

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

[FRL-7802-8]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site from the National Priorities List (NPL). Specifically EPA intends to delete 23 residential properties within the Davenport and Flagstaff Smelters Superfund Site located in Salt Lake County, Utah.

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 Substance Pollution Contingency Plan (NCP). The EPA is publishing this direct final notice of partial deletion with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), because the EPA has determined that all appropriate response actions under CERCLA have been completed at these properties and, therefore, further remedial action pursuant to CERCLA is not appropriate.

This partial deletion pertains only to the 23 properties listed in section IV of this document and does not include any other portion of the Davenport and Flagstaff Smelters Superfund Site. The remainder of the Site will remain on the NPL and response activities will continue.

**DATES:** This direct final partial deletion will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

**ADDRESSES:** Comments may be mailed to Britta Copt, Community Involvement Coordinator (80CPI), U.S. EPA Region 8,

999 18th Street, Suite 300, Denver, CO 80202-2466, (303) 312-6229.

*Information Repositories:*

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202, Hours: Monday—Friday, 8:30 a.m. to 4:30 p.m.

Sandy Branch, Salt Lake County Library, 10100 S Petunia Way, Sandy, UT 84092, Hours: Monday—Thursday, 10 a.m. to 9 p.m.; Friday—Saturday 10 a.m.—6 p.m.; and

Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, Utah, 84116, (801) 536-4400, Hours: Monday—Friday, 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Stanley Christensen, Remedial Project Manager (8EPR-SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6694.

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**I. Introduction**

EPA Region 8 is publishing this direct final notice of partial deletion of the Davenport and Flagstaff Smelters 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 or areas within 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 non-controversial and routine, EPA is taking it without prior publication of a notice of intent to partially delete. This action will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004 on this notice or the parallel notice of intent to partially 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 document, EPA will publish a timely withdrawal of this direct final notice of partial 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 partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting, or partially deleting, sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the residential properties that EPA intends to delete from the Davenport and Flagstaff Smelters Superfund Site and demonstrates how they meet the partial deletion criteria. Section V discusses EPA’s action to partially 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, or partially delete, a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;
- ii. Section 300.425(e)(1)(ii): All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response action under CERCLA has been implemented and no further response action by responsible parties is appropriate; or
- iii. Section 300.425(e)(1)(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 partially deleted from the NPL, if hazardous substances, pollutants or contaminants remain in place at the deleted portion of the 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 be conducted at least every five years after the initiation of the remedial action at the deleted portion of the 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 (or portion thereof) deleted from the NPL, the deleted area or site may be restored to the NPL without application of the hazard ranking system.

### III. Deletion Procedures

The following procedures apply to the partial deletion:

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

(2) The State of Utah concurred with the partial 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 partially delete was 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 partially delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion of these properties 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 partial deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion or partial deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion or partial 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. Section 300.425 (e)(3) of the NCP governs partial deletion of a site from the NPL in the same manner.

While EPA does not believe that any future response action within the residential properties included in this partial deletion will be needed, if future conditions warrant such action, the deleted areas will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of the remaining portions of the Davenport and Flagstaff Smelters Superfund Site, which is not proposed for deletion and remains on the NPL.

### IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the portions of the Site referred to above from the NPL.

#### A. Site Location

The Davenport and Flagstaff Smelters Superfund Site consists of properties located at the mouth of Little Cottonwood Canyon, which is located approximately 15 miles southeast of Salt Lake City, in Salt Lake County, Utah. The Davenport Smelter was located on the southern side of the canyon, near Little Cottonwood Canyon Road. The Flagstaff Smelter was located north of Little Cottonwood Creek. Surrounding these smelter sites are residential properties, which have been grouped into the Residential Operable Unit (ROU) of the Davenport and Flagstaff Smelters Superfund Site. The Site was divided into a Residential Operable Unit and a Non-Residential Operable Unit in order to more efficiently remediate the Site (see section IV B). The real property addresses of the 23 properties to be deleted are:

9767 South Little Cottonwood Place  
 9516 Glacier Lane  
 9600 Glacier Lane  
 3541 N. Little Cottonwood Canyon Road  
 3742 N. Little Cottonwood Canyon Road  
 3744 N. Little Cottonwood Canyon Road  
 3623 Little Cottonwood Lane  
 3641 Little Cottonwood Lane  
 3652 Little Cottonwood Lane  
 3661 Little Cottonwood Lane  
 3695 Little Cottonwood Lane  
 3698 Little Cottonwood Lane  
 3736 Little Cottonwood Lane  
 3895 Little Cottonwood Lane  
 9795 Little Cottonwood Lane  
 9815 Little Cottonwood Lane  
 9751 Little Cottonwood Lane  
 9752 Little Cottonwood Lane  
 9764 Little Cottonwood Lane  
 9751 Old Ranch Place  
 9759 Old Ranch Place  
 9715 Quail Ridge Road  
 9753 Quail Ridge Road

#### B. Site History

The Davenport and Flagstaff Smelters Superfund Site includes the remains of three old smelters from the late 1800s. The Davenport Smelter was constructed on the south side of Little Cottonwood Creek as was the McKay Smelter. The Flagstaff Smelter was located less than a quarter mile to the north, near 9500 South Wasatch Boulevard, on the north side of Little Cottonwood Creek.

Airborne particles from the smelter's smokestacks included lead and arsenic used in the smelting process. These contaminants were deposited in soils

around the smelters. Slag, which is the waste product from the smelting process, was also left behind. The UDEQ and the Salt Lake County Health Department were alerted when a local gold prospector reported colored soils indicative of early smelting activities.

In 1992, EPA conducted on-site soil analyses and found high levels of lead and arsenic. Based on the results of the 1992 sampling efforts, a Preliminary Assessment (PA) was performed in August 1992. Focused site inspections were performed for the Davenport and Flagstaff Smelters Site in 1994. Additional sampling activities were conducted in June 1994 near the former smelter sites in order to determine the distribution of the soil contamination dispersed away from the source area via air, surface water, or groundwater pathways. It was determined that the possibility of release was likely due to the proximity of surface water, proximity of the groundwater recharge area, and the commonly observed dispersion of windblown dust.

A Site Characterization of the residential areas near the two smelters was performed in 1998. A total of 740 samples were collected from 32 residences near the locations of the two smelters. Surface and subsurface samples were collected in the general area of the former smelter locations in order to provide information regarding the source, nature, and extent of arsenic and lead contamination. Lead and arsenic contamination was found in surface and subsurface soils in the residential areas surrounding both of the smelter sites at concentrations well above risk-based screening levels established by the EPA. EPA proposed the Site for the National Priorities List in January 2000.

There are two operable units at the Site. The Residential Operable Unit (ROU) addresses soil contamination on residential properties in the areas near the locations of the former smelters. About 500 people reside within these areas. The Non-residential Operable Unit (NROU) addresses soil contamination in the undeveloped and non-residential properties surrounding the smelter sites.

The residential properties to be deleted are located within the ROU. The owners of 9767 South Little Cottonwood Place performed a voluntary removal of soil with levels of arsenic and lead above established action levels for the Site. After the removal was complete and documented, the owners received a no further action letter from EPA. The owners of the 22 other properties were issued no further action letters based on

the results of the Site risk assessment and the characterization study.

### C. Characterization of Risk

A Baseline Risk Assessment (BLRA) was performed for the Davenport and Flagstaff Smelters Site by the EPA as part of the Site Characterization to determine if risks to human health associated with the contamination identified in previous investigations were sufficient to warrant remediation. The findings of the BLRA indicate that ingestion of arsenic and lead contaminated soils presents the primary health-threatening exposure pathway and presents an unacceptable risk to current and future residents of the Site. Speciation tests were performed on site soils to determine which forms of arsenic and lead were present. Certain types of heavy metal compounds are more available for uptake into the human body. Most of the lead in the contaminated soil appears to be in the form of lead carbonate, lead arsenate and metal bearing iron and manganese oxides. Most of the arsenic in the contaminated soil was found to be in the form of lead arsenate. Lead carbonate and lead arsenate are considered extremely bioavailable for uptake into the human body.

After a thorough review of pertinent data, EPA has identified 10 ug/dL of blood lead as the concentration level at which adverse health effects begin to occur. Furthermore, EPA has set a goal that there should be no more than a 5% chance that a child will have a blood lead concentration above that level. Likewise, the Centers for Disease Control (CDC) has established a guideline of 10 ug/dL of blood lead in preschool children. This is believed to prevent or minimize cognitive deficits associated with lead.

The health effect of chief concern for exposure to arsenic is increased risk of cancer. Because cancer is a chronic disease associated with long-term exposure, the appropriate exposure unit is the area over which a resident is exposed over the course of many years. EPA typically considers risks below one in one million to be so small as to be negligible and risks above 100 in one million to be sufficiently large that some sort of action or intervention is usually needed. Average risk estimates associated with arsenic contaminated soils in the ROU ranged from 2 to 10 in one million, and reasonable maximum exposure (RME) risk estimates range from 20 to 100 in one million. A joint risk management decision was made by UDEQ and EPA to use the level for 100 cancers in one million as the action level for arsenic at the Site.

Ecological risk was not specifically evaluated for the ROU due to the residential setting. In such a setting, risk to residents generally exceeds any ecological risks, and as such, any remediation required to abate human health risk will abate any ecological risks. Ecological risks for the entire site will be evaluated in conjunction with response actions at the NROU.

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

A Site Characterization Report was completed in February 2000 and the Remedial Investigation (RI) was completed in October 2001. These studies were conducted to further characterize contaminated soil at residential properties surrounding the two smelters. The Contaminants of Concern (COCs) identified by UDEQ and EPA for the ROU are arsenic and lead. Other heavy metals are present at elevated levels in site soils; however, the levels of these metals were not considered harmful to human health. Health based clean up goals of 600 mg/kg of lead and 126 mg/kg of arsenic have been established for the Site. Toxicity Characteristic Leaching Procedure (TCLP) analysis was performed to determine hazardous characteristics of contaminated soil. The results of the TCLP analysis indicated high levels of lead and arsenic in the soil, and that the lead in the soil was fairly leachable. It was estimated that 80% of the soil may constitute hazardous waste and require treatment before disposal. It is unlikely that ground water has been impacted by the contamination and steep slopes pose minimal risk of exposure and will not be cleaned up. Twenty properties contain known contamination that requires cleanup.

A Focused Feasibility Study evaluating possible remedies for these properties was completed in December 2001. Three remedial alternatives were selected for evaluation: Alternative 1: No Action; Alternative 2: Excavation and disposal of all contaminated soil (Cost = \$11,950,000); Alternative 3: Excavation of contaminated soil under non-native vegetation and soil cover around native vegetation (Cost = \$9,717,000).

### E. Record of Decision Findings

The selected remedy agreed upon by the EPA and UDEQ for the Residential Operable Unit was Alternative 2, excavation and disposal of all contaminated soil. This decision was made after issuance of the Proposed Plan, which describes the remedial alternatives considered for the Site and the rationale for choosing the selected

remedy, and review of the public comments submitted on the Proposed Plan. Soils are to be excavated to a depth of 18 inches for all properties recommended for remediation that have soil-lead levels exceeding 600 mg/kg and arsenic levels exceeding 126 mg/kg. Properties with principle threat wastes, which are contaminants that are either highly toxic or highly mobile, may be excavated to depths greater than 18 inches. Hand excavation will be conducted around affected areas of native vegetation. Excavated soils will be disposed at an appropriate disposal facility. Following excavation, clean backfill and topsoil will be imported. Non-native vegetation that is removed will also be replanted. The interiors of all buildings located on remediated properties will be cleaned to remove dust, and institutional controls will be developed and implemented for any contamination left in place on properties recommended for remediation.

### F. Response Actions

Twenty residential properties require soil remediation. Four of the twenty properties, due to highly elevated concentrations of lead and arsenic in soil, are being addressed pursuant to an action memorandum for time critical removals, dated April 22, 2004. The remaining 16 properties will be addressed either pursuant to the April 2004 action memorandum or pursuant to the September 2002 Record of Decision. The cleanup and remediation standards are identical for both response actions.

No waste above action levels was identified on the 23 residential properties proposed for deletion from the Site, with the exception of the 9767 South Little Cottonwood Place property. All soils contamination above action levels was removed from this property, allowing unlimited use and unrestricted exposure. No five-year reviews will be required for these 23 properties since the properties are available for unlimited use and unrestricted exposure.

### G. Cleanup Standards

Cleanup standards for the ROU were arrived at through the use of health-based goals. Based on the results of the BLRA, a risk management decision made by the UDEQ and EPA established action levels of 600 mg/kg for lead and 126 mg/kg for arsenic in residential surface soils for properties within the ROU. The 600 mg/kg action level for lead was based on a target such that no child under the age of seven has more than a 5 percent chance of exceeding a

blood lead concentration of 10 micrograms of lead per deciliter of blood. The 126 mg/kg action level for arsenic was derived from a target cancer risk level of 10<sup>-4</sup>.

**H. Community Involvement**

The RI and FFS reports and the Proposed Plan for the Davenport and Flagstaff Smelters Superfund Site were made available to the public June 10, 2002. A public comment period was held from June 10, 2002 to August 22, 2002. In addition, a public meeting was held on June 20, 2002 to present the Proposed Plan. A response to the comments received on the Proposed Plan is included in the Responsiveness Summary, which is part of the Record of Decision (ROD).

Public participation activities have been satisfied as required in Sections 113(k), and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617. Documents in the deletion docket, which EPA relied on for recommendation of the partial deletion from the NPL, are available to the public in the information repositories.

**V. Partial Deletion Action**

The EPA, with concurrence of the State of Utah, has determined that all

appropriate responses under CERCLA for the referenced properties have been completed and that no further response actions under CERCLA are necessary. The properties in this partial deletion either did not require remediation or all soil containing identified contaminants was removed. Therefore, EPA is deleting these 23 properties from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004 on a 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 partial deletion before the effective date of the deletion and it will not take effect. EPA will simultaneously prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

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

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

Dated: July 28, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

■ 1. The authority citation for Part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under Utah for "Davenport and Flagstaff Smelters" to read as follows:

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

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>a</sup>
UT	Davenport and Flagstaff Smelters	Sandy City	P

<sup>a</sup> \* \* \*

P = sites with partial deletion(s).

[FR Doc. 04–18966 Filed 8–19–04; 8:45 am]  
BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 25**

[IB Docket No. 02–34; FCC 04–147]

**Satellite Licensing Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rule revisions to reduce the amount of the bond that satellite licensees are required to file when they are issued their licenses. These rule changes are intended to reduce disincentives against filing

satellite license applications proposing new or innovative services.

**DATES:** Effective September 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1539 or via the Internet at [steven.spaeth@fcc.gov](mailto:steven.spaeth@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This summary of the Commission's *First Order on Reconsideration and Fifth Report and Order*, IB Docket No. 02–34, FCC 04–147, adopted June 22, 2004, and released July 7, 2004. The complete text of this *First Order on Reconsideration and Fifth Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from

the Commission's duplicating contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail <http://www.BCPIWEB.com>.

*Regulatory Flexibility Analysis:* In this *Fifth Report and Order*, the Commission adopts revisions to the current interim bond amounts. Those bond amounts are now \$3 million for each GSO satellite and \$5 million for each NGSO constellation as the required bond amounts on a going-forward basis. In addition, in this *Fifth Report and Order*, the Commission considered and rejected giving all satellite licensees the option of creating an escrow account rather than posting a bond. The effect of these rule revisions is to reduce the administrative burdens of space station licensees. We expect that this change