

aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2-1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 100.35-T05-078 to read as follows:

§ 100.35-T05-078 Mill Creek, Fort Monroe, Hampton, VA.

(a) *Regulated area.* The regulated area is established for the waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the

following boundaries: To the north, a line drawn along latitude 37°01'00" N, to the east a line drawn along longitude 076°18'30" W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258-Mercury Boulevard Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. to 6:30 p.m. on August 12, August 13 and August 14, 2005.

Dated: July 11, 2005.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05-14632 Filed 7-25-05; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7943-5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final notice of deletion of the Red Oak City Landfill Superfund site from the National Priorities List (NPL).

SUMMARY: The EPA, Region VII, is publishing a direct final notice of deletion of the Red Oak City Landfill Superfund site (site), located near Red Oak, Iowa, from the NPL.

The NPL, promulgated pursuant to section 105 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the state of Iowa, through the Iowa Department of Natural Resources (IDNR) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate. **DATES:** This direct final deletion will be effective September 26, 2005, unless EPA receives adverse comments by August 25, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to Bob Stewart, Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, 901 North 5th Street, Kansas City, KS 66101.

Information Repositories:

Comprehensive information on the site is available for viewing in the Deletion Docket at the information repositories located at: U.S. EPA, Region VII, Superfund Division Records Center, 901 North 5th Street, Kansas City, KS 66101; and the IDNR, Henry A. Wallace Building, 900 East Grand, Des Moines, IA 50319.

FOR FURTHER INFORMATION CONTACT: Bob Stewart, Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, 901 North 5th Street, Kansas City, KS 66101, fax (913) 551-9654, or 1-800-223-0425.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

The EPA, Region VII, is publishing this direct final notice of deletion of the Red Oak City Landfill Superfund site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 26, 2005 unless EPA receives adverse comments by August 25, 2005 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. The 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 Red Oak City Landfill Superfund site and demonstrates how it meets the deletion criteria. Section V states EPA's action to delete the site from the NPL unless adverse comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met.

- i. Responsible parties or other persons have implemented all appropriate response actions required.
- ii. All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate.
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the remedy remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever

there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures apply to deletion of the site.

i. The EPA, Region VII, issued a Record of Decision which documented the required remedial action.

ii. All appropriate responses under CERCLA have been implemented as documented in the Final Close-Out Report dated June 13, 2005.

iii. The state of Iowa concurred with deletion of the site from the NPL. The EPA consulted with the state of Iowa on the deletion of the site from the NPL prior to developing this direct final notice of deletion. Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the site and is being distributed to appropriate Federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the site from the NPL.

iv. The EPA placed copies of documents supporting the deletion in the Deletion Docket at the site information repositories identified above.

v. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of the 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 Intended Site Deletion

The following information provides EPA's rationale for deleting the site from the NPL.

Site Location

The Red Oak City Landfill site is located in Montgomery County, Iowa, and is a 40-acre site which lies about 1.5 miles northwest of the city of Red Oak on the west bank of the East Nishnabotna River and on the east side of Parkwest Road, now known as G Avenue. Red Oak is a community of approximately 6,300 residents.

Site History

The site was originally a limestone quarry which operated from the late 1940s to the early 1960s. The city of Red Oak purchased the property in 1962 and operated it as a landfill until it closed in April 1974. Wastes disposed of at the site reportedly included construction and demolition debris, tree pruning waste, municipal refuse, and industrial waste from facilities in the Red Oak area. These industrial wastes included toluene, methyl isobutyl ketone, tetrachloroethylene, mineral spirits, diacetone alcohol, laminated paper containing approximately three percent mercurous chloride from battery production, and drummed filter cake containing lead.

The site was proposed to the National Priorities List in June 1986 and became final in March 1989 (54 *FR* 13296). The site posed a threat to the public health through direct contact, slope erosion, and potential leaching and migration of contaminants into surface water and groundwater.

Remedial Investigation and Feasibility Study (RI/FS)

In June 1989, the EPA issued an administrative order to the responsible parties at the site to perform a remedial investigation and feasibility study (RI/FS) at the site to determine the nature and extent of the contamination problem. The responsible parties conducted the RI/FS under EPA oversight. Field activities were conducted in two phases; the first was conducted from December 1989 to April 1990, and the second was conducted from May 1991 to July 1992. These activities included sampling and analysis of surface and subsurface soils and wastes, surface water, groundwater, and leachate seeps. Five monitoring wells were installed for this effort. Data from these wells indicated groundwater flow was toward the East Nishnabotna River, to the east of the site. Hazardous substances that have been released at the site include aluminum, barium,

cadmium, chromium, copper, lead, manganese, mercury, nickel, silver, zinc, acetone, 1,2-dichloroethene, tetrachloroethene, bis(2-ethylhexyl) phthalate, and polycyclic aromatic hydrocarbons (PAHs). These contaminants were of concern primarily in the surface soils and exposed wastes. Exposure to contaminated groundwater at the site was determined not to represent a significant exposure pathway. A final RI report was completed in 1992, and a final FS submitted to EPA in July 1992.

Record of Decision Findings

In March 1993, EPA decided on a cleanup plan which was explained in a Record of Decision (ROD). The cleanup plan included installation of an engineered low-permeability cap over the surface of the landfill, construction of diversion and drainage structures to manage surface drainage resulting from the reduced permeability of the landfill cover, stabilization of the river bank slope by contouring and revegetation, along with further study of the stability of the slope, access control provided by a perimeter fence around the landfill area, institutional controls, including deed and access restrictions, to control future land use at the site, and long-term groundwater monitoring to evaluate the effectiveness of the remedy and ensure groundwater contaminant levels remain protective. Subsequently, EPA determined that river bank slope shaping could be limited, the landfill cap could be reduced in thickness, the slope study and further stabilization measures could be eliminated, and costs could be re-estimated. These changes were incorporated into an Explanation of Significant Differences (ESD) memorandum issued by EPA in January 1996.

Characterization of Risk

A baseline risk assessment was prepared for the site and was described in the 1993 ROD. The exposure assumptions used to develop the Human Health Risk Assessment included both current exposures (adult hunter/trespasser scenario) and potential future exposures (future child resident, future adult resident, and future adult excavation worker). In the ROD, the ecological risks at the site were judged to be minimal.

Hazardous substances that have been released at the site include aluminum, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, silver, zinc, acetone, 1,2-dichloroethene, tetrachloroethene, bis(2-ethylhexyl) phthalate, and PAHs. These contaminants were of concern primarily

in the surface soils and exposed wastes. Exposures to soil and exposed wastes were associated with significant human health risks, due to exceedance of EPA's risk management criteria for either the average or the reasonable maximum exposure scenarios. The carcinogenic risks were highest for exposure to soils and waste due to the concentrations of carcinogenic PAHs. Non-carcinogenic hazards were highest for exposure to soils and waste due to lead, manganese, and cadmium. Exposure to contaminated groundwater at the site was determined not to represent a significant exposure pathway.

Response Actions

In a Consent Decree (CD) signed with EPA on November 27, 1996, the responsible parties agreed to perform the remedial design/remedial action (RD/RA) and pay past costs for cleaning up the site. The RD was conducted in conformance with the ROD as modified by the ESD. The RD was approved by EPA on July 28, 1997. The RA was initiated on August 16, 1997, and the initial construction activities were completed on November 21, 1997.

The potentially responsible parties (PRPs) were divided into three groups according to the obligations they took on: The construction parties, consisting of Eveready Battery and its parent; a group of operation and maintenance (O&M) parties consisting of Magna International and the city of Red Oak; and a group of cashout parties. Construction of the remedy was initially thought to be completed in November 1997. However, areas of failure of both landfill cap and riverbank slope were discovered in the spring of 1998. The cap was repaired in May 1998, and the slope was repaired in September 1998. A May 1999 site visit was set to inspect both slope and cap, but before this meeting occurred, a second failure of the slope was discovered in spring 1999. Additional lab analysis was conducted to find the cause, and repairs were made in July and September 1999.

The EPA conducted a pre-final inspection on October 27, 1999, which resulted in a "punch list" of identified construction deficiencies, mostly minor in nature. Those punch list items pertaining to the cap were satisfactorily completed, and EPA notified the construction and O&M parties in October 2000 that the cap portion of the remedy was now operational and ready to be maintained by the O&M parties. The remaining items on the punch list of concern to EPA were slope revegetation and slope stability. Additional repairs and monitoring were conducted and on June 21, 2001, the

EPA determined that construction of the remedy as embodied in the RD had been completed.

On December 12, 2002, a RA Report was completed, demonstrating successful completion of construction activities. The site is listed on the state of Iowa's Registry of Hazardous Waste or Hazardous Substance Disposal Sites, which prevent changes in land ownership or use without state approval. Institutional controls have also been applied to the site through language in the CD and on the deed requiring that the property only be used for purposes compatible with the RD and O&M specifications. The institutional controls cover all contaminated media that cannot support unlimited use and unrestricted exposure.

Cleanup Standards

Cleanup standards were developed in the ROD to prevent exposure to wastes and contaminated soils on the surface of the site. The chosen remedy was capping, to prevent this exposure. The cleanup goals were achieved in the site remediation work. All facets of the ROD and ESD have been met as well. Because wastes remain at the site in a capped landfill, some residual risks remain at the site that require continued O&M activities, institutional controls, and five-year reviews. There is no significant threat to public health or the environment from the site, however, and additional remedial measures are not appropriate.

Operations and Maintenance

The O&M parties are currently conducting O&M activities pursuant to the Monitoring, Operation, and Maintenance Plan that was approved by EPA on September 29, 1999. The O&M of the landfill cap, drainage structures, riverbank slope, and fences is required along with regular groundwater and surface water monitoring and will continue after site deletion, since waste was left in place as part of the final source control remedy. The final plan, dated February 2000, lists the activities to be performed, including annual inspections to ensure erosion control, drainage structure maintenance, mowing, monitoring, and fence maintenance. Institutional controls will also be maintained. No major problems have been encountered. Results from the groundwater and surface water monitoring have not indicated any concerns with contamination, and the continuing monitoring is not needed to determine any future response measures.

Five-Year Review

A statutory five-year review report was completed on September 10, 2002, pursuant to CERCLA 121(c) and to § 300.430(f)(4)(ii) of the NCP. The report concluded that the remedy is protective of human health and the environment, and that all threats at the site have been addressed. Another five-year review report is scheduled for 2007.

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. A mailing list was developed, fact sheets mailed out, and a public notice placed in a newspaper in August 1992 to support the Proposed Plan. A public meeting was held on August 20, 1992. In addition, a public notice for the five-year review was placed in May 2002. Documents in the Deletion Docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories. A public notice for this action will also be published in the *Red Oak Express*.

V. Deletion Action

The EPA, with concurrence of the state of Iowa, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, are necessary. The state concurrence letter dated May 11, 2005, states that IDNR concurs with the proposed removal of the site from the NPL. 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 26, 2005 unless EPA receives adverse comments by August 25, 2005. 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 substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: July 5, 2005.

James B. Gulliford,

Regional Administrator, Region VII.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended under Iowa by removing the site name “Red Oak City Landfill” and the city “Red Oak.”

[FR Doc. 05–14608 Filed 7–25–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7575]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.