

will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(ii) No later than December 15 of the year preceding the year in which the surveys will be conducted, EPA must receive a copy of the contract with the independent surveyor, proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account, and, if placed into an escrow account, a copy of the escrow agreement, to be sent to the official designated in paragraph (e)(10)(vi) of this section.

(12) *Failure to fulfill requirements.* A failure to fulfill or cause to be fulfilled any of the requirements of this paragraph (e) will cause the option to use the alternative quality assurance requirement under this paragraph (e) to be void *ab initio*.

■ 3. Section 80.1339 is amended by revising paragraph (e)(4) to read as follows:

**§ 80.1339 Who is not eligible for the provisions for small refiners?**

\* \* \* \* \*

(e) \* \* \*

(4) During the period provided under paragraph (e)(2) of this section, and any extension provided under paragraph (e)(3) of this section, the refiner may not generate gasoline benzene credits under § 80.1275(b)(3) for any of its refineries where under § 80.1342 the refiner was previously allowed to defer compliance with the standards in §§ 80.1230(a) and 80.1230(b).

\* \* \* \* \*

[FR Doc. 2010-10915 Filed 5-10-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-2009-0654; FRL-9146-8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II is publishing a

direct final Notice of Deletion of the Asbestos Dump Superfund Site (Site), located in Long Hill Township and Harding Township, New Jersey, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection (NJDEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective July 12, 2010 unless EPA receives adverse comments by June 10, 2010. 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:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2009-0654, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.

- *E-mail:* [hwilka.theresa@epa.gov](mailto:hwilka.theresa@epa.gov): Theresa Hwilka, Remedial Project Manager; [seppi.pat@epa.gov](mailto:seppi.pat@epa.gov): Pat Seppi, Community Involvement Coordinator.

- *Fax:* 212-637-4429.

- *Mail:* Theresa Hwilka, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007; or Pat Seppi, Community Involvement Coordinator, U.S. Environmental Protection Agency, Region II, Public Affairs Division, 290 Broadway, 26th Floor, New York, NY 10007.

- *Hand delivery:* U.S. Environmental Protection Agency, Region II, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-SFUND-2009-0654. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

### Docket

All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828. (212) 637-4308.

**Hours:** 9 a.m. to 5 p.m., Monday through Friday; and at Long Hill Township Public Library, 917 Valley Road, Gillette, New Jersey 07933. (908) 647-2088.

**Hours:** 10 a.m. to 9 p.m., Monday through Thursday. 10 a.m. to 5 p.m., Friday and Saturday. 1 p.m. to 5 p.m., Sunday (Closed on Sundays in July and August).

**FOR FURTHER INFORMATION CONTACT:** Theresa Hwilka, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, New

York, NY 10007, (212) 637-4409, e-mail: [hwilka.theresa@epa.gov](mailto:hwilka.theresa@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

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

#### I. Introduction

EPA Region II is publishing this direct final Notice of Deletion of the Asbestos Dump Superfund site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the 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 maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *July 12, 2010* unless EPA receives adverse comments by *June 10, 2010*. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, 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 Asbestos 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

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will 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 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.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. 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 State of New Jersey prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.
- 2. The New Jersey Department of Environmental Protection has concurred on the 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 is being published in a major local newspaper, *Courier News*. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.
- 4. The EPA placed copies of documents supporting the proposed deletion in the deletion docket and

made these items available for public inspection and copying at the Site information repositories identified above.

5. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

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

#### IV. Basis for Site Deletion

The information below provides EPA's rationale for deleting the Site from the NPL. For each Operable Unit there is a discussion section containing information on the following: (1) Site background and history; (2) remedial investigation and feasibility study (RI/FS); (3) selected remedy; (4) response actions; (5) cleanup goals; (6) operation and maintenance; (7) five year reviews; and (8) community involvement.

The Asbestos Dump Superfund Site (the Site), CERCLIS ID NJD980654149, consists of four separate properties which were addressed in three discrete operable units (OUs). OU1 consists of the Millington site, located in Millington, New Jersey. OU2 consists of the New Vernon Road and White Bridge Road "satellite" sites, both of which are located in Meyersville, New Jersey. OU3 consists of the third satellite site, known as the Dietzman Tract, which is located in Harding Township, New Jersey. The Site was placed on the National Priorities List (NPL) in September 1983 (48 FR 40658).

Given the nature of this Site, this Direct Final Notice of Deletion will summarize the history, remedies and remedial actions taken for each individual OU.

##### OU-1

##### Site Background and History

OU1 consists of the Millington site which is an 11 acre commercial

property located at 50 Division Avenue in Millington, New Jersey. The site is bounded on the west by the Passaic River, on the north by the Millington Train Station, and on the east and south by commercial and private residences, respectively. Currently owned by Tifa Ltd., this parcel was formerly utilized as an asbestos processing plant that had several previous owners. Manufacturing of asbestos products at the Millington site began in 1927 by Asbestos Ltd., which engaged in the fiberization and sale of asbestos until 1946. From 1946 until 1953, the plant was owned and operated by Smith Asbestos, Inc., a manufacturer of asbestos roofing and siding. During this later period, asbestos sediment from water settling ponds was disposed of on-site.

In May 1953, the property was acquired by the National Gypsum Company (NGC), which manufactured cement asbestos siding and roofing sheets at the plant until 1975. During this period, waste products, consisting of broken siding and asbestos fibers were dumped on a five acre area of the property. This included a 330 by 75 foot area (later referred to as the asbestos mound) where predominantly asbestos fibers were disposed. It is estimated that 90,000 cubic yards of asbestos waste was disposed of on-site.

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

RI/FS activities were initiated by NGC in 1986 and completed in 1987. The primary contaminant of concern was asbestos. Soil borings and historical information revealed that the upland portion of site contained broken asbestos tiles and siding, while the asbestos mound was found to contain predominantly asbestos fibers. The upland and asbestos mound portions of the site were covered with varying thicknesses of topsoil; however, exposed areas of asbestos fibers were observed on the slope of the asbestos mound adjacent to the Passaic River. Extensive slope stability analyses indicated that the asbestos mound was relatively stable; however, the slope was unprotected from surface erosion and the potential destabilizing effects of flooding along the Passaic River. Analysis of groundwater samples revealed low concentrations of mercury and asbestos related to disposal activities at the site. Mercury was detected in groundwater in concentrations exceeding drinking water standards in a limited number of samples; however, the limited mercury contamination remained within the footprint of the landfill and did not pose an unacceptable human health risk. As

a result, groundwater alternatives were not evaluated. Asbestos was detected at concentrations substantially below the proposed EPA drinking water standard. The RI and FS reports were completed in September 1988.

#### Selected Remedy

On September 30, 1988, EPA issued a ROD for OU1. The major components of the selected remedy include the following: (1) Installation of a two-foot soil cover on areas of exposed or minimally covered asbestos; (2) installation of a chain-link security fence to restrict access to the asbestos mound; (3) construction of slope protection/stabilization measures along the asbestos mound embankment; (4) construction of surface run-off diversion channels on top of the asbestos mound; (5) operation and maintenance of the remedy; (6) long-term monitoring; (7) institutional controls to restrict on-site groundwater usage and limit development on the asbestos fill areas; and (8) treatability studies of technologies for permanent destruction or immobilization of asbestos.

#### Response Actions

OU1 remedial action activities were conducted pursuant to the 1988 ROD. EPA entered into an Interagency Agreement (IAG) with the U.S. Army Corps of Engineers (USACE) who in turn provided oversight during all remedial activities. USACE contracted IT Corporation (IT) to complete the remedial actions in accordance with the contract documents and all applicable State and Federal regulations.

Mobilization activities began on June 17, 1999 and included the delivery of general materials, initiation of soil erosion and sediment control measures, and clearing and grubbing activities. The primary remedial construction activities included, but were not limited to, the following: (1) Access road construction—completed in November 1999; (2) retaining wall construction for slope stabilization—completed in May 2000; and (3) cap construction operations and site restoration—completed in May 2000. Capping activities consisted of relocating excavated material, closing the asbestos mound, grading the asbestos-containing material (ACM) to the required elevations, installation of a layer of geotextile and geogrid material, and the placement and grading of a two-foot soil cover. A retaining wall was installed at the toe of the asbestos mound for stabilization purposes. The wall is an average of 10 feet in height and 516 feet

long. The Final RA Report for OU1 was approved by EPA in September 2001.

EPA also conducted treatability studies to fulfill the OU1 ROD requirement for evaluating innovative treatment technologies that may be effective in permanently remediating asbestos. Since the issuance of the OU1 ROD, EPA has performed treatability studies on solidification/stabilization and vitrification (thermal treatment resulting in an asbestos-free glass) and has evaluated potential applicability of thermochemical asbestos conversion (destruction) technologies. EPA believes that the OU1 remedy, including the cap constructed over the ACM waste and institutional controls, is protective and will remain protective of human health and the environment. Solidification and stabilization of the ACM was incorporated into the OU2 remedy.

#### Cleanup Goals

The cleanup goal for the Site was to contain the migration of asbestos. The objective was achieved through response actions conducted between June 1999 and June 2000 which included the consolidation of ACM into the landfill area and the construction of the landfill cap.

#### Operations and Maintenance

In September 2001, EPA approved the Final RA Report as well as the 30-Year Operations and Maintenance (O&M) Plan. NJDEP is currently responsible for operation and maintenance activities. The O&M Plan documents the installation of a six-foot high chain link security fence which surrounds the site on its north, east and south limits. Furthermore, the O&M Plan specifies that periodic inspections are conducted of all OU1 design components including the retaining wall, perimeter access fence, capped area, and mowing/pruning of the ACM cover and surrounding areas. Monitoring of surface water and sediment sampling of the Passaic River along with groundwater monitoring in accordance with the New Jersey landfill closure requirements is also included in the O&M Plan. Monitoring and sampling is conducted once every 5 years.

In addition to O&M activities, the OU1 site is protected by institutional controls. A Deed Notice was filed by Tifa Realty, Inc., in the Morris County, New Jersey, Office of the County Clerk, on September 8, 2008 for the OU1 Millington property designated as Block 12301, Lot 1 on the Long Hill Township tax map. The Deed Notice has been filed in Deed Book 21152, Page 508. The type of restrictions placed on the OU1 Millington property significantly limit

any type of intrusion onto the landfill cap thereby restricting on-site groundwater usage and limiting development on the asbestos fill areas. Any future use of the landfill area must be designed to protect the integrity of the components of the landfill.

#### OU-2

##### Site Background and History

OU2 consists of the New Vernon Road and White Bridge Road sites. The OU2 New Vernon Road site is located at 237 New Vernon Road in Meyersville, Long Hill Township, Morris County, New Jersey. The New Vernon Road site consists of approximately 30 acres of land and is currently bounded by the Great Swamp National Wildlife Refuge (GSNWR) to the north, tracts of wooded and wetland areas to the east and south, and New Vernon Road to the west. The property previously included two residences and a large garage structure.

From 1945 through 1980 the privately owned New Vernon Road site was used for farming. From 1968 to 1971, ACM generated by NGC, including asbestos fibers, broken asbestos tiles, and siding, was deposited throughout the site. Large amounts of ACM were deposited in the central portion of the property in a large depression. Asbestos was also detected in other areas of the property.

The White Bridge Road site is located at 651 White Bridge Road in Long Hill Township, NJ. The White Bridge Road site is approximately two miles away from the New Vernon Road site and consists of approximately 12 acres of privately owned land, as well as adjoining property, which is part of the GSNWR, in Meyersville, New Jersey. From 1945 through 1969, the White Bridge Road site had been used for farming. In 1970, the property was purchased by the current residents. From 1970 to 1975, ACM, consisting of asbestos tiles and siding from the NGC, was disposed of on the property. Subsequent to these disposal activities, the current owner converted the property into a horse farm with stables, a horse riding track, and grazing fields. The horse riding track was comprised of large amounts of ACM mixed with soils. ACM had also been detected in other areas of the site.

The remedy for the White Bridge Road portion of OU2 was completed and this portion of the site was deleted from the NPL in February 2002 (67 FR 5955). Therefore, the White Bridge Road portion of the Asbestos Dump Site is not included in this Notice of Deletion.

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

EPA initiated a RI/FS in the fall of 1990 to supplement the NGC RI and fully characterize the extent of asbestos contamination at the OU2 portion of the Site. The RI included a hydrogeological investigation, extensive sampling and subsequent laboratory analysis of subsurface soils, sediments, surface water, groundwater, potable water and air. The data indicated the presence of elevated levels of asbestos in the soil at both the New Vernon Road and White Bridge Road residential properties. With respect to groundwater, sampling results indicated that asbestos was not detected in levels above the analytical detection limit for all groundwater samples analyzed. Asbestos was determined to be present in air sample at both OU2 sites as a result of soil contamination. EPA determined that an immediate removal action was necessary to address the imminent threat posed by the contamination. Removal activities were conducted in the fall of 1990 to temporarily reduce the potential for airborne asbestos fibers and to restrict access. Removal activities included installation of fences, air and soil sample collection, decontamination of the residences, and visual inspection of ACM. RI field work was completed in 1990 and the RI and FS reports were completed in June 1991.

##### Selected Remedy

On September 27, 1991, EPA issued a ROD documenting the remedy for OU2. The ROD documented the remedial actions for both the New Vernon Road property and the White Bridge Road property. The major components of the selected remedy include the following: (1) In-situ solidification/stabilization of asbestos contaminated soils; (2) appropriate environmental monitoring to confirm the effectiveness of the remedy; and (3) implementation of institutional controls to restrict future subsurface activities and assure the integrity of the treated waste.

TRC and TAMS Consultants, Inc. initiated the Remedial Design (RD) in 1991 under contract with EPA. A solidification/stabilization treatability study was performed by TRC as part of the RD. Based upon the results of the treatability study, the solidification/stabilization depth was changed prior to the issuance of the Final Design Report in January 1993 to require that the solidified/stabilized mass be constructed only above the groundwater table. EPA issued an Explanation of Significant Differences (ESD) on October

20, 1993 to modify the remedy specified in the OU2 ROD.

##### Response Actions

Remedial activities were conducted in two phases. Phase I activities at the New Vernon Road site were initiated in August 1994 and were completed in December 1994. Phase I activities included the following: (1) Excavation and consolidation of ACM; (2) in-situ solidification/stabilization of ACM; (3) impermeable cover and perimeter infiltration trench construction; (4) placement of rip rap along the sides of the cap for slope stability protection; and (5) backfill of excavation areas excluding topsoil and seeding. The solidification process was considered complete when the cement mixture had set and quality control sample results indicated that the solidified mass conformed to the specified design criteria. Upon completion of the solidification/stabilization process, the site was graded and a minimum of six inches of soil was placed over the solidified material. The protective cap placed on the solidified soil consisted of several components including six inches of stone screenings, a geomembrane liner, a drainage layer consisting of a geocomposite, a 24 inch layer of common fill and a vegetative layer consisting of six inches of topsoil and grass. After the implementation, air monitoring was performed to demonstrate the effectiveness of this remedy.

The second phase of the remedial action activities was initiated in March 1995 and was intended to include site restoration work such as final grading with topsoil, grass establishment, planting, wetlands restoration, asphalt paving, and demobilization. The second phase was halted when EPA issued a Stop Work Order on March 30, 1995. EPA subsequently issued a Cure Notice, in April 1995, to CDM Federal Programs Corporation (CDM), an EPA contractor, for failure to meet the contract specification for the use of fill at both the New Vernon Road and White Bridge Road properties. The Cure Response cleanup activities at New Vernon Road were initiated in July 1998 and completed by March 1999. The USACE provided oversight of the Cure Response cleanup activities. In September 2000, EPA approved the Remedial Action Report for the New Vernon Road portion of OU2.

##### Cleanup Goals

The cleanup goal for the Site was to contain the migration of asbestos. Asbestos containing materials on the OU2 properties that were either

detected by visual inspection or analytically (having greater than 0.5% asbestos, which is the detection limit of the TEM analytical method) were addressed in the remedy. The objective was achieved through consolidation of ACM, in-situ solidification/stabilization of asbestos contaminated soils, environmental monitoring to confirm the effectiveness of the remedy, and implementation of institutional controls to restrict future subsurface activities and assure the integrity of the treated waste. Response actions for OU2 were conducted between August 1994 and March 1999.

#### Operations and Maintenance

In June 2001, an O&M plan for the New Vernon Road site was finalized. The overall objective of the O&M Plan is to provide for periodic inspection, maintenance, and monitoring to evaluate and maintain the effectiveness of the remedy implemented at the site. The landfill cap, perimeter infiltration trench and environmental monitoring, are the key components of the O&M Plan. Environmental monitoring includes the collection and analysis of groundwater and monitoring of wildlife species from the area around the New Vernon Road site.

In January 2002, EPA, NJDEP and the U.S. Fish & Wildlife Service (FWS) reached an agreement on the terms of the transfer of a portion of the New Vernon Road property to FWS to expand the GSNWR. In September 2002, an approximately 25 acre portion of the New Vernon Road property (Block 225, Lot 30) was formally transferred to FWS and is now in use as part of the Refuge. This Lot also includes the residential structures along New Vernon Road. The remaining five acre portion of the property (Block 225, Lot 30.03), which contains the solidified ACM, was transferred to the State of New Jersey. NJDEP is conducting the O&M activities on the five acre parcel of the property.

Subsequent to the division of the New Vernon Road property between NJDEP and FWS, separate Deed Notices were filed for Block 225, Lots 30 and 30.03. The Deed Notice for Block 225, Lot 30 was filed in the Morris County, New Jersey, Office of the County Clerk on August 20, 2002. The Deed Notice includes a "Limited Subsurface Use Area" which exists within 10 feet of the foundation of the residences. This area is restricted because it could not be fully investigated for the presence of asbestos because such and investigation would have compromised the integrity of the substructure. Digging and excavating more than 12 inches below the surface of the Limited Subsurface Area is

prohibited unless approved by EPA or NJDEP. The Deed Notice for Block 225–Lot 30.03, which pertains to the five acre capped OU2 parcel, was filed in the Morris County, New Jersey, Office of the County Clerk on October 22, 2002. The Deed Notice specifies the restrictions placed on the capped area of OU2. The Deed Notice does not permit any disturbance of the surface or subsurface of the capped area including, but not limited to filling, drilling, excavation, or the removal of topsoil, sediments, rock or minerals, or by construction, planting anything other than grass or wildflowers, or changing the topography in any manner; however, topsoil may be added to make repairs in accordance with the Deed Notice. Changing, damaging or removing the perimeter trench around the solidified mass, the manholes or the monitoring wells is also prohibited.

#### OU–3

##### Site Background and History

OU3 consists of the former Dietzman Tract which is a seven acre parcel of land located in the GSNWR, about two miles southeast of the New Vernon Road portion of the site. The GSNWR, currently owned by the FWS, covers approximately 7,400 acres of swamp, wooded, and wetland areas. The refuge is managed by FWS as a wildlife habitat and for recreational purposes. The Dietzman Tract included the following four discrete areas: (1) Site A—a five acre asbestos contaminated dump; (2) Site B—a half acre dump consisting of refuse and covered with ACM; (3) Unimproved Access Road (UAR)—a road surfaced with ACM which leads to Site A and Site B; and (4) three small refuse areas adjoining Site B (Refuse Areas #1, 3 and 6).

The above mentioned areas of OU3 were used for the disposal of refuse collected from neighboring communities. Along with refuse, ACM and other industrial wastes from the NGC plant in Millington were trucked to the OU3 site for disposal. The disposal of ACM began in 1959 and ended in 1968 when the FWS acquired the property. Approximately 40,000 cubic yards of ACM and refuse were delineated at OU3.

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

The supplemental RI, known as the Phase II RI, for OU3 was needed to fill data gaps remaining from prior investigations to characterize the nature and extent of contamination at OU3. Another goal of the Phase II RI was to collect geotechnical data for evaluation

of remedial alternatives in the FS. RI activities included, but were not limited to, the following: (1) Characterization of the organic and inorganic contaminants and asbestos in the site media; (2) sampling of groundwater from 15 monitoring wells; (3) sampling of surface water; and (4) excavation of drums from Site A.

Early Phase II RI field activities commenced in January 1996. Removal actions were conducted in the Fall of 1996 to address buried drums, and air quality monitoring was completed in December 1996. The Phase II RI report was completed and submitted to EPA in 1997. The report indicated that OU3 was found to contain approximately 36,800 cubic yards of ACM, 3,800 cubic yards of refuse debris, an estimated 207 buried drums at Site A, and areas of metal-impacted soil and ACM. Buried drums located at Site A were removed in September 1997. FWS completed their FS Report in 1997 which outlined general response actions to satisfy the remedial action objectives for OU3 and recommend a remedy.

##### Selected Remedy

On September 8, 1998, EPA issued a ROD for OU3. The major components of the selected remedy include the following: (1) Access improvements; (2) long-term drainage improvements, and short-term erosion control measures; (3) drum removal activities (which were completed in September 1997 as a time-critical, non-emergency removal prior to implementation of the preferred alternative), including post-excavation and waste classification sampling; (4) removal and off-site disposal of soils having lead concentrations greater than 218 mg/kg (completed, Spring 1998); (5) consolidation of Site B ACM into Site A (completed, Spring 1998); (6) placement of a biotic cover over Site A; (7) implementation of institutional controls to ensure the continued integrity of the drainage and cover activities; and (8) assessment of wetland impacts and wetlands restoration.

##### Response Actions

The FWS contracted the USACE to perform remedial design and construction activities. The USACE subcontracted the design and construction activities to IT Corp. A three-phase approach was developed for the remediation of the OU3 areas described in the previous OU3 background section.

Phase 1, addressed the activities including site access improvement, drainage improvement and drum removal from Site A. Access to Site A was improved by upgrading the surface

of the UAR and clearing dense vegetation covering Site A. The site drainage was enhanced by clearing the channel constriction and blockage where the UAR crosses the Old Great Brook Channel northwest of Site A and a culvert system was placed in the channel to maintain vehicle access to Site B and improve site drainage. After drainage improvements were completed, drum excavation and removal, and off-site disposal of the drums and miscellaneous debris was initiated and completed in October 1997. Post excavation sampling confirmed that contaminants in the drums had not been released to the soil and therefore were not released to groundwater above the regulatory standards before or during removal. Phase 1 work was completed in 1997.

The Phase 2 removal action consisted of excavation, removal, and off-site disposal of lead-contaminated soils located at Site B, Refuse Area #1, and Refuse Area #6 (as defined in the OU3 background section). The action was initiated in February 1998 and was completed in May 1998. Removal activities also included the consolidation of ACM from Site B onto Site A.

Phase 3, the final remedial action phase, consisted of the excavation and removal of ACM from the UAR, consolidation of the excavated UAR material to Site A, backfilling the excavated portions of the UAR, and construction of the biotic cap on Site A. Cap construction activities included the installation of an anchor trench on the west side of the landfill, compaction of landfill material, placement of geotextile fabric (woven and non-woven) and placement of geonet for the biotic barrier. Construction of the biotic cap on the Site A landfill was considered to be complete after a final inspection was conducted in September 1999.

The disturbed and created wetlands areas were restored by placing a final soil cover, consisting of six inches of organic sediment, over the areas. The sediment contained a natural seed bank with species indigenous to adjacent wetlands. The progress of wetlands restoration efforts continues to be monitored by FWS.

On September 29, 1999, EPA approved the Final Remedial Action Report for OU3, which signified the completion of OU3 remedial activities.

#### Cleanup Goals

The cleanup goal for the Site was to contain the migration of asbestos. OU3 ROD cleanup activities consisted of drum removal, removal of lead contaminated soils and consolidation

and capping of ACM. The cleanup objective was achieved through the response actions conducted between September 1997 and September 1999.

#### Operations and Maintenance

The O&M Plan for OU3 includes maintenance of the permanent features such as the surface water drainage improvements and the Site A biotic cap. The O&M plan also requires the implementation of a groundwater monitoring program that meets the requirements of the New Jersey Pollutant Discharge Elimination System regulations. FWS is responsible for implementing the OU3 O&M plan.

In addition to O&M activities, FWS has implemented institutional controls at OU3 to ensure the continued integrity of the capped areas. OU3 institutional controls include the following: (1) Restricted access via a gated road; (2) posted signs indicating closed areas; (3) law enforcement presence; (4) altered trail system to divert people from the landfill area; and (5) periodic inspections. The OU3 property is located entirely within the GSNWR. As part of the National Wilderness Area, the remediated OU3 area is protected from development or future land uses that might potentially conflict with the remedial design. Any changes to this designation would be subject to Congressional approval. As such, the land will be managed in perpetuity as wildlife habitat with very limited public use and access insofar as these activities are consistent and compatible with the O&M actions that have been prescribed for the Site.

#### Five Year Review for All Operable Units

The first Five-Year Review was completed for the Site in September 2000. The results of the second Five-Year Review, which was completed in September 2005, indicated that there is no significant off-site migration of contaminants and that the remedies for OU1, OU2 and OU3 are functioning as intended by the respective RODs. Since contaminants remain contained on-site, EPA will continue to conduct statutory five-year reviews of the implemented remedies. The next review is scheduled to be completed by September 2010.

#### Community Involvement for All Operable Units

Community involvement activities for the Asbestos Dump Superfund Site have been conducted in accordance with CERCLA requirements. Public meetings have been held for remedial milestones such as the presentation of the Proposed Plan, RI and FS reports and for the public comment period. Additional

meetings were held with the public and/or stakeholders on an as needed basis throughout the remedial process. Documents comprising the administrative record were made available to the public at the Passaic Township Free Public Library in Sterling, New Jersey. Community notifications were also issued for the site Five-Year Reviews. A more detailed account of community involvement activities may be found in the Asbestos Dump Superfund Site Close Out Report.

#### Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if "all appropriate responsible parties or other persons have implemented all appropriate response actions required" or "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". 40 CFR 300.425(e)(1). EPA, with concurrence of the State of New Jersey through the New Jersey Department of Environmental Protection by a letter dated February 19, 2009, believes these criteria for deletion have been satisfied. Therefore, EPA is proposing the deletion of the site from the NPL. All of the completion requirements from the site have been met as described in the Superfund Final Close-Out Report, dated November 10, 2009. Documents supporting this action are available in the site file and deletion dockets.

#### V. Deletion Action

The EPA, with concurrence of the State of New Jersey through the New Jersey Department of Environmental Protection, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. Therefore, EPA is deleting the site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective July 12, 2010 unless EPA receives adverse comments by June 10, 2010. 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. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

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

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

Dated: April 1, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

■ 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.

■ 2. Table 1 of Appendix B to part 300 is amended by removing “Asbestos Dump, Millington, NJ” from the table.

[FR Doc. 2010–10849 Filed 5–10–10; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 54**

[WC Docket No. 05–337, CC Docket No. 96–45; FCC 10–56]

**High-Cost Universal Service Support, Federal-State Joint Board on Universal Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) defines “sufficient” under section 254(e) of the Communications Act as an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program. The Commission finds that rural rates are “reasonably comparable” to urban rates if they fall within a reasonable range of the national average urban rate. The Commission concludes, on the basis of undisputed empirical evidence in the record, that the current non-rural high-cost support mechanism comports with the requirements of section 254. The Commission also grants, with modifications, the joint petition filed by the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for supplemental

high-cost universal service support for rural residential customers of Qwest, Wyoming’s non-rural incumbent local exchange carrier.

**DATES:** Effective June 10, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7491 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Order on Remand and Memorandum Opinion and Order (Order) in WC Docket No. 05–337, CC Docket No. 96–45, FCC 10–56, adopted April 16, 2010, and released April 16, 2010. The complete text of this document is available for inspection and copying during normal business hours in 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., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission’s Web site at <http://www.fcc.gov>.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**I. Order on Remand****A. The Current Non-Rural Mechanism Comports With Section 254**

1. On remand, the Tenth Circuit directed the Commission to address three issues. First, the court held that the Commission “must articulate a definition of ‘sufficient’ that appropriately considers the range of principles in the text of the statute.” Second, the Commission “must define the term ‘reasonably comparable’ in a manner that comports with its concurrent duties to preserve and advance universal service.” And finally, the court directed the Commission “to utilize its unique expertise to craft a support mechanism taking into account all of the factors that Congress identified in drafting the Act and its statutory obligation to preserve and advance universal service.” With respect to this last mandate, the court stated that “the FCC must fully support its final decision on the basis of the record before it.” We address each of these issues in turn. After careful analysis and

review of the record, we conclude that the non-rural support mechanism, as currently structured, comports with the requirements of section 254 of the Act.

**1. “Sufficient”**

a. An Assessment of Whether Support Is “Sufficient” Must Take Into Account the Entire Universal Service Fund

2. Section 254(e) of the Act provides that Federal universal service support “should be explicit and *sufficient* to achieve the purposes of [section 254].” In the context of determining high-cost support for non-rural carriers, the Commission previously defined “sufficient” as “enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers.” In *Qwest II*, the Tenth Circuit held that the Commission did not adequately demonstrate how its non-rural universal service support mechanism was “sufficient” within the meaning of section 254(e). The court noted that “reasonable comparability” was just one of several principles that Congress directed the Commission to consider when crafting policies to preserve and advance universal service. The court was “troubled by the Commission’s seeming suggestion that other principles, including affordability, do not underlie Federal non-rural support mechanisms.” “On remand,” the court concluded, “the FCC must articulate a definition of ‘sufficient’ that appropriately considers the range of principles identified in the text of the statute.”

3. Congress, in section 254(b) of the Act, set forth a number of principles for the Commission to consider when implementing the universal service policy. These principles include: (1) “[q]uality service should be available at just, reasonable, and affordable rates”; (2) “access to advanced telecommunications and information services should be provided in all regions of the Nation”; (3) “low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications services and information services \* \* \* that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged \* \* \* in urban areas”; (4) “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service”; (5) “[t]here should be specific, predictable and sufficient Federal and State mechanisms to