

summary of the evidence considered in the case relating to the issue or issues covered in the NOD, a summary of the applicable laws and regulations with appropriate citations, and a discussion of how the laws and regulations affected the determination of the appellant's claim. Generally, a Supplemental Statement of the Case (SSOC) is furnished to the appellant when additional pertinent evidence is received after the SOC, when there was a material defect in the SOC, or when, for any other reason, the SOC is inadequate. (These bases apply to SSOCs as well as SOC's.)

Recently, we amended 38 CFR 19.31, part of VA's Appeals Regulations relating to the SSOC. 67 FR 3099, 3104 (January 23, 2002). As amended, that rule provides that a SSOC will not be used to announce the AOJ's decision on an issue not previously addressed in a SOC or to respond to a notice of disagreement on a newly appealed issue that was not addressed in the SOC. The purpose of that change was to help eliminate confusion on the part of appellants as to whether they must respond to a SSOC.

We are amending Rule 302(c) (38 CFR 20.302(c)) and Rule 501(c) (38 CFR 20.501(c)) of the Board's Rules of Practice for the purpose of creating uniformity of practice and procedure and to ensure that there is no misunderstanding as to whether an appellant needs to respond to a SSOC. Currently, Rules 302(c) and 501(c) provide, in pertinent part, that an appellant need not respond to a SSOC to perfect an appeal unless the SSOC covers issues that were not included in the original SOC. Those Rules further provide that, if a SSOC covers issues that were not included in the original SOC, an appellant must file a Substantive Appeal with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues. The changes made to 38 CFR 19.31 render the foregoing requirements superfluous and create the risk of causing confusion to the appellant and VA adjudicators.

Accordingly, we are amending Rule 302(c) and Rule 501(c) to eliminate the language relating to responding to "new issues" in Supplemental Statements of the Case.

#### Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and, pursuant to 5 U.S.C. 553, is exempt from notice and comment requirements.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This final rule will have no such effect on State, local, or tribal governments, or the private sector.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

#### Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

#### List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Lawyers, Legal services, Veterans.

Approved: September 10, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

#### PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.302, paragraph (c) is amended by removing "appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case." from the third sentence and adding, in its place, "appeal."; and by removing the fourth sentence.

■ 3. In § 20.501, paragraph (c), is amended by removing "appeal, unless the Supplemental Statement of the Case covers issues that were not included in

the original Statement of the Case." from the third sentence and adding, in its place, "appeal."; and by removing the fourth sentence.

[FR Doc. 03–28615 Filed 11–14–03; 8:45 am]

BILLING CODE 8320–01–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7586–6]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final deletion of the Follansbee 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 Follansbee, Superfund Site (Site), located north of the city of Follansbee, West Virginia, 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 State of West Virginia, through the West Virginia Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective January 16, 2004 unless EPA receives adverse comments by December 17, 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: Anthony C. Jacobone, Remedial Project Manager (RPM) 3HS23, *iacobone.anthony@epa.gov*, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215 ) 814–5237 or 1–800–352–1973.

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, Philadelphia, PA 19103-2029, (215) 814-5364, Monday through Friday 8 a.m. to 4:30 p.m.; Follansbee City Library, 844 Main Street, Follansbee, WV 26037, (304) 527-0860, Monday through Thursday 11 a.m. to 7 p.m., Friday and Saturday 9 a.m. to 1 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Anthony C. Iacobone, Remedial Project Manager (RPM) 3HS23, [iacobone.anthony@epa.gov](mailto:iacobone.anthony@epa.gov), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-5237 or 1-800-352-1973.

**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 Follansbee Superfund Site from the NPL.

The 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 January 16, 2004 unless EPA receives adverse comments by December 17, 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 notice of deletion before the effective date of the deletion and the deletion will not take effect. Alternatively, 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 Follansbee 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 Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed (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, the taking of remedial measures is not appropriate.

Consistent with § 300.425(e) of the NCP, EPA proposes deletion of this Site because no further response action is appropriate under CERCLA, as laid out in EPA's policy entitled "The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act ("RCRA") Facilities." Published in the **Federal Register** on March 20, 1995 (60 FR 14641), this policy sets forth the following criteria, all of which should be met, and their general application for deleting RCRA facilities from the NPL:

- 1. If evaluated under EPA's current RCRA/NPL deferral policy the site would be eligible for deferral from listing on the NPL;
- 2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions;
- 3. Response under RCRA is progressing adequately; and
- 4. Deletion would not disrupt an ongoing CERCLA response action.

Under this policy EPA has determined that the Site is eligible for deletion from the NPL.

**III. Deletion Procedures**

The following procedures apply to deletion of the Site:

- (1) EPA determined that no further response under CERCLA is necessary due to the fact that the

Site is being investigated and cleaned up using RCRA authorities.

- (2) West Virginia 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) The 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 or 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:

*Site Description*

The Follansbee Site is located in the northern panhandle of West Virginia along the east bank of the Ohio River in Brooke County, just north of the city of Follansbee, West Virginia. The Site is roughly rectangular with the approximate dimensions of 3,000 feet in a northwest-southeast direction and 500 feet perpendicular to the river. The Site occupies 34 acres. The Site is bounded

to the north, south, and east by a coke-making facility which is owned and operated by the Wheeling-Pittsburgh Steel Corporation. The Site is bounded to the west by the Ohio River.

The Site consists of process and storage facilities for the manufacture of coal tar by-products. Contamination at the Site is due to leaking tanks, spills, surface impoundments and poor operation practices. The Site is underlain by three geological formations (a Perched Zone, an Alluvial Aquifer and a Bedrock Aquifer), each of which is contaminated with polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs) such as benzene and toluene, and heavy metals. In addition, the Bedrock Aquifer is contaminated with as much as seven feet of a coal tar Dense Non-Aqueous Phase Liquid (DNAPL).

The Site is located in a heavily industrialized area within one mile of several population centers. There are an estimated 5,900 people living within a 3-mile radius of the Site. The City of Follansbee obtains potable water from a radial collector well and a surface water intake located approximately 1.5 miles downstream of the Site. Fifty private residential wells are within a 3-mile radius, and there are public wells located five miles downstream of the Site.

#### Site History

American Tar Products Company began operations at the Site in 1914. Since then, there have been many physical changes to the processing facilities, as well as changes in plant ownership. The Site, however, has always operated as a coal-tar processing plant. The northern portion of the property is highly contaminated with coal tar constituents which have migrated through the groundwater into the bedrock. The Site was proposed for inclusion on the NPL in December 1982 and was listed in September 1983.

#### Response Actions

As noted below, the Follansbee Site is currently being addressed by a series of RCRA Interim Measures under an existing enforceable order. The response under RCRA is progressing adequately as detailed below. Deletion of the Site from the NPL will not disrupt the possibility of any further CERCLA response action. As such, EPA intends to delete the listing of this Site from the NPL under CERCLA based on deferral to RCRA.

In October 1990, EPA and Beazer East (Beazer) the former owner/operator of the Follansbee Site, entered into a RCRA section 3008(h) Administrative Order on

Consent (AOC), Docket No. RCRA-III-037CA, requiring Beazer East to conduct a RCRA Facility Investigation (RFI) and to prepare a Corrective Measures Study (CMS). A draft RFI report was submitted to EPA in May 1994 and subsequently found to be deficient by EPA. Beazer then developed a new work plan which enabled it to gather additional information to sufficiently supplement the 1994 RFI report. As a result, in June 2000 the final RFI report was approved subject to additional sediment sampling by Beazer. Beazer is currently operating two interim pump and treat systems to control contaminated groundwater migration.

The first system installed in 1983 by Beazer involves the operation of five groundwater recovery wells to provide hydraulic containment for portions of the shallow perched zone aquifer. The recovered groundwater is processed in an on-site wastewater treatment plant prior to being discharged to the Ohio River. The effect of this system has been to prevent releases into the neighboring Wheeling-Pittsburgh Steel Corporation coal pits as well as to mitigate historical plant seeps to the banks of the Ohio River. EPA has required that Beazer provide a demonstration of the effectiveness of this system. Beazer is presently completing additional field investigations to fulfill this objective.

The second system, initiated pursuant to the 1990 RCRA, Order began operation in April 1999. This system provides for the collection of DNAPL coal tar product from the bedrock wells on-site. To date, the DNAPL removal program has been successful. This system will remain in operation until it is no longer technically feasible to remove DNAPL from this area of the Site.

Beazer has been conducting the RFI in a phased approach which resulted in the submission of a comprehensive RFI report in 1994. EPA provided technical comments on this report. Beazer responded to these comments by performing additional field work to better characterize the Site and to address certain identified data gaps. The work has included the installation of additional wells, performance of additional sampling and analysis, and evaluation of the existing shallow zone pump and treat system.

On June 26, 2000, EPA conditionally approved the RFI report subject to additional sediment sampling by Beazer. The river sediment sampling was completed in January 2001 and EPA received those results in August 2001. Actions taken as a result of this sampling will be at the discretion of the EPA Region III RCRA program.

Additionally, Beazer will submit an interim measures program report regarding the performance of the DNAPL removal program and the performance of the shallow groundwater pump and treat system. Both interim measures are expected to be components of the final RCRA remedy at the Site.

Pursuant to the 1990 RCRA Consent Order and the 1984 Consent Decree (*United States of America and State of West Virginia v. Koppers Company Inc. and Wheeling-Pittsburgh Steel Corp.* Civil Action No. 83-0127-W(k) WV-1984), Beazer submitted a work plan to EPA on July 24, 2002. EPA approved this work plan on July 30, 2002. The work to be performed under this plan will expand the groundwater monitoring activity at the Site to provide useful data allowing EPA to document the effectiveness of current and future remedial activities.

EPA completed construction activities at the Follansbee Site in accordance with *Close Out Procedures for National Priority List Sites* (OSWER Directive 9320.2-09A-9) on July 25, 2003. EPA's Superfund Division conducted a Pre-Final Inspection on June 17, 2003 and determined that the contractors have constructed a remedy in accordance with the Interim Measures specified by EPA, and no further Superfund response is anticipated.

#### Exposure Pathways

Human exposure to contaminated soils is being prevented due to the Site being largely paved and secured. Koppers Industries (Koppers), the current Site owner, developed and submitted a plan to EPA in February of 1998 to increase the extent of paved area at the Site. Koppers also provides a full time security staff which limits access to the property.

The area in the vicinity of the Site is serviced by municipal water supplies which obtain water from the Ohio River and from wells near the river. The nearest surface water intake and the municipal wells are located about 1.5 miles downstream from the Site. Three industrial wells are located within one mile of the Site but are not used for potable purposes. As supported by Site characterization data, there is no evidence that the Site contamination has impacted private or municipal water supplies due to the remoteness of the water supply wells and the surface water intakes as well as the substantial dilution effect of the Ohio River.

### Operation and Maintenance

Operation and Maintenance of all systems at the Site will be performed by Beazer under the direction of EPA.

### Five-Year Review

No five-year review is required since no remedy has been selected under CERCLA section 121. Future response actions at the Site are expected to be taken pursuant to RCRA authority.

### 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 of the Site from the NPL are available to the public in the information repositories.

### V. Deletion Action

The EPA, with concurrence of the State of West Virginia, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA are necessary and that the Site meets the criteria for deleting RCRA Sites from the NPL. (60 FR 14641 dated March 20, 1995).

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 January 16, 2004 unless EPA receives adverse comments by December 17, 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. Alternatively, 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.

### 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.

**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 under West Virginia by removing "Follansbee Site, Follansbee, WV."

[FR Doc. 03–28574 Filed 11–14–03; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket No. FEMA–P–7628]

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

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

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs 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 table below.

### FOR FURTHER INFORMATION CONTACT:

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, 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.

The changes in BFEs are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

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

### Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and