

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7547-7]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final deletion of the Resin Disposal 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 Resin Disposal Superfund Site (Site) located in the Borough of Jefferson, Allegheny County, Pennsylvania, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 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 with the concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA have been completed at the Site and, therefore, further remedial action at the Site pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective October 21, 2003, unless EPA receives adverse comments by September 22, 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: Trish Taylor, Community Involvement Coordinator, (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5539, [taylor.trish@epa.gov](mailto:taylor.trish@epa.gov).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5364, Monday through Friday 8 a.m. to 4:30 p.m.; the Jefferson

Borough Library (contact, Ann Reschenthaler), Municipal Building, 925 Old Clairton Road, Jefferson Borough, Pennsylvania 15025 (412) 655-7741, Monday through Thursday 11 a.m. to 8:30 p.m.; and the Pennsylvania Department of Environmental Protection, Pittsburgh Office, 400 Waterfront Drive, Pittsburgh, PA 15222 (412) 442-4197.

**FOR FURTHER INFORMATION CONTACT:** Rashmi Mathur, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5234, [mathur.rashmi@epa.gov](mailto:mathur.rashmi@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction

EPA Region III is publishing this direct final deletion of the Resin Disposal 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, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such actions.

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 October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final 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 Resin Disposal 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 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 (Hazardous Substance Superfund Response Trust Fund) 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, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at a site, CERCLA section 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 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 PADEP on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) PADEP concurred with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final 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 the 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 to delete also published in today's **Federal Register**, EPA will publish a timely withdrawal of this direct final 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 future response 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:

##### A. Site Location

The Site is located about one half mile west of the town of West Elizabeth in Jefferson Borough, Allegheny County, Pennsylvania and comprises approximately 26 acres. The Site contains a 2-acre landfill which is located in the head of a narrow valley on the site of a former coal mine. The Site overlies a bedrock aquifer, and is also in contact with the Pittsburgh Coal formation, a source of non-potable ground water.

##### B. Site History

Between 1950 to 1964, the Pennsylvania Industrial Chemical Corporation (PICCO) deposited approximately 85,000 tons of process wastes consisting of petroleum and coal derived chemicals mixed with clay in the onsite landfill. Prior to 1950, the area on which the landfill came to be located had been used for coal strip and deep mining operations. At the location of the landfill, PICCO deposited approximately 20 feet of waste in place of the mined coal.

PICCO deposited the waste into the landfill as a slurry which collected behind an earthen dike constructed across the upper end of the strip-mined valley. Precipitation runoff from the surrounding hillsides along with any free water from the waste materials collected within the active landfill behind the dike. After PICCO stopped depositing waste in the landfill, it

placed a poorly graded, native clay soil cover, ranging in thickness from four to ten feet, over the surface of the landfill. As a result, the direct precipitation and run off from the surrounding hills ponded at times on the landfill cover. Some of the water infiltrated the cover, recharging the waste material and adjacent ground water system. The remainder of the water evaporated or ran off to an unnamed stream. Over time residual product oils decanted from the waste materials as free product. The free product and infiltrated water migrated southeast through the landfill dike into downslope soils and also southwest into mine voids in the adjacent Pittsburgh Coal Formation.

In 1972, Hercules, Incorporated purchased the Site. Between 1980 and 1984, Hercules conducted field investigations of the ground water conditions in the coal formation, deep bedrock, and the extent of contaminated soils downslope of the landfill. Those investigations revealed that there were contaminants in ground water in the Pittsburgh Coal Formation and in downslope soils and perched ground water. In 1983, as a result of those investigations, Hercules installed a leachate collection trench below the lower landfill dike to collect leachate and ground water. The trench is still operating. Liquids collected in the trench are directed to an oil/water separator. The oil is collected and is burned at the Hercules Jefferson Plant boiler. The water is discharged to the Jefferson Borough Sanitary Sewer System and, then, to the West Elizabeth sewage treatment plant.

EPA completed a Superfund Site Investigation in April 1982. The Site received a Hazard Ranking System score of 37.69 in December 1982, was proposed for the National Priorities List (NPL) in December 1982 and was placed on the NPL in September 1983.

##### Remedial Investigation and Feasibility Study

In November 1987, Hercules entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Resources (PADER), the name of which was subsequently changed to PADEP, to conduct a Remedial Investigation (RI)/Feasibility Study (FS) (collectively, RI/FS) in order to characterize the Site for potential remediation. In March 1988, Hercules began work under an EPA-approved RI, which included conducting an extensive study of the extent of contamination of the soils, ground water, and surface water associated with the landfill. Hercules submitted a final RI Report which provided a detailed

analysis of no action, containment, and treatment options to PADER and EPA in March 1991, and submitted the final FS to PADER and EPA in May 1991.

##### Characterization of Risk

The primary contaminants of concern affecting soil, debris, and ground water at the Site are volatile organic compounds (VOCs) including benzene, toluene, and xylenes and other organics including naphthalene, poly-aromatic hydrocarbons (PAHs) and phenols. Federal Maximum Contaminant Levels (MCLs) for drinking water established pursuant to the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*, were exceeded for benzene, benzo (a) pyrene, ethylbenzene, 2-methylnaphthalene, 4-methylphenol, naphthalene, toluene, and xylene. The exposure route which made the greatest contribution to the trespasser scenario was the inhalation of Ethylbenzene and 4-methyl-2-pentanone (VOC) vapors. The VOCs, naphthalene, PAHs and phenols are "hazardous substances" as defined in section 101(14) of CERCLA.

After reviewing the results of the original RI/FS, EPA categorized the Site into two operable units. Operable Unit One (OU-1) addresses remediation of the landfill, the adjacent contaminated soils, non-aqueous floating product present in the subsurface mine voids of the Pittsburgh Coal Formation, and monitoring of onsite ground water. Operable Unit Two (OU-2) addresses offsite ground water, seeps and residential wells.

##### Record of Decision Findings for OU-1

A June 28, 1991 Record of Decision (ROD) documented the selected remedial action for OU-1 which included: installation of a multi-layer cap; reinforcement and upgrading of the lower landfill dike to increase its stability; installation of an upgraded oil/water separator downslope of the leachate collection system, with discharge of aqueous phases to a publicly owned treatment works; relocation of a sanitary sewer; implementation of institutional controls which include deed restrictions to alert prospective buyers to the presence of hazardous substances onsite and to prohibit future development; construction of a fence around the perimeter of the Site property to prevent unauthorized access; offsite reclamation of non-aqueous phase liquids (NAPLS) through skimmer wells for use as an energy source; and implementation of a Site maintenance and long-term ground water monitoring program.

#### Response Actions for OU-1

In February 1992, Hercules signed a Consent Decree with EPA to perform the Remedial Design (RD)/Remedial Action (RA) (collectively RD/RA) at this Site. EPA approved the final RD Work Plan on December 4, 1992; the Final Oil/Water Separator Design on December 21, 1994 and the Final Design for the landfill cap and the fence on September 29, 1995.

As part of the RA, Hercules performed the following activities, among others: replaced the oil/water separator; reinforced the lower landfill dike with approximately 5,000 tons of clean soil, and then regraded and hydroseeded; placed a multi-layer cap on the onsite landfill; installed infiltration controls around the perimeter of the landfill; placed a six inch layer of topsoil on top of the cap; and hydroseeded the landfill; erected fences around the perimeter of the Site and also around the onsite landfill; and installed and currently operates a well skimmer system down gradient of the landfill to collect floating product in ground water that may otherwise migrate offsite via the mine voids and monitored ground water quarterly for three years and semiannually until the Five-Year Review. Hercules completed the RA activities in October 1996.

#### Record of Decision Findings for OU-2

In September 1995, EPA issued a No Further Action ROD for OU-2 which required long-term onsite and offsite monitoring of the ground water. Hercules is monitoring the onsite ground water pursuant to the RA selected in the ROD for OU1. Under OU-2, Hercules monitored offsite ground water quarterly for three years and then semiannually until the five-year review was completed. The Five-Year Review recommendations included quarterly monitoring for TW-13 until the second Five-Year Review or until EPA determines that further monitoring is unnecessary.

Under the OU-2 ROD, offsite monitoring includes sampling of the offsite monitoring wells, as well as monitoring the seeps, sampling of an unnamed tributary and sampling of residential wells near the Site. EPA discontinued the requirement that Hercules monitor residential wells after it determined that, based on ground water monitoring during the RI and the 1999 ground water monitoring events, residential water users are not affected by Site related contaminants. EPA also discontinued the requirement that Hercules conduct bi-monthly surface water sampling because repeated

surface water sampling from 1991 to 1998 showed levels of contaminants of concern at or well below Maximum Contaminant Levels for the "Drinking Water Regulations and Health Advisories" in the unnamed stream. EPA determined that the decrease in levels of contaminants of concern in the stream were a result of the following remedial actions: buttressing of the landfill, construction of a multi-layer cover system over the landfill area, upgrading of an oil/water separator and routine product recovery from a network of down gradient product recovery wells.

#### C. Future Activity

##### Operation and Maintenance

Hercules is required to perform the following Operation and Maintenance (O&M) activities with EPA oversight: periodic inspections of the landfill cover system and the fence, ground water monitoring, light non-aqueous phase liquids (LNAPL) recovery through the skimmer wells, maintenance of the oil/water separator and any other activities necessary to ensure continued protection of public health and the environment. Until the next five-year review or until EPA determines that further monitoring efforts are unnecessary, Hercules is required to continue semi-annual ground water monitoring in selected monitoring wells; quarterly monitoring for TW-13 and quarterly LNAPL recovery. The LNAPL recovery, in conjunction with long-term ground water monitoring, will continue to ensure the effectiveness of the completed remedy at the Resin Disposal Site.

##### Five-Year Review

CERCLA requires a five-year review of all sites at which hazardous substances, pollutants or contaminants remain at the Site. Since residual organic solvents, resin cakes and oils from a resin manufacturing process and ground water contamination remain at the Site, the five-year review process will be used to ensure that the selected remedy continues to be protective of human health and the environment. EPA completed the first five-year review of the Resin Disposal Site on September 19, 2000. In that five-year review, EPA determined that the remedy was not completely protective of human health and the environment because institutional controls on future land use at the Site had not yet been implemented. In July 2002, EPA implemented institutional controls to limit future land use at the Resin

Disposal Site. Those institutional controls were recorded at the Allegheny County Courthouse, Recorder of Deeds Office, in Jefferson Borough, Pennsylvania. These controls include alerting prospective buyers to the presence of hazardous substances onsite and recite Hercules' obligation under the Consent Decree to limit future development. EPA has determined that all requirements of the RODs for OU-1 and OU-2 have been achieved at the Site and the remedies selected in those RODs are protective of human health and the environment. EPA plans to complete the next five-year review prior to September 19, 2005.

#### D. Community Involvement

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

The EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. 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 October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document to delete, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA 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. There will be no additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 4, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

#### **Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site for “Resin Disposal, Jefferson Borough, PA.”

[FR Doc. 03–21596 Filed 8–21–03; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 413**

**[CMS–1199–F]**

**RIN 0938–AL51**

#### **Medicare Program; Electronic Submission of Cost Reports**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulation by requiring that, for cost reporting periods ending on or after December 31, 2004, all hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement when implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

**DATES:** *Effective Date:* The provisions of this final rule are effective September 22, 2003.

*Applicability Date:* The provisions of this final rule are effective for cost reporting periods ending on or after December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Larry Stevenson, (410) 786–5529.

**SUPPLEMENTARY INFORMATION:** Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is \$10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The website address is: <http://www.access.gpo.gov/nara/index.html>.

#### **I. Background**

Generally, under the Medicare program, hospices, organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provided that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (the Secretary), needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in title 42 of the Code of Federal Regulations (CFR) 413.20 and 413.24.

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with the reporting period

based on the provider's accounting year. Additionally, under § 413.24, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at § 413.20 and § 413.24.

Section 1886(f)(1)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we revised our regulations at § 413.24(f)(4)(ii) to extend the electronic cost reporting requirement to skilled nursing facilities (SNFs) and home health agencies (HHAs) (62 FR 26–31).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. We later revised our regulations in § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. In order to preserve the integrity of the electronic file, in the January 1997 final rule we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary (62 FR 27).

#### **II. Provisions of the Proposed Regulations**

With the exception of revising the first cost reporting period affected from those ending on or after December 31, 2002 to those ending on or after December 31, 2004, we have adopted the provisions as set forth in our proposed rule, published in the **Federal Register** on July 26, 2002 (67 FR 48840–48844). We revised the cost reporting periods affected to take into account the publication date for this final rule. We discuss the finalized provisions in section IV of this final rule.

#### **III. Analysis of and Responses to Public Comments**

We received approximately 20 comments on the proposed electronic submission of cost reports requirements. These comments were from providers, professional organizations, trade associations, vendors and individuals. Summaries of the public comments