

### J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Montana?

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

A. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Montana:

- a. Blackfeet Indian Reservation.
  - b. Crow Tribe of Montana Indian Reservation.
  - c. Flathead Indian Reservation.
  - d. Fort Belknap Indian Reservation.
  - e. Fort Peck Indian Reservation.
  - f. Northern Cheyenne Indian Reservation.
  - g. Rocky Boy's Indian Reservation.
- B. Any land held in trust by the U.S. for an Indian tribe, and

C. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

### K. What is Codification and is EPA Codifying Montana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart BB for this authorization of Montana's program until a later date.

### L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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 document 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 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). This action will be effective November 29, 2005.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-reference, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 22, 2005.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 05-19619 Filed 9-29-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7977-6]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Deletion of the Batavia Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, announces the deletion of the Batavia Landfill Superfund Site (Site), located in the Town of Batavia, Genesee County, New York, from the National Priorities List (NPL) and will consider public comment on this action.

The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated

pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. This Direct Final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that potentially responsible parties have implemented all appropriate response actions required. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health or the environment.

**DATES:** This direct final deletion will be effective November 29, 2005 unless EPA receives significant adverse comments by October 31, 2005. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Michael Walters, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007-1866.

*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 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007-1866, (212) 637-4308,

Hours: 9 a.m. to 5 p.m., Monday through Friday;

Batavia Town Hall, 3833 West Main Street Road, Batavia, New York 14020, Telephone Number (585) 343-1729, Hours: 9 a.m. to 8 p.m., Monday through Friday.

Richmond Public Library, 19 Ross Street, Batavia, New York 14020, Mon., Tues., Thurs. 9 a.m. to 9 p.m., Wed. 9 a.m. to 6 p.m., Fri. 9 a.m. to 5 p.m. Closed on Saturday and Sunday, Telephone (585) 343-9550.

**FOR FURTHER INFORMATION CONTACT:** Michael Walters, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 20th Floor, New York, New York 10007-1866, (212) 637-4279; Fax Number (212) 637-4284; E-mail address: [Walters.Michael@EPA.GOV](mailto:Walters.Michael@EPA.GOV).

**SUPPLEMENTARY INFORMATION:**

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion

**I. Introduction**

EPA Region 2 announces the deletion of the Batavia Landfill Superfund Site from the NPL. The EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health, welfare, or the environment. As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at the deleted site warrant such action.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. This action will be effective November 29, 2005 unless EPA receives significant adverse comments by October 31, 2005 on this action or the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period, EPA Region 2 will publish a timely withdrawal of this Direct Final Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if 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 explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Batavia Landfill Superfund Site and demonstrates how it meets the deletion criteria.

**II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, shall consider whether any of the following criteria have been met:

- i. Responsible parties or other parties have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further 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, implementing 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. 9261(c) requires that a subsequent review of the site be conducted at least every five years after initiation of the remedial action at the deleted site to ensure that the action remains protective of human health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Based upon Section 300.425(e)(3) of the NCP, 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. EPA proposes to delete this Site because potentially responsible parties have implemented all appropriate response actions.

**III. Deletion Procedures**

The following procedures were used for the intended deletion of this Site:

(1) The Site was listed on the NPL in September 1983.

(2) In August 1984, EPA entered into an Administrative Order on Consent with NL Industries for the performance of the Remedial Investigation/Feasibility Study (RI/FS) for the Site.

(3) The RI Report was completed in 1992, the FS Report in 1994.

(4) On March 31, 1993, EPA signed a Record of Decision (ROD) selecting an interim remedy for the Site which required the extension of the municipal water supply system to residents affected or potentially affected by the Site.

(5) On September 21, 1993, EPA issued a Unilateral Administrative Order to the Potentially Responsible Parties (PRPs) directing them to implement the interim remedy.

(6) On January 30, 1996, EPA formally approved the completion of the extension of the municipal waterline system and connection of the homes.

(7) On June 6, 1995, EPA issued a ROD which selected a final remedy for the Site which included engineered and institutional controls.

(8) The first Five-Year Review was signed by EPA on June 30, 2000.

(9) On July 10, 2003, EPA determined that the engineered controls had been constructed. A final Remedial Action Report was approved on September 26, 2003.

(10) In June 2005, institutional controls were recorded with the Genesee County Register of Deeds.

(11) The EPA consulted with the NYSDEC on the deletion of this Site and NYSDEC concurred with the deletion of

the Site from the NPL on September 13, 2005.

(12) Concurrently with the publication of this Direct Final Deletion, a parallel Notice of Intent to Delete has been published today in the Notice section of the **Federal Register**. Notices are also being published in local newspapers and appropriate notice is being provided to federal, state, and local government officials and other interested parties.

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

If no significant adverse comments are received, the Site will be deleted. If significant adverse comments are received within the 30-day public comment period on this action, EPA will publish a timely notice of withdrawal of this deletion before its effective date. EPA will prepare, if appropriate, 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 appropriate enforcement actions.

#### IV. Basis for Site Deletion

The following summary provides a brief description and actions taken at the Batavia Landfill Superfund Site which provides the Agency's rationale for recommending deletion of the Site from the NPL.

The Batavia Landfill Superfund Site (the Site or the Landfill) is located in the Town of Batavia, Genesee County, approximately three miles west-northwest of the City of Batavia, New York. The Site is approximately 35 acres in area and is bounded to the north and portions of the east by the Galloway Swamp, to the east by the Town's former Sanitary Landfill (now closed), to the south by Harloff Road (the New York State Thruway is approximately 200 feet south of the Landfill), and to the west by vacant property. The Town of Batavia owns the Site and the adjoining sanitary landfill to the east.

The Landfill accepted wastes, including industrial wastes, for on-site disposal from 1968 until 1980, when the NYSDEC declared the property an open dump based on noncompliance with surface water criteria (40 CFR Part 257). Poor housekeeping practices and the disposal of industrial and hazardous wastes resulted in the closure of the Landfill.

During the active years of waste management approximately 800,000 cubic yards of industrial wastes have been disposed at the Site. In December 1982, Fred C. Hart Associates, under contract with EPA, conducted a groundwater sampling survey in the area of the Site. Sampling data from on-site monitoring wells revealed the presence of hazardous organic and inorganic chemical constituents (including methylene chloride, 1,1 dichloroethane, and barium) which exceeded New York State and Federal drinking water standards.

On December 20, 1982, the Site was proposed for inclusion on the NPL and was added to the NPL by publication in the **Federal Register** on September 8, 1983 (48 FR 40658).

On August 9, 1984, EPA entered into an Administrative Order on Consent (AOC) with NL Industries, a Potentially Responsible Party (PRP), for the performance of a RI/FS at the Site.

A residential well program conducted by the New York State Department of Health in 1992 at homes in close proximity to the Site revealed levels of contaminants in the wells above the Federal Maximum Contaminant Levels. A subsequent risk assessment performed by EPA revealed that the continued ingestion of the groundwater posed a significant endangerment to the area residents.

On March 31, 1993, EPA signed a Record of Decision (ROD) selecting an interim remedy for the Site which required the extension of the municipal water supply system to residents affected or potentially affected by the Site.

On September 21, 1993, EPA issued a Unilateral Administrative Order to the PRPs directing them to implement the interim remedy outlined in the 1993 ROD. On January 30, 1996, EPA approved the completion of the replacement and/or retrofitting of residential groundwater well piping systems with new piping and appurtenances connecting each home to the waterline.

On June 6, 1995, EPA selected the final remedy: (a) The excavation of approximately 50,000 cubic yards of contaminated soil from the northern area of the Landfill and consolidation of these materials under a landfill cap in the southern area of the Landfill; (b) excavation of approximately 150 drums from the southern area of the Landfill and their off-site treatment and disposal; (c) construction of a cap over the southern region of the Landfill; (d) the restoration of the surrounding wetlands at the Landfill impacted by past waste disposal activities; and, (e)

establishment of institutional controls to preclude certain uses of the property.

In September 1995, EPA issued an AOC for the performance of the remedial design (RD) for the site remedy. The RD was completed in December 1999. The site remedy was modified on September 16, 1999 in an Explanation of Significant Difference (ESD) which called for the excavation and removal of 126,000 cubic yards of contaminated soils from the northern and central areas of the Site, an increase of 76,000 cubic yards of wastes from the previous estimate.

The final landfill cap, constructed in the southern area of the Site, covers an approximate area of 15.5 acres and is consistent with New York State hazardous waste management regulations. Approximately 210,000 cubic yards of excavated wastes from the northern, central and wetland areas of the Site were consolidated under the southern area landfill cap. The landfill cap was constructed with 18 inches of compacted clay, a drainage and leachate collection system, a gas venting system and a 24-inch barrier protection layer of soil and 6 inches of topsoil suitable to maintain vegetative growth.

A perimeter chain-linked fence around the Site, including three access gates, has been installed. Approximately seven acres of waste-impacted wetlands (including some areas of standing water which support a submergent vegetative community) were remediated and restored during the conclusion of remedial construction activities in September and October 2002.

Institutional controls have been put in place at the Site to restrict future activities at the Site that may negatively impact the effectiveness of the implemented site remedy or threaten human health and the environment. These site restrictions include a ban on the construction of drinking water wells and new building structures that may impede the effectiveness of the landfill cap systems.

Implementation of the interim and final remedies have utilized permanent solutions in the effective short-term and long-term abatement of the human health and ecological risks posed by the Site. The final remedy is reducing the toxicity, mobility, and volume of contaminants by reducing infiltration through the landfilled wastes and collecting and treating the leachate. In addition, the final remedy also involved the remediation and restoration of seven acres of wetlands at the Site.

EPA has determined that all appropriate response measures under the Comprehensive Environmental Response, Compensation, and Liability

Act have been implemented and that no further cleanup is required. The Site poses no significant threat to public health or the environment. Consequently, this Site no longer needs to be listed on the NPL; however, this decision does not preclude future actions under Superfund should they become necessary.

A Remedial Action Work Plan (RAWP) for the implementation of long-term operation and maintenance for the landfill cap systems is in place. The Town of Batavia is required to manage the required operation and maintenance (O&M) activities in accordance with the RAWP. Required O&M activities include the long-term implementation of a semi-annual groundwater monitoring program, periodic Site inspections, and regular landfill cap maintenance activities. The inspections are required to ensure and maintain the operational effectiveness and structural integrity of the Site remedy to protect human health and the environment.

Institutional controls consisting of an easement and deed restriction limiting access to the Site and preventing the use of contaminated water as a drinking source were filed with the Genesee County Register of Deeds on June 10, 2005.

Public participation activities for this Site have been satisfied as required by CERCLA Section 113(k), 42 U.S.C. 9613(k), and, CERCLA Section 117, 42 U.S.C. 9617. The RI/FS and the 1993 and 1995 RODs were both subject to the public review process. All documents and information which EPA relied on or considered in reaching the conclusion that this Site can be deleted from the NPL are available for the public to review at the information repositories.

The final remedy implemented at this Site results in contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. In accordance with CERCLA Section 121(c), EPA and/or NYSDEC will conduct a review of this remedy no less often than every five years. A first Five-Year Review Report for the Site was completed in June 2000. EPA has determined that the remedies protect public health and the environment and that they function as intended by the decision documents. All construction activities for the Site required by the final ROD were completed in July 2003. A second Five-Year Review was completed in September 2005.

One of the three criteria for site deletion specifies that a site may be deleted from the NPL if "responsible parties or others parties have implemented all appropriate response actions required." [ 40 CFR

300.425(e)(1) (i)]. EPA, with concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met and therefore, EPA is deleting this Site from the NPL.

#### 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: September 21, 2005.

**Alan J. Steinberg,**

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

■ For the reasons set out in the preamble Part 300 Title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

#### PART 300—[AMENDED]

■ 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 New York (NY) by removing the site name "Batavia Landfill" and the corresponding city designation "Town of Batavia."

[FR Doc. 05–19613 Filed 9–29–05; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7976–8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of partial deletion of the Jacobs Smelter 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 Jacobs Smelter Superfund Site from the National Priorities List (NPL). Specifically EPA intends to delete Operable Unit 3 from the site, comprised only of soils within the Union Pacific Rail Road (UPRR) right-of-way in Tooele 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 to Operable Unit 3 described in section IV of this document and does not alter the status of any other portion of the Jacobs Smelter Superfund Site. Operable Unit 1 was deleted from the NPL in 2001.

**DATES:** This direct final partial deletion will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005. 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 Jennifer Lane, Community Involvement Coordinator, U.S. EPA Region 8 (8OC), 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6813.

#### 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 80202–2466,  
Hours: Monday–Friday, 8:30 a.m. to  
4:30 p.m.

Tooele City Public Library, 128 West  
Vine Street, Tooele, UT 84074, Hours:  
Tuesday–Friday 11 a.m. to 7:30 p.m.;  
Saturday 10:30 a.m. to 6 p.m.

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

**FOR FURTHER INFORMATION CONTACT:** Lisa  
Lloyd, Remedial Project Manager  
(8EPR–SR), U.S. EPA Region 8, 999 18th  
Street, Suite 300, Denver, CO 80202–  
2466, (303) 312–6537.

#### SUPPLEMENTARY INFORMATION:

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