pond, which was created southeast of the landfill. EPA issued a Record of Decision (ROD) for OU1 on June 29, 1988. The ROD for OU1 included:

- Implementation of institutional controls (including groundwater management zones and restrictions on use of the property);
- Posting warning signs;
- Replacement of shallow water supply wells adjacent to the Site;
- Covering exposed wastes on the landfill with soil;
- Off-site disposal of drums;
- Installing one additional groundwater monitoring well; and
- Monitoring of the shallow (Columbia) aquifer.

On November 28, 1988, EPA issued a ROD for OU2. The ROD for OU2 included:

- Draining and back-filling the northwest pond;
- Creating a replacement pond (racetrack pond) to be joined with the existing deepwater pond located southeast of the landfill;
- Installing one monitoring well upgradient of the new racetrack pond to monitor the landfill; and
- Implementation of institutional controls to ensure that the integrity of the newly-created racetrack pond and the filled northwest pond is maintained.

After a period of negotiations with the potentially responsible parties, the State, EPA, and a group of Settlers entered into a Consent Decree for implementation of the Remedial Design/Remedial Action for both operable units. In December 1989 the Settlers submitted Remedial Design (RD) plans and specifications for regulatory review. Black and Veatch Science and Technology Corporation prepared the engineering plans and specifications on behalf of the Settlers. The U.S. Army Corps of Engineers reviewed these plans and provided comments to EPA. In February 1991, the State and EPA granted conditional approval of a revised set of RD plans and specifications.

##### *Remedial Action Activities*

The Settlers proposed Severson Environmental Services as the Remedial Action (RA) Contractor. EPA, after consultation with the State and the U.S. Army Corps of Engineers, approved the use of Severson. The Settlers started construction of the RA for both operable units in July 1991. The U.S. Army Corps of Engineers provided field oversight of the RA for EPA.

During construction a larger-than-anticipated number of drums were discovered along the northern and eastern fringes of the landfill. The State, EPA, and the Settlers subsequently developed a management plan for staging, sorting, and disposing of the unanticipated drums. The State established and continues to maintain a Groundwater Management Zone for the Site and certain areas adjacent to the Site. A pre-final construction inspection was conducted by the State, EPA, and the Settlers on April 1, 1992. The final construction inspection followed on May 14, 1992.

On April 26, 2002, documents entitled "Environmental Protection Easement and Declaration of Restrictive Covenants" were recorded at the Office of Recorder of Deeds for Kent County, Delaware, for each of the parcels comprising the Site in order to implement the institutional controls required by the OU1 and OU2 RODs.

The RA for OU1 and OU2 eliminated the principal threat posed by the Site by reducing the potential for direct contact with the contents of the landfill and the sediments of the northwest pond. The RA also reduced the potential for erosion of landfill contents into the St. Jones River. Finally, the RA provides for monitoring of the groundwater in the vicinity of the landfill to ensure the continued effectiveness of the RA.

### Operation and Maintenance

Operation and maintenance (O&M) activities at the Site include annual groundwater monitoring and an annual inspection. The annual inspection looks at the condition of a variety of items to ensure they are operating as intended so the remedy remains protective. Items inspected include: Site security and access (fences, gates, locks, and roads); the landfill surface, including both capped and uncapped areas; monitoring wells; the riverbank, looking for evidence of storm damage or erosion; and the replacement pond.

Groundwater monitoring data show a clear overall downward trend in contaminant levels. The levels of some contaminants in some wells (notably lead and benzene in MW-4) remain sufficiently high to merit continued monitoring. EPA will continue groundwater monitoring until all compounds are at levels that allow for unlimited use and unrestricted exposure.

### Five-Year Review

In 1996, EPA conducted its first Five-Year Review of the Site to determine if the remedy was protective of human health and the environment. There were two known deficiencies that affected the protectiveness of the remedy at the time of the Five-Year Review: (1) The institutional controls called for in the RODs were not yet fully implemented; and (2) there were unresolved issues related to who would perform O&M at the Site and for how long. Because of these deficiencies, EPA concluded that the remedy was not protective at that time. EPA conducted its second Five-Year Review in 2001. Progress had been made on resolving the two deficiencies, but they were still present. EPA again concluded the remedy was not protective at that time. Both deficiencies have since been resolved, and EPA has since concluded that the remedy is fully protective of human health and the environment.

Since waste is being left in place at the landfill, EPA will continue to conduct Five-Year Reviews at the Site. The next Five-Year Review is scheduled for October 2006.

### Site Redevelopment

The Site has limited commercial redevelopment potential, but would make an excellent park, nature preserve, or open space greenway, subject to compliance with the institutional controls and operation and maintenance requirements. The landfill waste remains in place and must not be disturbed by construction activities. No

wells, except monitoring wells, may be drilled in the landfill area. EPA and DNREC will review the safety of any proposed redevelopment.

### Community Involvement

Public participation activities have been satisfied as required in CERCLA § 113(k), 42 U.S.C. 9613(k), and CERCLA § 117, 42 U.S.C. 9617. 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.

### V. Deletion Action

One of the criteria for site deletion, set forth in § 300.425(e)(1)(i) of the NCP, specifies that EPA may delete a site from the NPL if “[r]esponsible parties or other persons have implemented all appropriate response actions required.” EPA, with the concurrence of the State of Delaware, believes that this criterion has been met. 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 of a notice of intent to delete. This action will be effective March 14, 2003 unless EPA receives adverse comments by February 12, 2003 on this notice or the parallel notice of intent to delete published in the “Proposed Rules” section of today’s **Federal Register**. 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. EPA will also 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: December 20, 2002.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

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 under Delaware (“DE”) by removing the site entry for “Wildcat Landfill, Dover.”

[FR Doc. 03–515 Filed 1–10–03; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

[Docket No. FEMA–D–7533]

### Changes in Flood Elevation Determinations

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified 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:** Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) [mike.grimm@fema.gov](mailto:mike.grimm@fema.gov).

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of