

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-2002-0008; FRL-9988-91-Region 8]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the OU2 of the Libby Asbestos Superfund Site

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

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete Operable Unit 2 (OU2), Former Screening Plant, of the Libby Asbestos Superfund Site (Site), located in Lincoln County, Montana, from the National Priorities List (NPL) and requests public comments on this proposed action. 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). The EPA and the State of Montana (State), through the Department of Environmental Quality (DEQ), have determined that all appropriate response actions at OU2 under CERCLA, other than operation and maintenance and five-year reviews (FYR), have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains only to OU2. Operable Unit 1 (OU1), Former Export Plant; Operable Unit 3 (OU3), Former Vermiculite Mine; Operable Unit 4 and Operable Unit 7 (OU4/OU7), Residential/Commercial Properties of Libby and Troy; Operable Unit 5 (OU5), Former Stimson Lumber Mill; Operable Unit 6 (OU6), BNSF Rail Corridor; and Operable Unit 8 (OU8), Highways and Roadways, are not being considered for deletion as part of this proposed action and will remain on the NPL.

**DATES:** Comments must be received by March 8, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-2002-0008 by one of the following methods:

- <https://www.regulations.gov>. Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa2.gov/dockets/commenting-epa-dockets>.

- **Email:** Dania Zinner, [zinner.dania@epa.gov](mailto:zinner.dania@epa.gov)

- **Mail:** Dania Zinner, Remedial Project Manager, U.S. EPA, Region 8, Mail Code 8EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129

**Instructions:** Direct your comments to Docket ID no. EPA-HQ-SFUND-2002-0008. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://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 <https://www.regulations.gov> or email. The <https://www.regulations.gov> website 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 email comment directly to the EPA without going through <https://www.regulations.gov>, your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 [https://](https://www.regulations.gov)

[www.regulations.gov](https://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 electronically in <http://www.regulations.gov>; by calling EPA Region 8 at (303) 312-7279 and leaving a message; and at the EPA Info Center, 108 E 9th Street, Libby, MT 59923, (406) 293-6194, Monday through Thursday from 8:00 a.m.-4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dania Zinner, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-7122, email [zinner.dania@epa.gov](mailto:zinner.dania@epa.gov).

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##### I. Introduction

EPA announces its intent to delete all of Operable Unit 2 (OU2), Former Screening Plant, of the Libby Asbestos Superfund Site (Site) from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which the EPA promulgated pursuant to section 105 of the CERCLA of 1980, as amended. The EPA maintains the NPL as those 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 OU2 of the Libby Asbestos Superfund 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 section 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.

The EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the OU2 of the

Libby Asbestos Superfund Site and demonstrates how it meets the deletion criteria.

## 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), the 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, the 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. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The 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 OU2 of the Libby Asbestos Superfund Site:

- (1) The EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

- (2) The EPA has provided the State 30 working days for review of this notice prior to publication of it today.

- (3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

- (4) The State of Montana, through the DEQ, has concurred with deletion of OU2 of the Libby Asbestos Superfund Site, from the NPL.

- (5) Concurrently with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, notices are being published in the Western

News, the Kootenai Valley Record, and the Montanian. The newspaper notices announce the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, made these items available for public inspection, and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, the EPA will evaluate and respond to the comments before making a final decision to delete OU2. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete OU2 of the Libby Asbestos Superfund Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

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 the 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 Partial Site Deletion

The following information provides the EPA's rationale for deleting the OU2 of the Libby Asbestos Superfund Site from the NPL:

### *Site Background and History*

The Libby Asbestos Superfund Site, CERCLIS No. MT0009083840, is located in Lincoln County, Montana in the northwest corner of Montana approximately 35 miles east of Idaho and 65 miles south of Canada. The Site was proposed for inclusion on the NPL on February 26, 2002 (67 FR 8836) and listed on October 24, 2002 (67 FR 65315).

Vermiculite was discovered 7 miles northeast of Libby, Montana in 1881 by

gold miners. In the early 1920s, Mr. Edward Alley began initial mining operations on the vermiculite ore body. Full-scale operations began later that decade under the name of the Universal Zonolite Insulation Company (Zonolite). This ore body contained a mixture of amphibole mineral fibers of varying elemental composition (e.g., winchite, richterite, tremolite) that have been identified in the Rainy Creek complex near Libby (Libby amphibole asbestos or LA). Unlike the commercially exploited chrysotile asbestos, the LA material has never been used commercially on a wide scale, and, for the mine's operating life, it was considered a byproduct of little or no value. The commercially exploited vermiculite was used in a variety of products including insulation and construction materials, as a carrier for fertilizer and other agricultural chemicals, and as a soil conditioner. The vermiculite ore was mined using standard strip mining techniques and conventional mining equipment. The ore was then processed in an onsite dry mill to remove waste rock and overburden material. Once processed, the ore was transported down from the mine to the former Screening Plant (OU2), which sorted the ore into five size ranges. After the sorting process, the material was shipped to various locations across the United States for either direct inclusion in products or for "expansion" prior to use in products. Expansion (also known as "exfoliation" or "popping") was accomplished by heating the ore, usually in a dry kiln, to approximately 2000 °F. This process explosively vaporizes the water contained within the mica structure, causing the vermiculite to expand by a factor of 10 to 15. This produces the vermiculite material most commonly seen in stores and sold as soil conditioner for gardens and greenhouses. In 1963, Grace purchased Zonolite and continued vermiculite-mining operations in a similar fashion. In 1975, a wet milling process was added that operated in tandem with the dry mill until the dry mill was taken off line in 1985. The wet milling process was added to reduce dust generation by the milling process. Expansion operations at the former Export Plant ceased in Libby sometime prior to 1981, although this area was still used to bag and export milled ore until mining operations were stopped in 1990. Before the mine closed in 1990, Libby produced about 80 percent of the world's supply of vermiculite.

The Site was placed on the NPL in response to media articles, which detailed extensive asbestos-related

health problems in the Libby population. EPA arrived on-site in 1999 and since then EPA has conducted sampling and response action activities to address highly contaminated areas in the Libby Valley. While at first the situation was thought to be limited to those with direct or indirect occupational exposures, it soon became clear there were multiple exposure pathways, and many persons with no link to mining-related activities were affected. Typically, the amphibole asbestos contamination found in the Libby Valley comes from one or some combination of source materials (e.g., vermiculite insulation, processed vermiculite ore, mine wastes). Asbestos from these source materials has been found in interior building dust samples and local soils, which in turn act as secondary sources. Response actions to clean up the Site have been ongoing since 1999.

The Site has 8 operable units (OUs). The OUs are as follows: Operable Unit 1 (OU1), Former Export Plant; Operable Unit 2 (OU2), Former Screening Plant; Operable Unit 3 (OU3), Former Vermiculite Mine; Operable Unit 4 and Operable Unit 7 (OU4/OU7), Residential/Commercial Properties of Libby and Troy; Operable Unit 5 (OU5), Former Stimson Lumber Mill; Operable Unit 6 (OU6), BNSF Rail Corridor; and Operable Unit 8 (OU8), Highways and Roadways. The OUs pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination.

The background and history, the Remedial Investigations and Feasibility Studies (RI/FS), Removal and Response Actions, Selected Remedies, Cleanup Standards, and Operation and Maintenance activities for OU2 are discussed below.

#### *OU2 Background and History*

Operable Unit 2 (OU2) consists of the former screening plant and surrounding properties. OU2 is located approximately five miles northeast of the City of Libby on the east side of the Kootenai River and at the confluence of Rainy Creek and the Kootenai River. A map of OU2 can be found in the docket at [www.regulations.gov](http://www.regulations.gov) under Docket ID no. EPA-HQ-SFUND-2002-0008. The OU2 site was historically owned and used by W.R. Grace for stockpiling, staging, and distributing vermiculite and vermiculite concentrate to vermiculite processing areas and insulation distributors outside of the City of Libby. OU2 is known as the former Screening Plant and Surrounding Properties. OU2 has been separated into

distinct impacted areas that include the former Screening Plant (Subarea 1), the Flyway (Subarea 2), Privately-Owned Property (Subarea 3), and the Rainy Creek Road Frontages (Subarea 4). The Highway 37 right-of-way (ROW) adjacent to the OU2 site was included due to its proximity to OU2 and the known contamination in the ROW.

#### *OU2 Remedial Investigations and Feasibility Study (RI/FS)*

The State, the EPA and certain Potentially Responsible Parties (PRPs) conducted various studies and investigations to evaluate the nature and extent of contamination generally at the Site. Remedial Investigations (RIs) began in 1999 within the Site, including the export and screening plants and highly contaminated areas with exposure pathways such as residential/commercial properties and schools. Various removal actions were conducted starting in 2000 through 2006 where source areas were excavated and were disposed of at the former vermiculite mine (OU3). The Former Screening Plant Remedial Investigation (2009 RI) evaluated the human health and environmental impacts due to the former screening plant and surrounding properties.

In August 2009, the OU2 Remedial Investigation (2009 RI) confirmed that OU2 had been mostly cleaned up by prior removal actions and that only two more locations needed to be remediated to meet EPA's clearance criteria and to break the exposure pathway to LA.

The EPA released the OU2 Feasibility Study (FS) in August 2009 and a proposed plan in September 2009.

#### *OU2 Selected Remedy*

The EPA issued the Record of Decision (ROD) for OU2 (2010 OU2 ROD) on May 10, 2010. The selected remedy in the 2010 OU2 ROD was narrowly focused on breaking the exposure pathway to LA in a few locations on OU2 as most of the former screening plant was already remediated by prior removal actions. Other surrounding contaminated geographical areas were addressed as part of remedial actions taken at other operable units. Thus, the 2010 OU2 ROD identified three remedial action objectives (RAOs) of breaking the exposure pathway for inhalation of LA fibers, controlling erosion of contaminated soil to prevent exposures and spread of contamination, and implementing controls to prevent uses of the site that could pose unacceptable risks to human health.

The original remedy selected in the 2010 OU2 ROD consisted of the following remedial components: (1)

Excavation and offsite disposal of top 18 inches of soil in certain areas; (2) Protective cover of clean soil; (3) Institutional controls such as a utility location service and community awareness programs to prevent exposure to contamination in the subsurface and the spread of contamination; and (4) Operations and maintenance of the remedy.

Because the selected remedy in the 2010 OU2 ROD left wastes in place, ICs are critical to the protection of the remedy. The objectives of ICs for OU2 are as follows: (1) Notify future landowners of the presence of subsurface contamination and IC requirements; (2) Mitigate the potential for inhalation exposures to LA fibers; (3) Control dispersion/erosion of contaminated soil to prevent the spread of contamination; (4) Implement controls to prevent uses of the site that could pose unacceptable risks or compromise the remedy; and (5) Implement controls to prevent uses of the site that could spread contamination to un-impacted or previously remediated locations. The properties that comprise OU2 are owned by Kootenai Development Company and a private residential property owner.

#### *OU2 Cleanup Standards*

The OU2 remedy was one of the first source control remedies at the Site that addressed breaking the exposure pathway to a highly contaminated area of the site, but did not contain numeric cleanup standards because toxicity values for Libby amphibole asbestos had not been finalized yet. Numeric cleanup standards for site-wide soil contamination were established in the OUs 4–8 Record of Decision. A post-construction risk assessment for OU2 was released in October 2015 confirming that the remediation met cleanup standards.

#### *OU2 Response Actions*

The EPA and W.R. Grace & Co.—Conn (Grace) entered into an Administrative Order on Consent for Removal Action (AOC) to cost recover funds for EPA removal actions on OU2 and for Grace to assume responsibility of post-removal site controls. Notice for completion of work was sent in December 2015 and this AOC has been closed out following recording of an environmental covenant on Grace's property (Flyway).

Remedial activities began in summer of 2010 with excavation of the areas investigated where the exposure pathway needed to be broken including along the Highway 37 ROW. Materials were excavated, disposed offsite at the former vermiculite mine (OU3), and

confirmation sampling was performed at depth. Clean cover was placed as backfill at depths of 6 inches to 25 inches depending upon location and these areas were hydroseeded (vegetated) to prevent erosion. Additional confirmation activity-based sampling was conducted in summer of 2012 to confirm effectiveness of remedy. The OU2 post-construction risk assessment (October 2015) and the site-wide risk assessment (November 2015) both confirmed that the remedy at OU2 is protective. As part of the AOC agreement with Grace, the Kootenai Development Company (a subsidiary of Grace) placed an environmental covenant on its property in OU2 on July 28, 2014 that meets the IC objectives above. All remedial components described in the 2010 OU2 ROD have been implemented.

#### *OU2 Operation and Maintenance*

The State and PRP operations and maintenance (O&M) responsibilities are defined in the OU2 O&M Plan (September 2018). Grace's responsibilities are further defined in the environmental covenant (July 2014) for the Flyway property.

Montana DEQ requirements for O&M includes conducting an annual inspection, preparing an annual report, maintaining the cover, and evaluating/ updating institutional controls (ICs). Current annual inspection reports and associated data are available by contacting EPA Region 8 or Montana DEQ.

In regard to ICs, an environmental covenant for the Kootenai Development Company's property within OU2 was recorded with the Lincoln County Clerk and Recorder on July 28, 2014. The environmental covenant provides the following Use Restrictions: (1) No excavation, construction, or disturbing soil on the property without written approval from EPA and Montana DEQ, (2) Prior to disturbance activities, a written plan must be approved by EPA and Montana DEQ that describes the health and safety of workers and restoring the integrity of the cover material, and (3) Restrictions on uses or activities that would disturb/interfere or have the potential to disturb/interfere with the protectiveness of the remedy and remedial components.

#### *Five-Year Review*

The remedies at the entire Site, including OU2 require ongoing five-year reviews in accordance with CERCLA Section 121(c) and Section 300.430(f)(4)(ii) of the NCP.

In the statutory 2015 five-year review dated June 22, 2015 conducted for OU1

and OU2 for the Site, the OU2 remedy was determined to be protective since all required institutional controls were in place including an environmental covenant on the Kootenai Development Company's property. There were no issues or recommendations for OU2.

Pursuant to CERCLA section 121(c) and the NCP, EPA will conduct the next five-year review by June 22, 2020 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.

#### *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. During the development and implementation of the remedy for this operable unit, comment periods were offered for the proposed plan, the five-year review, and other public meetings. The documents that the EPA relied on for the partial deletion of OU2 from the Libby Asbestos Superfund Site are in the docket and are available to the public in the information repositories. A notice of availability of the Notice of Intent for Partial Deletion has been published in the Western News, the Kootenai Valley Record, and the Montanian to satisfy public participation procedures required by 40 CFR 300.425 (e) (4).

The State, the Lincoln County Commissioners, and the City of Libby are supportive of the partial deletion of OU2. The State signed a letter of concurrence on September 13, 2018.

#### *Determination That the Site Meets the Criteria for Deletion*

EPA has consulted with the State, Lincoln County Commissioners, and the City of Libby on the proposed partial deletion of OU2 of the Libby Asbestos Site from the NPL prior to developing this Notice of Partial Deletion. Through the five-year review, 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.

The implemented remedies achieve the degree of cleanup or protection specified in the 2010 OU2 ROD.

All selected removal and remedial action objectives and associated cleanup goals for OU2 are consistent with agency policy and guidance. This partial deletion meets the completion requirements as specified in OSWER Directive 9320.2-22, Close Out

Procedures for National Priority List Sites. All response activities at OU2 of the Site are complete and the Operable Unit poses no unacceptable risk to human health or the environment. Therefore, EPA and Montana DEQ have determined that no further response is necessary at OU2 of the Site.

#### **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(d), 42 U.S.C. 9601-9657; E.O. 12580, E.O. 12777, E.O. 13626, 52 FR 29233, 56 FR 54757, 77 FR 56749, 3 CFR 2013 Comp., p. 306; 3 CFR, 1991 Comp., p. 351; 3 CFR, 1987 Comp., p. 193.

Dated: December 20, 2018.

**Douglas H. Benevento,**

*Regional Administrator, Region 8.*

[FR Doc. 2019-01319 Filed 2-5-19; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL MARITIME COMMISSION**

### **46 CFR Part 515**

**[Docket No. 18-11]**

**RIN 3072-AC73**

#### **Amendments to Regulations Governing Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** In a proposed rule published in the **Federal Register** on December 17, 2018, the Federal Maritime Commission proposed to amend its rules governing licensing, financial responsibility requirements, and general duties for ocean transportation intermediaries (OTIs). The proposed changes are mainly administrative and procedural. This notice reopens the comment period which concluded on January 18, 2019.

**DATES:** Comments on the proposed rule published December 17, 2018 (83 FR 64502) are due on or before February 22, 2019.

**ADDRESSES:** You may submit comments by the following methods:

- *Email:* [secretary@fmc.gov](mailto:secretary@fmc.gov).
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573-0001.