

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 rules, 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).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 25, 2011.

**Jared Blumenfeld**,

*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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(378)(i)(B) and (C) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(378) \* \* \*  
(i) \* \* \*

(B) Placer County Air Pollution Control District.

(1) Rule 245, "Surface Coating of Metal Parts and Products," amended on August 20, 2009.

(C) Ventura County Air Pollution Control District.

(1) Rule 74.12, "Surface Coating of Metal Parts and Products," adopted on April 8, 2008.

\* \* \* \* \*

[FR Doc. 2011-12611 Filed 5-23-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[EPA-HQ-RCRA-2010-0851; FRL-9310-2]

#### Land Disposal Restrictions: Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treated by U.S. Ecology Nevada in Beatty, NV and Withdrawal of Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treatment Issued to Chemical Waste Management in Kettleman Hills, CA

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

**ACTION:** Withdrawal of Direct Final Rule.

**SUMMARY:** Because EPA received adverse comment, we are withdrawing the Direct Final rule that granted a site-specific treatment variance to U.S. Ecology Nevada in Beatty, Nevada and withdrew an existing site-specific treatment variance issued to Chemical Waste Management, Inc. in Kettleman Hills, California. The Direct Final rule pertains to the treatment of a hazardous waste generated by the Owens-Brockway Glass Container Company in Vernon, California that is unable to meet the concentration-based treatment standard for selenium established under the Land Disposal Restrictions program. EPA also issued a parallel proposal to be used as the basis for the final action in the event that EPA received any adverse comments on the Direct Final rule.

**DATES:** Effective May 24, 2011, EPA withdraws the Direct Final rule published at 76 FR 18921 on April 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** For more information, contact Jesse Miller, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308-1180; fax (703) 308-0522; or [miller.jesse@epa.gov](mailto:miller.jesse@epa.gov).

**SUPPLEMENTARY INFORMATION:** Because EPA received adverse comment, we are

withdrawing the Direct Final rule that amended the Land Disposal Restrictions treatment standards (40 CFR part 268.44(o)) by granting a site-specific treatment variance to U.S. Ecology Nevada in Beatty, Nevada and withdrawing an existing site-specific treatment variance issued to Chemical Waste Management, Inc. in Kettleman Hills, California, published on April 6, 2011 at 76 FR 18921. We stated in that Direct Final rule that if we received adverse comment by May 6, 2011, the Direct Final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that Direct Final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on April 6, 2011 at 76 FR 18921. As stated in the Direct Final rule and the parallel proposed rule, we will not institute a second comment period on this action.

#### List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, and Variances.

Dated: May 17, 2011.

**Mathy Stanislaus**,

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

Accordingly, the amendments to the rule published on April 6, 2011 (76 FR 18921) are withdrawn as of May 24, 2011.

[FR Doc. 2011-12783 Filed 5-23-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-9310-8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, 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 the remaining portions of OU9, the Residential Populated Areas. Subunits A and B, residential waste rock piles, and the parks and playgrounds within Operable Unit 9 were partially deleted from the NPL on January 30, 2002. In addition, OU2, OU8, and OU10 have been partially deleted from the NPL. 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), 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 July 25, 2011 unless EPA receives adverse comments by June 23, 2011. 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 on-line 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:

##### Table of Contents

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

#### I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for the remaining portions of Operable Unit 9 (OU9), Residential Populated Areas, of the California Gulch Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, of 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). 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 *July 25, 2011* unless EPA receives adverse comments by *June 23, 2011*. 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 the remaining portion of OU9, Residential Populated Areas, 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 the remaining portions of OU9 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 the remaining portion of OU9, Residential Populated Areas of the California Gulch Superfund Site from the NPL.

### *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 proposed for

inclusion on the National Priorities List, December 30, 1982, 47 FR 58476, and listed on September 8, 1983, 48 FR 40,658. 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. 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. Being a Rocky Mountain community, the City of Leadville (population 2,801) has a high percentage of second homes. Commercial, residential, and industrial properties and vacant lots are mixed in together. 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 principal 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. The Leadville area was the site of extensive gold, silver, lead and zinc mining, milling and smelting operations. Most of the facilities ceased operations around 1900, although several facilities continued operations into the 1920s (Western Zinc) and the 1960s (AV Smelter).

All of the mines within the Site boundaries are presently inactive, and all of the mills and smelters have been demolished. As a result of these operations, the Site contains mill tailing (the fine-grained residue remaining after milling and separation has removed the metal concentrates from the ore) impoundments, fluvial deposits, slag piles, mine waste rock piles (mine development rock and low grade ore removed to gain access to an ore body, and often deposited near adits and shaft openings), and mine water drainage tunnel which have further distributed heavy metals throughout the area. In addition, smelters, which previously operated at the Site, have historically been a source of heavy metals from dust and stack emissions.

The Site was placed on the NPL due to concerns regarding the impact of acidic and metals laden mine drainage on surface waters leading to California Gulch and the impact of heavy metals loading into the Arkansas River. 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 identified the first operable unit, the Yak Tunnel, to address the largest single source of metallic loading. A number of additional Site-wide studies followed the Phase I RI.

EPA agreed, pursuant to a May 2, 1994 Consent Decree (1994 CD), to divide the Site into 12 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 Groundwater

To date, OU2; OU8; OU10; and parts of OU9—Subunits A and B, residential mine waste rock piles, and the parks and playgrounds—have been partially deleted from the NPL.

#### *OU9 Background and History*

The soils in OU9 have been highly disturbed by human activities. The yards of most residences have grass cover over either native soil or imported fill. The sources of fill materials have included areas outside the Site and waste rock and tailing from California and Stray Horse Gulch. Even though mining operations are no longer active at the Site, waste products and other residues from past mining and smelting activities are present in OU9—some as visible features. Additionally, smelter emissions and slag may have contaminated some residential soils.

OU9 includes residential area soils in those portions of the Site where the land use is residential or that were zoned as residential/populated areas and as low-density residential areas on or before September 2, 1999. A map of OU9, named OU9 Partial Deletion—Residential Areas, can be found in the docket at <http://www.regulations.gov> under California Gulch. Residential area

soils are defined as soils in the residential area of the Site (see Attachment A of the 1994 CD) which may have been impacted by past smelting and mining activities. This encompasses the City of Leadville, Stringtown, and outlying areas zoned for residential use. Included are residential properties, yards, parks, vacant lots, schools yards, playgrounds, and community use areas, including unpaved streets and alleys. Additionally OU9 includes 38 mine waste piles located within the populated areas of eastern Leadville. For ease in determining compliance with blood monitoring performance standards, OU9 was geographically divided into statistical subunits A through G.

Subunits A and B (the shaded area of OU9 on the map in the docket), 38 residential waste rock piles, and the parks and playgrounds within OU 9 were partially deleted from the NPL on January 30, 2002.

The remaining portion of OU9 (shown in yellow on the map in the docket) are the subject of this deletion. EPA is the lead agency for OU9; Colorado Department of Public Health and Environment (CDPHE) is the support agency. Under the 1994 CD, ASARCO assumed responsibility for OU9.

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

##### Remedial Investigations

The State of Colorado, EPA and certain Potentially Responsible Parties have conducted various studies and investigations to evaluate the nature and extent of contamination within the Site. In 1991, Remedial Investigations (RIs) began for several areas within the Site, including mine waste rock piles, tailing disposal areas, surface water and aquatics, groundwater, smelter sites, residential/populated area soils, slag piles, and terrestrial studies. These studies have determined lead in soils to be the primary contaminant of concern in OU9.

##### Interim Response—The Kids First Program

ASARCO and many community members argued that there are numerous environmental sources of lead in the residential areas of Leadville. One primary source was mining-related primary sources such tailing and mine waste piles. Other primary sources include lead-containing paint on interior and exterior surfaces of homes and lead found in food, water, and residential soils. As recommended by ASARCO and the community, the interim response was designed to

reduce overall lead-related risk to children in Leadville, including responses that address sources that would not normally be remediated under CERCLA authorities. As part of the 1994 CD with EPA and the State, ASARCO agreed to undertake actions to address all sources of lead in lieu of soil removal only at each residence. To determine the effectiveness of the actions, the level of lead in children's blood was voluntarily monitored and performance standards in relation to concentrations of lead in the blood of children were established.

In 1995, ASARCO began implementing the Lead Risk Reduction Program (LRRP), more commonly known as the Kids First Program (KF). ASARCO agreed to operate KF as an interim response action until EPA selected a remedy for OU9.

The purpose of KF, a risk reduction response program based on voluntary participation, was to: (1) Provide information to the community, and (2) reduce children's exposure to secondary sources of lead. KF consisted of a variety of services and remedial response activities designed to: (1) Gather information from the community, (2) identify residences for which response actions are needed, (3) plan and prioritize the risk reduction responses for these residences, (4) perform the risk reduction responses, and (5) provide additional information and services to the community.

Initially KF targeted residences where sample soil lead levels were found above 3,500 mg/kg because EPA established an interim response level of 3,500 mg/kg lead for Leadville residential soils. The basis for this value is presented in the 1994 CD, along with a discussion of trigger criteria for other significant environmental media (dust, paint and water). These trigger criteria were used by the KF work group to identify and prioritize locations for response actions.

Residences with children that had blood-lead levels greater than 10 µg/dl, measured during the 1991 Blood-Lead Study or any subsequent blood-lead monitoring, were targeted for priority response in the program.

Information used in the evaluation of residences and the selection of appropriate response actions (if needed) came from a variety of sources. Response programs included within KF were:

- The blood-lead monitoring program by Lake County Health Department;
- A lead information hotline and a door-to-door survey within priority exposure areas; and

- Additional environmental sampling and property assessment.

The Lake County Health Department managed the voluntary blood-lead monitoring program, which was funded by ASARCO. The blood-lead monitoring program was a key component of the interim response program. Ongoing blood-lead monitoring was provided upon request for children below the age of 72 months (6 years) and for pregnant/nursing women. The data were used as one means of identifying individuals who had blood-lead levels greater than 10 µg/dl. The data were also used in the finalization of the Baseline Risk Assessment.

All homeowners or residents who responded via the hotline/office or door-to-door surveys received information about the program. The Information Hotline and the door-to-door surveys resulted in the need for additional environmental sampling of soils, paint, dust, water, and blood-lead levels. Environmental sampling was conducted if the residence: (1) Was located in the 3,500 mg/kg lead soils priority area, (2) had a child with a blood-lead level greater than 10 µg/dl, (3) had a pregnant or nursing woman in the home, (4) was known to have paint in poor condition or known to have another possible lead source (lead pipes, certain hobbies, *etc.*), or (5) was requested by a resident who is not within the designated priority risk area.

The first year remediations were performed at 37 properties in accordance with Action Memoranda prepared for each property. The KF work group developed and approved all action and no-action determinations. The property owners consented on all investigations and remediations.

KF integrated a variety of lead toxicity intervention and abatement methods. Additionally, KF addressed reducing children's exposure to lead in soils, dust-containing lead in residences, and additional lead sources such as paint and tap water. For these reasons, KF was presented as an alternative in the feasibility study when it was revised and renamed the Lake County Community Health Program (LCCHP).

#### Risk Assessments

Concurrent with the interim response, numerous risk assessments were conducted as part of the investigation. They included Baseline Human Health Risk Assessments (BRAs): Part A (Weston 1996), Part B (Weston 1996), and Part C (Weston 1995); Ecological Risk Assessment for Terrestrial Ecosystems (Weston 1997); Surface Water Human Health Risk Assessment (Golder 1996); Groundwater Baseline

Human Health Risk Assessment (Golder, June 1996) and Baseline Aquatic Ecological Risk Assessment (Weston 1995).

The Baseline Human Health Risk Assessments (BRAs) concluded that lead was the only contaminant of concern (COC) for OU9. There are no locations on-Site where antimony, barium, cadmium, beryllium, chromium, copper, mercury, nickel, silver, thallium, or zinc are of significant concern in residential soil. The risk assessment also concluded that non-lead metals (including arsenic and manganese) in residential soils do not pose a significant health risk to residents.

The risk assessment for lead was supported by a large body of Site-specific data. Included were: (1) Extensive measurements of lead in soil and dust in residential locations, (2) an extensive demographics survey, data on lead levels in water and paint (both interior and exterior), (3) data on the physical and chemical forms of lead at various locations around the community, and (4) an informative community-wide blood-lead study involving 314 children (about 65% of the total population of children at the Site). This data was used to support two parallel lines of investigation and assessment. The first of these employed EPA's Integrated Exposure Uptake and Biokinetic (IEUBK) model to calculate the expected impact of lead levels in soil and dust on blood-lead levels in area children. The second approach compared the measured blood-lead values in area children with relevant national blood-lead statistics in order to help evaluate the current effects of actual Site exposure to lead.

Several ecological risk assessments were performed on a site-wide basis for the California Gulch Site. These are available in the docket or on the EPA Web site, <http://www.epa.gov/region8/superfund/co/calgulch/>. These assessments showed a potential unacceptable risk to small mammals and breeding birds. However, given the data available, there was little evidence of population-level effects on small mammals or breeding birds. In addition, calculated ecological risk due to potential exposure to tailing or waste rock media found in other operable units was higher than risks resulting from potential exposure to surrounding soils found in OU9.

#### Feasibility Study (FS)

The Final Residential Soil Feasibility Study, completed by Golder Associates in November of 1998, evaluated seven remedial alternatives to address the

residential soils of properties, yards and open space areas within OU9 where lead levels exceeded the trigger level of 3,500 mg/kg.

One alternative in the FS was the LCCHP, a revised version of the KF used during the interim response. The LCCHP combined blood-lead monitoring, education, community awareness, and residence specific response actions reduced the potential for children to be exposed to lead in Leadville and surrounding areas. This program addressed lead in soil and dust, interior and exterior paint, plumbing fixtures, and dietary and household sources. It also included institutional controls to ensure effectiveness of the LCCHP. Operation and maintenance activities included LCCHP administration and the blood-lead monitoring program.

#### Selected Remedy

Signed on September 2, 1999, the OU9 Record of Decision (1999 ROD) selected a remedy for addressing lead in soils in residential population areas. The selected remedy was the LCCHP with institutional controls (ICs) to ensure the effectiveness of the LCCHP. In September 2009, an Explanation of Significant Differences required ICs for the 17 mine waste piles remaining in OU9.

The Remedial Action Objectives (RAO) from the 1999 ROD are:

- RAO-1: No more than 5% of children age 0–72 months residing within OU9, either now or in the future, should have blood-lead values exceeding 10 µg/dl.
- RAO-2: No more than 1% of children age 0–72 months residing within OU9, either now or in the future, should have blood-lead values exceeding 15 µg/dl.
- RAO-3: Reduce direct exposure of lead incurred by children which result in optimal risk reduction through effective use of resources.

#### LCCHP

The LCCHP combined (1) Community awareness and education, (2) residence-specific response actions to reduce the risk of lead exposure to children in Leadville and (3) blood-lead monitoring. Funding for the LCCHP was from a trust fund established by ASARCO under the 1994 CD.

#### LCCHP Community Awareness and Education

The LCCHP involved an extensive education and intervention program to manage lead exposure at the Site. The educational program focused on raising public awareness about risks from lead

and encouraged participation in the LCCHP. Outreach included the hotline, door-to-door contacts, public notices, mailings, publications, meetings and incentives. Education included individual face-to-face consultations with residents and customized recommendations for specific actions that reduced the residents' risk to lead exposure. The recommendations made to each resident were based on the results of environmental lead sampling at their homes and specific information collected by the program about their daily habits and activities. Follow-up education, consultation, and intervention continued with families that had young children by the Lake County Health Department through their blood-lead monitoring program; Women, Infants, and Children (WIC); and Head Start.

#### LCCHP Residence-Specific Actions

Through this program, Leadville residents were able to request an investigation of lead levels in soil, dust, paint, and water on their property. Properties owners could also request a re-investigation if conditions changed. The LCCHP investigated and remediated lead concentrations in soil, paint, dust, and water on a property-by-property basis. Sampling plans were designed for each individual investigated property. Action was taken when trigger levels were exceeded. All investigations and remediations were performed with the consent of the property owners. Owner contact and consent, sampling plans, analytical data, remediation activities and final closeout procedures were extensively documented. Property Documentation Reports (completion reports) were sent to property owners and are kept on file at EPA.

#### LCCHP Blood-Lead Monitoring

The LCCHP also included voluntary blood-lead monitoring (with financial incentives, as appropriate) for all children six years old and under, and pregnant or nursing women. As part of the program, appropriate actions were taken when the concentration of lead in blood of a child or a pregnant or nursing woman exceeded the blood-lead criterion, or when the concentration of lead exceeded a specified set of trigger criteria for one or more of the environmental media at a residence.

#### LCCHP Trigger Levels

These trigger criteria are summarized below:

- Blood-lead greater than or equal to 10 µg/dL;
- Soil with lead concentrations greater than or equal to 3,500 mg/Kg;

- Dust in houses with lead concentrations greater than or equal to 2,000 ppm;
- Tap water with lead concentrations greater than or equal to 15 µg/l; and
- Interior or exterior paint, in poor condition, with the following lead levels:
  - Greater than or equal to 1 mg/cm<sup>2</sup> triggers educational action, and
  - Greater than or equal to 6 mg/cm<sup>2</sup> triggers active remediation

When one or more of the trigger criteria were exceeded, a work group evaluated a range of different response actions. The most appropriate response action was determined by evaluating the nature and extent of the exceedance, overall protectiveness of the action, compliance with applicable or relevant and appropriate requirements, long-term effectiveness and permanence, short-term effectiveness, implementability, cost effectiveness, and community impacts. The work group also considered the views of the property owner, and only implemented response actions when property owners provided permission. Extensive education and intervention programs to manage lead exposure at the Site were an integral component of each action considered.

#### Scientific Review of LCCHP

Since the LCCHP was considered a "pilot project" that involved a number of innovative approaches, the program was (1) evaluated by a group of outside scientists and (2) included ongoing review to ensure that the program was operating as intended and that human health was being adequately protected. The ongoing review included the establishment of performance standards which when met would indicate the successful completion of the LCCHP and the beginning of operation and maintenance.

#### Performance Standards

The 1999 ROD provided that performance standards would be established during the remedial design phase. These performance standards were necessary to determine if the blood-lead monitoring program met the RAOs. The performance standards were set out in a July 2002 addendum to the OU9 remedial design and are summarized in the Final Methods and Standards for Evaluating the Performance of the LCCHP.

As documented in annual reports beginning in 2002, the data collected was analyzed, and the results were compared to the performance standards, expressed as goals for blood-lead levels in children, to determine the effectiveness of the program.

During the calendar year 2005, the performance standards established by EPA for the selected remedy were met. This conclusion is supported and documented in the 2005 LCCHP annual report.

The LCCHP was implemented as required by the ROD and under the Methods and Standards for Evaluating the Performance of the Program. ASARCO continued to execute the LCCHP until July 2005 when ASARCO declared bankruptcy, after which EPA managed the LCCHP soil investigations and cleanups. The work group continued the blood-lead monitoring and education/outreach programs.

#### Response Actions

KF conducted several time critical removal actions from October 1995 to April 2000. Under the LCCHP from April 2000 to the summer of 2009, time critical removal actions were completed on multiple residences, commercial properties and vacant lots.

From October 1995 to the summer of 2009, 1040 properties were investigated. 270 of those properties required a soil removal action. Forty properties, which may or may not have had soil removals, have had dust removed or paint repaired/replaced. The EPA conducted the last property assessment and response actions in the summer of 2009.

#### "Last Call"

In an effort to include any property that had not participated in the LCCHP, a "last call" for property owners to have their property investigated was given in 2006 by the EPA and ASARCO. EPA sent a letter notifying property owners of the "last call" and published several notices in the Leadville Herald Democrat. EPA completed investigations and remediation of "last call" properties in the summer of 2009.

Due to ASARCO's bankruptcy in 2005, EPA proceeded to finish the assessment and cleanup of properties that were already scheduled for work. Additionally, EPA also investigated and cleaned up properties from the "last call." Due to the short construction season in Lake County, the last Site assessment and on the ground construction work was not completed until the summer of 2009.

#### Institutional Controls (ICs)

On March 15, 2010, Lake County passed a resolution approving the LCCHP Phase 2 Work Plan and adopting the LCCHP Phase 2 as an IC for OU9. With the County's passing of the resolution to adopt the LCCHP Phase 2 Work Plan as an IC for OU9, remedial action was completed.

Moreover on December 23, 2009, the County also passed a resolution, which serves as an IC. The resolution amends the Lake County Land Development Code Chapter 3.2. The Lake County Building and Land Use Department (LCBLUD) is required to provide building permit applicants within the boundaries of the remaining 38 mine waste piles in OU9 with a handout regarding Best Management Practices for managing potentially contaminated soils in Lake County. Each applicant is obligated to sign a document attesting to the fact that he/she received, read and understood the Lake County Best Management handout. No building permit will be issued without the applicant's written acknowledgement provided to the LCBLUD. Additionally, written proof of approval from the CDPHE is a condition precedent to issuance of a building permit by the LCBLUD.

#### *Operation and Maintenance*

The LCCHP Phase 2 Work Plan also serves as the operations and maintenance (O & M) plan for OU9. The goal of the LCCHP Phase 2 is to maintain the progress made in reducing overall lead-related risk to children and pregnant and nursing women who live in Leadville through education, blood-lead monitoring of children, investigation when elevated blood lead is detected, and a cleanup response, if appropriate.

In addition to blood-lead monitoring, the LCCHP Phase 2 includes community education and outreach. Under the modified program, Lake County provides information to residents and families with children to promote ongoing community awareness of health risks from lead exposures. The Lake County Public Health Agency provides this information several ways, including periodic public notices in the newspaper, brochures in physicians' offices, and handouts during immunization visits. Additionally, Lake County provides counseling, education and small incentives to families who participate in the modified program's blood-lead monitoring program.

The most significant change from the LCCHP (remedial action) is that residential environmental sampling and cleanup for soil, dust and paint are only offered:

- (1) When children or pregnant/nursing mothers living at a property have blood-lead levels at or above the Center for Disease Control's level of concern, currently 10 µg/dl; or
- (2) At the specific recommendation of either the work group or the Lake County Public Health Agency.

The original program allowed residents to request environmental sampling with no preconditions. This service is no longer available. In addition, the work group may not offer environmental sampling if preliminary investigation indicates the source of lead exposure is solely from household items such as consumer goods, toys, candy, etc. Environmental sampling and cleanup will occur as directed by the work group and only with the consent of the resident and/or property owner.

The County and State administer the LCCHP Phase 2 with EPA oversight. The Lake County Public Health Agency monitors blood-lead concentrations in individual children who live within the County, and provides workshops and educational material to families about preventing exposure to lead. CDPHE performs data management, environmental sampling and cleanup upon recommendation of the work group.

#### *Five-Year Review*

The remedies at the entire Site, including OU9, require ongoing five-year reviews in accordance with CERCLA Section 121(c) and Section 300.430(f)(4)(ii) of the NCP. The next five-year review for the California Gulch Site is scheduled for 2012.

In the 2007 five-year review for the Site, the OU9 remedy that was determined was protective of human health and the environment. However, concerns were noted about continued protectiveness because ICs were not in place and an O & M Plan did not exist. Those concerns were resolved when the work group approved the LCCHP Phase 2 as an IC and O & M Plan for properties in OU9, and Lake County adopted ICs by resolution.

#### *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).

A fact sheet outlining the new LCCHP Phase 2 was presented to the public in June 2009. The public commented and EPA responded. The State, the Lake County Commissioners and the Mayor

of Leadville are supportive of the deletion of OU9.

#### *Determination That the Criteria for Deletion Have Been Met*

More specifically for OU9, EPA and the State have determined that the responsible parties completed all appropriate response actions. EPA has consulted with the State, Lake County Commissioners, and the City of Leadville, Colorado, on the proposed partial deletion of OU9 from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that the response actions taken are protective of 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 finalize the next five-year review in 2012 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at the 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 on February 16, 2011, 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 the remaining portions of OU9, the Residential Populated Areas, 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 *July 25, 2011* unless EPA receives adverse comments by *June 23, 2011*. 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: May 10, 2011.

**James Martin,**

*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”, Colorado to read as follows:

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

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>(a)</sup>
CO	California Gulch	Leadville	P

(a) \* \* \*

P = Sites with partial deletion(s).

[FR Doc. 2011–12763 Filed 5–23–11; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 930792–3265]

RIN 0648–XA431

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Reopening of Commercial Penaeid Shrimp Trawling Off South Carolina**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reopening.

**SUMMARY:** NMFS reopens commercial penaeid shrimp trawling, i.e., for brown, pink, and white shrimp, in the exclusive economic zone (EEZ) off South Carolina in the South Atlantic. NMFS previously closed commercial penaeid shrimp trawling in the EEZ off South Carolina on March 22, 2011. The reopening is intended to maximize harvest benefits while protecting the penaeid shrimp resource.

**DATES:** The reopening is effective 12:01 a.m., local time, June 7, 2011, until the effective date of a notification of a closure which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, 727–824–5305; e-mail: *Steve.Branstetter@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** Penaeid shrimp in the South Atlantic are managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.35(d)(1), NMFS may close the EEZ adjacent to South Atlantic states that have closed their waters to the harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Consistent with those procedures and criteria, after determining that unusually cold temperatures resulted in at least an 80-percent reduction of the white shrimp populations in its state waters, the state of South Carolina closed its waters on January 10, 2011, to the harvest of brown, pink, and white shrimp. South Carolina subsequently requested that the Council and NMFS implement a concurrent closure of the EEZ off South Carolina.

The Council approved South Carolina’s request and requested that NMFS concurrently close the EEZ off South Carolina to the harvest of brown, pink, and white shrimp. NMFS determined that the recommended closure conformed with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, and, therefore, implemented the closure effective as of March 22, 2011 (76 FR 16698, March 25, 2011).

During the closure, as specified in 50 CFR 622.35(d)(2), no person could: (1) Trawl for brown, pink, or white shrimp in the EEZ off South Carolina;

(2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

The FMP and implementing regulations at 50 CFR 622.35(d) state that: (1) The closure will be effective until the state’s requested ending date of the closure in the respective state’s waters, but may be ended earlier based on the state’s request; and (2) if the state closure is ended earlier, NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register. Based on biological sampling and the initial request from the state of South Carolina, the reopening of the EEZ waters off South Carolina would occur no later than June 7, 2011. Therefore, NMFS publishes this notification to reopen the EEZ off South Carolina to the harvest of brown, pink, and white shrimp effective 12:01 a.m., local time, June 7, 2011.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Allowing prior notice and opportunity for public comment on the reopening is unnecessary because the rule