

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7535-8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Gurley Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site) from the National Priorities List (NPL) and requests public comments on this proposed deletion. The NPL constitutes 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 of 1980 (CERCLA), as amended. The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Site have been successfully executed, that all appropriate Fund-financed responses under CERCLA have been implemented, and that no further response action by responsible parties is appropriate.

DATES: Written public comments concerning this proposed deletion must be received by EPA by August 27, 2003.

ADDRESSES: Comments may be mailed to: Mr. Donn R. Walters, Community Involvement Coordinator (6SF-P), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-6483 or 1-800-533-3508.

Comprehensive information on this Site has been compiled in a public docket which is available for viewing at the Site information repositories:

U.S. EPA Region 6 Library (6MD-II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-6424 or 665-6427; Hours of Operation: 7:30 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

Arkansas Department of Environmental Quality, Attn: Mr. Kim Siew, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682-0855; Hours of Operation: 8 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, P.E., Remedial Project Manager (6SF-AP), U.S. Environmental

Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-8521 or 1-800-533-3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

The U. S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site), Edmondson, Crittenden County, Arkansas, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Gurley Pit Site have been successfully completed. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions at the deleted site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after the publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with NCP § 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In determining whether to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate Fund-financed 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, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the deleted site shall be restored to the NPL without application of the Hazard Ranking System.

The NPL is designed primarily for information purposes and to assist EPA management. Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations.

III. Deletion Procedures

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

(1) All appropriate response actions for the Site under CERCLA have been implemented, and no further action by EPA is appropriate.

(2) The EPA Region 6 has recommended deletion and has prepared the relevant documents.

(3) The State of Arkansas, Arkansas Department of Environmental Quality (ADEQ), has concurred by letter dated October 11, 1999, with the proposed deletion.

(4) Concurrently with this Notice of Intent to Delete, a notice is being published in a local newspaper and is being distributed to appropriate federal, state, and local officials and other interested parties. The local notice announces the 30-day public comment period and the availability of this Notice of Intent to Delete for review.

(5) The EPA has made all relevant documents available in the Site information repositories.

The EPA will consider comments received during the 30-day public comment period before making a final decision concerning the proposed deletion. If necessary, EPA will prepare a Responsiveness Summary to address concerns raised by the comments received during the public comment period. EPA responds to each significant comment and any significant new data submitted during a public comment period. If it is necessary to prepare a Responsiveness Summary, it will be made available to the public at the information repositories, and members of the public may contact EPA Region

6 to obtain a copy of the Responsiveness Summary, when available.

Deletion of a site from the NPL occurs when the Regional Administrator of an EPA region publishes a final notice of deletion in the **Federal Register**.

Generally, the NPL will reflect deletions in the final update following the Notice.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for the proposal to delete the Gurley Pit Superfund Site from the NPL.

Site History and Background

The Gurley Pit Site is located 1.2 miles north of the community of Edmondson, Arkansas, which has a population of 286 residents. It is surrounded on one side by a small residential community and on three sides by farmland. The Site is in Crittenden County, northwest of the intersection of County Road 14, County Road 175, and State Highway 131. The facility is situated in the flood plain of Fifteen Mile Bayou, which is approximately 400 feet south of the Site, and has five residences within a half-mile circular radius.

There are three major ground water aquifers within Crittenden County, which are found at depths of 40 to 200 feet, 300 to 1125 feet, and 1400 to 1700 feet. The deepest aquifer is used for all municipal wells. The middle aquifer is comparatively undeveloped, and the shallow aquifer is used for domestic wells. Due to the water quality, most of the domestic wells found in the shallow aquifer are used for agricultural irrigation purposes. The residences surrounding the Gurley Pit Site obtain their drinking water from the Midway Water Association well located in the deep (1,585 feet) aquifer, which is 2.2 miles southeast of the Site.

The Site originally consisted of one large pit which was excavated for the clay material found in this area. Gurley Refining Co., Inc., subsequently leased the property in 1970 from Robert Caldwell for use as a disposal area. The Site pit was divided into three cells for disposal of sludges from the refining of used oil, with major contaminants including lead, barium, zinc, and polychlorinated biphenyls (PCBs). Waste disposal operations were permitted under specified conditions by the ADPC&E, now known as ADEQ, from 1970 until 1975, when Gurley Refining Co., Inc., notified the State that disposal at the Site had stopped.

There were two releases from the pit in 1978 and 1979 requiring response actions by EPA. It is estimated that as much as 500,000 gallons of oil were

released during the second event. The Site was proposed for inclusion on the NPL in December 1982 and was listed in August 1983. Several attempts were made by EPA to get the potentially responsible parties (PRPs) to conduct the Remedial Investigation, Feasibility Study, Remedial Design, and Remedial Action. However, the PRPs failed to take any action, and Superfund monies were used to perform the needed actions. In 1992, the United States was awarded a judgment against Mr. William Gurley and Mr. Larry Gurley for past response costs associated with the Site and a declaratory judgment for all future costs. The United States is continuing efforts to recover all Site response costs.

Response Actions

After reviewing the results of the Remedial Investigations and Feasibility Studies, EPA issued two decision documents for the Site. The project was divided into source control and ground water operable units. The Enforcement Decision Document, which was signed October 6, 1986, addressed source control and included the following major components:

- Solidification of contaminated sludge, sediments, and soil, and placement of the solidified material in a Resource Conservation and Recovery Act (RCRA) compliant vault located in the north cell, and
- Placement of appropriate monitoring wells, and long-term operation and maintenance (O&M) of the RCRA vault and the monitoring wells.

The ground water operable unit investigation culminated in a Record of Decision (ROD) dated September 26, 1988, and concluded that no further action was necessary provided the source control measures in the Enforcement Decision Document were implemented.

During the Remedial Design of the source control operable unit, it was determined that an insignificant change to the Enforcement Decision Document was desirable from a cost and construction standpoint. The location of the RCRA vault was moved from the north cell toward the south; this was more cost effective because the north cell had approximately 85 percent of the contaminated materials. Using the north cell as a temporary holding cell for all the contaminated material during construction reduced the volume of contaminated material which had to be handled prior to construction of the RCRA vault. This saved EPA and ADEQ the costs of unnecessary handling and reduced the potential for spillage during handling operations. In addition, this

approach allowed EPA to address concerns of ADEQ about the overall height of the RCRA vault by allowing the vault to be spread out over a larger surface area.

In 1992, the EPA began implementation of the Remedial Action pursuant to a Superfund State Contract with ADEQ. EPA Region 6 determined during the Remedial Design phase that this Site represented a potential opportunity for implementation of an affirmative action approach wherein a woman-owned or minority business could conduct the work. Through the direction of EPA, the U.S. Army Corps of Engineers (USACE) entered into negotiations with the Small Business Administration, and a contract was awarded to a minority business, Mobley Contractors, Inc., on July 31, 1992. The Notice to Proceed was issued on September 9, 1992. Mobilization was on October 26, 1992, and full-scale construction commenced on November 13, 1992.

Remedial construction activities were conducted as planned, and no additional areas of contamination were identified. EPA, ADEQ, and USACE conducted a pre-final inspection of the construction at the Site on August 12, 1994, and conducted a final inspection on August 31, 1994. A September 12, 1994, letter from EPA to USACE certified that the Remedial Action construction activities were performed according to the Remedial Design, with only minor modifications.

The Enforcement Decision Document and the ROD also called for monitoring of the ground water; leachate sampling and analysis and removal; and maintenance of the sumps and the perimeter fencing. Six new monitoring wells (MW-A through MW-F) were installed and developed on-site during the Remedial Action, and two existing off-site monitoring wells (MW-30 & MW-31) also were monitored in each of the sampling events. The source control Remedial Action has protected the ground water and human health through containment of the source. Ground water monitoring data for the Site indicates that contaminants from the pit have not migrated through the subsurface into the ground water, supporting EPA's decision not to conduct any separate remediation of the ground water.

After the construction of the RCRA vault, the Site entered the operational and functional phase of the Remedial Action. In September 1995, there was a significant volume of liquid in the detection and collection systems. The ADEQ was concerned that this water indicated the liner was damaged during

landfill construction. Measurements were made which indicated that the water was approximately eight feet in depth, but the total volume of water within the cell was unknown. Due to the fact that pumping activity was principally from the secondary leak detection sump and given the existence of water from construction activities, it was decided that the Site could not be considered to be operational and functional.

Operational and functional is defined in NCP § 300.435(f)(2) as follows:

A remedy becomes "operational and functional" either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

Based on the measurements of water described above, and in accordance with NCP Section 300.435(f)(2), the one-year operational and functional period was extended by the EPA. By means of an interagency agreement with EPA, USACE continued remedial activities at the Site. The USACE secured a contractor and installed a permanent electrical supply box, flow meter, high and low pump limit switches, circuit and wiring modifications for automated water pumping activities, and project signs; USACE also arranged for Site mowing and other related activities. In October of 1995, Halliburton Services was contracted to cut additional slots into the sump pipes using a hydrojet. After the slots were cut, the recharge of the water into the sump pipes increased appreciably.

Pumping operations began May 20, 1996. A contractor, Griffin Electric of West Memphis, Arkansas, installed a control system on one of the pumps in March that would turn the pumps on and off automatically according to the water levels in the sump pipe. A flow totalizer was installed to record the amount of water removed from the landfill. Operational shakedown and verification of system performance were completed on July 11, 1997, and the system ran fully automatically. As of July 29, 1998, the automated system had pumped an additional 16,708 gallons. Pumping by the USACE continued until January 1999, with a decrease in the average pump rate over the course of the USACE-conducted pumping.

The Quality Assurance/Quality Control (QA/QC) program utilized throughout the Remedial Action was sufficient to enable EPA, ADEQ and USACE to determine that the testing results reported were accurate to assure satisfactory completion of the Remedial

Action consistent with the Enforcement Decision Document. All previous sampling results from the Remedial Investigation, Feasibility Study, and Remedial Design are documented in the project files and also followed appropriate QA/QC procedures.

Several types of data were collected over the course of the USACE-conducted operational and functional activities, including recharge rates to the sumps, volumetric data, hydraulic characteristics, ground water elevations, and analytical data. Based upon this data, the final engineering report prepared by USACE concluded that the Gurley Pit landfill cell appears to be operational and functional as designed and constructed. The following items support this conclusion:

- Pumping data demonstrates that the collection system is capable of maintaining less than one foot of head above the bottom liner system.
- Recharge rates into the detection and collection sumps continued to decrease throughout the USACE pumping period, refuting the possibility of a major influx of water table flow and/or recurring rainwater into the cell during or between the pumping events.
- The volume of water pumped continued to decrease steadily with each pumping event or work period, further negating concerns of major infiltration of ground water and bearing evidence of minimum rainfall permeability of the cell.
- The comparison of elevation data collected over the course of the USACE work period does not indicate hydraulic communication between the pumping water and the water bearing zone which is being monitored.
- Contaminant concentrations have remained consistently low and uniform in the ground water monitoring events.

Similarities in types of chemical constituents detected in the samples collected by USACE in both the primary and secondary leachate collection systems indicate that the two systems may be in hydraulic communication; a general trend in the data was that the majority of the water pumped was from the secondary containment system. However, while it appears that there may be a leak in the primary liner which allows water to move into the secondary containment system, there has been no evidence of detectable contamination in the tested ground water.

As documented in the Final Close-Out Report, dated July 31, 1998, EPA extensively reviewed applicable regulations and guidance to evaluate the severity of the leakage problem. EPA's review supports the determination that

there is not a serious leak of the top or bottom liner systems at the Site and that the Site remedy is fully operational and functional, and this determination is also supported by the results of the second five-year review for the Site, conducted in September 2002. The presence of water in the detection and collection systems apparently resulted from heavy rainfall during construction of the cell, which evidently saturated the sand drainage system in the cell, but did not indicate any problems with the remedy or the integrity of the cell. It also should be noted that landfill covers of this design in similar climate conditions do leak to a limited extent. Moreover, the solidified cell waste serves to further minimize leachate and ensure a low-risk facility at the Site. Continued pumping of leachate from the vault will be required throughout the operation and maintenance (O&M) period to remove construction water and leachate as they accumulate, and continued monitoring of the ground water monitoring wells will also be needed. These activities are detailed in ADEQ's O&M plan for which ADEQ has secured EPA's approval; the final O&M and monitoring plan will be implemented by ADEQ.

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. A five-year review was required for this Site because the selected remedy does not allow for unlimited use and unrestricted exposure. The first five-year review was completed on January 9, 1997, and a second five-year review was completed in September 2002. Ground water sampling performed by EPA in 2002 confirmed EPA's determination that the Site remedy is fully operational and functional. Further five-year reviews will be conducted pursuant to OSWER Directive 9355.7-02A, "Structure and Components of Five Year Reviews," and other applicable guidance.

On July 31, 1998, the final Close-Out Report was signed in which EPA, in consultation with ADEQ, concluded that all appropriate response actions required to ensure the protectiveness of human health and the environment at the Gurley Pit Superfund Site had been implemented. Long-term O&M of the ground water wells and the RCRA vault will be under the direction of ADEQ.

All the completion requirements for this Site have been met as specified in OSWER Directive 9320.2-09A, "Close Out Procedures for National Priorities List Sites." Confirmatory sampling conducted during the second five-year review has verified that the ROD and Enforcement Decision Document

objectives have been achieved and that all actions specified have been implemented. Pursuant to the Superfund State Contract between EPA and ADEQ executed in March 1992, ADEQ agreed to assume full responsibility for performing Site O&M activities, and the State subsequently agreed to begin those O&M activities after the sampling performed by EPA in 2002. EPA will be providing oversight of all O&M activities.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "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)(ii). EPA, with the concurrence of the State of Arkansas, believes that this criterion for deletion has been met. Accordingly, EPA is proposing deletion of this Site from the NPL.

Dated: June 23, 2003.

Myron O. Knudson,

P.E., Director, Superfund Division (6SF).

[FR Doc. 03-19006 Filed 7-25-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03-151; FCC 03-160]

Amendment of the Commission's Rules Regarding AM Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission issues this document in order to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules. Both of these rules are invoked when an AM station's directional antenna monitor indications and/or monitoring point field strength measurements exceed the required operating tolerances. Each rule provides for different time periods for AM licensees to take action when their directional antenna operating parameters are found to be out of licensed tolerances. The inconsistent directive leaves AM licensees unclear as to the course of action they must take when they observe excessive monitor measurements. It is important that these rules be clarified because they affect termination of broadcast operation. This document begins a proceeding to harmonize these rules.

DATES: Comments are due August 29, 2003 and reply comments are due September 18, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

SUPPLEMENTARY INFORMATION for filing instructions.

FOR FURTHER INFORMATION CONTACT:

Karen A. Kosar, Media Bureau at (202) 418-1053 or via Internet at kkosar@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM), MB Docket No. 03-151, adopted July 1, 2003 and released July 7, 2003. The full text of this decision 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, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com or may be viewed via Internet at <http://www.fcc.gov/mb/>.

1. This Notice of Proposed Rule Making (NPRM) proposes to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules regarding the operation of AM stations with directional antennas. Both of these rules are invoked when an AM broadcast station's directional antenna operating parameters and/or monitoring point field strengths exceed operating tolerances. Section 73.62 of the rules, which specifically governs directional antenna system tolerances, provides that, whenever the operating parameters of a directional antenna cannot be maintained within the tolerances specified in the rule, an AM broadcast station has twenty-four hours within which to identify any excessive monitoring point field strengths followed by three hours to take corrective action. In contrast, § 73.1350(d)(2) of the rules, which addresses transmission system operation, requires that, in the event of any condition of antenna parameters or monitoring points out of tolerance, station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. This inconsistent directive in our rules leaves AM licensees unclear as to the correct course of action they must take when they observe out-of-tolerance indications. Clarity in our rules is especially necessary when the rules may require that broadcast operations

terminate within a matter of minutes. In such situations, termination of operations would be disruptive to programming and, in some cases, broadcast listeners may be deprived of information regarding hazardous weather or other emergency conditions. Moreover, broadcast stations may be faced with fines and forfeitures if found not to be in compliance with our rules.

2. The NPRM recognizes that almost all AM broadcast station directional antenna arrays experience some amount of instability. Unfavorable weather conditions or other environmental factors occasionally may affect monitoring systems to such an extent that these systems experience short-term out-of-tolerance operation. Such out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, may not warrant immediate corrective action. Regardless of whether out-of-tolerance indications were caused by these conditions, § 73.1350(d)(2) arguably requires that stations shut down or reduce power within three minutes. In contrast, § 73.62 of the rules, which is narrowly aimed at directional antenna tolerances, provides a reasonable period of time for corrective action.

3. The NPRM tentatively concludes that § 73.1350(d)(2) is excessively stringent and was not intended to apply to instances of minor out-of-tolerance directional antenna operating parameters. The NPRM tentatively concludes that both §§ 73.62 and 73.1350 should be revised and restructured to delineate clearly those situations that require 24-hour, three-hour and/or three minute responses by AM licensees, as well as by FM and TV licensees. The NPRM tentatively concludes that a requirement to terminate operation within three minutes should apply only to catastrophic events that are likely to cause significant disruption to the operation of other stations or that pose a threat to life or property. The NPRM tentatively concludes that a requirement to terminate operation within three hours should apply to instances of out-of-tolerance operation which are likely to result in minor interference to other stations. The NPRM seeks comment on these tentative conclusions as well as comment on other ways to resolve the problem presented by these rules.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory