

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

[FRL-8694-5]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct Final Deletion of the Pfohl Brothers Landfill Superfund Site (Site) from the National Priorities List.

**SUMMARY:** EPA, Region 2, is publishing a direct final Notice of Deletion of the Site, located in Cheektowaga, Erie County, New York, from the National Priorities List (NPL). 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, 42 U.S.C. 9605. This direct final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that the responsible parties have completed all appropriate remedial actions and that no further actions, other than operation and maintenance and five-year reviews, are required. In addition, EPA and NYSDEC have determined that the cleanup goals attained at this Site are protective of public health and the environment. This deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion will be effective September 22, 2008 unless EPA receives significant adverse comments by August 21, 2008. 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:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1994-0001, by one of the following methods:

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

*E-mail:* [tames.pam@epa.gov](mailto:tames.pam@epa.gov).

*Fax:* To the attention of Pamela Tames at (212) 637-3966.

*Mail:* To the attention of Pamela Tames, P.E., Remedial Project Manager,

Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007-1866.

*Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866 (telephone: 212-637-4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-1994-0001.

EPA's policy is that all comments received will be included in the 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 CBI or otherwise protected through <http://www.regulations.gov> or via 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 comments. If you send comments to EPA via e-mail, your e-mail address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD-ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should 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 hard copy. Publicly available Docket materials can be viewed electronically at <http://www.regulations.gov> or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center,

290 Broadway, 18th Floor, New York, NY 10007-1866, *Phone:* 212-637-4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m. and  
New York State Department of Environmental Conservation, Region 9, 270 Michigan Avenue, Buffalo, New York 14203-2999, *Phone:* 716-851-7200.

**FOR FURTHER INFORMATION CONTACT:**

Pamela Tames, P.E., Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007-1866; telephone at 212-637-4255; fax at 212-637-3966; or e-mail at [Tames.Pam@epa.gov](mailto:Tames.Pam@epa.gov).

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**I. Introduction**

EPA Region 2 is publishing this direct final deletion of the Pfohl Brothers Landfill Superfund Site (Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental 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, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 22, 2008 unless EPA receives significant adverse comments by August 21, 2008. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this Direct Final 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 received. In such a case, there will be no additional opportunity to comment.

Section II below explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless significant adverse comments are received during the public comment period.

## 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 accordance with § 300.425(e)(1), EPA shall consult with the State to determine 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 of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In addition, the State shall concur with the deletion, as required by § 300.425(e)(2), and the public shall be informed, as required by § 300.425(e)(4). A site which is deleted from the NPL remains eligible for remedial actions should future conditions warrant such action, as set forth in § 300.425(e)(3). Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a review of the site be conducted at least every five years after the initiation of the remedial action to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. If 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, a numerically-based screening system that uses information from initial, limited investigations to assess the relative potential of sites to pose a threat to human health or the environment.

## III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) EPA consulted with the State of New York 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) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, 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, The Buffalo News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the 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. If appropriate, EPA may then continue with the deletion process based on the Notice of Intent to Delete and the comments already received.

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

## IV. Basis for Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

### Background

The Site consists of a 130-acre inactive landfill and an adjacent 22-acre borrow pit located in a commercial/residential area in the Town of

Cheektowaga, Erie County, New York, approximately one mile northeast of Buffalo International Airport.

The Site is bordered by wetlands, Aero Lake, Aero Creek, and the New York State Thruway to the north. The remaining boundaries consist of Transit Road to the east, a Niagara Mohawk Power easement to the west, and residential properties (along the north side of Pfohl Road) and Conrail tracks to the south. A former New York Thruway Authority borrow area (Area A) is located just south of the New York State Thruway. The Site is bisected from west to east by Aero Drive. One disposal area is located immediately north of Aero Drive (Area B) and another disposal area is located immediately south of Aero Drive (Area C).

The Pfohl Brothers Landfill accepted municipal and industrial wastes from 1932 to 1971 from the surrounding townships, manufacturers, and utilities. The landfill was operated as a cut and fill operation, whereby waste and drums, which were filled with substances that could be spilled out, were emptied into 150-foot diameter trenches. Some of the generators of the waste have indicated that pine tar pitch, waste paints and thinners, waste cutting oils, oil-contaminated Fuller's earth, phenolic tar containing chlorinated benzenes and dioxins, and oil and capacitors laden with polychlorinated biphenyls (PCBs) were disposed of at the Site. No records were kept as to the quantity of wastes received, other than an estimated 125 tons of phenolic tar. Limited historical records indicate that no hazardous wastes were disposed of in Area A. Soil from this area was used primarily by the New York Thruway Authority for road fill material.

A preliminary assessment of the Site was performed by EPA in 1982 to determine its hazard ranking. Based upon the analytical results, which indicated that the landfill leachate contained various volatile organic compounds, semi-volatile organic compounds and metals, the Site was listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites as a "Class 2 Inactive Hazardous Waste Site" in 1985.

Between 1983 and 1985, all of the residences near the Site were connected to the municipal drinking water supply system. Previously, these residents obtained drinking water from private wells.

The Site was added to the NPL on December 16, 1994 (FRL-5124-7).

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

An RI/FS was initiated in 1988 by NYSDEC. Various levels of volatile organic compounds, semi-volatile organic compounds, PCBs, and metals were detected in the soil, groundwater, and sediment. In 1990, NYSDEC installed a fence around most of the Site.

A second RI/FS addressed Area A and the off-site groundwater contamination. Based upon the results of this investigation, it was determined that Area A was not used for the disposal of hazardous substances and significant levels of groundwater contamination were not detected.

### *Selected Remedy*

A ROD for Areas B and C was issued by NYSDEC in February 1992. The selected remedy included capping the two disposal areas, construction of a leachate collection and conveyance system, construction of a barrier wall containment system around the outside perimeter of the disposal areas, collection and disposal of the drums and phenolic tars found on-Site, and long-term monitoring of the groundwater at and near the landfill. The ROD also called for the implementation of institutional controls to protect the integrity of the containment remedy and to prevent the use of contaminated groundwater.

A ROD for Area A, issued on January 10, 1994, selected a "no-action" remedy.

### *Response Actions*

Under Orders on Consent with NYSDEC dated October 4, 1993 and April 11, 2001, the PRP Group performed the actions called for in the 1992 ROD.

The PRP Group commenced the design related to the containment system and leachate collection system in 1994; the design was approved by NYSDEC upon execution of the above-noted Order on Consent in April 2001. Detailed information on the remedial construction is available in the September 2003 Remedial Action Report.

To facilitate future development along Pfohl Road and Aero Drive, approximately 31 acres of landfilled material, consisting of approximately 365,000 cubic yards of waste located along these roads (edges of Areas B and C) were excavated and consolidated on the interior portions of Areas B and C. In addition, 9,200 cubic yards of contaminated soil and waste were excavated to protect the adjacent wetlands and consolidated on the

interior portions of Areas B and C. Post-excavation soil samples showed that the remaining soils met New York State's soil cleanup objectives, thereby eliminating all significant threats to human health and/or the environment. The excavated areas were backfilled and seeded.

Caps were constructed over the consolidated wastes in the two fill areas (approximately 70 acres in Area B and 24 acres in Area C) in conformance with 6 New York State NYCRR Part 360 closure requirements. The caps consist of a six-inch gas venting layer overlain by a layer of filter fabric, a 40-mil thick very flexible polyethylene (VFPE) liner, a 24-inch barrier protection layer of clean soil, and topped with six inches of topsoil capable of supporting vegetation. Forty-nine gas vents were installed to convey the gas from beneath the low permeability layer of the caps via the gas venting layer to the atmosphere.

The leachate collection system consists of an 8-inch diameter perforated solid collection pipe set in a wall of granular material which runs along the 10,000-foot perimeter of the disposal areas. An additional 1,000 feet of collection drain was installed in the southwest interior of Area B to promote an upward gradient from the bedrock to the overburden aquifer within the confines of the perimeter barrier containment system. All of the collected leachate is discharged directly to the Cheektowaga Publicly-Owned Treatment Works via six collection wet wells and a force main that was constructed to the sewer interceptor on Rein Road. A VFPE wall keyed into 24 inches of undisturbed clay at the bottom of the perimeter trench was installed as a vertical barrier to prevent the collection drain system from collecting clean off-Site groundwater and dewatering the adjacent wetlands. The VFPE wall was connected to the VFPE liner in the landfill cap. A Remedial Action Report documenting the completion of the Remedial Action was approved by EPA in September 2003.

The 1992 ROD called for the implementation of institutional controls to protect the integrity of the containment remedy and to prevent the use of contaminated groundwater. The restrictions were placed on Areas B and C in the form of Declarations of Covenants and Restrictions and Grant of Access signed by each of the seven owners whose parcels make up the Site. Five of the seven agreements were signed by the end of 2003 and the last two were signed in late 2005. Each Declaration requires that the owners agree not to use any on-Site

groundwater, not to construct on-Site surface water cisterns, not to access the capped areas without prior written approval of NYSDEC, not to excavate, remove, or disturb the on-Site soil without NYSDEC written approval, and not to plant trees and shrubs whose roots may breach the caps.

### *Cleanup Goals*

The implemented actions protect human health and the environment. The landfilled areas have been capped, removing potential direct contact (*i.e.*, ingestion or dermal contact of soil) exposures to the public. Institutional controls are in place to prevent potential exposures to the public, including trespassers. The potential impacts to groundwater are being addressed through the caps that reduce or prevent percolation through the landfilled areas and a barrier wall containment system around the outside perimeter of the disposal areas. The leachate collection system is discharging to an appropriate discharge facility to reduce potential exposures to the population. Groundwater monitoring data indicate that Site-related contamination is not present outside the containment system. A final Close-Out report documenting the completion of the implementation of the site remedies was issued by EPA on December 10, 2007.

### *Operation and Maintenance*

An operation and maintenance (O&M) plan, which provides for a long-term monitoring program for the cover system, the drainage system, the groundwater, and the institutional controls, was approved in February 2006. The O&M activities at the Site are being performed by the Town of Cheektowaga. Semi-annual O&M reports are reviewed by NYSDEC and EPA.

### *Five-Year Review*

Hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to section 121(c) of CERCLA, EPA reviews site remedies where such hazardous substances, pollutants, or contaminants remain no less often than every five years after the initiation of a remedy at a site. EPA conducted a five-year review of the Site in March 2006. The five-year review led EPA to conclude that human health and the environment are being protected by the remedial action implemented at the Site. The next five-year review is scheduled to be completed before March 2011.

### Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on NYSDEC's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

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

All of the completion requirements for this Site have been met, as described in the December 2007 Final Close-Out Report. The State of New York, in a September 28, 2007 letter, concurred with the proposed deletion of this Site from the NPL.

The NCP 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 New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

### V. Deletion Action

EPA, with the concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 22, 2008 unless EPA receives adverse comments by August 21, 2008. If adverse comments are received within the 30-day public comment period of this action, EPA 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 received. In such a case, there will be no additional opportunity to comment.

### List of Subjects in 40 CFR Part 300

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

Dated: June 30, 2008.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

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

### PART 300—[AMENDED]

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; and 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 "Pfohl Brothers Landfill" and the corresponding City/County designation "Cheektowaga."

[FR Doc. E8–16478 Filed 7–21–08; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 070430095 7095 01]

RIN 0648–XH91

### Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fishery; Inseason Action #3 and #4

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

**ACTION:** Modification of fishing seasons; request for comments.

**SUMMARY:** NOAA Fisheries announces two inseason actions in the ocean salmon fisheries. Inseason action #3 modified the commercial fishery from Cape Falcon, Oregon, to the Oregon/California Border. Inseason action #4 modified the recreational fishery from Cape Falcon, Oregon, to Humbug Mountain, Oregon.

**DATES:** Inseason actions #3 and #4 were effective at 1615 hours local time (l.t.)

April 9, 2008. After this time these fisheries remained closed until reopened subject to the 2008 management measures and regulations which were announced, and published in the **Federal Register** (73 FR 23971, May 1, 2008).

Comments will be accepted through August 6, 2008.

**ADDRESSES:** You may submit comments, identified by 0648–AV56, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: 206–526–6736 Attn: Sarah McAvinchey

- Mail: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Sarah McAvinchey, 206–526–4323.

**SUPPLEMENTARY INFORMATION:** In the 2007 annual management measures for ocean salmon fisheries (72 FR 24539, May 3, 2007), NMFS announced the commercial and recreational fisheries in the area from Cape Falcon, Oregon, to the Oregon/California Border.

On April 9, 2008, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife and California Department of Fish and Game. Information related to catch to date, Chinook and coho catch rates, and effort data were reported. These inseason actions were taken because these fisheries were scheduled to occur in the impact area for Sacramento River fall Chinook. This stock was projected not to meet its escapement goal in 2008 and therefore consistent with the Magnuson-Stevens Act all fisheries that impact the stock were to be closed. By