

to prevent accidental exposure to the landfill contents and the treated waste material, rather than act as an impermeable cap, roots from the vegetation will not impact the intended protectiveness of the soil cover. Soil and debris are also being added to the oily sludge mound area as part of the current property redevelopment efforts, creating an additional protective layer on the treated waste material. The security fence around the Site has been removed with the exception of the area within the hardwood wetlands that separates the Site from the St. Francis levee. A security gate at the entrance to the Site from South 8th Street was left in place at the request of the property owner to control access to the Site.

#### Five-Year Review

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since the cleanup of the South 8th Street Landfill site utilized in-situ stabilization and solidification of the hazardous materials as the method to reduce the risk, the five-year review process will be used to insure that the site reuse and redevelopment activities are consistent with the site restrictions. The EPA completed the first statutory five-year review in June 2004 and determined that the remedy selected for the South 8th Street Landfill remains protective of human health and the environment. For future five-year reviews, EPA will continue to monitor the reuse and redevelopment activities at the South 8th Street Landfill site and perform a five-year review inspection. EPA plans to complete the next Five-Year Review by June 2009.

#### 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 concurrence of the State of Arkansas, 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 the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2004, unless the EPA receives adverse comments by August 30, 2004, on a parallel notice of intent to delete published in the proposed rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, the 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, and the 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 waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 20, 2004.

**Richard E. Greene**,  
Regional Administrator, Region 6.

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. In Appendix B to Part 300, Table 1 is amended by removing the entry for “South 8th Street Landfill, West Memphis, Arkansas.”

[FR Doc. 04–17301 Filed 7–29–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL–7792–8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Ralph Gray Trucking Company Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region IX is publishing a direct final notice of deletion of the Ralph Gray Trucking Company Superfund Site (Site), located in Westminster, California, 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 California, through the California Department of Toxic Substances Control 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 September 28, 2004, unless EPA receives adverse comments by August 30, 2004. 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: Don Hodge, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3240 or 1–800–231–3075.

**Information Repositories:** Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, San Francisco, CA 94105–3901, (415) 536–2000, Monday through Friday 8 a.m. to 5 p.m.; Westminster Public Library, 8180 13th Street, Westminster, CA 92683, (714) 893–5057.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Bowlin, Remedial Project Manager, U.S. EPA Region IX (SFD-7-3), 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 972-3177 or 1-800-231-3075.

**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 IX is publishing this direct final notice of deletion of the Ralph Gray Trucking Company 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 September 28, 2004, unless EPA receives adverse comments by August 30, 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 Ralph Gray Trucking Company 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, 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 the Site:

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

(2) The State of California 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 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 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 Location*

The Ralph Gray Trucking Company Superfund Site is located in a 23-acre residential neighborhood of Westminster, Orange County, California. This neighborhood, also known as Westminster Tract Number 2633, is located north of the San Diego freeway (I-405) and is bounded by the Orange County flood control channel to the south, Goldenwest Avenue to the west, the U.S. Navy railroad (abandoned) to the north, and Chestnut Street to the east. The area to the west of the site is residential and the other surrounding areas are used for light industrial and commercial activities.

*Site History*

During the 1930s, the immediate area was primarily used for agricultural purposes and the site was known as the Murdy Dairy Farm. From 1936 until the late 1930's, Ralph Gray Trucking Company collected acid sludge, oil field wastes, and oil refinery wastes and used four unlined pits at the farm as a disposal site. The disposal pits were abandoned in place and remained undisturbed until the construction of 75 homes in the late 1950s. The Hintz Development Company moved the hazardous substances from the pits and buried the material in two unlined trenches which had been cut through the backyard areas of about 25 of the lots before the homes were built. Five homes were built directly over one of the original waste pits.

By 1965, residents reported black sludge seeping into their yards from the ground. Throughout the 1970s, residents routinely complained to city officials about the black sludge and buried waste material uncovered during excavations

for swimming pools and house additions. In 1983, Orange County referred the site to the California Department of Health Services (DHS) for investigation. Between 1987 and 1991, DHS conducted annual seep removals and issued an advisory to the residents recommending they not eat vegetables and fruit grown in their yards. During the period, DHS also completed a Multipathway Health Risk Assessment, developed a draft feasibility study (RI/FS), and prepared a draft Remedial Action Plan (RAP).

In 1989, EPA completed the Preliminary Assessment/Site Investigation (PA/SI) which concluded that local residents could potentially be exposed to hazardous substances via several exposure routes, including dermal contact, ingestion, and inhalation. The Site was proposed for listing on the NPL in July 1991 and placed on the NPL in October 1992. EPA decided to conduct a non-time-critical removal action because of the threat to public health posed by hazardous waste and contaminated soil at the Site and the length of time necessary to initiate a remedial action selected in a Record of Decision.

#### *Engineering Evaluation and Cost Analysis (EE/CA)*

From November 1992 through April 1993, EPA conducted a focused investigation to further study the waste body. In general, the hazardous substances found at the site were present in two different forms: surface seep material and buried waste. Both forms of the material were comprised of volatile organic compounds (VOCs), various sulfur and organic sulfur compounds, and polynuclear aromatic hydrocarbons (PAHs).

EPA completed the Engineering Evaluation and Cost Analysis (EE/CA) in August 1993 which recommended a removal action to address the buried hazardous substances on site. The EE/CA found that releases of VOCs and sulfur dioxide from both seep and buried waste material had occurred and would continue to occur unless a removal action was conducted. The VOCs in the seep and buried waste material included known and potential human carcinogens, and the levels of sulfur dioxide could impact individuals with impaired respiratory systems.

#### *Action Memorandum*

The initial Action Memorandum (AM) for the site, dated March 29, 1994, authorized the non-time-critical removal action for the site. Under this AM, EPA proposed to excavate contaminated soils and subsurface hazardous substances

from 25–30 properties, and dispose of the contaminated materials and soil off-site at an authorized disposal facility. The removal action required the razing and restoration of backyard improvements such as house additions, swimming pools, decks, and other structures. The AM also authorized EPA to conduct a groundwater investigation to determine whether contaminants had migrated to the underlying groundwater.

The second AM, dated May 12, 1995, authorized EPA to raze and reconstruct five homes which were built directly over the waste body. The third AM, dated July 8, 1996, authorized EPA to enter into a cash settlement agreement with one resident in lieu of landscaping restoration. The fourth AM, dated December 17, 1996, authorized EPA to enter into cash settlement agreements with the owner of the five homes that were razed during the removal in lieu of reconstruction.

#### *Characterization of Risk*

The Multipathway Health Risk Assessment determined that the sum of excess individual lifetime cancer risks from the contamination at the site ranged from  $6 \times 10^{-6}$  to  $7 \times 10^{-5}$  which is sufficient to warrant an EPA response action given the close proximity of humans to the waste and the uncertainty associated with risk characterizations. In addition, a June 1993 review by DHS identified the potential for an acute health threat to individuals who inhaled the emissions from disturbed seep or buried wastes.

#### *Response Actions*

EPA entered into an Interagency Agreement with the U.S. Bureau of Reclamation (USBR) to conduct the removal activities at the site. USBR conducted engineering surveys of all the properties at the site, extensive soil sampling throughout the neighborhood to determine the extent of the waste body, prepared the removal design package, retained a removal contractor and restoration contractor, and administered the temporary relocation program. The removal action commenced in June 1994 and was completed in February 1997.

Pursuant to the first AM, EPA conducted groundwater sampling from nine previously installed monitoring wells to determine if cleanup activities were necessary. EPA conducted sampling in July 1997 through November 1997 and in October and November 1999. Based on the sampling results, EPA determined that neither the intermediate nor deep aquifers, which are the only viable potential sources of drinking water in the area, were

impacted by the contamination at the site. Sampling of the perched shallow zone indicated minor water quality impacts from the site were present. However, EPA did not propose any further action because (1) this perched zone is not a viable potential source of drinking water, hence human exposure to the residual contamination is unlikely, and (2) the residual contamination did not pose a significant health risk even in the unlikely event of human consumption.

#### *Site Closure*

During the removal work at the Site, EPA installed vault boxes for a potential soil vapor extraction (SVE) system. After EPA conducted soil and groundwater sampling, EPA determined that the removal action was successful and that the SVE system was not needed. In April 2003, EPA properly abandoned the SVE vaults and the nine groundwater monitoring wells.

#### *Cleanup Standards*

The cleanup of the site complies with the "clean closure" requirements, consistent with the Resource Conservation and Recovery Act of 1976, as amended, 40 CFR 264.111. EPA believes that it has found and removed all significant sources of hazardous waste from the site. Confirmatory sampling verifies that EPA has achieved the Action Memoranda cleanup objectives. There are no hazardous substances remaining at the site above health-based levels, and, therefore, no five-year reviews will be required.

#### *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 concurrence of the State of California, 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 noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 28, 2004, unless EPA receives adverse comments by August 30, 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 and, 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 waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 21, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ 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 California (“CA”) by removing the entry for “Ralph Gray Trucking Co.”

[FR Doc. 04–17299 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7794–7]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion for the Niagara County Refuse Superfund site from the National Priorities List.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Niagara County Refuse Superfund site from the National Priorities List (NPL). The Niagara County Refuse site is located in the Town of Wheatfield, Niagara County, New York. The NPL

constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and New York State, through the Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been implemented and no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and the NYSDEC have determined that the remedial action taken at the Niagara County Refuse site is protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** July 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4278.

**SUPPLEMENTARY INFORMATION:** To be deleted from the NPL is: the Niagara County Refuse Superfund site, Town of Wheatfield, Niagara County, New York.

A Notice of Intent to Delete for the Niagara County Refuse site was published in the **Federal Register** on March 17, 2004. The closing date for comments on the Notice of Intent to Delete was April 16, 2004. EPA received two comments on the proposed deletion during the public comment period. Both comments were from local residents opposed to the deletion due to historical flooding problems experienced at their homes associated with wetlands adjacent to the landfill and their properties. The commentors assigned a portion of the blame for the flooding to the presence of the landfill and EPA’s actions at the landfill. In response, EPA notes that research shows that poor drainage and flooding were evident at least as far back as the 1970s and that both federal and State designated wetlands located to the north of the site have been regulated since the late 1970s. Steps were taken during the remediation of the landfill to minimize or reduce the impacts of increased surface water drainage to an already existing flood prone environment. EPA’s decision to propose the site for delisting is based on the successful implementation of the multi-layered cap remedy to contain landfill wastes to prevent the migration of contaminants into the surrounding environment, thereby mitigating risks to human health and the environment. The monitoring

data collected on a regular basis since the construction of the remedy was completed in December 2000 confirm that the remedy is operating as designed and is protective of human health and the environment. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

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

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

Dated: July 6, 2004.

**Walter Mugdan,**

*Acting Regional Administrator, Region II.*

■ For the reasons set out in the preamble, part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

#### PART 300—[AMENDED]

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

**Authority:** 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); 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 “Niagara County Refuse, Town of Wheatfield, New York.”

[FR Doc. 04–17374 Filed 7–29–04; 8:45 am]

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### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405 and 411

[CMS–6014–F]

RIN 0938–AL14

#### Medicare Program; Interest Calculation

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