

from the wood preserving industry meet the variance criteria found in 40 CFR 260.31(b). As was stated in the Phase IV proposal, if these criteria can be demonstrated on an industry-wide basis, the Agency may grant a conditional exclusion from the definition of solid waste for reclaimed production wastewaters from the wood preserving industry. The comments from AWPI address each of the 40 CFR 261.31(b) criteria in some detail. EPA will also review other comments, such as those submitted by EDF, that question the basis and desirability of granting the variance on an industry-wide basis. EPA solicits replies to these particular comments.

EPA has also added to the docket a bill being considered by Congress that would exempt from regulation wastewaters provided the materials are "contained, collected, and reused in an on-site production process that prevents releases to the environment." In discussions of this issue, representatives of the American Wood Preservers Association stated that they were not seeking to eliminate the existing Subpart W standards for drip pads used to collect and manage drippage from wood preserving. EPA solicits comments on whether the record supports a national exclusion from the definition of solid waste for recycled process wastewaters from wood preserving operations that are returned to the process from which they originated, with the condition that drippage from the wood is collected and managed on drip pads that are in compliance with Subpart W drip pad standards and that there is no release of the wastewaters to the environment.

(4) Capacity Issues

a. Request for More Information on Amounts of TC Metal Wastes and TC-contaminated Soil

EPA has received comments on the Phase IV proposed rule stating that application of Universal Treatment Standards to TC metal wastes will significantly increase the demand for, and costs of, treatment. As stated in the Supplemental Proposal on mineral processing wastes, EPA has limited information on quantities of TC metal wastes with which to analyze available treatment capacity. Comments also indicated that there may be TC metal-contaminated soil that would require treatment to meet LDR treatment standards. These commenters argue that there will be a need for a capacity variance for TC metal-contaminated soils. Commenters submitted very little data, however, to support their

arguments. EPA requests data to potentially support capacity variances for TC metal wastes and TC metal-contaminated soils.

Furthermore, as stated in the Supplemental proposal, EPA solicits information on quantities of characteristic mineral processing wastes, in order to determine whether adequate capacity exists to treat these wastes (61 FR 2360). Because data do not exist to support a capacity variance at this time, EPA is once again urging commenters to provide information on the quantities, characteristics, and management of the newly identified mineral processing wastes.

b. Potential Capacity Variance for FMC Corporation

Representatives of FMC Corporation met with EPA to present their argument that they need a two-year national capacity variance for three large volume TC metal wastewater streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) that are generated at its Pocatello, Idaho facility. (A memorandum summarizing this meeting is part of the record for this rulemaking.) FMC believes that these three wastewaters pose unique treatability problems because of elemental phosphorous contamination and naturally occurring radioactive material. They argue that the logistics and costs to ship these wastestreams off-site for treatment are impractical and prohibitive. FMC also stated that a survey of off-site treatment facilities shows that no permitted TSDF can currently handle these wastestreams. As such, FMC believes it will need a two-year national capacity variance to develop and construct treatment capacity for these wastewater streams and thus comply with Phase IV. FMC intends to submit detailed documentation supporting its claim for a two-year national capacity variance. If it is submitted in a timely fashion, EPA will make it available to the public during the comment period for this notice, and will potentially use this information in determining whether a capacity variance is needed.

Summary

In conclusion, the Agency is making available to the public new data it has received since the Phase IV proposal (or alerting the public to data it expects to receive immediately). Comments are requested on the data and their possible use, as discussed in this notice. In addition, the Agency is requesting data on TC metal wastes, TC metal-contaminated soil, and mineral

processing wastes and contaminated soils, that could be used to determine the need for capacity variances, since the Agency currently lacks such data.

Dated: May 3, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 96-11740 Filed 5-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL-5502-2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Marathon Battery Company site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Marathon Battery Company site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National 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), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Marathon Battery Company site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Marathon Battery Company site from the NPL may be submitted on or before June 7, 1996.

ADDRESSES: Comments concerning the deletion of the Marathon Battery Company site from the NPL may be submitted to: Pamela Tames, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor, New York, NY 10007-1866.

Comprehensive information on the Marathon Battery Company site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding

holidays. For further information, or to request an appointment to review the public docket, please contact Ms. Tames at (212) 637-4255.

Background information from the Regional public docket is also available for viewing at the Marathon Battery Company site's Administrative Record repository located at: Julia Butterfield Memorial Library, Morris Avenue, Cold Spring, NY 10516.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

EPA Region II announces its intent to delete the Marathon Battery Company site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. 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 (RAs) financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed RAs, if conditions at such site warrant action.

EPA will accept comments concerning the Marathon Battery Company site for thirty (30) days after publication of this notice in the Federal Register (until June 7, 1996).

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 how the Marathon Battery Company site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been

implemented, and no further cleanup by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Marathon Battery Company site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30)-day public comment period on the deletion package starting on May 8, 1996 and concluding on June 7, 1996.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary, which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the Federal Register. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The Marathon Battery Company site, located in the Village of Cold Spring, Putnam County, New York, includes a

former nickel-cadmium battery manufacturing facility, the Hudson River in the vicinity of the Cold Spring pier, and a series of river backwater areas known as East Foundry Cove, East Foundry Cove Marsh, Constitution Marsh, and West Foundry Cove. Before the site was remediated, a battery plant and an underground asphalt- and clay-lined vault containing spoils from dredging activities in the cove, were located on the facility's grounds. Twenty-nine houses, located on Constitution Drive, are in the vicinity of the site.

Nickel-cadmium batteries were manufactured at the plant from 1952-1979. The plant's wastewater treatment system originally consisted of a lift station and piping for transfer of all process wastewater into the Cold Spring sewer system for discharge directly into the Hudson River at the Cold Spring pier. In addition, a by-pass valve was installed so that when the lift station was shut down or overloaded, a direct gravity discharge could be made into the Kemble Avenue storm sewer for discharge into Foundry Cove.

In the early 1970s, studies conducted by New York University, EPA, and the New York State Department of Environmental Conservation (NYSDEC) showed high levels of cadmium contamination in Foundry Cove sediments. Samples of vegetation and various species of fish, muskrat, turtle eggs, and green heron revealed high concentrations of cadmium, as well.

In 1972, the U.S. Department of Justice signed a Consent Agreement requiring the present and past owners/operators to remove as much cadmium from the outfall area and channel leading into the cove as was economically, technically, and ecologically feasible. The dredge spoils were entombed in the above-described vault. The dredging, however, was not totally successful. Post-dredging monitoring continued to detect elevated cadmium concentrations in the cove's sediments, flora, and fauna. Tidal action slowly flushed some of the remaining cadmium deposits from the cove into the Hudson River and into Constitution Marsh, a National Audubon Society sanctuary.

In October 1981, the Marathon Battery Company site was included on the NPL. In August 1983, EPA and the State of New York signed a Cooperative Agreement to undertake a remedial investigation and feasibility study (RI/FS) at the Marathon Battery Company site. The results of the RI sediment sampling program indicated widespread heavy metal contamination of the sediments and marsh soils of Foundry

Cove. The highest level of contamination occurred in East Foundry Cove Marsh in close proximity to the Kemble Avenue outfall. This area, characterized by a layer of greenish-white sediment spanning an approximately 50 by 100 foot area, showed concentrations as high as 171,000, 156,000, and 6,700 milligrams/kilogram (mg/kg) for cadmium, nickel, and cobalt, respectively. Cadmium levels as high as 2,200 mg/kg were found in the Hudson River in the vicinity of the Cold Spring pier.

Samples from the former battery facility indicated contamination as high as 120,000 mg/kg cadmium and 130,000 mg/kg nickel in the rafters, and up to 600 mg/kg cadmium on the surrounding grounds. Cadmium concentrations up to 67 mg/kg were found in soils in the adjacent residential yards.

In March 1986, NYSDEC requested that EPA assume the lead role for this project. EPA's contractor completed a supplemental RI/FS for the East Foundry Cove Marsh/Constitution Marsh portion of the site (Area I) in August 1986.

On September 30, 1986, a Record of Decision (ROD) was signed for Area I, calling for the dredging of the contaminated sediments exceeding 100 mg/kg, placement of a clay cap and soil cover on the excavated marsh areas, restoration of the marsh, chemical fixation of the excavated sediments, followed by their off-site disposal. Long-term monitoring was selected for Constitution Marsh.

Supplemental RI activities for the former battery facility (Area II) were completed in April 1988. A ROD for this operable unit was signed on September 30, 1988. The selected remedy included decontamination of the interior of the former battery plant building and its contents, excavation and chemical fixation of the dredge spoils vault, excavation and chemical fixation of the cadmium-contaminated soils on the plant grounds and adjacent properties which exceeded 20 mg/kg (determined by a risk assessment), enhanced volatilization of the volatile organic compound (VOC)-contaminated soils, and off-site disposal of the contaminated dust and fixated soils. Long-term monitoring was selected for the VOC-contaminated ground water underlying the site. (A search for VOC-contaminated soils on the plant grounds during the design failed to find a source area. Therefore, the enhanced volatilization component of the selected remedy was not designed. The subsequent demolition of the building revealed elevated levels of VOCs in some sections of the sealed process

trenches and an ejector pit. The contents of the process trench and ejector pit were sent to an off-site facility for treatment/disposal.)

An RI/FS for the East Foundry Cove, West Foundry Cove, and Hudson River in the vicinity of the Cold Spring pier portion of the site (Area III) was completed in June 1989. The Area III ROD was signed on September 26, 1989. The selected remedy called for dredging one foot of contaminated sediments to achieve a 95% removal rate from East Foundry Cove and the Hudson River in the vicinity of the Village of the Cold Spring pier, followed by chemical fixation and off-site disposal. Long-term monitoring was selected for West Foundry Cove, a depositional area.

A consolidated design for Areas I, II (the dredge spoils vault and the plant grounds), and III was completed in May 1992.

Following the completion of field investigations to more fully delineate the areas of the adjacent residential properties that required remediation, in May 1992, this portion of the Area II remediation effort commenced. When the remedial action was completed in March 1993, approximately 1,600 cubic yards of contaminated soil had been excavated and removed.

On March 26, 1989, EPA issued a Unilateral Administrative Order (UAO) to Marathon Battery Company, Gould Inc., and Merchandise Dynamics, the property owner, requiring them to decontaminate the interior of the 114,000-square foot former battery plant (which at the time was an abandoned book repository) and its contents, to recycle the decontaminated books, and to properly dispose of contaminated materials. Following the performance of a pilot-scale study conducted by Marathon Battery Company's and Gould Inc.'s contractor to evaluate decontamination techniques, the facility, as well as 4,170 pallets containing approximately 2.5 million books were decontaminated. Twelve of seventy-six rolloffs containing debris from the building were determined to contain hazardous debris and were disposed of at Chemical Waste Management's hazardous landfill in Model City, New York. The remaining rolloffs were sent to Waste Management's Modern Landfill in York, Pennsylvania. While the book and building decontamination work was completed in December 1991, due to the limited production rate of available book recycling companies, the recycling of the books continued until March 1993.

A Consent Decree, in which Gould Inc. agreed to perform the remedial

action and the remaining PRPs, Marathon Battery Company and the U.S. Army, agreed to a cash settlement, was entered with the Southern District Court on April 1, 1993. Gould Inc., as the Settling Work Defendant, chose Severson Environmental Services as its contractor. The U.S. Army Corps of Engineers (USACE) performed oversight of the work effort.

Full-scale dredging of East Foundry Cove Marsh and East Foundry Cove and the excavation of the plant grounds began in September 1993. The treated sediments and soils were stockpiled on the treatment area for curing and post-treatment testing prior to off-site disposal at City Management Landfill in Michigan. All treated materials were subjected to the Toxicity Characteristics Leaching Procedure as required by EPA and the Extraction Procedure Toxicity Test as required by the State of Michigan.

Dredging in the Hudson River in the vicinity of the Cold Spring pier was completed in early July 1994 and dredging of East Foundry Cove continued until February 1994. All dredged areas underwent post-remedial sampling and were surveyed to determine whether the proper concentration or dredging depth was achieved. With regard to East Foundry Cove Marsh, post-excavation cadmium levels in the sediments did not exceed the 100 mg/kg action level, averaging 11.75 mg/kg.

In the Hudson River and East Foundry Cove, an average of 10 mg/kg of cadmium remained, which was consistent with the ROD requirement that at least one foot of sediment and 95% of the contamination be removed.

The collection of ice and snow on the former battery facility's roof during the winter of 1993-1994 resulted in the collapse of a 10,000 square foot section of the roof, thereby exposing a portion of the concrete foundation to the outside elements. This particular portion of the foundation contained numerous trenches which were used for waste disposal during the manufacture of nickel-cadmium batteries. Sample analyses revealed that elevated levels of cadmium and nickel remained encased in the rubble-filled and cemented-over trenches. Due to EPA's concern that continued exposure to the elements and freeze/thaw cycles could cause the concrete floor and/or trenches' cement caps to heave and crack, possibly resulting in a release of contaminated dust, the PRPs agreed to demolish the building and remove the foundation and process trenches. Demolition of the former battery facility began in

September 1994 and was completed in January 1995.

Following the demolition of the former battery facility, it was discovered that a cadmium nitrate tank located on a pedestal immediately adjacent to the plant had leaked onto the underlying soil prior to the closing of the plant in 1979. In an attempt to remove this cadmium-contaminated soil, a twenty-by-sixty-foot area was excavated to a depth of approximately twenty feet (approximately two feet above the ground-water table). While post-excavation sampling of this area showed that some cadmium contamination remained in the saturated soils at levels above the 20 mg/kg action level, and low levels of cadmium were present in the ground water, it was determined that excavating an additional four feet of contaminated soil (two feet below the water table), placing two feet of limestone at the bottom of the excavation (to keep the cadmium insoluble), and backfilling the excavation with clean fill would be protective of public health and the environment.

At the completion of the marsh remediation and restoration activities in April 1995, the marsh was planted with cattails, bull rush, arrow arum, and upland shrubs in specified areas.

The plant grounds were regraded and reseeded in July 1995. Fourteen monitoring wells remain in place on the plant grounds for the long-term monitoring of the ground water for VOCs and cadmium.

In all, 189,265 tons of treated soils and sediments were transported off-site (via 1,979 railcars) to City Management Landfill in Michigan. Chemical Waste Management's hazardous waste landfill in Model City, New York received 906 tons of hazardous materials.

A Remedial Action Report associated with the remediation of the adjacent properties was approved on September 28, 1993. A Remedial Action Report associated with the East Foundry Cove, East Foundry Cove Marsh, Hudson River in the vicinity of the Cold Spring pier, the former battery facility, and plant grounds portions of the site was approved on September 18, 1995. A Superfund Site Close-Out Report was approved on September 28, 1995.

Summary of Operation and Maintenance and Five-Year Review Requirements

The cattails, bull rush, and arrow arum, as well as the upland shrubs, are being monitored on a regular basis by the warden of the adjacent National Audubon sanctuary, Constitution Marsh.

The Settling Defendants have agreed to monitor the site for up to thirty years, commencing with the first inspection/monitoring event that occurred on October 27, 1995.

The long-term monitoring program consists of monitoring the groundwater, East and West Foundry Cove sediments and surface water and biological sampling and analysis quarterly the first year, semi-annually during years two through five, and annually thereafter for a total of thirty years.

Site inspections are to be coincident with the monitoring events. The inspections will include visual observations of the marsh soil cover and erosion controls, groundwater monitoring wells, and general site conditions. Maintenance, if required, will consist of correcting observed deficiencies (e.g., repairing ground water monitoring wells). The fourteen groundwater monitoring wells that comprise the groundwater monitoring program will be inspected to ensure their integrity. They will be repaired should they become damaged, or replaced should they become non-functional.

So that EPA can evaluate the remedy's effectiveness, following each inspection/sampling event, Gould Inc. is to submit to EPA a monitoring and inspection program report, summarizing the inspection and sampling results, and describing any corrective maintenance actions that were taken. In addition, a review of the long-term monitoring and inspection program reports will be performed five years after the completion of the RA to assure that the remedy remains effective in protecting human health and the environment.

There are no operational requirements related to the implemented remedy.

Summary of How the Deletion Criteria Has Been Met

Based upon the results of RA sample analyses, survey results, and site inspections, the site meets the requirements set forth in the RODs. All contaminated soils and sediments above the specific action levels set for each operable unit were excavated and/or dredged from those areas, treated and disposed of off-site. East Foundry Cove Marsh and the plant grounds have been regraded with clean fill and restored. An Explanation of Significant Differences, dated May 1995, was issued by EPA to address the pedestal area on the plant grounds which exceeds the action level at a depth of 20 feet. However, EPA believes the placement of two feet of limestone at the bottom of the excavation to keep the cadmium insoluble, and the backfilling of the

excavation with clean fill is protective of public health and the environment.

EPA and the State have determined that the response actions undertaken at the Marathon Battery Company site are protective of human health and the environment.

In accordance with 40 CFR § 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Marathon Battery Company site from the NPL.

The State has advised EPA that, upon deletion of the Marathon Battery Company site from the NPL, it proposes to change the classification of the site on its Registry of Inactive Hazardous Waste Sites from a Class 2 (a site where the disposal of a consequential quantity of hazardous waste has been confirmed and presents a significant threat to the environment or health) to a Class 4 (a site that has been properly closed, but requires continued operation, maintenance, and/or monitoring).

Dated: April 12, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96-11481 Filed 5-9-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-103; RM-8794]

Radio Broadcasting Services; Smith, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Donegal Enterprises, Inc., seeking the allotment of Channel 271C3 to Smith, Nevada, as the community's first local aural service. Channel 271C3 can be allotted to Smith in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) east, at coordinates 38-47-53 NL; 119-16-55 WL, to avoid a short-spacing to Station KSSJ, Channel 270B, Shingle Springs, CA.