

Act have been implemented and that no further cleanup is required. The Site poses no significant threat to public health or the environment. Consequently, this Site no longer needs to be listed on the NPL; however, this decision does not preclude future actions under Superfund should they become necessary.

A Remedial Action Work Plan (RAWP) for the implementation of long-term operation and maintenance for the landfill cap systems is in place. The Town of Batavia is required to manage the required operation and maintenance (O&M) activities in accordance with the RAWP. Required O&M activities include the long-term implementation of a semi-annual groundwater monitoring program, periodic Site inspections, and regular landfill cap maintenance activities. The inspections are required to ensure and maintain the operational effectiveness and structural integrity of the Site remedy to protect human health and the environment.

Institutional controls consisting of an easement and deed restriction limiting access to the Site and preventing the use of contaminated water as a drinking source were filed with the Genesee County Register of Deeds on June 10, 2005.

Public participation activities for this Site have been satisfied as required by CERCLA Section 113(k), 42 U.S.C. 9613(k), and, CERCLA Section 117, 42 U.S.C. 9617. The RI/FS and the 1993 and 1995 RODs were both subject to the public review process. All documents and information which EPA relied on or considered in reaching the conclusion that this Site can be deleted from the NPL are available for the public to review at the information repositories.

The final remedy implemented at this Site results in contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. In accordance with CERCLA Section 121(c), EPA and/or NYSDEC will conduct a review of this remedy no less often than every five years. A first Five-Year Review Report for the Site was completed in June 2000. EPA has determined that the remedies protect public health and the environment and that they function as intended by the decision documents. All construction activities for the Site required by the final ROD were completed in July 2003. A second Five-Year Review was completed in September 2005.

One of the three criteria for site deletion specifies that a site may be deleted from the NPL if "responsible parties or others parties have implemented all appropriate response actions required." [ 40 CFR

300.425(e)(1) (i)]. EPA, with concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met and therefore, EPA is deleting this Site from the NPL.

#### 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: September 21, 2005.

**Alan J. Steinberg,**

*Regional Administrator, U.S. EPA Region II.*

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

#### PART 300—[AMENDED]

■ 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 New York (NY) by removing the site name "Batavia Landfill" and the corresponding city designation "Town of Batavia."

[FR Doc. 05–19613 Filed 9–29–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL–7976–8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of partial deletion of the Jacobs Smelter Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of the Jacobs Smelter Superfund Site from the National Priorities List (NPL). Specifically EPA intends to delete Operable Unit 3 from the site, comprised only of soils within the Union Pacific Rail Road (UPRR) right-of-way in Tooele County, Utah.

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 Substance Pollution Contingency Plan (NCP). The EPA is publishing this direct final notice of partial deletion with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ) because the EPA has determined that all appropriate response actions under CERCLA have been completed at these properties and, therefore, further remedial action pursuant to CERCLA is not appropriate.

This partial deletion pertains to Operable Unit 3 described in section IV of this document and does not alter the status of any other portion of the Jacobs Smelter Superfund Site. Operable Unit 1 was deleted from the NPL in 2001.

**DATES:** This direct final partial deletion will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

**ADDRESSES:** Comments may be mailed to Jennifer Lane, Community Involvement Coordinator, U.S. EPA Region 8 (8OC), 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6813.

#### Information Repositories:

Comprehensive information about the site is available for viewing and copying at the site information repositories located at:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202–2466, Hours: Monday–Friday, 8:30 a.m. to 4:30 p.m.

Tooele City Public Library, 128 West Vine Street, Tooele, UT 84074, Hours: Tuesday–Friday 11 a.m. to 7:30 p.m.; Saturday 10:30 a.m. to 6 p.m.

Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, UT 84116, (801) 536–4400, Hours: Monday–Friday, 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Lisa Lloyd, Remedial Project Manager (8EPR–SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6537.

#### SUPPLEMENTARY INFORMATION:

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I. Introduction

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

## I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of the Jacobs Smelter 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 or areas within 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 partially delete. This action will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005 on this notice or the parallel notice of intent to partially delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of partial 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 partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting, or partially deleting, sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the UPRR right-of-way property that EPA intends to delete from the Jacobs Smelter Superfund Site and demonstrates how it meets the partial deletion criteria. Section V discusses EPA's action to partially 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, or partially delete, a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;
- ii. Section 300.425(e)(1)(ii): All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response action under CERCLA has been implemented and no further response action by responsible parties is appropriate; or
- iii. Section 300.425(e)(1)(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 partially deleted from the NPL, if hazardous substances, pollutants or contaminants remain in place at the deleted portion of the 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 be conducted at least every five years after the initiation of the remedial action at the deleted portion of the 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 or require further remedial actions. Whenever there is a significant release from a site (or portion thereof) deleted from the NPL, the deleted area or site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to the partial deletion:

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

(2) The State of Utah concurred with the partial 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 partially delete was 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 partially delete the site from the NPL.

(4) The EPA placed copies of documents supporting the deletion of these properties 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 partial 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 or partial deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion or partial 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. Section 300.425(e)(3) of the NCP governs partial deletion of a site from the NPL in the same manner.

While EPA does not believe that any future response action within Operable Unit 3 will be needed, if future conditions warrant such action, this deleted area will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of any remaining portions of the Jacobs Smelter Superfund Site, which are not proposed for deletion and remain on the NPL. The residential portion of Operable Unit 1 was deleted from the NPL in 2001.

## IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the portion of the site referred to above from the NPL.

### A. Site Location

The Jacobs Smelter Superfund Site Operable Unit 3 is a long irregularly shaped property consisting of the Union Pacific Railroad right-of-way, 1,625 feet in length and varying in width from 50 to 450 feet with an average width of 200 feet. An active mainline railroad bisects this 9-acre site from north to south. One of the major roads, Silver Avenue, crosses the right-of-way from east to west. The site is relatively level and vegetated with native grasses and scrubby trees. Several older concrete foundations of removed buildings and one possible water tower base are evident. The only other onsite structures are two small signal houses.

### B. Site History

The Stockton Yard (OU3) is located within the Jacobs Smelter Superfund

Site. Several mining and smelting facilities were constructed in and near the town of Stockton in the early 1870's. The Jacobs Smelter was located in the town of Stockton near the current location of the Stockton Yard. Contamination on OU3 is likely the result of sediments entrained in process water that was allowed to flow down-gradient across the rail road right of way as well as spillage from an ore-loading facility that was built for the transportation of ores to other mills and smelters.

The railroad property was cleaned up in 1999. UPRR, under an agreement with the EPA, removed all debris and large vegetation (bushes and trees), placed a 16-inch soil cover over the contaminated soils in their right-of-way, fertilized the soil cap, and seeded with a mixture of indigenous grass seed.

Concrete foundations onsite were left in place. Following removal of vegetation from the site, a limited amount of grading was performed to smooth out uneven areas of the site. In general, soil surfaces were kept moist to reduce the potential for spreading contaminated soil and also to ease handling and placement of material.

UPRR built 6' fences along the edge of Silver Avenue and Plaza Street. A 16-ft-wide gravel access road was also constructed along the length of the east and west sides of the railroad track between the railroad ballast and the soil cap. The road was developed using a 4-inch layer of crushed rock.

### C. Characterization of Risk

Arsenic is a human carcinogen. Arsenic can be acutely and chronically poisonous and can be fatal if ingested or inhaled in sufficient quantities by humans, livestock and wildlife. Arsenic compounds are absorbed into the body primarily through inhalation or ingestion.

Lead is a cumulative poison which can cause neurologic, kidney and blood cell damage in humans. Some lead compounds are also animal carcinogens adversely affecting the lungs and kidneys. Children under the age of seven years are especially sensitive to the effects of lead. Lead carbonate, which is the type of lead found at the site, is very bio-available. Bio-availability is an indication of how easily lead is absorbed into the body, thus lead at the site is readily absorbed.

These metals are hazardous substances, as defined by section 101 (14) of CERCLA. They appear to have been released into the soils along the railroad track by historic smelting activities and spread through the

community by water drainage and possibly aerial deposition.

Because arsenic contamination is found along the railroad track in areas that are surrounded by residences, there is also a potential for contaminated soil to be wind-blown and dust-sized particles to be transported by wind and human activities into yards and into homes. Also, children play along the tracks.

UDEQ collected soil and sediment samples from the Stockton area in July of 1997. The analysis of samples from the area at and around Jacobs Smelter detected arsenic and lead levels as high as 6,550 parts per million (ppm) and 68,400 ppm respectively.

Sampling on the UPRR property revealed high concentrations of lead in several lots east of the railroad tracks. Concentrations of lead ranged as high as 4,800 ppm near the edge of a suspected settling pond to 12,000 ppm near an area described as an old railroad loading dock.

### D. Site Investigations

In August 1998, EPA Region 8 conducted a screening investigation of site (OU3) surface soils to evaluate potential lead and arsenic contamination. This investigation identified lead in soils at concentrations ranging from 837 to 12,000 parts per million (ppm). Due to its collocation with the lead, an analysis for arsenic was also conducted and results appeared correlated. The PRP Removal Action Memorandum of February 2, 1999 identified both lead and arsenic as contaminants of concern.

In February 1999 further investigation was conducted on the east side of the Stockton Yard railroad lines to delineate lead contamination. The site was broken up into 20 sampling zones; 2 to 4 samples were collected within each zone and composited. Surface soil samples collected from the 20 zones ranged from 14 to 23,902 ppm total lead.

On June 11, 1999 additional investigations of lead in surface soils on the west side of the railroad lines were conducted. This area was divided into 11 sample zones, using the same grid configuration as the earlier work. The samples were collected as 3- to 4-point composites in 0-6" intervals using the same protocol as outlined in the February 24, 1999 Site Investigation and Remedial Alternatives Report. Total lead concentrations ranged from 164 to 1,958 ppm.

The industrial action level set by the EPA was 1,200 ppm total lead. Based on sampling events, soils exceeding this 1,200-ppm cleanup level encompassed approximately 3.6 acres on the east side

of the railroad tracks and approximately 0.70 acre on the west side of the tracks. In the February 1999 Site Investigation and Remedial Alternatives Report, cost estimates were presented for several remedial alternatives. Based on this information, EPA and UDEQ selected soil cover as the preferred alternative for the Stockton Yard.

### E. Action Memorandum Findings

The purpose of the Enforcement Action Memorandum was to document the selected PRP Removal Action. The selected response action was to confine the affected soil beneath a soil cover and to fence off the area to reduce access by the public. The objectives were to preclude direct exposures and to reduce the potential for offsite migration of affected soil through air or water borne pathways.

### F. Response Actions

Site preparation included the removal of large vegetation (e.g. bushes and trees) and debris (i.e. boulders, concrete chunks, trash) from the areas to be capped. Vegetation and debris were disposed of in the Tooele County Landfill. The concrete foundations remained on site.

The UPRR developed a plan of action for soils in excess of 1,200 ppm lead, including 3.6 acres on the east side and .70 on the west of the 9 acres in the right-of-way described in the agreement. That soil, adjacent to the track ballast, was compacted and capped with 12" of clean soil (approximately 7,550 yards) and 4" of top soil (approximately 2,300 yards). UPRR sowed the remediated area with a combination of wild rye, sagebrush and two grasses which were recommended for the local altitude and weather pattern. UPRR also built 6' high chain link fences along the edge of Silver Avenue and Plaza Street.

In agreement with the EPA and UDEQ, UPRR filed in Tooele County a Declaration of Restrictions that limits the future use of the site.

### G. Cleanup Standards

Cleanup standards for Operable Unit 3 were based on the IEUBK model data that showed elevated lead concentrations exceeded EPA's criteria. EPA and UDEQ selected soil cover as the preferred alternative for the Stockton Yard. The soil cap was placed over sections of the site that contained lead concentrations greater than 1,200 ppm.

### H. Community Involvement

EPA established an Information Repository containing the Administrative Record and other

information about the site at the Tooele City Public Library, 128 West Vine Street, Tooele, Utah. Public interviews were conducted, ties with local officials were established, and an avenue created to address local questions and concerns through the appointment of a Community Involvement Coordinator.

Numerous community meetings were held to inform and invite public comment on site-wide remedies, and discussions included the cleanup of the UPRR right-of-way in January, March, May and June of 1999.

Public participation activities have been satisfied as required in sections 113(k), and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617. Documents in the deletion docket, which EPA relied on for recommendation of the partial deletion from the NPL, are available to the public in the information repositories.

**V. Partial Deletion Action**

The EPA, with concurrence of the State of Utah, has determined that all appropriate responses under CERCLA for the referenced property have been

completed and that no further response actions under CERCLA are necessary.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005 on a 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 partial deletion and it will not take effect. EPA will simultaneously prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially 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 substance, Hazardous waste,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 21, 2005.

**Robert E. Roberts,**  
*Regional Administrator, Region 8.*

■ 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 revising the entry under Utah for "Jacobs Smelter" to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
UT	Jacobs Smelters	Tooele County	P.

a \* \* \*  
P = sites with partial deletion(s).

[FR Doc. 05–19626 Filed 9–29–05; 8:45 am]  
BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 412, 413, 415, 419, 422, and 485**

[CMS–1500–CN]

RIN 0938–AN57

**Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Correction**

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

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects technical errors in the final rule that

appeared in the August 12, 2005 **Federal Register** entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates."

**DATES:** Effective October 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Marc Hartstein, (410) 786–4548.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 05–15406 (70 FR 47278), the final rule entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates" (hereinafter referred to as the FY 2006 final rule), there were a number of typographical and technical errors that are identified and corrected in the "Correction of Errors" section (section III. of this notice). The provisions of this correction notice are effective as if they had been included in the FY 2006 final rule. Accordingly, the corrections are effective October 1, 2005.

**II. Summary of the Corrections to the FY 2006 Final Rule**

On page 47292, in our preamble discussion regarding cardiac catheterizations for DRGs 535 and 536, we stated that we are removing code 37.26 from DRGs 535 and 536 and then erroneously stated that we are adding code 37.26 to DRG 515. Therefore, we are revising this discussion by deleting the phrase "and adding the code in DRG 515." (See item 2 of section III.A. of this notice.)

On page 47312, in our preamble discussion regarding the "Tobacco Use Disorder Edit", we stated the incorrect Medicare code editor (MCE) edit to which we added code 305.1. Although our national coverage determination on smoking cessation counseling services provides that we never cover tobacco cessation services when code 305.1 is reported as the principal diagnosis, we erroneously stated that code 305.1 would be added to the MCE edit "Questionable Admission—Principal