

*Comment #4:* No response necessary.

### III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the Arizona SIP as meeting the requirements of sections 189(b)(1)(B) and 188(e).

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 5, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(141)(i)(B)(2) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(141) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 316, "Nonmetallic Mineral Processing," adopted on March 12, 2008.

\* \* \* \* \*

[FR Doc. E9-27046 Filed 11-12-09; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-8979-2]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is publishing a direct final rule, a Notice of Partial Deletion of the California Gulch Superfund Site (Site), located in Lake County, Colorado, including all of Operable Unit 8 (OU8), 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 an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment. The

Yak Tunnel (OU1), D&RGW Slag Piles and Easement (OU3), Upper California Gulch (OU4), Asarco Smelter/Colorado Zinc-Lead Mill site (OU5), Stray Horse Gulch (OU6), Apache Tailing (OU7), Residential Soils (OU9), Arkansas River Floodplain (OU11), and Site-wide Surface and Groundwater Quality (OU12) will remain on the NPL and are not being considered for deletion as part of this action.

**DATES:** This direct final partial deletion is effective January 12, 2010 unless EPA receives adverse comments by December 14, 2009. 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:**

Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1983-0002, by one of the following methods:

- <http://www.regulations.gov>. Follow online instructions for submitting comments.

- *E-mail:* Linda Kiefer, [kiefer.linda@epa.gov](mailto:kiefer.linda@epa.gov).

- *Fax:* (303) 312-7151.

- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129.

- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129. Such 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-1983-0002. 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. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312-6473 or toll free (800) 227-8917; Viewing hours: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays;

and  
Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486-0569.

**FOR FURTHER INFORMATION CONTACT:** Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6689 *e-mail:* [kiefer.linda@epa.gov](mailto:kiefer.linda@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- II. NPL Deletion Criteria
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- V. Partial Deletion Action

**I. Introduction**

EPA Region 8 is publishing this direct final Notice of Partial Deletion for Operable Unit 8 (OU8) of the California Gulch Superfund Site (Site), from the National Priorities List (NPL). This partial deletion pertains to all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment. The NPL constitutes Appendix B of 40 CFR part 300, 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 maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in § 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *January 12, 2010* unless EPA receives adverse comments by *December 14, 2009*. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial 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 for Partial Deletion 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 OU8 of the California Gulch Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will 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 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.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. 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. Partial Deletion Procedures

The following procedures apply to the deletion of OU8 of the Site:

(1) EPA has consulted with the State of Colorado prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the Colorado Department of Public Health and Environment, has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Leadville Herald Democrat. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site

information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, 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 for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion 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 further response actions, should future conditions warrant such actions.

### IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting OU8.

#### *Site Background and History*

The California Gulch Superfund Site (Site), EPA ID No. COD980717938, is located in Lake County, Colorado approximately 100 miles southwest of Denver. The Site was listed on the National Priorities List on September 8, 1983, 48 FR 40658. The Site is in a highly mineralized area of the Colorado Rocky Mountains covering approximately 18 square miles of a watershed that drains along California Gulch to the Arkansas River.

Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years. Mining in the District began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground workings became the principle method for removing gold, silver, lead, and zinc ore. As these mines were developed, waste rock was excavated along with the ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally slurried into tailing impoundments. As a result of these operations, the Site contains many tailing impoundments, fluvial deposits, slag piles, waste rock piles, and mine water drainage tunnels. The Site was placed on the NPL due to concerns regarding the impact of mine drainage on surface waters leading to California

Gulch and the impact of heavy metals loading into the Arkansas River.

The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, Stringtown, and a section of the Arkansas River from the confluence of California Gulch to the confluence of Two-Bit Gulch.

A Site-wide Phase I Remedial Investigation (Phase I RI), which primarily addressed surface and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA developed the first operable unit at the Site, the Yak Tunnel. This first operable unit was designed to address the largest single source of metallic loading. A number of additional Site-wide studies followed the Phase I RI. These include the Tailing Disposal Area Remedial Investigation Report (Tailing RI), Baseline Human Health Risk Assessment Part A, Part B, and Part C, Ecological Risk Assessment for Terrestrial Ecosystems, Baseline Aquatic Ecological Risk Assessment, Groundwater RI, Surface Water RI, Waste Rock RI, and Site-wide Screening Feasibility Study (SFS).

In order to expedite the clean-up of the Site, EPA agreed, pursuant to a May 2, 1994 Consent Decree (1994 CD), to divide the Site into twelve Operable Units (OUs). With the exception of OU12, the operable units pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. The OUs are as follows:

1. Yak Tunnel/Water Treatment Plant
2. Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
3. D&RGW Slag Piles and Easement
4. Upper California Gulch
5. Asarco Smelter Sites/Slag/Mill Sites
6. Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile
7. Apache Tailing Impoundments
8. Lower California Gulch
9. Residential Populated Areas
10. Oregon Gulch
11. Arkansas River Valley Floodplain
12. Site-wide Surface and Ground Water

To date, OU2, OU10 and portions of OU9 have been deleted from the Site. The remaining OUs are still on the NPL.

#### *Background and History*

Operable Unit 8 (OU8) also known as Lower California Gulch is defined by the 500-year floodplain of the California Gulch from immediately below the boundary of the Yak Tunnel Water Treatment Plant (OU1) to the point of confluence of California Gulch with the Arkansas River, and includes the

Colorado Zinc-Lead (CZL) Tailing Impoundment outside the 500-year floodplain. OU8 is approximately 97 acres in size and 4.3 miles long. OU8 borders portions of several other operable units including OU1 (Yak Tunnel Treatment Plant), OU2 (Malta Gulch), OU3 (D&RGW slag piles), OU5 (Asarco smelters/slag/mill sites), OU7 (Apache Tailing Impoundments), OU9 (Residential Populated areas), and OU10 (Oregon Gulch). Lower California Gulch receives runoff and water from tributaries that drain all or portions of these other operable units. Lower California Gulch also receives tributary water from upper California Gulch and Stray Horse Gulch via Starr Ditch, which drain areas of OU4 (Upper California Gulch) and OU6 (Starr Ditch/Penrose Dump/Stray Horse Gulch). The land area within OU8 consists predominantly of private property. While no residences are located in OU8, several anthropogenic features, primarily consisting of highway bridges, road crossings, and culverts, currently exist within the 500-year floodplain of Lower California Gulch. Lower California Gulch roughly parallels U.S. Highway 24.

Historically, tailing impoundments within the Site have resulted in fluvial deposits of tailing being transported by surface flows and deposited at specific locations in OU8. Since that time, remediation activities have occurred upstream in OUs 1, 4 and 6. Previously, during high flow events, stream sediments originating from source areas primarily upstream of OU8 were transported by California Gulch and associated tributaries into and within OU8. The stream sediment in Lower California Gulch was contaminated with mine wastes and associated metals transported from upstream sources. The soluble metals contained in runoff have contributed to the contamination of surface water and sediments.

Additionally, waste rock from underground mining was frequently dumped near mineshafts within the Site and has added to the contamination.

The CZL tailing impoundment is the only tailing impoundment identified in OU8. The CZL site was an operating flotation mill that processed zinc-lead ores sporadically between 1925 and 1940. The CZL tailing impoundment is located approximately one mile west of Leadville and immediately north of Stringtown. The CZL tailing impoundment at the site of the flotation mill operation covered approximately 1.6 acres at an average depth of 7 feet. The CZL tailing impoundment contained an estimated 17,000 cubic yards of tailing.

The Gaw waste rock pile is located upstream of the Apache Tailing Impoundment (OU7) within OU8. The Gaw waste rock pile represents the only deposit of waste rock identified within OU8.

Five fluvial tailing sites within OU8 were found to have elevated levels of contamination. Fluvial Tailing Site 1 (FTS1), comprising approximately 3.4 acres, is adjacent to the La Plata Slag Pile (part of OU3) and extends downstream in a westerly direction to a point approximately 1,000 feet up gradient of the CZL Tailing Impoundment. California Gulch flows through the tailing and the gulch has cut a channel through the fluvial deposits. The fine to coarse grained tailing and alluvial/tailing materials ranged from 1–6 feet in depth.

Fluvial Tailing Site 2 (FTS2) lies 200 feet downstream of FTS1 and is estimated to be 3.2 acres. The fluvial tailing material in FTS2 is generally light brown to brown clay silts and sands overlying light brown silt that contains cobbles and sand.

Fluvial Tailing Site 3 (FTS3) is located immediately downstream of Lake County Road 6 on California Gulch and covers approximately 4.8 acres. The flow of California Gulch through FTS3 is split into a north and south channel, with most of the flow occurring in the North Channel.

Fluvial Tailing Site 6 (FTS6) is located on California Gulch between the Yak Tunnel Treatment Plant Surge Pond embankment and the Apache Tailing Impoundments comprising approximately 4.2 acres. A portion of the Gaw waste rock pile also lies within FTS6. The pile covers approximately one half acre and is estimated to have a volume of 7,500 cubic yards.

Fluvial Tailing Site 8 (FTS8) extends from the Arkansas Valley Slag Pile (part of OU3) to a point approximately 6,500 feet downstream to the confluence of California Gulch with the Arkansas River. FTS8 is a series of small discontinuous tailing deposits with a total estimated area of 115 acres. Approximately 45 acres of fluvial tailing that lie within the floodplain boundaries of the portion of FTS8 are addressed in the OU8 Record of Decision.

Non-residential area soils are defined as poorly vegetated areas outside of the fluvial tailing sites and within the OU8 boundary. The studies identified about 6.3 acres of non-residential area soils with elevated levels of contaminants.

Stream sediments were identified as a potential contaminant source in the SFS. The primary concerns were loose and erodible sediments that could be

resuspended and carried downstream. The studies estimated that there were about 4,500 cubic yards of stream sediments of potential concern.

EPA is the lead agency for OU8, and the Colorado Department of Public Health and Environment (CDPHE) is the support agency. Pursuant to the 1994 CD, Resurrection Mining Company (Resurrection) conducted and financed remediation work in OU8.

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

A number of studies and remedial investigations have been conducted within the California Gulch Superfund Site that have addressed Lower California Gulch (OU8). The following areas were identified as potential contaminant sources in OU8: Areas of impounded tailing in the Colorado Zinc-Lead (CZL) Tailing Impoundment located in the California Gulch 500-year flood plain, non-residential area soils, waste rock in the Gaw Waste Rock Pile, fluvial tailing in five fluvial tailing sites, and stream sediments. Potential contaminant sources identified in OU8 by the numerous investigations are described below.

**CZL Fluvial Tailing Impoundment:** Contained elevated concentrations of lead, cadmium, arsenic, and zinc with the potential to generate Acid Rock Drainage (ARD).

**Non-Residential Soils:** Metals concentrations are generally low and decrease with depth to the native undisturbed soils.

**Gaw Waste Rock Pile:** Surface soil contained lead at slightly elevated concentrations, outflow from the Gaw shaft demonstrated neutral pH values, with minimally elevated sulfate concentrations, and metals typically were below limits of detection.

**FTS 1, 2, and 3:** Surface tailings had elevated levels of arsenic, cadmium, lead, and zinc; subsurface tailing had elevated levels of arsenic, cadmium, and lead; foundation soils had elevated levels of silver, cadmium, arsenic, lead, and zinc.

**FTS 6:** Surface tailing had elevated levels of arsenic, cadmium, copper, lead, mercury, silver, and zinc; subsurface tailing had elevated levels of arsenic, cadmium, copper, lead, manganese, mercury, and zinc; foundation soils had elevated levels of silver, cadmium, copper, arsenic, lead, and zinc; the waste pile has potential for generating ARD.

**FTS 8:** Surface tailing had elevated levels of arsenic, cadmium, copper, lead, and zinc; subsurface tailing had elevated levels of arsenic, cadmium,

lead, and zinc; foundation soils had elevated levels of cadmium.

*Stream sediments:* Had elevated levels of arsenic, cadmium, lead, copper, and zinc.

A Focused Feasibility Study (FFS) for OU8 was prepared by Resurrection in 2000. The FFS evaluated and screened remedial alternatives retained in the site-wide SFS for impounded tailing, non-residential area soils, waste rock, fluvial tailing, and stream sediment within OU8. The FFS presented a comparative analysis of the potential remedial alternatives based on the nine NCP evaluation criteria. A proposed plan for OU8 was published on July 27, 2000.

#### *Selected Remedy*

In order to take advantage of the availability of the Oregon Gulch Tailing Impoundment in OU10 as a repository for contaminated materials from OU8, two interim removal actions were approved for OU8 in 1995 and 1998. In the first interim removal action, approximately 28,000 cubic yards of material were excavated from the CZL Tailing Impoundment, the western portion of FTS2, and the underlying foundation soils and placed in the Oregon Gulch Tailing Impoundment (OU10). The excavated area was backfilled with clean borrow soil, graded, and vegetated. Wetlands adjacent to the CZL Tailing Impoundment site were revegetated in the summer of 1996. The activities were documented in the 1995 Action Memorandum for OU8. In the second interim removal action, approximately 5,794 cubic yards of fluvial tailing were excavated from poorly vegetated, erosion-prone areas within OU8 (specifically, FTS2, FTS3, FTS6, and FTS8). The excavated tailing was transported and placed in the Oregon Gulch Tailing Impoundment (OU10). In conjunction with channel excavation under the second interim removal action, approximately 1,339 cubic yards of sediment were removed from accumulated sediment in FTS2 and FTS3. The excavated stream sediment was transported and placed in the Oregon Gulch Tailing Impoundment (OU10). These activities were documented in the 1998 Action Memorandum for OU8. Resurrection conducted both removal actions.

A Record of Decision for OU8 (OU8 ROD) was signed on September 29, 2000.

The remedial action objectives (RAOs) for the remedies presented in the OU8 ROD are summarized below.

- Control airborne transport of tailing particles and contaminated non-residential soils.

- Control leaching and migration of metals from tailing, soil, waste rock, and contaminated fluvial and stream sediments into surface water.

- Control leaching and migration of metals from tailing, soil, waste rock, and contaminated fluvial and stream sediments into groundwater.

- Control erosion of tailing material and soil materials into local water courses.

- Control contaminant exposure to terrestrial and aquatic life.

The selected remedies for addressing the contaminated media within OU8 are described below.

*CZL Impounded Tailing:* No Further Action was the selected alternative for impounded tailing within OU8. All tailing were removed from the CZL Tailing Impoundment site in the 1995 Removal Action and no other impounded tailing exist within OU8.

*Non-Residential Area Soils:* Containment was the selected alternative for non-residential area soils within OU8. The Non-Residential Area Soils were to be regraded to promote positive drainage, soil amendment added, and re-vegetated. Institutional controls are required.

*Gaw Waste Rock:* No Action was the selected alternative for waste rock within OU8. No Action was selected since the Site-wide studies and remedial investigations showed that the Gaw waste rock pile was not a source of contamination to surface water or groundwater.

*Fluvial Tailing:* Containment was the selected alternative for fluvial tailing within OU8. This alternative consisted of (1) regrading, (2) revegetation, (3) riprap or erosion-control matting in erosion-prone areas of fluvial tailing, and (4) institutional controls.

*Stream Sediment:* Sediment Removal and Channel Reconstruction was the selected alternative for stream sediment within OU8. This alternative consists of (1) reconstruction of unstable braided channel areas of FTS3, (2) construction of a channel through FTS6, (3) removal of sediment and channel improvements in currently erosionally unstable areas, and (4) institutional controls.

#### *Response Actions*

Remedial action activities for OU8 began in August 2001 by the responsible party, Resurrection Mining Company. For the non-residential area soils remedy, approximately 4.5 acres of poorly-vegetated upland soils were regraded and revegetated. Revegetation

of non-residential soils was approached on a site-specific basis utilizing amendments as necessary based on the results of agronomic soil tests.

For Fluvial Tailings pile FTS1, remedial construction included regrading of the tailings in place and placing riprap on the embankment adjacent to the California Gulch stream channel. The tailing surface was covered with approximately one foot of growth material and was regraded to provide positive, non-erosive drainage into California Gulch. The surface was revegetated. For Fluvial Tailings pile FTS2, construction involved regrading existing berms and constructing new berms in erosion-prone areas of the north stream bank. Berms were reinforced with riprap, and disturbed areas were revegetated. For Fluvial Tailings pile FTS3, construction involved reconstruction of the stream channel, reinforcement of stream bank areas prone to erosion, and revegetation of disturbed areas. For Fluvial Tailings pile FTS6, remediation included reconstruction of the stream channel and revegetation of disturbed areas. Stream channel restoration involved abandonment of the elevated channel where California Gulch historically bypassed the Apache tailing impoundment to the valley floor. For Fluvial Tailings pile FTS8, construction involved placement of borrow soil in fluvial tailing removal areas, removal of sediments from the California Gulch stream channel, stabilization of existing berms, and construction and reinforcement of new berms in areas prone to erosion.

Remediation activities of the California Gulch included widening the existing stream channel and regrading riprap on existing berms. Areas disturbed during construction were revegetated.

Construction was completed in September of 2002.

#### *Cleanup Goals*

OU8 was established pursuant to the 1994 CD. The intent of the parties under the 1994 CD was that source remediation would occur in each of the designated operable units and once source remediation was completed in those OUs, site-wide surface water and groundwater would then be examined and addressed as needed. Thus, specific numerical cleanup standards for surface water or groundwater were not established for OU8. Instead, the RAOs considered actions designed to prevent or control the release or threatened release of waste material or contaminants of concern from sources of contamination within OU8.

The Selected Remedies met the RAOs by either excavating and removing materials from OU8, therefore preventing the release of waste material, or containing the contaminated materials and controlling the release of waste material to air and water.

#### *Operation and Maintenance*

Resurrection performs operation and maintenance pursuant to the May 2008 OU4, OU8, and OU10 Operation and Maintenance Plan. This plan requires biannual inspection/maintenance of the constructed components of the remedies in OU8 and annual reporting to EPA and CDPHE. The constructed components are to be inspected and maintained as follows:

**Revegetated Channels and Ditches:** Revegetated channels will be inspected for erosion/scour, sediment collection, and vegetative cover. Sediment and material in excess of two inches in depth will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Scouring deeper than two inches below the base of the channel or rills and/or gullies on the channel sideslopes deeper than two inches in depth will be repaired.

**Riprap-Lined Channels, Banks, and Berms:** Riprap-lined channels, banks, and berms will be inspected for erosion and uniformity of rock placement and in the case of channels, capacity restriction. For channels, sediment and material in excess of two inches in depth above the top of the riprap will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Larger quantities of sediment that can not be placed adjacent to a channel will be placed at locations within the Site as approved by the EPA and the State. Areas in which riprap has been displaced to expose the channel, bank, or berm subgrade will be repaired with rock meeting the as-built specifications in the completion report and material restricting the channel capacity will be removed.

**Reno Mattress-Lined Channels and Gabion Structure:** Reno mattresses and gabions will be inspected for structural integrity. Damaged mattresses and baskets will be repaired. Erosion under or around the mattresses or gabions will be repaired.

**Erosion Control Block-lined Channels:** Channels constructed using erosion control blocks will be inspected for eroded or broken blocks and erosion of the channel banks. Sediment and material in excess of one inch in depth

above the top of the blocks will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Damaged or eroded blocks which cause the channel subgrade to be exposed will be repaired or replaced with blocks meeting the as-built specifications in the completion report to maintain channel integrity.

**Revegetated Areas:** Areas revegetated during remedial construction will be inspected for erosional stability and vegetative cover. Inspected areas will include channel banks, floodplains, non-residential soils, embankment toes, tailing and waste rock areas. Erosion rills or gullies in excess of two inches deep in revegetated areas will be repaired. In addition, vegetative areas will be inspected for the presence of bareground areas. Areas void of or containing little vegetation which are larger in area than 100 square feet will be considered bareground areas. Identified bareground areas will be assessed for agronomic conditions, and any necessary soil amendments identified by the agronomic assessment will be completed and the area will be reseeded during next spring or fall planting season.

Bi-annual (twice per year) inspections will be performed in late spring or early summer after snowmelt has occurred and in mid- to late fall.

A report will be prepared and submitted to Region 8 of the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE) prior to the end of each year (December 31) documenting the inspection and maintenance activities. The report will discuss the inspection and include: (1) Completed copies of the inspection forms contained in Appendix B, (2) photographs of areas where inspections and maintenance were performed, and (3) maintenance activities performed.

In addition, Lake County passed an ordinance on March 2, 2009 that established institutional controls for OU8. Under this ordinance, the fluvial tailing sites, non-residential soils, and constructed elements of the remedies as depicted on the corresponding map available at the Lake County Building and Land Use Department within OU8, are designated as engineered remedies. The County will not issue a permit for any activity on property that contains a designated engineered remedy unless the permit applicant has secured approval for those activities from the CDPHE. For all other portions of OU8 not designated as part of an engineered remedy, the ordinance provides that any excavation or other earth removal

activity that exceeds 10 cubic yards requires CDPHE approval for such activity as a condition precedent to the County granting a permit. Finally, the ordinance provides that all permit applicants shall be provided with information regarding best management practices regarding potentially contaminated soils and the applicant must certify they have received and reviewed this information before a permit will be issued.

#### *Five-Year Review*

The remedies at the Site require ongoing five-year reviews in accordance with CERCLA Section 121(c) and § 300.430(f)(4)(ii) of the NCP. The next five-year review for the California Gulch Site is scheduled for 2012.

The five-year review in 2007 noted that all remedial actions in OU8 have been completed. Biannual inspections were performed in accordance with the Final California Gulch Superfund Site Operation and Maintenance Plan, Operable Units 4, 8 and 10 as revised in January 2005. Two action items for OU8 were recommended in the 2007 five-year review. First, a portion of Non-Residential Soils Areas, FTS1 and FTS2 remedies were in need of repair or replacement to extend the life of the cap. The existing remedy was repaired so that mine waste does not come into contact with California Gulch flows or allow precipitation to accumulate on the tailing surface. Second, institutional controls were needed to ensure protection of human health in the event of changes in zoning or to preclude disturbance of engineered remedies as a result of development consistent with current zoning. These institutional controls are now in place as discussed above.

#### *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 partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Leadville Herald Democrat to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

The Lake County Commissioners and the Mayor of Leadville are supportive of the deletion of OU8.

*Determination That the Criteria for Deletion Have Been Met*

More specifically for OU8, EPA and the State have determined that the responsible parties completed all appropriate response actions required by the OU8 Record of Decision, the 1995 Action Memorandum, 1998 Action Memorandum and the 1994 Consent Decree. Additionally Resurrection has continuing obligations to perform operation and maintenance of the remedies under the OU4, OU8, and OU10 Operation and Maintenance Plan. Furthermore, institutional controls are in place. EPA has consulted with the State, Lake County Commissioners, and the City of Leadville, Colorado on the proposed partial deletion of OU8 from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that all response actions have been completed such that any release from the contaminated media contained in place poses no significant threat to public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA will conduct the next five-year review in 2012 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a

site above levels that allow for unlimited use and unrestricted exposure.

**V. Deletion Action**

The EPA, with concurrence of the State of Colorado through the Colorado Department of Public Health and Environment has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment 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 *January 12, 2010* unless EPA receives adverse comments by *December 14, 2009*. 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 before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the 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 waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 22, 2009.

**Carol Rushin,**

*Acting 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 “California Gulch, CO” to read as follows:

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

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
CO	California Gulch	Leadville	P

(a) \* \* \*

\* P = Sites with partial deletion(s).

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 234**

[Docket No. FRA–2009–0032; Notice No. 2]

RIN 2130–AC05

**State Highway-Rail Grade Crossing Action Plans**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Removal of direct final rule provisions.

**SUMMARY:** On September 2, 2009, FRA published a direct final rule in the **Federal Register** requiring the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. FRA received one adverse comment regarding the direct final rule. Under FRA regulations, FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the **Federal Register**; however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn

before its effective date. As a result, FRA is now publishing this removal of the direct final rule provisions, which removes the changes effected by the direct final rule. In a separate document publishing elsewhere in this issue of the **Federal Register**, FRA is publishing a Notice of Proposed Rulemaking (NPRM).

**DATES:** This removal of the direct final rule becomes effective on November 13, 2009.

*Docket Information: Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time, or to room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC