

anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before September 13, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2006-0604, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 200, Denver, Colorado 80202-2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instruction on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA Region 8, 999 18th Street, Suite 200, Mailcode 8P-AR, Denver, CO 80202, (303) 312-6144, [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 1, 2006.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-8209-7]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Nineteenth (19th) Avenue Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 9 is issuing a notice of intent to delete the Nineteenth (19th) Avenue Landfill Superfund Site (Site), located in Phoenix, AZ, from the National Priorities List (NPL) and requests public comment on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Arizona, through the Arizona Department of Environmental Quality (ADEQ), have determined that all appropriate response actions under CERCLA have been completed. Operation and maintenance and five-year reviews will continue at the Site. This deletion does not preclude future actions under Superfund.

**DATES:** Comments concerning the deletion of this Site from the NPL must be received by September 13, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1983-0002, by one of the following methods:

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

- E-mail: [hollan.nadia@epa.gov](mailto:hollan.nadia@epa.gov).
- Fax: (415) 947-3526. Mail or Hand Delivery: Nadia Hollan, EPA Region IX, Mail Code: SFD-8-2, 75 Hawthorne Street, San Francisco, CA 94105,

or  
Environmental Protection Agency,  
EPA Docket Center (EPA/DC), Docket ID

No: EPA-HQ-SFUND-1983-0002, Mailcode: 5202T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-SFUND-1983-0002. 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. Publicly available docket materials are available electronically in <http://www.regulations.gov> or at the EPA's information repositories at the following addresses: U.S. EPA Region IX Superfund Records Center at 95 Hawthorne St., San Francisco, CA, (415) 536-2000, Monday through Friday 8 a.m. and 5 p.m., excluding holidays; City of Phoenix Main Library, Government Documents Section, 1221 North Central Avenue, Phoenix, Arizona 85004, (602) 262-4636, Hours: M-Th, 10 a.m. to 9 p.m., Fri. & Sat., 10 a.m. to 6 p.m., Sun., 12 p.m. to 5 p.m.; and Arizona Department of Environmental Quality Records Center, 1110 West Washington Street, Phoenix, Arizona 85007, e-mail: [recordscenter@azdeq.gov](mailto:recordscenter@azdeq.gov) or call (602) 771-4380 or 1 (800) 234-5677, ext. 771-4380, Hours: M-F, 8:30 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Nadia Hollan, EPA Remedial Project Manager, (415) 972-3187 OR 1 (800) 231-3075 (message line), [hollan.nadia@epa.gov](mailto:hollan.nadia@epa.gov), or fax (415) 947-3526. Or, you may contact William DePaul, ADEQ Remedial Project Manager, (602) 771-4654, [depaul.william@azdeq.gov](mailto:depaul.william@azdeq.gov), or fax (602) 771-2302.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

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

**I. Introduction**

The U.S. Environmental Protection Agency (EPA) Region 9 announces its intent to delete the 19th Avenue Landfill, located in Phoenix, Arizona, from the National Priorities List (NPL), and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

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 19th Avenue Landfill Superfund Site and demonstrates how it meets the deletion criteria.

**II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete releases 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; or
- (ii) All appropriate Fund-financed responses 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.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, as is the case with the 19th Avenue Landfill Site, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the site remains protective of public health and the environment. The Arizona Department of Environmental Quality (ADEQ), with EPA oversight, will conduct each five-year review of the Site. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without the application of the hazard ranking system.

**III. Deletion Procedures**

The following procedures apply to the deletion of the Site:

- (1) The EPA consulted with the State of Arizona on the deletion of the Site from the NPL prior to developing this notice of intent to delete.
- (2) The State of Arizona concurred with the deletion of the Site from the NPL.
- (3) Concurrently with the publication of this notice of intent to delete in the **Federal Register**, a notice is being published in the *Arizona Republic* (local newspaper) and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.
- (4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

If adverse comments are received within the 30-day public comment period on this document, EPA will evaluate the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will place a final Notice of Deletion in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if prepared, will be made available to interested

parties and in the site information repositories.

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 of Intended Site Deletion**

The following information provides EPA's rationale for proposing to delete the Site from the NPL.

*Site Location and History*

The 19th Avenue Landfill is owned by the City of Phoenix and is located southeast of the intersection of Lower Buckeye Road and 19th Avenue, in a predominately industrial area of Phoenix, Maricopa County, Arizona. The landfill is intersected by the Salt River Channel. The larger part of the landfill, Cell A, covers approximately 200 acres located on the north side of the Salt River channel. The remainder of the landfill, Cell A-1, is located on the south side of the Salt River channel.

In 1955, the 19th Avenue Landfill Site was relatively undisturbed except for a shallow 20-acre excavation. More pits were excavated as deep as 50 feet below land surface to create the space needed for waste disposal. The pits were then backfilled with municipal refuse, solid, and liquid industrial wastes. Liquid wastes, including industrial wastes, were poured into unlined pits dug into areas of Cell A previously filled with refuse. In addition to the municipal and industrial wastes, some medical wastes and materials containing low levels of radioactivity were also deposited. It has been estimated that the landfill contains approximately nine million cubic yards of refuse. The refuse was generally covered on a daily basis. A final soil cap was placed over an area once it was full of waste. Parts of the landfill were covered with water by at least one flood during 1965 and intermittently during the 1970s.

The landfill was closed by a cease and desist order issued by the Arizona Department of Health Services (ADHS), predecessor to ADEQ, in February 1979. The City of Phoenix (City), the landfill owner and operator, and ADHS entered into a consent agreement in June 1979. The City covered the Site with fill material, stockpiled soil for final

capping, installed 18 groundwater monitoring wells, built berms around the boundary of the landfill, installed a methane gas collection system, and provided a 24-hour security guard.

The landfill was proposed for the EPA National Priorities List (NPL) on December 30, 1982, and formally placed on the NPL on September 8, 1983. The City of Phoenix voluntarily began a remedial investigation, and in 1988 the EPA assigned the lead oversight responsibility for the Site to ADEQ.

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

The remedial investigation and feasibility study (RI/FS) conducted was completed by the City in 1988. The RI/FS was prepared according to the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The major findings of the RI/FS indicated that:

1. The landfill contents are generally similar to those of other municipal landfills of its era and include some hazardous materials, pollutants, and contaminants at low levels.
2. The majority of water quality results did not exceed Maximum Contaminant Levels (MCL). The following constituents exceeded the MCL intermittently and in only a few wells during the RI: arsenic (maximum level detected 170 ppb), barium (max. 2.58 ppm), carbon tetrachloride (max. 35.1 ppb), gross alpha (max. 17.9 pCi/L), gross beta (max. 122 pCi/L), mercury (max. 11 ppb), and vinyl chloride (max. 2.6 ppb). Generally, the total concentrations of VOCs in downgradient wells were similar or less than in upgradient wells and impacts of inorganics at the landfill were not discernible at downgradient wells. In addition, the groundwater in the vicinity of the landfill was not being used as a drinking water source. Because of the above factors, results of risk assessment calculations, and that drinking water in the area is supplied by the City of Phoenix, ADEQ and EPA determined that groundwater quality did not pose a threat to public health or the environment.

3. The Salt River does not support permanent fish populations; therefore, no bioaccumulation of compounds will occur. Small mammals and birds observed at the landfill would not be expected to ingest any contaminated soil or refuse due to the landfill's protective cap.

4. Additional flood protection was required. Approximately 30 percent of the surface area of Cell A and 50 percent of Cell A-1 would be subject to

inundation during a 100-year flow in the Salt River.

5. The gas extraction system required renovation.

#### *Record of Decision Findings*

The City completed a remedial action plan (RAP) according to the State of Arizona Water Quality Assurance Revolving Fund (WQARF or State Superfund) in June 1989. The RAP selected the preferred remedy for the Site. By Letter of Determination (LOD), dated September 21, 1989, ADEQ approved the final draft Remedial Action Plan (RAP) and the preferred alternative for the Site. EPA signed a Record of Decision (ROD) in September 29, 1989 concurring with the remedy.

The major components of the selected remedy for the 19th Avenue Landfill Site include:

1. Levees along both the north and south banks of the Salt River at the landfill Site to provide for flood protection;
2. Channelization of the Salt River to widen the river bottom to prevent flood water from impeding upon the landfill surface;
3. A soil cap (minimum of 3 feet) with a permeability of less than 10–4 centimeters per second to be placed over the landfill so that rain water does not seep into the landfill material;
4. Methane gas collection and treatment in a manner that eliminates the risk of explosion;
5. Ambient air quality, methane gas, and groundwater monitoring; and
6. Implementation of a contingency plan to outline additional monitoring and response evaluation procedures should groundwater quality standards be exceeded at the landfill boundary in the future.

Subsequent to the ROD, EPA and ADEQ signed three Explanations of Significant Differences (ESDs) to the selected remedy. In December 1995, ESD #1 was signed to change the perimeter drainage channel lining material from gunite to Armorflex. The Armorflex material was better suited to handle potential landfill settlement and for landfill maintenance activities. In October 2005, ESD #2 updated the applicable standards for groundwater and air quality. The current and proposed EPA Safe Drinking Water Act Maximum Contaminant Level (MCL) and the Arizona Ambient Air Quality Guidelines for volatile organic carbons were identified as standards to compare groundwater and ambient air monitoring data with. In June 2006, ESD #3 was completed to identify institutional controls (IC) that are necessary to protect the integrity of the

remedy in the long-term. The specific IC mechanisms identified were the Declaration of Environmental Use Restriction (DEUR) and the existing Arizona Department of Water Resources (ADWR) requirements. The DEUR controls the use and access to the landfill property and ADWR restricts groundwater well site location, construction, and use that could impact the remedy.

#### *Response Actions*

ADEQ and the City entered into a Consent Decree in 1992 for the implementation and long term operation and maintenance of the remedy. Remedial design drawings and specifications were prepared by City contractors for all components of the remedy and submitted for review and approval by appropriate federal, state, county, and city agencies. Between August 1995 and October 1996, the City's Remedial Action contractor completed construction of the remedy components including the levee system and other flood control improvements, site landscaping, capping system, gas collection system, and the two flare stations. The emissions testing for the flare stations at Cell A and Cell A-1 were performed on October 16–18, 1996 and was satisfactory, and an air permit was subsequently issued to the City. The landfill gas collection system has been operational and functional since February 1997.

The City of Phoenix submitted a construction completion report in September, 1998 certifying completion of all remedial action and documenting that the objectives of the remedial action have been met. This report certifies that all major components of the remedy are complete with the exception of environmental monitoring which is an ongoing part of the remedy.

A Preliminary Close-Out Report (PCOR) documenting construction completion was signed by ADEQ and EPA in February 1998. Remedial Action Report was completed by the City of Phoenix in September 1998, documenting that the remedy was operational and functional.

During the first Five-Year Review in 2000, it was determined that the methane gas collection system was not operating optimally and methane had been migrating past the landfill boundary. In order to enhance the operational up time of the system as well as to better control methane along the southern and northeastern portions of the landfill, where probes were out of compliance, an expansion to the system was completed. The enhancements included installation of additional

methane monitoring probes at the perimeter of the landfill, and methane collection along the middle and southern portions of the landfill. A final engineering design of a system to enhance gas collection was approved by ADEQ in 2001, and construction was completed during May 2002. The system operates more effectively and the methane monitoring probes have been in compliance since the system expansion was completed.

Finally, in order to implement institutional controls concerning future land use, a Declaration of Environmental Use Restriction (DEUR) was recorded on the property title in July 2006. The DEUR restricts uses of the property, and specifically prohibits residential use. A Final Close Out report documenting completion of all necessary Site remedial actions was also completed by ADEQ and EPA in July 2006.

#### *Cleanup Standards and Operation and Maintenance*

The remedy selected for the Site eliminates or reduces the risks posed by the Site through the use of engineering controls (cap, levee system, methane collection and treatment system, etc.), and institutional controls. The selected remedy provides for containment of the large volume of low level organic and inorganic waste material present in the landfill and reduces the potential for contaminant migration into the groundwater. Groundwater, methane, and ambient air monitoring are conducted to ensure the remedy is performing as intended.

Quarterly groundwater monitoring has been conducted at the Site since 1992. It has been determined that the landfill has not impacted groundwater off-site. Groundwater monitoring will continue according to the Groundwater Contingency Plan requirements, however, it is extremely unlikely that contamination from the landfill will ever trigger the groundwater contingency or will pose a significant threat to human health and the environment.

Methane monitoring at the perimeter of the landfill is an on-going process as part of the operation of the methane gas collection and treatment system. Methane levels exceeding the explosive hazard (5% by volume) are brought into compliance through operational adjustments of the system in order to prevent migration of dangerous levels of methane off-site. In addition, monitoring of stack emissions from the flare stations is required on a periodic basis to conform with Maricopa County regulations.

Ambient air monitoring of VOCs above the landfill was performed in December 1998 and July 1999. Results show that the landfill, with current remedial measures in place, is not impacting ambient air quality.

Long-term protection of public health and the environment will be ensured by regular operation and maintenance of the remedial measures implemented and will be assessed by continued monitoring at the landfill of groundwater, methane and if necessary, ambient air. The City of Phoenix is required to implement these actions through the Consent Decree as well as the Declaration of Environmental Use Restriction (DEUR) with ADEQ.

#### *Five-Year Review*

Two Five-Year reviews have been conducted at the Site in September 2000 and September 2005. All deficiencies identified in the reviews have been corrected and the remedy is protective of human health and the environment. As required by statute, ADEQ will continue conducting statutory five-year reviews under EPA oversight. The next Five-Year review is scheduled for September 2010.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Community involvement activities for the 19th Avenue Landfill began in 1986 and continued throughout the cleanup. A Community Participation Group was established to review and provide comments on available information about the project and serve as a point of information exchange for the community. The RI/FS was released to the public and was made available at the information repositories. The RAP was submitted for public comment and a formal public meeting was held on July 20, 1989. After completion of the ROD, periodic fact sheets were issued to the Site mailing list to update the community on Site cleanup progress, and notices were published in the newspaper regarding five-year review activities. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

#### *Applicable Deletion Criteria*

One of the three criteria for site deletion in the NCP (40 CFR 300.425(e)(1)(i)) specifies that EPA may delete a site from the NPL if "responsible parties have implemented all appropriate response actions

required." The EPA, with the concurrence of the State of Arizona through the Department of Environmental Quality, has determined that all appropriate responses under CERCLA have been completed by the responsible party and that no further response actions under CERCLA are necessary. Operation and maintenance (O&M) activities will continue to be conducted by the responsible party, however O&M is not defined as a response action by the NCP. Therefore, a site in O&M can be deleted. EPA is proposing deletion of this site from the NPL based on this criteria. Documents supporting this action area available in the docket.

#### *State Concurrence*

In a letter dated July 12, 2006, the Arizona Department of Environmental Quality concurred with the proposed deletion of the 19th Avenue Landfill Superfund Site from the NPL.

Dated: August 3, 2006.

**Wayne Nastri,**

*Regional Administrator, Region 9.*

[FR Doc. E6-13298 Filed 8-11-06; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **45 CFR PART 5b**

#### **Privacy Act of 1974; Proposed Altered System of Records**

**AGENCY:** National Institutes of Health (NIH), Department of Health and Human Services (DHHS).

**ACTION:** Notification of proposed altered System of Records.

**SUMMARY:** The Department of Health and Human Services proposes to alter System of Records, 09-25-0168, "Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/NIH/OD." NIH proposes a new legal authority for the maintenance of the System to read: 15 U.S.C. 3710, 3710a, 3710c & 3710d and 35 U.S.C. 200 et seq. provide authority to maintain the records; 37 CFR Part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements;" 37 CFR Part 404 "Licensing of Government Owned Inventions;" and 45 CFR Part 7 "Employee Inventions." NIH is also