

provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Alaska.

[FR Doc. E7-15669 Filed 8-13-07; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1986-0005; FRL-8454-1]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Bailey Waste Disposal Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Bailey Waste Disposal Superfund Site (Site), located near Bridge City, Texas, 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 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 Texas, through the Texas Commission on Environmental Quality (TCEQ), 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 notice of deletion will be effective October 15, 2007 unless EPA receives adverse comments by September 13, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1986-0005, by one of the following methods:

*http://www.regulations.gov* (Follow the on-line instructions for submitting comments).

*E-mail:* [walters.donn@epa.gov](mailto:walters.donn@epa.gov).

*Fax:* 214-665-6660.

*Mail:* Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF-TS), 1445 Ross Avenue, Dallas, TX

75202-2733, (214) 665-6483 or 1-800-533-3508.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-SFUND-1986-0005. EPA 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, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected. 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 automatically be 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 disclosure of which 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 at *http://www.regulations.gov* or in hard copy at the information repositories.

**Information Repositories:** Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Online Library System at *http://www.epa.gov/natlibra/ols.htm*; U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, (214) 665-6617, by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Marion and Ed Hughes Public Library, 2712 Nederland Avenue,

Nederland, Texas 77627, (409) 722-1255, Monday 1 p.m. to 9 p.m., Tuesday through Friday 10 a.m. to 6 p.m. and closed Saturday-Sunday; City of Orange Public Library, 220 N. 5th Street, Orange, Texas 77630, (409) 883-1086, Saturday and Monday 10 am to 2 p.m., Tuesday 12 p.m. to 8 p.m., Wednesday through Friday 10 a.m. to 5 p.m. and closed Sunday; Texas Commission on Environmental Quality (TCEQ), Central File Room Customer Service Center, Building E, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Scott Harris, PhD, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF-RA), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-7114 or 1-800-533-3508 or [harris.scott@epa.gov](mailto:harris.scott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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- II. NPL Deletion Criteria
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#### I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Bailey Waste Disposal 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 October 15, 2007 unless EPA receives adverse comments by September 13, 2007 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 notice of 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 Bailey Waste Disposal Superfund Site, and demonstrates how it meets the deletion criteria. Section V discusses EPA actions to delete the Site from the NPL unless adverse comments are received during the public 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 Fund-financed (Hazardous Substance Superfund Response Trust Fund) 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.

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 action remains protective of public health and the environment. If new information becomes available that 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 deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with TCEQ on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) TCEQ concurred with deletion of the Site from the NPL.

(3) Concurrent with publication of this direct final notice of deletion, a notice of 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.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

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

## IV. Basis for Site Deletion

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

### Site Location

The Bailey Waste Disposal Site is located approximately three (3) miles southwest of Bridge City in Orange County, Texas, and was originally part of a tidal marsh near the confluence of the Neches River and Sabine Lake. The total site area includes two rectangular ponds and occupies approximately 280 acres. However, numerous investigations provided data to minimize the areas of the site that required remediation. These areas include the North Marsh Area (approximately four acres), the North Dike Area (approximately 7.8 acres) and the East Dike Area (approximately 7.6 acres).

### Site History

The Site is situated in a sparsely populated marsh area, surrounded by primarily industrial land use. Two ponds, A and B, were constructed on the property by the landowner, Mr. Joe Bailey, as part of the Bailey Fish Camp in the early 1950s by dredging the marsh and piling the sediments to form

levees, which surrounded the ponds. The fish camp was active until September 1961, when it was destroyed by Hurricane Carla, which introduced saline waters into the ponds, killing the freshwater fish. Mr. Bailey operated the site pursuant to his ownership and leasehold interests from the early 1950s through March or April 1971.

Following the hurricane, Mr. Bailey allowed the disposal of industrial and municipal waste within the levees along the north and east margins of Pond A (the North Dike Area and the East Dike Area, respectively). In addition to the waste located within the North Dike Area, which includes waste contained in Pits A-1, A-2, A-3, and B, and the East Dike Area, waste was also present in the North Marsh Area. Major contaminants within the waste included ethyl benzene, styrene, benzene, chlorinated hydrocarbons and polynuclear aromatic hydrocarbons. Waste disposal operations at the Site ceased in 1971, and it was purchased by Gulf State Utilities.

The North Dike Area is currently managed as a Texas Prairie Wetlands Project in cooperation with the Texas Parks & Wildlife, Ducks Unlimited, the U.S. Department of Agriculture Natural Resources Conservation Service and the U.S. Fish and Wildlife Service. There is little likelihood of additional development.

### Remedial Investigation and Feasibility Study (RI/FS)

In December 1984 the state of Texas entered into a cooperative agreement with EPA to conduct an RI/FS. Based on results from preliminary assessments, the Site was placed on the NPL on May 20, 1986, with the Texas Water Commission (TWC) as the lead agency. The TWC completed RI activities at the Site in October 1987, concluding: The Site has had no impact on drinking water and it would take over 800 years to reach potable groundwater, but that existing site conditions could degrade through a flood or other natural occurrences, releasing the contaminants contained in the dikes into the surrounding marsh. At the time of the RI, there had been no development in the immediate vicinity of the Site, nor was it likely to be suitable for future development due to prohibitions against development in wetland areas. Upon completion of the RI, EPA assumed the role of lead agency and, under the terms of an administrative order on consent, a group of potentially responsible parties (PRPs), the Bailey Site Settlers Committee (BSSC), completed a feasibility study (FS) in April 1988.

### *Characterization of Risk*

Data collected during the RI indicated that should hazardous substances be released from the Site that might endanger public health, welfare, or the environment, the most significant risks to human health and the environment included: Direct contact with organic compounds and heavy metals determined to be carcinogens via absorption through the skin or other routes of inadvertent intake; air emissions of volatile organic compounds; surface waters (marsh) directly contacted by the waste, including organic compounds and heavy metals; and shallow groundwater directly beneath the waste contaminated with organic compounds and heavy metals.

### *Record of Decision Findings*

Based on the FS, EPA selected an in-situ stabilization and capping remedy, issuing the site ROD in June 1988. In July 1988 EPA, pursuant to section 122 of CERCLA, issued special notice letters to the PRPs providing them an opportunity to enter into an agreement to perform the remedial action. In September 1988 the BSSC submitted to EPA its "Good Faith Offer," and an agreement to conduct the remedial action was reached. This agreement provided that the Settlers, as defined in the Consent Decree, would carry out the remedy selected by EPA, and that EPA would reimburse the Settlers for a portion of the costs to implement the remedy. However, because of demonstrated difficulties in achieving in-situ stabilization specifications and the finding that successful implementation of the original remedy would, if possible at all, be significantly more difficult, more time-consuming and more costly to implement than was contemplated at the time the original Record of Decision (ROD) was issued, EPA requested that the BSSC conduct a Focused Feasibility Study (FFS). FFS activities commenced in June 1995, and were completed in October 1996. The Revised Remedial Action was developed as a result of the FFS, and the ROD was amended in December 1996 consistent with the conclusions of the FFS. The amended ROD replaced the in-situ stabilization component of the original remedy with lightweight composite caps and the removal of certain wastes. February 8, 1996 and May 1, 1996 Explanations of Significant Difference (ESDs) documented the removal and offsite disposal of wastes, which was not specified in the original remedy.

### *Cleanup Standards*

The remedial action objectives were to minimize the potential for waste migration, protect human health and the environment, prevent future contamination of surface water and groundwater and minimize short-term air emissions resulting from remedial activities.

### *Response Actions*

After numerous in-situ stabilization attempts, subsequent investigations and a stabilization field pilot study, it was determined that the waste stabilization performance standards established in the ROD and the remedial design would, if possible at all, be significantly more difficult, more time-consuming, and more costly to implement than was contemplated at the time the original ROD was issued. Due to these difficulties, outlined in the Amended ROD (1996), implementation of the original remedy was not completed. Before that determination was made, the original action accomplished: Waste/soil interface evaluation; consolidation and relocation of shallow wastes; construction of clay dikes; construction of access roads; stabilization of approximately one-third of the East Dike Area; south drum disposal area remediation; and construction of a wastewater treatment plant. Between February and May 1996, additional actions taken included excavation of approximately 20,000 cubic yards of waste and affected sediments and transportation of this material to an off-site industrial landfill for disposal, excavation and onsite relocation of waste and affected sediments and placement of interim soil covers. Final removal activities included: Relocation and consolidation of wastes within the limits of the area to be capped; installation of a temporary water collection system to intercept and remove groundwater; construction of lightweight composite caps; installation of riprap along the cap perimeter for erosion and scour protection; installation of storm water management controls; construction of maintenance roads; and installation of a passive gas venting system.

The EPA and the Texas Natural Resource Conservation Commission (TNRCC) conducted a pre-final site inspection on July 31, 1997, and on August 20, 1997 the EPA conducted a final site inspection. All items noted in the pre-final site inspection were found to have been satisfactorily addressed with the exception of the removal of the silt fences, which were left in place until the establishment of vegetative

growth on the cap surface. During the third quarterly site inspection conducted on May 29, 1998, EPA noted that the silt fences had been removed. The Preliminary Close Out Report signed on September 14, 1998 notes that the remedy had been constructed in accordance with the remedial design plans and specifications and was operational and functional.

On May 4, 1998, the EPA approved the Final Remedial Action Report for the Site. The final report documents that the remedial action for the site was completed in accordance with the ROD, Explanations of Significant Differences and the ROD Amendment for the site, and that the final site inspection had been conducted for construction activities. This action initiated the Operation and Maintenance phase under EPA oversight, with site O&M activities required of the BSSC.

### *Operation and Maintenance (O&M)*

In September 1997 EPA approved the Final Inspection, Maintenance and Monitoring Plan (IMMP) for the Site. The purpose of the IMMP is to document procedures to be used to assess and maintain the long-term protectiveness of the remedy while minimizing adverse natural or man-made impacts on the Site. The Plan requires of the BSSC (1) regular inspection of the Site, including grounds, fencing, signs, access roads, bridge, vegetative cover, erosion control (riprap), evidence of erosion, gas vents, free movement of water and soil depression or settlement, (2) visits to the Site as needed to check site security and evaluate damage from severe weather events such as hurricanes, (3) maintenance, including regular mowing and clearance of trees and weeds from the capped and riprapped areas, repair of animal burrow damage, clearance of gas vent obstructions, silt removal if impeding the free flow of water within the diked area, repair or replacement of fences and signs, road and bridge repairs and periodic bridge recertification and (4) regular reporting of these activities to EPA through a formal Site Inspection Report. These reports are reviewed by the Remedial Program manager (RPM) when received, and are one component of the ongoing five-year reviews.

Institutional controls (ICs) are a necessary component of maintaining the long-term protectiveness of the remedy. ICs are legal and administrative measures that prevent exposure to contaminants that may remain at a site at concentrations above health-based risk levels. They are typically designed to limit activities at or near the Site, and

include requirements for providing notice (i.e., deed recordation) in the real property records for properties where residual contamination will remain. For this Site, the ICs include a deed recordation with a notice that buried contaminants remain on the property, and a prohibition against any reuse, development or other activities that might disturb or damage the affected areas without the approval of EPA, TCEQ and the property owner. The requirement for institutional controls was met through the August 2, 2006 deed recordation in the Official Public Records of Real Property of Orange County, Texas for each of the two capped areas.

#### Five-Year Review

Hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Therefore, the EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA Section 121(c), and as provided in the current guidance on Five Year Reviews (OSWER Directive 9355.7-03B-P, Comprehensive Five-Year Review Guidance, June 2001). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Five-year reviews for this Site were completed in September 2000 and September 2005. The reviews found that the remedy remains protective of human health and the environment, and that the Site appears to have been properly maintained during the period between reports. The next five-year review will occur no later than September 2010.

#### Community Involvement

Public participation activities required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied, and documents which EPA generated and/or relied on are available to the public in these information repositories.

#### V. Deletion Action

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

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 15, 2007

unless EPA receives adverse comments by September 13, 2007. 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. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

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

Dated: July 19, 2007.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

■ 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 Texas (“TX”) by removing the entry for “Bailey Waste Disposal.”

[FR Doc. E7-15891 Filed 8-13-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1243

[STB Ex Parte No. 661 (Sub-No. 1)]

#### Rail Fuel Surcharge Reporting

**AGENCY:** Surface Transportation Board, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board is amending its regulations to require Class I railroads to report certain data concerning fuel costs and fuel surcharges billed. The data reported pursuant to this rule will provide an overall picture of the use of fuel

surcharges and will permit the Board to monitor the fuel surcharge practices of Class I carriers. The new rule will be codified as 49 CFR 1243.3. The reporting form can be found in an Appendix to this section.

**DATES:** This rule is effective November 12, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents referred to herein, are part of the Board’s docket in STB Ex Parte No. 661 (Sub-No. 1) and are available for inspection or copying at the Board’s Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423-0001, are posted on the Board’s Web site, at <http://www.stb.dot.gov>, and are available from the Board’s contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: [asapdc@verizon.net](mailto:asapdc@verizon.net); telephone number: 202-306-4004).

**FOR FURTHER INFORMATION, CONTACT:** Joseph H. Dettmar at 202-245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The Board instituted this proceeding, in conjunction with our decision in *Rail Fuel Surcharges*, STB Ex Parte No. 661 (STB served Jan. 26, 2007), to solicit comments, pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), regarding the Board’s proposal to require all Class I (large) railroads to submit a monthly report containing the following information: (1) Total monthly fuel cost; (2) gallons of fuel consumed during the month; (3) increased or decreased cost of fuel over the previous month; and (4) total monthly revenue from fuel surcharges. In *Rail Fuel Surcharges*, STB Ex Parte No. 661 (Sub-No. 1) (STB served Jan. 26, 2007) (published at 72 FR 4676 on Feb. 1, 2007), the Board sought comments regarding: (1) Whether the particular collection of information described above is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board’s burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.