

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 8, 2005.

**Robert E. Roberts,**  
*Regional Administrator, Region VIII.*

■ 40 CFR part 52 is amended to read 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 TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(60) to read as follows:

#### § 52.2320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(60) Revisions to the Utah State Implementation Plan, Section IX, Part C.7, "Carbon Monoxide Maintenance Provisions for Salt Lake City," as submitted by the Governor on October 19, 2004; revisions to UACR R307-110-12, "Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide," as submitted by the Governor on October 19, 2004; revisions to the Utah State Implementation Plan, Section X, "Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as submitted by the Governor on October 19, 2004; and revisions to UACR R307-110-33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as submitted by the Governor on October 19, 2004.

(i) Incorporation by reference.

(A) UACR R307-110-12, as adopted by the Utah Air Quality Board on October 6, 2004, effective December 2, 2004. This incorporation by reference of UACR R307-110-12 only extends to the following Utah SIP provisions and excludes any other provisions that UACR R307-110-12 incorporates by reference: Section IX, Part C.7, "Carbon Monoxide Maintenance Provisions for Salt Lake City," adopted by Utah Air Quality Board on October 6, 2004, effective December 2, 2004.

(B) UACR R307-110-33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as adopted by the Utah Air Quality Board on October 6, 2004, effective October 7, 2004.

[FR Doc. 05-15150 Filed 7-29-05; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-7947-1]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Rhinehart Tire Fire Dump Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Rhinehart Tire Fire Dump Superfund Site (Site), located near Winchester

(Frederick County), Virginia, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, [Palestini.andy@epa.gov](mailto:Palestini.andy@epa.gov), (215) 814-3233.

**Information Repositories:** Comprehensive information about the Site is available for viewing and copying at the site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday, 8 a.m. to 5 p.m.; and, in Virginia, at the Handley Library, 100 West Piccadilly Street, Winchester, VA 22601, (540) 662-9041 ext. 23. Hours of operation are: Monday through Wednesday, 10 a.m. to 8 p.m. and Thursday through Saturday, 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, [Palestini.andy@epa.gov](mailto:Palestini.andy@epa.gov), (215) 814-3233 or 1-800-553-2509.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

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

EPA Region III is publishing this direct final notice of deletion of the

Rhinehart Tire Fire Dump Superfund Site from the NPL.

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

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005, on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, 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. 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 Rhinehart Tire Fire Dump Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action 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 § 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 which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the 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) EPA consulted with the Commonwealth of Virginia on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.
  - (2) The Commonwealth of Virginia has concurred with deletion of the Site from the NPL.
  - (3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.
  - (4) 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 notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date. 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.
- 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 the Site from the NPL:

### *Site History and Characteristics*

#### Land and Resource Use

The Rhinehart Tire Fire Dump Site is approximately 10 acres in size and is located on a much larger residential parcel of land located in a sparsely populated rural area in western Frederick County, Virginia approximately six miles west of Winchester. The upland portion of the Site, where most of the Superfund response work took place, is approximately 5 acres in size. Title of the property which constitutes the Site, as well as the remaining portion of the Rhinehart Farm, is part of the Rhinehart estate. The Site includes the head waters of Massey Run which flows into Hogue Creek and then into the Potomac River.

#### History of Contamination/Response Actions

Between 1972 and 1983, the operator (also the site owner) used the ravine behind his home as a tire storage area. During the course of his business, it is estimated that as many as twenty-five million tires were handled by the operator. Most of the tires were sold for re-tread and others for dock linings, etc. The remainder were stored in the ravine.

On October 31, 1983, a fire broke out in the tire storage area, and engulfed an estimated 5 to 7 million tires that were being stored at the site at that time. Due to the magnitude of the fire, state officials requested assistance from EPA. The fire was brought under control within a few days, but continued to smolder for six months. An investigation revealed that the fire was caused by an arsonist.

The burning of the tires caused a release of contaminants and the melting and pyrolysis of the tires produced a hot oily substance. Chemically, the oily tar contained benzene, ethylbenzene, toluene, anthracene, naphthalene, pyrene, cadmium, chromium, nickel,

and zinc. The fire posed an imminent and substantial threat to human health and the environment through the release of airborne contaminants, the release of hazardous substances to Massey Run, Hogue Creek, and the Potomac River, as well as the fire threat to the surrounding forest.

Initially, EPA constructed a catch basin to trap the free-flowing oily substance as it began to seep out of the edge of the tire pile and into Massey Run. However, because of a higher than estimated flow rate, a second pond (later named Dutchman's Pond) was constructed down-slope from the burn area. Dutchman's Pond was constructed as a lined, 50,000 gallon pond in mid-November 1983. Approximately 800,000 gallons of oil product were eventually collected, removed from the site, and recycled as fuel oil.

To address the long-term cleanup, the site was placed on the National Priorities List (NPL) on June 10, 1986. EPA split the remedial activities into three operable units. The purpose of Operable Unit 1 (OU-1) was to control the off-site migration of contaminants and to re-stabilize the area. The purpose of OU-2 was to decommission Dutchman's Pond. The purpose of OU-3 was to address site-wide contamination.

Aquatic toxicity was identified in the OU-1 Remedial Investigation as the principal environmental concern at the site. Contaminated runoff from the site was found to be the main contributor to the chronic and acute toxicity observed in surface water samples taken from locations downstream of the site. Zinc, detected at levels exceeding the ambient water quality, was thought to be the primary contributor of risk to aquatic life. EPA selected an interim remedy in the OU-1 Record of Decision (ROD) dated June 30, 1988, with the Remedial Action Objective (RAO) of reducing or eliminating the continued migration of contaminants off-site. The slopes were stabilized by covering them with shotcrete (a concrete-like substance) and storm sewers were constructed to transport the collected surface water to Rhinehart's Pond. The dam at the pond was raised ten feet to enable gravity settling of the collected water. A water treatment plant was installed when it was determined that gravity settling alone would not meet the effluent standards set by the Virginia Water Control Board.

The RAO for OU-2 was to eliminate the immediate threat of release of contaminants from Dutchman's Pond to Massey Run. Dutchman's Pond posed an imminent threat to the aquatic life in Massey Run because only six inches of

freeboard remained. Samples taken from the pond verified surface water and sediment contamination; Again, zinc was the primary contributor of aquatic risk. The remedy selected for OU-2, in the September 29, 1992 ROD, was clean closure of Dutchman's Pond, including: transporting the surface water to Rhinehart's Pond for eventual treatment; solidification of the sediment; and, off-site disposal of the solidified sediment, pond liner, and the soil surrounding the pond which exceeded 50 mg/kg zinc.

Because the previous operable units focused on the immediate threats posed by the contamination at the site, EPA evaluated long-term threats as part of OU-3. The OU-3 Remedial Investigation consisted of site-wide sampling to characterize and identify potential ground water, soil, surface water, and sediment contamination from the fire. Residential well and spring samples analyses showed concentrations below Federal Maximum Contaminant Levels (MCLs). Sediment analyses showed numerous inorganics in Rhinehart's Pond (such as arsenic, cadmium, copper, lead, mercury, nickel, selenium, and zinc) and Massey Run and Hogue Creek (such as copper, cyanide, iron, and zinc). Although the results of the OU-3 human health risk assessment indicated a potential risk associated with exposure to inorganics in the surface soil, subsurface soil, and ground water, a background study indicated that the levels detected were statistically comparable to background levels. As such, these media did not require remediation and were not considered when remedial action objectives were developed. The only RAO developed for human health was the potential risk associated with ingestion of fish from Hogue Creek, due to potential noncancer hazards above recommended levels.

An Ecological Risk Assessment was performed to determine the risk or harm to ecological resources from exposure to contaminants from the Site, including toxicity evaluation of the sediment in Rhinehart's Pond and Massey Run. Of all the metals calculated to pose a potential risk, zinc was determined to pose the highest risk to the ecological receptors at the Site, and was determined to be the driver of the ecological risk found at the Site. In summary, the potential adverse impacts on ecological receptors in Rhinehart's Pond and Massey Run is associated with zinc in the sediment and cyanide and iron in the surface water.

The OU-3 ROD, issued on September 29, 2000, provided for the third and final phase of the long-term cleanup. The OU-3 RAOs were to: Prevent

ecological exposure to levels of zinc exceeding 1,600 mg/kg; prevent migration and leaching of contaminants in the sediment that may contaminate the surface water in Rhinehart's Pond, Massey Run, and Hogue Creek; and, decommission the previously constructed facilities. This remedy consisted of: treating the remaining surface water in Rhinehart's Pond; solidification of the sediments in Rhinehart's Pond that exceeded 1,600 mg/kg zinc; removal of the sediments in Massey Run which exceeded 1,600 mg/kg zinc; offsite disposal of all sediments; and, decommissioning the previously constructed facilities, including covering the shotcrete with soil, removing the surface water collection system, the treatment plant, and the dam at Rhinehart's Pond, as well as re-grading and re-vegetating the site and restoring the stream where Rhinehart's Pond was located.

#### Cleanup Standards

The remedial action cleanup activities at the Rhinehart Tire Fire Dump site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The RAO for OU-1 (reducing or eliminating the continued migration of contaminants off-site) was met when EPA stabilized the site by placing shotcrete on the fire damaged slopes and diverted the surface water through construction of a collection sewer. Effluent limits set by the Virginia Water Control Board were met prior to discharge of the water to Massey Run, as evidenced by the effluent sampling forms, after construction of the water treatment plant.

The RAO set for OU-2 was met through the clean closure of Dutchman's Pond. All of the surface water was diverted to Rhinehart's Pond for treatment through the water treatment system and the sediment was solidified prior to offsite disposal. During excavation of the soil surrounding the pond, EPA performed confirmatory sampling to determine whether the cleanup standard of 50 mg/kg of zinc was met. However, the soil removal had to be stopped when it was feared that any further excavation could undermine the dam at Rhinehart's Pond. EPA issued an Explanation of Significant Differences, with the concurrence of the Virginia Department of Environmental Quality, to formalize this decision to stop the excavation of soil.

The OU-3 RAOs were to: Prevent ecological exposure to levels of zinc exceeding 1,600 mg/kg; prevent migration and leaching of contaminants in the sediment that may contaminate

the surface water in Rhinehart's Pond, Massey Run, and Hogue Creek; and, decommission the previously constructed facilities. These RAOs were met by treating the surface water in Rhinehart's Pond; removing, solidifying, and disposing of the sediment in Rhinehart's Pond which exceeded 1,600 mg/kg of zinc; removing and disposing of the sediment in Massey Run which exceeded 1,600 mg/kg of zinc; and decommissioning the facilities previously constructed. Monitoring was performed on the treatment plant discharge to ensure the effluent standards were met. Confirmatory sampling was performed to ensure that the cleanup level was achieved in Rhinehart's Pond. Confirmatory sampling was not performed for the sediment removal in Massey Run because EPA identified all of the stream pools in which sediment had to be removed and all of the sediment was removed in each of these pools.

#### *Operation and Maintenance*

The facilities constructed under OU-1 were operated and maintained by EPA from 1992 to 2002. The Commonwealth of Virginia contributed its ten percent share of these operation and maintenance costs through a Superfund State Contract.

All of the facilities constructed under OU-1 were decommissioned as part of the OU-3 Remedial Action, leaving nothing left to operate or maintain. In addition, re-vegetation of the site (performed as part of OU-3) was designed to return the site to a natural condition. The trees, bushes, and grass seed mixtures used were selected by the U.S. Fish & Wildlife Service because they are indigenous to the area. During the June 21, 2004 inspection, the U.S. Fish & Wildlife Service verified that significant plant and tree species had taken root within the stream area and along the stream banks, with good plant diversity and healthy condition.

#### *Five-Year Review*

CERCLA requires a five-year review of all sites where the remedial action results in hazardous substances, pollutants or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. EPA has completed two Five-Year Reviews for this Site. The first was completed on September 12, 1997 (while clean-up was ongoing) and the second on November 6, 2002 (just at the end of the OU-3 Remedial Action).

Since all of the remaining contaminated media (surface water and sediment from Rhinehart's Pond and sediment from Massey Run) was

removed from the Site as part of the OU-3 Remedial Action, there are no hazardous substances, pollutants or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. Thus, no additional Five-Year reviews will be conducted. Further, there are no institutional controls needed for this Site.

#### *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 Site docket which EPA relied on for recommendation of the deletion of the Site from the NPL are available to the public in the information repositories.

#### **V. Deletion Action**

EPA, with the concurrence of the Commonwealth of Virginia through the Department of Environmental Quality, has determined that all appropriate responses under CERCLA have been completed at the Site, and that no further response actions 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 of a notice of intent to delete. This action will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005, on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and EPA will also 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 26, 2005.

**Donald S. Welsh,**

*Regional Administrator, U.S. EPA Region III.*

■ For the reasons set out in the preamble, 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 Virginia ("VA") by removing the site name "Rhinehart Tire Fire Dump."

[FR Doc. 05–15151 Filed 7–29–05; 8:45 am]

**BILLING CODE 6560–50–P**

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 050510127–5190–02; I.D. 050305D]

**RIN 0648–AS35**

#### **Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab Fishery Management Plan**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab (Red Crab) Fishery Management Plan (FMP). This final rule modifies the existing annual review and specification process by allowing specifications to be set for up to 3 years at a time, and continues the current target total allowable catch (TAC) of 5.928 million lb (2.69 million kg) and fleet days-at-sea (DAS) of 780 fleet DAS for fishing year (FY) 2006 and FY2007. The purpose of this action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry.

**DATES:** This rule is effective August 31, 2005.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and Stock Assessment and Fishery Evaluation (SAFE) Report, are available from Paul J. Howard,