

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

#### IV. Proposed Action

EPA is proposing to approve the removal of the vacated Consent Agreement for Burlington Industries from the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve the Virginia Department of Environmental Quality State Implementation Plan revision request for the removal of the Consent Agreement for the Burlington Industries facility located in Clarksville, Mecklenburg County, VA, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and

recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2006.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. 06-6149 Filed 7-10-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-8195-4]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Intent to Delete the T. H. Agriculture and Nutrition Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 9 announces the intent to delete the T. H. Agriculture and Nutrition site ("the site") from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California, through the California Department of Toxic Substances Control, have determined that the remedial action for the site has been successfully executed.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before August 10, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instruction for submitting comments.
- E-mail the superfund docket center (specify docket ID number)—e-mail address: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).
- Fax the docket center (specify docket number)—fax number: 202-566-0224
- Mail hardcopy to the docket center (specify docket number) address:

Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund, Mailcode 5202T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- For Fedex/Courier delivery, the following address should be added (specify docket number): address: 1301 Constitution Ave., NW., EPA West Building, USEPA Docket Center, Reading Room B-102, Washington, DC 20460.

Hand deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-SFUND-1986-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA's Region 9 Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, (415) 536-2000. Available hours: by

appointment, 8 a.m. to 5 p.m., M-F, excluding legal holidays. The deletion document is also available for public viewing at the following local information repositories for the site: Fresno County Library, Sunnyside Branch, 5562 E. Kings Canyon Rd., Fresno, CA 93727, (559) 255-6594. Available hours: M-T, 9 a.m.-9 p.m.; F-Sat. 9-5 p.m.; Sun. 12-5, and California Department of Toxic Substances Control, Clovis Office, File Room, 1515 Tollhouse Road, Clovis, CA 93612, (559) 297-3961. Available hours: by appointment only, fax request to Barbara Doehring at (559) 297-3904.

**FOR FURTHER INFORMATION CONTACT:** Lynn Suer, Remedial Project Manager, U.S. EPA 9 (SFD-7-2), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3148, or 1-800-231-3075.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis of Intended Site Deletion

#### **I. Introduction**

The U.S. Environmental Protection Agency (EPA) Region 9 announces its intent to delete the T. H. Agriculture and Nutrition Site, Fresno County, California, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of California Cal/EPA Department of Toxic Substances Control have determined that the remedial action for the site has been successfully executed. EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**. Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the T. H. Agriculture and Nutrition site and explains how the site meets the deletion criteria.

#### **II. NPL Deletion Criteria**

Section 300.425(e)(1) of the NCP provides that releases may be deleted

from, or recategorized on 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; or

(ii) All appropriate Fund-financed 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, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and restricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System. In the case of this site, the selected remedy is protective of human health and the environment.

#### **III. Deletion Procedures**

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The State of California has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, § 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.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

#### IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

##### *Site Background and History*

The T. H. Agriculture and Nutrition (THAN) site consists of an approximately 5-acre parcel located at 7183 East McKinley Avenue, approximately three miles northeast of the City of Fresno, California. Between 1951 and 1981, several owners utilized the Site for the formulation, packaging, and warehousing of agricultural chemicals (i.e., pesticides). Successive owners included Ciba-Geigy Corporation, Olin Corporation, De Pester Western, Inc. (Nevada), De Pester Western, Inc. (California), and THAN (known as the Thompson-Hayward Chemical Company prior to 1981). From 1959 until present, the Site has been owned or operated by THAN. In 1981, THAN discontinued operations, and the facility closed completely in 1983.

In addition to the approximately 5-acre parcel, THAN currently owns an adjacent 20-acre orchard parcel that borders on the south, east, and west sides of the Site. Properties surrounding THAN's 25 acres of land consist of farms, orchards, and low-density residential developments.

Contamination at the site was discovered in 1980. Water sampling from domestic wells located near the site, conducted by the Cal/EPA Department of Toxic Substances Control (DTSC), then known as the Department of Health Services, revealed low levels of agricultural chemicals. Subsequently, DTSC, the Fresno County Health Department, and the State of California Central Valley Regional Water Quality Control Board (Regional Board) requested and supervised an investigation by THAN to determine the extent of environmental contamination in soil and groundwater related to the

site. Based on results of this investigation, the site was placed on the State Priority Ranking List in 1985. EPA added the site to the National Priorities List (NPL) in June 1986 (51 FR 21,054, June 10, 1986). Although EPA provides technical assistance to DTSC concerning the site, DTSC remains the lead agency.

The risk assessment for the site identified several chemicals of concern (COCs), including: organochlorine pesticides (dichlorodiphenyltrichloroethane [DDT], dichlorodiphenyldichloroethane [DDD], dichlorodiphenyldichloroethylene [DDE], dieldrin, lindane, and toxaphene), volatile organic compounds (VOCs) (chloroform, xylenes, and ethylbenzene), and the nematocide Dibromochloropropane (DBCP). The COCs in onsite and offsite groundwater included 1, 2-Dichloroethane (DCA), carbon tetrachloride, chloroform, dieldrin, DBCP and 1,2,3-trichloropropane (1,2,3-TCP). Lindane, alpha-benzenehexachloride (BHC), and delta-BHC have also been historically detected.

In the Fresno area, DBCP has been detected at elevated concentrations in regional groundwater as a result of its regional application to crops. Concentrations of DBCP in wells down-gradient of the site are not significantly different from the range of regional DBCP concentrations. Recent groundwater studies indicate that 1,2,3-TCP is also a regional pollutant similar to DBCP.

Remedial investigation activities revealed several onsite chemical source areas, including the former landfill area, the former railroad loading dock, the former south loading dock, certain former subsurface drainage systems, and the former solvent storage area.

Prior to implementation of the site remedial action, the primary chemicals contributing to the cancer risk from exposure to soils were toxaphene, DDT, and dieldrin. Dermal contact with soil was the most significant exposure pathway. The primary chemicals contributing to non-cancer health effects from exposure to soils were DDT, DDE, DDD, and dieldrin.

Prior to remedial action, cumulative cancer risks from exposure to groundwater (combining ingestion, bathing, and swimming pathways) ranged from  $3 \times 10^{-3}$  for future onsite adult residents to  $4 \times 10^{-5}$  for current offsite child residents. The primary chemicals contributing to both cancer risk and non-cancer hazard from exposure to groundwater were DBCP, chloroform, and dieldrin.

The Remedial Action Plan (RAP), which is the State's equivalent to EPA's Record of Decision, was adopted in 1999. EPA concurred with the RAP and the Final Remedy. The construction activities for implementing the Final Remedy were completed in early 2003, and all remedial actions were fully implemented in 2005.

##### *Response Actions*

Remedial activities occurred before and after adoption of the RAP. Activities prior to 1999 RAP included excavation and off-site disposal of more than 24,000 cubic yards of chemically-affected soil (1984 and 1989), demolition and removal of structures and chemically affected debris and soil, installation and operation of a soil vapor extraction system to treat soils, provision of alternative drinking water supplies to nearby residents, and installation of groundwater monitoring wells.

Activities to achieve Final Remedy, as established by the 1999 RAP, included further demolition and removal of structures, excavation of contaminated soils and incorporation beneath an engineered cap, construction of composite cap and perimeter fence, revegetation of engineered cap to prevent erosion, establishment of long-term Operations, Maintenance and Monitoring Agreement, development of contingency plan for action (e.g., groundwater extraction and/or treatment), in the event that groundwater monitoring indicates that one or more Contaminants of Concern (COCs) exceed Final Remediation Goals, continued provision (and expansion, as appropriate) of alternative water supply by connections to public water supply system, point-of-use treatment, or bottled water, land use restriction, and financial assurances to ensure long-term maintenance and operation of the Final Remedy.

Numeric Final Remediation Goals for Carbon tetrachloride, chloroform, 1,2-DCA and dieldrin, were based on regulatory and health-based criteria. Final Remediation Goals for 1,2,3 TCP and DBCP were non-numeric, because the presence of these chemicals in groundwater is regional.

The Remedial Design, for implementing the Final Remedy, was approved by DTSC in 2002 and the majority of the construction work was completed by January 24, 2003, including construction of site access restrictions (fence and signs). A Preliminary Close Out Report was signed by U.S. EPA on June 24, 2004, documenting Construction Completion. Implementation of the Final Remedy

was completed in 2005 with the execution of the Operation, Maintenance and Monitoring (OM&M) Agreement between DTSC and THAN and recording of the Deed Restriction, for which EPA is a third-party beneficiary. The Deed Restriction, limiting the uses of the property, is the primary institutional control for the site.

#### *Cleanup Standards*

The remedial action cleanup activities at the T. H. Agriculture and Nutrition Site are consistent with the objectives of the NCP and provide protection to human health and the environment. Contaminated soils were excavated and consolidated beneath a cap, and chemically affected structures were demolished and removed. Groundwater monitoring results indicate that concentrations of COCs in groundwater samples are generally declining due to natural biological, chemical, and physical attenuation processes that are likely to continue, and the site-specific COCs have not exceeded Final Remediation Goals in any wells since July 2002. Further, it is likely that this trend will continue, since receding groundwater levels reduce the chance that contaminated soils beneath the cap will become saturated. In addition, provision (and expansion, as appropriate) of alternative water supply by connections to public water supply system, point-of-use treatment, or bottled water ensures that humans are not exposed to contaminated drinking water. Annual inspections have verified the integrity of the cap and access controls.

#### *Operation and Maintenance*

Operation, Maintenance and Monitoring (OM&M) activities were generally outlined in the RAP, and further detailed and finalized in the OM&M Plan and OM&M Agreement, approved and signed by DTSC and THAN in 2005. DTSC is the oversight agency for the OM&M. OM&M activities are groundwater monitoring, natural attenuation monitoring, contingent groundwater treatment system monitoring, monitoring and maintenance of the soil cap and access controls (e.g., fencing), maintenance of the institutional controls (e.g., land use restrictions, as required by the Deed Restriction).

#### *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 T. H. Agriculture and Nutrition site utilized containment of the hazardous materials as the method to reduce the risk, the five-year review process will be used to insure that the cap is still intact and blocking exposure pathways for human health and the environment. EPA will conduct the first statutory five-year review in 2007.

#### *Community Involvement*

A Community Relations Plan was established in 1986 and updated in 1992. Numerous fact sheets and public announcements were mailed to the surrounding community and other interested parties during various phases of the site investigation and cleanup. In addition, at least seven public meetings were held to receive input from community stakeholders.

A Community Advisory Committee (CAC) was formed in 1988 to provide a forum for greater public input to the project decision making process. This group consisted of concerned residents, community activists, local and state government officials, and THAN representatives. This group initially met on a monthly basis reducing to bi-monthly in the early 1990s. The last formal meeting held by the CAC was in January 1995.

#### *Applicable Deletion Criteria/State Concurrence*

EPA has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA are necessary, and institutional controls are in place. In a letter dated March 27, 2006, the State of California through DTSC concurred with EPA that all appropriate responses under CERCLA have been completed. Therefore, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

#### **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.

**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.

Dated: June 22, 2006.

#### **Wayne Nastri,**

*Regional Administrator, Region 9.*

[FR Doc. E6–10856 Filed 7–10–06; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 721**

[EPA–HQ–OPPT–2005–0036; FRL–7733–9]

RIN 2070–AJ19

### **Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439–97–6) used in convenience light switches, anti-lock braking system (ABS) switches, and active ride control system switches in certain motor vehicles. This action would require persons who intend to manufacture (including import) or process mercury for these uses, including when mercury is imported or processed as part of an article, to notify EPA at least 90 days before commencing such activity. EPA believes that this action is necessary because manufacturing, processing, use, or disposal of mercury switches may produce significant changes in human and environmental exposures. The required notice would provide EPA with the opportunity to evaluate the use of mercury in these switches, and, if necessary, to prohibit or limit such activity before it occurs to prevent unreasonable risk of injury to human health or the environment.

**DATES:** Comments must be received on or before September 11, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0036, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0036. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special