

suspension or deferral is appropriate, BIS may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of BIS penalties on other parties who committed similar violations.

B. *Denial of Export Privileges and Exclusion from Practice*: In deciding whether a denial or exclusion order should be suspended, BIS may consider, for example, the adverse economic consequences of the order on the respondent, its employees, and other parties, as well as on the national interest in the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future export control violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

Dated: February 11, 2004.

**Kenneth I. Juster,**

*Under Secretary of Commerce for Industry and Security.*

[FR Doc. 04-3639 Filed 2-19-04; 8:45 am]

BILLING CODE 3510-33-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7625-1]

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

**AGENCY:** Environmental Protection Agency.

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

**SUMMARY:** The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of deletion of the Wheeler Pit, Superfund Site (Site), located in Janesville, Wisconsin, 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 deletion is being published by EPA with the concurrence of the State of Wisconsin, through the Wisconsin Department of Natural Resources, because EPA has determined

that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

**DATES:** This direct final notice of deletion will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** *Comments:* Comments may be mailed to: Darryl Owens, Remedial Project Manager (RPM) at (312) 886-7089, [Owens.Darryl@EPA.Gov](mailto:Owens.Darryl@EPA.Gov) or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7253, [Beard.Gladys@EPA.Gov](mailto:Beard.Gladys@EPA.Gov), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604, (mail code: SR-6J) or at 1-800-621-8431.

### Information Repositories

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353-5821, Monday through Friday 8 a.m. to 4 p.m.; Hedberg Public Library, 316 S. Main Street, Janesville, Wisconsin 53545, Monday through Friday 9 a.m. to 9 p.m., Saturday 9 a.m. to 5 p.m. and Sunday 1 p.m. to 5 p.m.

### FOR FURTHER INFORMATION CONTACT:

Darryl Owens, Remedial Project Manager at (312) 886-7089, [Owens.Darryl@EPA.Gov](mailto:Owens.Darryl@EPA.Gov) or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7253, [Beard.Gladys@EPA.Gov](mailto:Beard.Gladys@EPA.Gov) or 1-800-621-8431, (SR-6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

### 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 V is publishing this direct final notice of deletion of the Wheeler Pit, 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 non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004 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 Wheeler Pit 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) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, 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 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 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 this Site:

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

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

(3) Concurrently with the publication of this direct final notice of deletion a notice of intent to delete is 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 document 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 a decision on the deletion based on 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 this Site from the NPL:

#### *Site Location*

The Site is located in rural La Prairie Township approximately 1½ miles east of the City of Janesville, Wisconsin, directly northwest of the intersection of

County Highway O (Old Delevan Road) and County Highway J. The Site is within a physical depression approximately 50 feet deep and spanning an area of approximately 35 acres, which previously operated as a sand and gravel pit by the Southeast Railway Company and the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (CMC). In 1956, General Motors Corporation (GM) leased a portion of the pit area from the railroad for waste disposal. This portion of the pit area is the Wheeler Pit Superfund Site and is a 3.82 acre parcel in the southeast portion of Wheeler Pit which was used as a disposal area for industrial wastes for approximately 18 years.

#### *Site History*

The Wheeler pit property was purchased in 1900 by the Janesville and southeastern Railway Company, predecessor in interest to the Chicago, Milwaukee, St. Paul and Pacific Railroad, which filed for bankruptcy in the 1970s. Upon completion of the bankruptcy proceedings, CMC Real Estate Corporation, successor to the Railroad, acquired ownership of the property on which the site is located. In early 1990, CMC Real Estate Corporation reformed to become CMC corporation. In the 1990s CMC was the owner of the property on which the site is located. The Wheeler Pit property was originally bought to provide sand and gravel for the Railroad. It has been reported that the Railroad also used Wheeler Pit for refuse disposal.

In 1956, General Motors Corporation (GM) leased a 3.82 acre portion of the pit from the Railroad as a general waste disposal site. From 1956 to 1960, GM disposed of general refuse at the Site. From 1960 through 1974, GM disposed of paint spray booth sludges, residue from the part hanger stripping system, clarifier sludges and powerhouse coal ashes from its automobile assembly plant in Janesville. The disposal site was reported to be approximately 400 feet long, 250 feet wide and 8 feet deep. An estimated 22.3 million gallons of organic and inorganic sludges were disposed of at the site, as reported by GM to the EPA in GM's Notification of Hazardous Waste Site form submitted in June 1981.

At the site, waste was disposed of by depositing it within a diked area and allowing it to spread freely. The material was quite dense, so that compaction equipment was not used. The waste was deposited in layers, alternating between layers of sludge and layers of coal ash. Trucks were then able to drive over the previously filled area.

The dike, which contained the materials, was located on the north and west sides of the disposal area. In August 1981, some liquid seepage was noticed on the ground surface outside the disposal area. The Remedial Investigation (RI) results showed that the ash/waste boundary extended beyond the original disposal boundary to the north and northwest, indicating that the waste spilled over the dike to some extent during the active life of the site.

At the request of La Prairie Township, disposal at the Site was discontinued in 1974. The disposal area was covered and closed during the fall of 1974 and summer of 1975 in general accordance with guidelines provided by the Wisconsin Department of Natural Resources (WDNR). In a letter dated May 6, 1974, WDNR required that GM implement a groundwater monitoring program; generate a site topographic map, stabilize surface water runoff, and grade, cover and re-vegetate the site.

Groundwater monitoring was performed by GM on an irregular basis after closure in 1974. In response to concerns concerning potential groundwater quality impacts related to waste disposal practices at the site, WDNR and GM sampled on-site monitor wells and certain private water supply wells in April 1981. Elevated levels of trichloroethylene, chromium, zinc and barium were noted in both WDNR and GM samples from the on-site monitoring wells. Results from these analyses and GM's January 1981 sampling round were used by EPA in the Hazard Ranking System (HRS) evaluation of the site performed in April 1983. The site was placed on the National Priorities List on September 21, 1984.

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

RI field activities began in September 1988 and included two phases. Activities included digging and sampling of four test pits, installation of six monitor wells (three nests), hydraulic conductivity testing, groundwater level monitoring and groundwater sampling. Phase II activities included three additional test pits, an electromagnetic survey to help determine the waste boundary and volume, waste/soil borings and sampling, shallow soil borings, surface soil sampling, four additional monitoring wells (two nests), and a second round of hydraulic conductivity testing and groundwater sampling. The RI Report describing these activities was finalized on March 1, 1990. An Endangerment Assessment was also

prepared and was included as part of the RI Report.

The RI found that the waste/fill area covers approximately 3.4 acres and ranges from 0–23 feet in thickness with the deepest part of the waste/fill area being approximately 10 feet above the groundwater table. Sampling of the waste found the following:

- Toluene, ethylbenzene, xylenes at concentrations ranging from 3300 parts per billion (ppb) to 508,000 ppb. These compounds are volatile organic compounds (VOCs).
- Phthalates ranging from 450 ppb to 630,000 ppb. Phthalates are semi-volatile compounds associated with plastics and plastic making processes.
- Polynuclear Aromatic Hydrocarbons (PAHs) ranging from 9520 ppb to 152,000 ppb. PAHs are semi-volatile compounds derived from coal and oil tars and the incomplete combustion of carbonaceous materials.
- Nine metals were detected at elevated concentrations including antimony, barium, copper, cadmium, chromium, lead, mercury, nickel and zinc.

Groundwater sampling found several chlorinated benzene compounds 1.4 dichlorobenzene, 1,3 dichlorobenzene and chlorobenzene in down gradient monitoring wells. The 1,4 dichlorobenzene concentration exceeded the proposed Wisconsin Preventive Action Limit (PAL) groundwater standard. The sampling found that the metals arsenic, chromium, iron and manganese exceeded PALs and in the case of iron and manganese, also exceed Wisconsin Enforcement Standards (ES).

A risk assessment was conducted and it was determined that there was a possible carcinogenic (cancer causing) risk from groundwater if a well was placed on the site and a noncarcinogenic risk to a construction worker from inhalation of VOCs while digging in the waste. It was also determined that there was a potential for erosion to continue to degrade the present soil cover and if that occurred, a trespasser at the site might encounter a risk similar to a construction worker.

#### *Record of Decision Findings*

The ROD for the Wheeler Pit site was signed on September 28, 1990. The number of alternatives considered for groundwater was reduced in the Feasibility Study based on the levels of contaminants detected in the groundwater and the limited areal extent of contamination. The alternatives to address the ash/waste contamination were source control actions which relied on natural

attenuation to remedy the groundwater. Remedial action objectives identified in the ROD for source control and groundwater contamination were:

(1) Reduce the threat of direct contact with ash/waste contamination.

(2) Reduce the amount of infiltration of water into the waste which could lead to further groundwater contamination.

(3) Achieve Wisconsin PALs where technically and economically feasible.

The major components of the source control remedy selected in the ROD include the following:

(1) A multi-layer RCRA Subtitle D cap consisting of the following layers from top to bottom: a 6-inch thick topsoil layer; a frost protective soil layer at least 18 inches thick; a drainage layer and a 2-foot clay layer.

(2) Consolidation under the cap of 400 cubic yards of waste and soil from the property north of the site.

(3) Institutional controls including deed restrictions and landfill development restrictions.

The groundwater remedy consisted of monitoring wells to assess the projected decrease in groundwater contamination. Monitoring wells were to be sampled for at least 30 years. Private wells located down-gradient of the site were also to be monitored to assess potential impacts to human health.

#### *Characterization of Remaining Risk*

No additional response action(s) is required at the Wheeler Pit. Those areas associated with groundwater and source control have been adequately addressed by the response actions already taken. Wheeler Pit meets all site completion requirements specified under OSWER Directive 9320.2–09A–P (Close Out Procedures for National Priorities List Sites). Current site conditions are protective of human health and the environment, both for the source control and the groundwater. Cleanup objectives set forth in the RODs for this site and in the Consent Order have been achieved.

#### *Response Actions*

EPA gave notice to proceed with the Remedial Action on May 21, 1992. A contract for remedial construction activities was awarded April 30, 1992 and on-site construction began on June 8, 1992. Remedial construction included the following activities:

- Consolidation of approximately 36,400 cubic yards of material, including waste from property north of the site;
- Installation of a Wisconsin Administrative Code (WAC) No. 504 solid waste cap over the waste and

consolidated material, which included 2 feet of compacted clay, 1 foot gravel drainage layer with geotextile filter fabric, 1 and 1/2 foot of soil for frost protection and to serve as a rooting zone and 6-inches of topsoil;

- Access road construction;
- Retention basin construction;
- Perimeter drainage swale construction;
- Site clearing, stump removal and existing access road abandonment;
- Installation and also abandonment of groundwater monitoring wells and implementation of a long-term groundwater monitoring program.

A pre-final inspection was performed on October 27, 1992 and construction was found to be substantially complete. A Construction Completion Report was submitted by the PRPs in December 1992 and U.S. EPA subsequently issued a Preliminary Close Out Report on December 29, 1992.

An Explanation of Significant Differences (ESD) was signed on June 16, 2003. The purpose of the ESD was to eliminate manganese as a site contaminant of concern from the groundwater cleanup remedy selected by EPA in its September 28, 1990 ROD. The elimination of manganese from the site contaminants of concern was recommended in the September 18, 2002 Five Year Review for the Wheeler Pit Superfund site.

#### *Cleanup Standards*

The goal of the groundwater action will be to attain the groundwater cleanup standards at the waste boundary of Wheeler Pit, which is the suggested NCP point of compliance for groundwater. The clean-up goals which have been established are state of Wisconsin PALS. In the second Five-Year that was signed on September 18, 2002, with regard to the review of chemical-specific ARARs, the standards for four of the five chemicals of concern in the groundwater which exceeded PALs at the time of the 1990 ROD (1,4 dichlorobenzene, arsenic, iron and manganese) have not changed. The PALs remain at 15 micrograms per liter ( $\mu\text{g}/\text{l}$ ) for 1,4 dichlorobenzene, 5  $\mu\text{g}/\text{l}$  for arsenic, 150  $\mu\text{g}/\text{l}$  for iron, and 25  $\mu\text{g}/\text{l}$  for manganese. The PAL for chromium has become less stringent at 10  $\mu\text{g}/\text{l}$  versus 5  $\mu\text{g}/\text{l}$  at the time of the ROD signing. Manganese is the only site contaminant of concern which exceeds PALs at this time. An ESD was signed on June 16, 2003 which eliminated manganese as a site contaminant of concern.

#### *Operation and Maintenance*

General Motors is conducting operation and maintenance activities for

the landfill and the long-term groundwater monitoring in accordance with the Unilateral Administrative Order. The primary activities associated with the O & M include the following:

- Routine mowing of the landfill cover;
- Visual inspection of the landfill cover for damage due to erosion, washouts, settling, growth of trees or large plants, growth of noxious weeds and burrowing animals;
- Inspection of monitoring wells for well casing damage, surface seal damage, missing or broken locks, vandalism, well screen damage and sediment;
- Inspection of the landfill storm water control system which consists of perimeter swales, roadside swales, culverts, and the storm water retention pond. The inspection includes inspecting for damage from erosion, sediment accumulation in swales or culverts, settlement, riprap integrity, distressed vegetation, growth of trees or large plants, growth of noxious weeds and burrowing animals;
- Inspection of perimeter fence for damage from cuts or sagging, bent or damaged fence gates and posts, excessive gaps between ground and fence bottom, missing locks and signs, cut barbed wire and tree branches encroaching on the fence and;
- Inspection of the site access road for damage due to erosion, settlement or grading activities.

#### Five-Year Review

A second five-year review for the Wheeler Pit was conducted on September 18, 2002. The report recommended that manganese should be deleted from the site contaminants of concern. An Explanation of Significant Differences (ESD) to the ROD decision document was signed on June 16, 2003. The ESD also established the extent and frequency of future groundwater monitoring to be performed at the site.

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

#### V. Deletion Action

The EPA, with concurrence of the State of Wisconsin, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under

CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective April 20, 2004 unless EPA receives adverse comments by March 22, 2004. 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 prepare a response to comments and, as appropriate, 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: February 4, 2004.

**Thomas V. Skinner,**  
*Regional Administrator, Region V.*

■ 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 Wisconsin “WI” by removing the entry for “Wheeler Pit, La Prairie Township.”

[FR Doc. 04–3599 Filed 2–19–04; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030819206–4051–02; I.D. 020204A]

RIN 0648 AR42

### Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; effectiveness of collection-of-information requirements.

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for BSAI King and Tanner Crab, and Amendment 8 to the FMP for the Scallop Fishery off Alaska (collectively referred to as Amendments 61/61/13/8), and issues a final rule to make effective the collections of information contained in those amendments. The intent of this final rule is to inform the public of the effective date of the collection of information requirements.

**DATES:** Sections 679.28(c)(3), 679.28(c)(4)(iii), 679.28(g), 679.61(b), and 679.63(c)(2) published at 67 FR 79692 (December 30, 2002) are effective on March 22, 2004.

**ADDRESSES:** Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: (907)586–7247, e-mail: [lori.durall@noaa.gov](mailto:lori.durall@noaa.gov), and to David Rostker, OMB, e-mail: [DavidRostker@omb.eop.gov](mailto:DavidRostker@omb.eop.gov), or fax: (202)395–7285.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, NMFS, (907)586–7228 or e-mail at [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:** A final rule implementing the measures contained in Amendments 61/61/13/8 was published in the **Federal Register** on December 30, 2002 (67 FR 79692), and most of the measures were effective