39324 (July 18, 2007)). That principle applies to the mepiquat objection because, as explained below, even if EPA retains the 10X children's safety it would not change EPA's safety determination. Thus, NRDC's objection to the removal of the children's safety factor, even if upheld, would not support the relief it requested - "that EPA refrain from establishing the new tolerances for . . .mepiquat . . . until the pesticide tolerances have been assessed and determined to be safe[,] consistent with the requirements of the FQPA." (Ref. 6 at 22).

An EPA decision to retain the 10X children's safety factor has the effect of decreasing the "safe dose" or RfD/PAD by a factor of 10. Thus, if prior to application of the 10X children's safety factor, the level of exposure from a particular pesticide constituted 5 percent of the RfD/PAD, after application of the safety factor the level of exposure to the pesticide would rise by a factor of 10 to 50 percent of the RfD/PAD. Similarly, a pesticide which had an exposure level at 50 percent of the RfD/PAD before applying the 10X children's safety factor, would have an exposure level of 500 percent of the RfD/PAD after application of the factor. Only in the latter case, would retention of the children's safety factor raise a safety concern. Thus, for pesticides with sufficiently low risks, the decision on retention or removal of the children's safety factor is not outcome-determinative as to EPA's safety finding. (71 FR 43906, 43916-43917 (August 2, 2006)).

Mepiquat is one of those low risk pesticides. As EPA noted in the challenged tolerance document, acute exposure to mepiquat from residues in food equaled 1.5 percent of the acute RfD/PAD and acute exposure to mepiquat in water was an infinitesimal. (67 FR at 3115; 65 FR 1790, 1793 (January 12, 2000) (acute exposure to mepiquat in drinking water is 0.031 percent of the allowable amount – i.e. the acute DWLOC was 6,000 ppb and estimated acute exposure level was 1.9 ppb); see Unit III.B.1.d. (explaining how allowable amounts of pesticide residues in drinking water were calculated)). Similarly, chronic exposure to mepiquat from residues in food equaled 0.3 percent of the chronic RfD/PAD and chronic exposure to mepiquat in water was also infinitesimal. (67 FR at 3115; 65 FR at 1794 (chronic exposure to mepiquat in drinking water is 0.018 percent of the allowable amount — i.e. the chronic DWLOC was 6,000 ppb and the estimated chronic exposure level was 1.1 ppb)). Retention of the 10X children's safety would raise the percentage exposure to approximately 15 percent of the acute RfD/PAD and 3 percent of the chronic RfD/PAD. Because these exposure levels would still be well below the applicable RfD/PADs, they would not change EPA's determination that the petitioned-for mepiquat tolerances are safe. Accordingly, because NRDC's objection to removal of the children's safety factor does not justify its request for EPA to refrain from establishing the mepiquat tolerances, it is denied.

VIII. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final order regarding objections filed under section 408 of FFDCA. The FFDCA specifically directs that objections be resolved by "order," and thus this action is an adjudication and not a rule. (21 U.S.C. 346a(g)(2)(C)). The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

X. References

1. USEPA, *A User's Guide to Available EPA Information on Assessing Exposure to Pesticides in Food* (June 21, 2000).

2. Office of Pesticide Programs, USEPA, Office of Pesticide Programs' Policy on the Determination of the Appropriate FQPA Safety Factor(s) For Use in the Tolerance Setting Process (February 28, 2002).

3. Office of Pesticide Programs, USEPA, Standard Operating Procedures (SOPs) for Residential Exposure Assessments (Draft December 19, 1997).

4. Office of Pesticide Programs, USEPA, "Estimating the Drinking Water Component of a Dietary Exposure Assessment" (November 2, 1999).

5. Office of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Brenda Tarplee to Margarita Collantes, "Mepiquat Choloride – Report of the FQPA Safety Factor Committee" (November 1, 1999).

6. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Imidacloprid, Mepiquat, Bifenazate, Zeta-cypermethrin, and Diflubenzuron Tolerances (filed March 19, 2002).

7. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Isoxadifen-ethyl, Acetamiprid, Propiconazole, Furilazole, Fenhexamid, and Fluazinam Tolerances (filed May 20, 2002).

8. Petitioners' Brief, *NCAP* v. *EPA*, Case Nos. 75255, 76807 (9th Cir. March 6, 2006).

9. Letter from Kent E. Hanson, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides* v. *EPA*, Nos. 05-75255 & 05-76807 (May 25, 2007).

10. Letter from Aaron Colangelo, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Response to EPA's Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides* v. *EPA*, Nos. 05-75255 & 05-76807 (May 29, 2007).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–19431 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0006; FRL–9185–4]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Deletion of the Peter Cooper Corporation (Markhams) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 is publishing a direct final notice of deletion of the Peter Cooper Corporation (Markhams) Superfund Site (Markhams Site) located in the Town of Dayton, Cattaraugus County, New York 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 deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation (NYSDEC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final rule will be effective September 20, 2010 unless EPA receives adverse comments by September 7, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2000–0006, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: henry.sherrel@epa.gov.*
- *Fax:* 212–637–3966.
- *Mail:* Sherrel Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (*telephone:* 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2000–0006. 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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866. (212) 637–4308.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

or

Town of Dayton, Town Building, 9100 Route 62, South Dayton, New York 14138. (716) 532–9449.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Sherrel D. Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, NY, NY 10007–1866, (212) 637–4273, *e-mail: henry.sherrel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Peter Cooper Corporation (Markhams) Superfund Site (Markhams Site) from the NPL. 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 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). As described in 300.425(e) (3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 20, 2010 unless EPA receives adverse comments by September 7, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Markhams Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

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. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided New York State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *Dunkirk Observer*. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed 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 deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Markhams Site, EPA ID No. NYD980592547, is located off Bentley Road, in the Town of Dayton, Cattaraugus County, New York. The Site is approximately 103 acres in size and is bordered to the northwest by Bentley Road; to the northeast by a wooded property and farm field; to the southeast by a railroad right-of-way; and to the southwest by hardwood forest. Site access is restricted by a locked cable gate at the Bentley Road entrance. Surrounding property is rural, consisting of small farm fields, open meadow and forests.

The Site was used for the disposal of wastes remaining after the manufacturing process from the Peter Cooper Corporation (PCC), a former animal glue and adhesives plant located in Gowanda, New York. Materials disposed at the Site were reported to consist of "cookhouse sludge," residue pile material and vacuum filter sludge. Cookhouse sludge was so named because of a cooking cycle that occurred just prior to extraction of the glue. It was derived primarily from chrome-tanned hides obtained from tanneries and leather finishers. Residue pile material is described as air-dried cookhouse sludge, which was stabilized to a dry, granular form. Vacuum filter sludge reportedly was produced during dewatering of cookhouse sludge. The waste material has been shown to contain elevated levels of chromium, arsenic, zinc, and several organic compounds.

PCC purchased the Site in 1955 and sold the Site, among other assets including its corporate name, in 1976 to a foreign company, Rousselot Gelatin Corporation, and its parent, Rousselot, S.A. of Paris, France. Rousellot Gelatin subsequently changed its name to the Peter Cooper Corporation. From approximately 1955 until September 1971, it was reported that approximately 9,600 tons of waste material from the Gowanda plant were placed at the Site over an approximately 15-acre area.

In addition, PCC transferred approximately 38,600 additional tons of waste materials from the Gowanda plant to the Site pursuant to a New York State Supreme Court Order (8th J.D. Cattaraugus County) dated June 1971. PCC arranged the material into several waste piles approximately 20 feet high and covering a total of approximately seven acres, mostly in the original disposal area.

The NYSDEC completed preliminary site investigations in 1983 and 1985 and identified the presence of arsenic, chromium and zinc in soil samples.

At that time, the Site did not meet the New York State statutory definition for an inactive hazardous waste disposal site and NYSDEC could not use State funds to implement a remedial program. Consequently, the NYSDEC removed the Site from its Registry of Inactive Hazardous Waste Disposal Sites and transferred the Site to EPA for further evaluation.

In 1993, EPA conducted a Site Sampling Inspection, which included the collection and analysis of soil and surface water samples from the Site. Chromium and arsenic were detected in soils above background concentrations within the waste piles. In 1999, EPA determined a Hazard Ranking System score for the Site so that it could be evaluated for potential listing on the National Priorities List (NPL). The Site was proposed to the NPL on April 23, 1999 (*64 FR 19968*) and subsequently added on February 4, 2000 (*65 FR 5435*).

Remedial Investigation and Feasibility Study (RI/FS)

On September 29, 2000, EPA issued a Unilateral Administrative Order (UAO) to several potentially responsible parties (PRPs) to perform the RI/FS for the Site, subject to EPA oversight. The RI characterized the physical properties of the soil fill piles, soils around the perimeter of the fill piles (perimeter surface soils), native subsurface soils, wetland sediments, groundwater, and soil gas.

The PRPs, through their consultants, Benchmark Environmental Engineering and Science PLLC (Benchmark) and Geomatrix Consultants, performed the Remedial Investigation (RI) from November 2000 to December 2003 and the final RI report was submitted to EPA in February 2005. The chemicals of concern (COCs) in site media included: arsenic, total chromium and hexavalent

chromium (metal COCs). The results of the RI suggest that low concentrations of metal COCs can leach from the waste fill. However, the data from native soil samples (non-waste fill) collected below the waste fill indicate that metals have not migrated substantially in native soil. Arsenic and total chromium concentration detected in the surface soil samples from the cover of the fill piles were above soil criteria. Soil testing below the fill piles identified decreasing concentrations of metal COCs with depth. Metal COCs were reported to exceed the NYS Groundwater Quality Standards and Guidance Values (GWQS/GVs) in one groundwater monitoring well MW–2S for arsenic, chromium, zinc and benzene (with benzene only slightly above the GWQS/GVs). In the RI report, difficulties in obtaining representative samples from monitoring well MW–2S were identified. Suggested possible explanations for these difficulties were the age of the well and construction materials. The report concluded that the groundwater analytical results collected from well MW–2S during the first and second sampling events might not be representative of Site groundwater. To address the limitations of the sampling from monitoring well MW–2S, the ROD required that any groundwater monitoring program at the Site include replacing well MW–2S and conducting analytical sampling for metals. Monitoring well MW–2S was decommissioned by the PRPs contractor in September 2008. MW–2S was found to be constructed of steel casing and screen, and was found to be visibly rusted/rotted on removal. MW–2S was replaced with a new PVC replacement well (MW–2SR). Site data indicate that transport of metal COCs and organic compounds is not considered significant at the Site.

The RI concluded that all groundwater from the Site ultimately discharges to Wetland F before reaching the southwestern property boundary located more that 500 feet across the wetland. Site-related chemicals in the overburden groundwater are transported beneath the Site to the southwest in the direction of Wetland F. Water quality data indicate subsurface conditions are not conducive to transport of metal COCs. Although chromium was widely detected in soils across the Site, chromium concentrations were not elevated in groundwater (except in monitoring well MW–2S). Hexavalent chromium was detected at a low concentration in one of 18 samples analyzed: the detection was not confirmed in the second sampling event. The lack of hexavalent chromium in groundwater suggests conditions are not suitable for the oxidation of chromium (Cr^{+3}) to hexavalent chromium (Cr^{+6}). The slightly alkaline subsurface soil conditions and relatively low concentrations of manganese inhibit reactions that can produce hexavalent chromium. These results are indicative that the area of groundwater contamination is limited to a relatively small area, under the waste piles.

Based on the results of the RI report a risk assessment was performed for the Site. The risk assessment determined that if infiltration of rainwater through the waste/fill material is not curtailed, then the quality of Site groundwater would continue to degrade, resulting in a potential future risk from groundwater ingestion.

A Feasibility Study (FS) was then completed by the PRPs and submitted to EPA in August 2006. The FS Report identified and evaluated effective remedial alternatives for the Site, consistent with the guidelines presented in "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA." The FS evaluated five alternatives, including no action, institutional controls, two containment alternatives and an excavation/off-site disposal remedies. The remedial alternatives were developed to satisfy the Remedial Action Objectives (RAO) for the Site:

- Minimize or eliminate contaminant migration from contaminated soils to the groundwater.
- Prevent direct contact with waste fill materials.
- Mitigate erosion and migration of waste material from the exposed surface.

Selected Remedy

Based upon the results of the RI/FS, a Proposed Plan, and a Public Meeting, a Record of Decision (ROD) was signed in December 2006. The major components of the selected remedy included consolidation of various waste/fill piles into a single waste/fill area, followed by capping with a low-permeability soil cover. Specifically, the ROD called for:

- Consolidating the waste/fill piles into seven acres or less, followed by capping the consolidated wastes with a low permeability soil cover, consistent with the requirements of 6 NYCRR Part 360, including seeding with a seed mixture to foster natural habitat, and replacement of waste piles moved during consolidation with native soil.
- Imposing institutional controls in the form of an environmental easement/restrictive covenant filed in the property records of Cattaraugus County that will at a minimum require: (a) Restricting activities on the Site that could compromise the integrity of the cap; and (b) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met.
- Developing a site management plan that provides for the proper management of all remedy components post-construction, such as institutional controls, and also includes: (a) Monitoring of groundwater to ensure that, following the soil consolidation and capping, the contamination is attenuating and groundwater quality continues to improve; (b) an inventory of any site use restrictions; (c) necessary provisions for ensuring the easement/covenant remains in place and is effective; (d) provision for any operation and maintenance required of the components of the remedy; and (e) the owner/operator or entity responsible for maintenance of the Site to complete and submit periodic certifications concerning the status of the institutional and engineering controls for the Site.
- Evaluating site conditions at least once every five years to ensure that the remedy continues to protect public health and the environment.

Response Actions

In 2008, EPA concluded Consent Decree negotiations with the PRPs related to the performance of the design and implementation of the remedy called for in the ROD. On February 19, 2008, the Consent Decree was entered in United States District Court (approved by the Judge). On March 12, 2008 Benchmark Environmental Engineering and Science PLLC (Benchmark) was approved as the supervising contractor to conduct the remedial design and construction work at the Site.

The PRPs prepared a Remedial Design (RD) Report which was approved by EPA on July 3, 2008. The RD report outlined the following remedial construction measures: mobilization, site preparation, waste/fill consolidation and grading, and cover system (barrier layer material placement and compaction, topsoil and seeding, and passive gas venting).

Zoladz Construction Company, Inc. was approved as the subcontractor for the Remedial Action (RA) and mobilized to the site on July 30, 2008. Site preparation work included clearing, grubbing and access improvements required for consolidation and covering work. Vegetation was stripped from the surface of the waste fill where cover soils were placed.

Waste/fill consolidation involved relocation of the various waste/fill piles located at various areas across the center of the site into a single area. Regraded and consolidated waste/fill were placed in maximum 12-inch lifts and compacted with rollers to 90% modified density.

A total of approximately 40,000 cubic yards of waste/fill were consolidated and compacted. The waste fill consolidated area has a footprint of approximately four acres, with an average peak elevation (including cover soil) of 14 feet above surrounding grade.

Landfill Cap Construction

The final landfill cap meets the grading requirements of 6 NYCCR Part 360–2.13(q)2(ii) which requires that the barrier component of the cap have a slope of no less than 4 percent to promote positive drainage and no more than 33 percent to minimize erosion.

Cover System

The final cover system was constructed to function with minimum maintenance, promote drainage, and minimize erosion. The cover system was designed with an 18-inch thick recompacted low permeability (less than 1×10^{-6} cm/sec) soil barrier layer and 6 inches of topsoil.

Barrier Layer

Barrier soil was placed and compacted to provide a thickness of 18 inches across the final waste surface. Barrier layer soil was compacted with rollers. Smooth drum rollers were used for temporary sealing of the lifts and for the stockpiled soils.

Topsoil, Seeding and Tree Planting

Following the final grading and compaction of the barrier layer, topsoil was placed to a depth of six inches (after placement and rolling). Topsoil was placed and graded to a smooth, even surface and was rolled and raked to remove ridges and fill in depressions, ruts and low spots. A conservation seed mixture was used to foster a natural habitat and minimize maintenance requirements. Fifty trees, including 25 hardwood trees, 13 poplars and 12 birch trees were replanted at various locations across the Site to provide shelter for the wildlife and stimulate repopulation of the wooded areas outside of the consolidated area.

Cleanup Goals

Results of subsurface soil data indicated that metal COCs have not migrated into native soils beneath the waste fill piles. The consolidated waste piles were removed and underlying native soils were scraped and consolidated into one central area. As a result, contaminated-specific soil cleanup values for the Site were not developed. Groundwater is being monitored through post-remedial groundwater and surface water sampling. The primary objectives of the remedy are to reduce or eliminate any direct contact threat associated with the contaminated soils/fill and minimize or eliminate contaminant migration from contaminated soils to the groundwater.

Operation and Maintenance

The primary components at the Site to be monitored and maintained include groundwater and surface water quality, the waste/fill consolidation area cover system (the Cap), and gas vents. These goals are being met through the Operation, Maintenance and Monitoring (OM&M) Plan that describes personnel requirements, responsibilities, duties, and specifics post-construction sampling, analysis, and monitoring to be conducted to monitor the effectiveness of the remedy.

The OM&M plan requires groundwater and surface water sampling to be conducted on a semiannual (spring and fall) basis for the first two years of monitoring; sampling may be reduced to annually if the data support the reduction. The semiannual samples were collected starting in June and December 2009. Results indicate that the cover system has minimized contaminant migration from contaminated soils to the groundwater. In addition, the total metals concentrations reported from both sampling events for the metal COCs arsenic, total chromium, and hexavalent chromium were nondetectable or below NYSDEC Groundwater Quality Standards and Guidance Values (GWQS/GVs).

As per the OM&M plan, semiannual inspection of the landfill was conducted concurrently with the sampling described above. Inspection reports submitted on February 5, 2010, indicated that the final cover system appears to be in good condition, with the gas-venting system intact and operational. Semiannual inspections will continue as part of the OM&M plan.

The ROD requires the implementation of institutional controls (ICs). The ICs involve filing of an Environmental Easement to restrict the use of on-site groundwater as a source of potable or process water (unless groundwater quality standards are met) and to restrict activities on the Site that could compromise the integrity of the cap.

The owner of record of the Site, Peter Cooper Corporation (PCC) is an inactive Delaware Corporation. A search for potential corporate successors was conducted and none were found. The PRPs consistent with the obligation to use reasonable best efforts to implement the ICs: Commenced an action in Supreme Court, Cattaraugus County, against the Peter Cooper Corporation to secure an Order from the court to provide the PRPs with access to the Site and to give permission to implement the ICs by filing the Easement in the Office of the Clerk of Cattaraugus County. The Court granted legal access to the Site on July 1, 2008. The ICs were filed with the Clerk's office on July 13, 2008 and a stamped copy was sent to EPA.

Five-Year Review

Hazardous substances remain at this Site above levels which would allow for unlimited use and unrestricted exposure. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, Section 121(c), EPA must conduct five-year reviews. The first Five-Year Review Report will be completed prior to July 2013, which is five years from the initiation of construction for the remedy.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA § 113(k) and Section 117. As part of the remedy selection process, the public was invited to comment on EPA's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

Determination That the Site Meets the Criteria for Deletion in the NCP

One of the three criteria for site deletion is when responsible parties or other persons have implemented all appropriate response actions required (40 CFR 300.425(e)(1)(I)). EPA, with the concurrence of the State of New York through NYSDEC, has determined that all required and appropriate response actions have been implemented by the responsible parties.

V. Deletion Action

The EPA, with concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 20, 2010, unless EPA receives adverse comments by September 7, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect, and EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

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: July 25, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

■ 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.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for "Peter Cooper Corporation (Markhams)," "Winslow Township," "NY."

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LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective as of August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The figures for 2010 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on August 3, 2010 (75 FR 45628).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 200% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

LSC notes that these 2010 Income Guidelines are substantively unchanged from the 2009 Income Guidelines. This is because HHS' Poverty Guidelines for the remainder of 2010 are unchanged from the 2009 Poverty Guidelines which have been in place since last year.

List of Subjects in 45 CFR Part 1611

Grant programs—Law, Legal services.

■ For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A of part 1611 is revised to read as follows:

Appendix A of Part 1611

LEGAL SERVICES CORPORATION 2010 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,538	$16,913	$15,575
2	18,213	22,763	20,950
3	22,888	28,613	26,325
4	27,563	34,463	31,700
5	32,238	40,313	37,075
6	36,913	46,163	42,450
7	41,588	52,013	47,825
8	46,263	57,863	53,200
For each additional member of the household in excess of 8, add:	4,675	5,850	5,375

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.