

Wyoming's Department of Environmental Quality (WDEQ) to manage an adequate and equivalent RCRA authorized program in light of SF 147 and decided to withhold approval of Wyoming's program revisions until SF 147 could be revised.

As noted above, we withdrew the Immediate Final Rule on April 23, 1999. On March 10, 2000, Wyoming passed Senate File 15 (SF 15) which repealed and substituted SF 147 with a significantly modified voluntary remediation program. More recently, Wyoming passed Senate File 130 (SF 130) which amended and clarified SF 15. Many of the concerns raised by commenters on the Proposed Rule and Immediate Final Rule have been addressed through these legislative changes.

Conclusion

As a result of the changes to Wyoming's law since the passage of SF 147, EPA Region VIII has determined that approval of the revisions to Wyoming's authorized RCRA program should proceed. Therefore, we are granting final approval of Wyoming's RCRA program revisions as listed in the Immediate Final Rule found at 64 FR 09278 on February 25, 1999.

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64

FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Taking" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Incorporation-by-reference, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 12, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region 8.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7023-5]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Kem-Pest Laboratories Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 7 is publishing a direct final notice of deletion of the Kem-Pest Laboratories Superfund Site, located in Cape Girardeau County, Missouri, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the state of Missouri, through the Missouri Department of Natural Resources (MDNR), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 5, 2001, unless EPA receives adverse comments by September 5, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Victor A. Lyke, Remedial Project Manager at U.S. EPA, Region 7, Superfund Division, 901 N. 5th Street, Kansas City, Kansas, 66101. Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA, Region 7 Superfund Records Center, 901 N. 5th Street, Kansas City, Kansas, 66101 and Cape Girardeau Public Library, 711 N. Clark Street, Cape Girardeau, Missouri, 63701

FOR FURTHER INFORMATION CONTACT: If additional information is needed, please contact Victor A. Lyke at (913) 551-7256 or email at Lyke.Victor@epa.gov.

The EPA, Region 7 toll-free phone number is 1-800-223-0425.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA, Region 7 is publishing this direct final notice of deletion of the Kem-Pest Laboratories Superfund Site from the NPL. 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. 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.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 20, 2001, unless EPA receives adverse comments by August 20, 2001. If adverse comments are received within the 30-day public comment period on this document, 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, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

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 a release 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 (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown 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 deleted site above levels that allow for unlimited use and unrestricted exposure, 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 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. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the state of Missouri on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The state of Missouri concurred with 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 published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site 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.

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

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

should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Kem-Pest Laboratories Superfund Site is located in Cape Girardeau County, Missouri, approximately three miles northeast of the city of Cape Girardeau and east of Missouri State Highway 177 in the southwest part of section 22, Township 31 north, Range 14 East. The Mississippi River is located approximately 1,000 feet south of the Site.

The 6.5 acre Site is located in a rural setting, and once housed a 40 x 100 foot concrete cinder block formulation building on the northeast portion of the Site. The building was located 900 feet north of the Mississippi River and was demolished in 1996. A two celled lagoon was located approximately 40 feet southwest of the building.

Site History

The Kem-Pest Laboratories plant was constructed in 1964. From 1965 to 1977, the company formulated various pesticide products including liquid pesticides, granular insecticides and herbicides, and pesticide dust. Wastes generated from the formulation processes contained several pesticides including aldrin, dieldrin, endrin, and heptachlor. The plant wastes were disposed of in the on-site lagoon. There have been no production or disposal activities at the Site since 1977. The lagoon was backfilled with clay by the owner in 1981.

A preliminary assessment of the Site was conducted by the EPA in September 1981. In April 1984, EPA installed five on-site groundwater monitoring wells and collected groundwater, soil, and sediment samples. Pesticides, volatile organic compounds (VOCs), and semi-volatile organic compounds were detected in the soil, sediment, and groundwater samples. The Kem-Pest Site was proposed for the National Priorities List (NPL) in January 1987 (52 FR 2492). The NPL designation became final in October 1989 (54 FR 41000). The NPL identifies sites that warrant further evaluation to determine the type of responses that may be required to protect human health and the environment.

Remedial Investigations (RI)

In February 1989, EPA initiated a Remedial Investigation (RI), which included collection of soil and sediment

samples, installation of six monitoring wells down-gradient of the Site and a background well up-gradient of the Site, and collection of groundwater samples from on-site and off-site monitoring wells and two nearby private wells. Based on the soil, sediment, and groundwater samples collected, remediation alternatives were developed and evaluated and can be found in the Remedial Investigation/ Feasibility Study (Operable Unit 1), dated August 1989. Further remedial investigation results can be found in the Remedial Investigation Report (Operable Unit 2), dated November 1990. These reports provide a summary of analytical results that were used to characterize the risk that this Site posed to human health and the environment.

Characterization of Risk

The RI field activities included sampling for potential exposure to pesticide contamination in the formulation building. Using the data collected during the RI, the EPA prepared a Baseline Risk Assessment to characterize the risk that the Site posed to human health and the environment. The only pathway considered to be complete under current or future land use conditions was future use of the building. An industry occupying the Site in the future might use the formulation building, and workers might be exposed to chemicals in the building through direct contact with contaminated surfaces and through inhalation. Wipe samples were collected as part of the RI and the human health assessment was conducted for the following chemicals at the surface of the formulation building: aldrin, chlordane, DDT, dieldrin, and heptachlor. These chemicals were found present on wipe samples at levels to 140 times for each individual chemical. These chemicals were considered to be the primary source of contamination for the formulation building.

The RI report also concluded that removal of the primary source of contamination to groundwater at the on-site lagoon (via soil excavation), including the removal of the lagoon, would eliminate the risk posed by ingestion by residents. No Ecological Assessment was prepared since no known critical habitats, sensitive environments, or endangered species were affected by contamination in the groundwater.

Feasibility Study (FS)

The Feasibility Study Report, dated August 1989, evaluated the remedial alternatives and provided the bases for EPA's preferred alternative. In

November 1990, Addendum I and II to the Phase I RI report, The Formulation Building Operable Unit Feasibility Study report, and the Proposed Plan were made available to the public in the administrative record file located at the Cape Girardeau Public Library. The start of the public comment period was November 27, 1990.

Record of Decision Findings

The September 1989 (OU1) and December 1990 (OU2) Records of Decision (RODs) document the remedial alternatives selected by EPA to address the potential exposure to soil, sediment, and groundwater contamination at the Site. The selected remedies addressed the threat posed by the pesticides, volatile organic compounds (VOCs), and semi-volatile organic compounds at the Site and required the following actions:

- *Lagoon*

1. Excavation of 4,050 cubic yards* of contaminated soil and sediment; and
2. Disposal at an offsite land disposal facility in compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA) and other applicable laws or regulations.

- *Groundwater:*

1. No remedial action. Monitoring will be conducted to verify that no unacceptable exposure to risks posed by conditions at the Site occur in the future.

2. Wells to be monitored include existing monitoring wells, and additional wells to be installed during remedial design, and private drinking water wells located off of the Site.

- *Formulation Building***

1. Decontamination by surface layer removal and off-site incineration of decontamination and dismantling debris.

2. Institutional controls that limit future use of the build to commercial or industrial activities.

*An explanation of significant differences (ESD) was written to set the actual cubic yards of land disposed to 6,479.7.

**The December 1990 ROD was amended on February 2, 1993, to allow for the complete demolition of the formulation building with off-site disposal of the demolition debris material; and the establishment of institutional controls that limit future use of the property to commercial or industrial activities. However, because of the completion of the cleanup, no institutional controls to limit land use were necessary.

Response Actions

Pursuant to an Administrative Order on Consent entered into by EPA and the

property owners (Charles and Ruth Knot) in November 1988, the owners conducted limited sampling in December 1988. However, in February 1989, EPA initiated a RI, which included collection of soil and sediment samples, installation of six monitoring wells down-gradient of the Site and the background well up-gradient of the Site, and collection of groundwater samples from on-site and off-site monitoring wells and two nearby private wells.

In February 1993, the EPA amended the ROD for OU 2 based on information collected during the design phase, and decided to demolish and dispose of the formulation building. The EPA immediately initiated construction activities to remove the formulation building, but these actions were halted as a result of litigation between the property owner and the United States. The litigation was settled in 1995, and the construction activities for OU2 were completed in 1996. Further information related to the Remedial Design/ Remedial Action activities can be found in the Remedial Action Report for Operable Unit 1, dated September 1993 and the Remedial Action Report for Operable Unit 2, dated September 1997.

Cleanup Standards

In March 1992, EPA initiated remedial clean-up action of the soils and sediment operable unit. Remedial action was complete in May 1992. The selected remedy for OU1 included the excavation and off-site disposal of 6,479.7 cubic yards of contaminated soils and sediment and their transportation to Peoria Disposal Company, Peoria, Illinois, a RCRA approved commercial hazardous waste landfill.

The soil and sediment with contaminant concentrations above protective soil concentrations were excavated using conventional earthmoving equipment. Soil and sediment lifts were initially taken in one and two foot increments. Soil sampling was then conducted to confirm whether the horizontal and vertical extent of excavation was sufficient to remove contamination above cleanup levels. This process was repeated until clean up levels were achieved. Clean soil was then backfilled into the excavated areas, compacted and graded. Vegetation and gravel was then placed onsite to minimize erosion. The RA Report approved by EPA on September 30, 1993, concluded that no further action was required for OU1 dealing with the soils and sediment. The cleanup standards that governed the remedial action for OU2 included the hazardous debris rule (57 FR 37194) for

decontamination of the former pesticide formulation building, and risk-based cleanup goals for arsenic and selected pesticides in soil, established by EPA. The hazardous debris rule requires porous surfaces, like the concrete block walls and the concrete floor of the building to be decontaminated by removing at least 0.6 centimeters (cm) (or approximately 1/4") of material from the surface and inspecting the decontaminated surface to ensure they are visibly clean and that no more than 5% of each square inch of surface area remains visibly contaminated. Removal of all building structures was required to a maximum of 3 feet below the existing grade. The hazardous debris rule decontamination for the Site was expanded to include all building structures, and the building basement. Following decontamination, the former pesticide formulation building and basement were demolished. Decontaminated debris, which met the hazardous debris rule criteria, was segregated and transported to a solid waste landfill. Debris which did not meet the hazardous debris rule decontamination criteria was sent to a RCRA permitted hazardous waste incinerator. The demolition of the building, including its basement, was completed in August 1, 1996. Backfilling in the building footprint was completed on August 29, 1996, after analytical results showed that cleanup goals were met at the former building location. The December 1990 OU2 ROD directed that five years of groundwater monitoring be conducted at the Site to assure continued protectiveness of the remedy. Five years of monitoring of this Site have been completed and no significant concerns have been discovered with regard to the groundwater. Further information related to the Remedial Action activities can be found in Remedial Action Report for Operable Unit 2, dated September 1997. There are no land use restrictions for the Site. Neither is it on Missouri's Registry of Confirmed, Abandoned, or Uncontrolled Hazardous Waste Sites in Missouri.

Inspection and Maintenance

OU1

The pre-final inspection included a full system walk-through witnessed by representatives from EPA, the U.S. Army Corps of Engineers (USACE) and MDNR on June 16, 1992 and minor deficiencies were noted. These were corrected. Final acceptance of completion of the work was certified by the USACE, and the remedy was deemed operational and functional on

September 4, 1992. After that date, EPA determined that no further action was required.

OU2

On September 17, 1996, EPA conducted along with MDNR, the final inspection at the location of the formulation building to ensure that deficiencies noted during the substantial completion inspection were corrected. EPA concluded that the deficiencies had been corrected. On December 2-3, 1996, MDNR visited the Site to inspect the vegetative cover. MDNR noted deficiencies in the amount of vegetative cover. The Site owner corrected these deficiencies by reseeding in early March 1997. EPA and MDNR again visited the Site on April 16-17, 1997 to inspect the vegetative cover; no deficiencies were noted. In addition, groundwater sampling results from the groundwater monitoring indicate no significant concerns in regard to the groundwater. As a result, EPA, at the request of MDNR, abandoned the monitoring wells at the Site on June 13, 2001.

Five-Year Review

Section 121(c) of CERCLA, as amended, and Section 300.430(f)(4)(ii) of the National Oil and Hazardous Substances Pollution Contingency Plan require that periodic reviews (at least once every five years) be conducted for sites where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use or unrestricted exposure following the completion of all remedial actions for the site. This type of five-year review is referred to as a statutory review. Since the monitoring wells have been abandoned, and the remains of the building and contaminated soil have been disposed of, there will be no need for a five-year review.

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. A Community Relations Plan was prepared for the Site in January 24, 1989. An information repository was established for the Site at the Cape Girardeau Public Library. The Addendum I and II to the Phase I RI report, The Formulation Building Operable Unit Feasibility Study report, and the Proposed Plan were made available for public comment November 27, 1995 to December 27, 1995. Fact sheets providing site updates were distributed to individuals on the mailing list as established by the

Community Relations Plan. Documents which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the state of Missouri, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than Inspection and Maintenance of the vegetative cover, is 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 20, 2001, unless EPA receives adverse comments by August 20, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: July 24, 2001.

William Rice,

Region Acting Regional Administrator, Region 7.

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

PART 300—[AMENDED]

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

Authority: 33 U.S.C.1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site name, Kem-Pest Laboratories, Cape Girardeau, Missouri.

[FR Doc. 01-19318 Filed 8-3-01; 8:45 am]

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