

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-8222-9]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of deletion of the Nineteenth (19th) Avenue Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Nineteenth (19th) Avenue Landfill Site (Site), located in Phoenix, Maricopa County, Arizona, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Arizona have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

**DATES:** *Effective Date:* September 25, 2006.

**FOR FURTHER INFORMATION CONTACT:** Nadia Hollan, Remedial Project Manager, Mail Code: SFD-8-2, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105-3901, [hollan.nadia@epa.gov](mailto:hollan.nadia@epa.gov), (415) 972-3187 OR 1-800-231-3075 (message line), or William DePaul, Remedial Project Manager, Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix Arizona, 85007, [depaul.william@azdeq.gov](mailto:depaul.william@azdeq.gov), (602) 771-4654.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Nineteenth (19th) Avenue Landfill Site, Phoenix, Maricopa County, Arizona.

A Notice of Intent to Delete for this Site was published in the **Federal Register** on August 14, 2006 (71 FR 46429). The closing date for comments on the Notice of Intent to Delete was September 13, 2006. Two written comments were received; therefore EPA has prepared a Responsiveness Summary (See Appendix 1 below). In addition, EPA received a request from a community group representative to extend the public comment period. This

is also addressed in the Responsiveness Summary. EPA has considered all public comments in its final decision to delete the Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

**Appendix 1—Responsiveness Summary**

The Responsiveness Summary has been prepared to provide responses to comments submitted to EPA during the 30-day public comment period regarding the Notice of Intent to Delete (71 FR 46429) for the 19th Avenue Landfill Superfund Site. The original comments are summarized below and available at <http://www.regulations.gov>, Docket ID No. EPA-HQ-SFUND-1983-0002, with the support materials under document type “public submissions”, and at the information repositories at the following addresses: Arizona Department of Environmental Quality Records Center, 1110 West Washington Street, Phoenix, Arizona 85007, (602) 771-4380 or 1 (800) 234-5677, ext. 771-4380, Hours: M-F 8:30 a.m.-4:30 p.m.; City of Phoenix Public Library, Government Documents Section, 1221 North Central Avenue, Phoenix, Arizona 85004, (602) 262-4636, Hours: M-Th 10 a.m.-9 p.m., Fr&Sa 10 a.m.-6 p.m., Su 12 p.m.-6 p.m.; and U.S. EPA Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105, (415) 536-2000, Hours: M-F 8 a.m.-5 p.m.

*Summary of Comment #1, Letter from Stephen M. Brittle, President, Don't Waste Arizona, Inc. (DWAZ):* The majority of the comments are concerns regarding the impact of the Site to groundwater contamination. Mr. Brittle stated that the delisting “will remove the appropriate protections that the Superfund program is supposed to provide”. Specifically, there is a concern that during the landfill cleanup in the 1990's barrels of hazardous waste were left in the landfill and could ultimately leak, impacting groundwater in the future. There is also a concern regarding “plumes of chemical contamination moving off the landfill site” and DWAZ believes it has received conflicting information regarding the

source of the contamination. It also appears to the group that EPA has allowed the plumes to migrate and fall below action levels rather than taking appropriate action to clean them up.

*Response to Comment #1:* The landfill contains a variety of contaminants which have the potential to leach into the groundwater. Since removing all of the landfill contamination was not feasible, the EPA and ADEQ selected the remedy to include leaving the refuse in place, preventing the landfill from eroding during flood seasons with levees and a soil cap, and controlling the soil gas produced with a landfill gas collection and treatment system. The landfill cap also reduces infiltration of rainwater, which will reduce the potential for leaching. Also as part of the remedy, the City of Phoenix is required to monitor groundwater at the landfill in perpetuity, and required to implement a “groundwater contingency plan” should any constituent *due to landfill contamination* exceed action levels. This plan involves follow-up sampling to confirm the results, and an evaluation of remedial alternatives for groundwater cleanup should the contamination pose a threat to human health and the environment. The deletion does not affect this requirement, nor does it prevent EPA or ADEQ from requiring cleanup of groundwater should there be an impact in the future. As explained later in this response, EPA acknowledges that there are elevated levels of contaminants in the groundwater at the landfill, however it has been determined that the landfill is not a source of this contamination based on the review of monitoring data that has been collected quarterly for almost 20 years.

Regarding the allegations of buried barrels, a letter was sent to ADEQ in August 1996, complaining that barrels were improperly handled. Potentially hazardous material was drained out of leaking drums, mixed with surrounding soil/debris, excavated and stored in roll-off containers, and then re-buried in the landfill. Therefore, the material was already taken out of the drums. The complaint gave rise to the question of whether the material was hazardous and whether it was handled appropriately, and this was investigated by ADEQ and EPA at the time. The conclusions of the investigation were provided by EPA to the complainant in February 1998.

Regarding groundwater contamination in the area, only three constituents have ever exceeded action levels on multiple occasions in the landfill monitoring well network: 1,1-dichloroethylene (1,1-DCE), vinyl chloride, and arsenic. There is a known plume of 1,1-DCE moving

under the landfill, however, EPA and ADEQ have determined that the 1,1-DCE plume is from an upgradient source, and that the 19th Avenue Landfill is not contributing (*Assessment of Upgradient 1,1-DCE for City of Phoenix 19th Avenue Landfill*, Dames & Moore, November 1998). Vinyl chloride was detected above the action level in one of the monitoring wells and was also from off-site sources unrelated to the landfill. Vinyl chloride has not been above the action level since 2002 (*19th Avenue Landfill Exceedence Report for Vinyl Chloride*, URS, June 2002, and *Response to Agency Comments to the June 2002 Report*, URS, April 2003). Arsenic has been detected above action levels in two of the on-site wells, however arsenic is below levels of concern outside the boundaries of the landfill. EPA and ADEQ determined that the source of the arsenic is not contamination from the landfill itself, but native arsenic present in the soils. The arsenic is being mobilized into groundwater over a small area due to the oxygen low conditions near the landfill. (*Exceedence Report for Arsenic at Monitoring Well I-4*, URS, December 2003, *Technical Memorandum of Arsenic Concentrations in Groundwater Monitor Wells*, Hugh Rieck, ADEQ, April 2004, and *Exceedence Report for Arsenic at Monitoring Well I-4*, URS, June 2006, reference arsenic report). Again, if in the future it is determined that groundwater is impacted by the landfill, the protections will remain in place to compel cleanup. The supporting information that is referenced above is available in the deletion docket and site repositories and can also be provided to DWAZ.

*Summary of Comment #2, Request from Michael Pops, President, Concerned Residents of South Phoenix:* Mr. Pops contacted EPA and ADEQ by telephone with a request to extend the public comment period. He believed the community outreach EPA conducted regarding the notice was inadequate and requested that EPA and ADEQ conduct an outreach campaign to fully inform the affected community of the proposed action. He also was concerned with future use of the Site, and that the community would be unable to provide input or ensure that redevelopment plans would be acceptable to the community.

*Response to Comment #2:* EPA decided not to extend the timeframe for comment on this action beyond the required 30 days. EPA believes there was adequate time for the community to raise significant concerns regarding the deletion, and that the deletion action itself will not impact the community's

ability to comment on issues regarding the Site. EPA had issued a fact sheet to the Site mailing list and published a notice in the local paper, *The Arizona Republic*. We will work with ADEQ and the City of Phoenix to update the Community Involvement Plan and add other local newspapers and community groups to the outreach strategy as suggested for future actions. The public will continue to have an opportunity to comment to ADEQ, the lead agency, on any actions or activities associated with the Site even after deletion, particularly during the statutory Five-Year Review process.

Regarding future development at the Site, any plans would still need to follow all the applicable criteria under CERCLA and the NCP, and be protective of human health and the environment. In addition, the City of Phoenix filed a Declaration of Environmental Use Restriction on the property title in July 2006, prohibiting residential use and ensuring a process by which no landowner will be allowed to interfere with the remedy.

*Summary of Comment #3, Letter from Karen O'Regan, City of Phoenix, Environmental Programs:* This comment is in "support and concurrence" with the deletion action, and an expression of the commitment the City has to ensuring the remedy will be maintained and the groundwater monitored. The City will work with ADEQ on any "viable reuse proposals".

*Response to Comment #3:* EPA appreciates the concurrence, and on-going commitment to ensure the remedy will be maintained. EPA encourages the City to consider community concerns regarding the Site in the future, particularly as associated with the issues expressed by the community during this public comment period, and any input that may be provided during additional community involvement activities.

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

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

Dated: September 18, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

■ 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 [Arizona] ("AZ") by removing the entry for the Nineteenth Avenue Landfill site in Phoenix, Arizona.

[FR Doc. 06–8175 Filed 9–22–06; 8:45 am]

BILLING CODE 6560–50–P

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

**46 CFR Parts 4, 30, 31, 32, 52, 68, 71, 91, 107, 108, 109, 126, 147, 150, 153, 159, 160, 164, 176, and 197**

##### 49 CFR Part 450

[USCG–2006–25697]

RIN 1625–ZA10

#### Shipping and Transportation; Technical, Organizational, and Conforming Amendments

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes throughout Titles 46 and 49 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public.

**DATES:** This final rule is effective September 25, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–25697 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Ray Davis, Coast Guard, telephone 202–