

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL-7147-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final notice of partial deletion of the California Gulch Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of the subunits A and B, residential waste rock piles, and the parks and playgrounds within Operable Unit 9 (OU 9) of the California Gulch Superfund Site (Site), Lake County, Colorado 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 Substance Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment, 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.

OU 9 includes the Residential Populated Areas. EPA issued a Record of Decision (ROD) for OU 9 on September 2, of 1999. The Remedial Investigation has shown that the taking of remedial measures is not appropriate for subunits A and B of the Residential Populated Areas. Proposal to partially delete subunits A and B of the Residential Populated Areas was made by the State of Colorado, through the Colorado Department of Public Health and Environment, on November 3, 2000.

The Removal Action for the residential waste rock piles within OU 9 was completed on December 22, 1999 and the Removal Action Completion Report was submitted to EPA in July 2001. The Remedial Action for the parks and playgrounds within OU9 was completed on September 27, 2000.

The Site has been divided into 12 Operable Units (OUs). This direct final partial deletion pertains only to the

subunits A and B, residential waste rock piles, and parks and playgrounds within OU 9 of the Site. Response activities will continue at the remaining OUs. Furthermore, this partial deletion does not alter the status of the Site-wide Surface and Ground Water, OU 12, which is not proposed for deletion and remains on the NPL.

DATES: This direct final partial deletion action will be effective April 22, 2002 unless EPA receives adverse comments by March 22, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Comments may be mailed to: Rebecca Thomas, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 999 18th Street, Suite 300, Denver, CO 80202, Thomas.Rebecca@epamail.epa.gov, (303) 312-6552.

Information Repositories: Comprehensive information about the California Gulch Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 8, Superfund Records Center, 999 18th Street, 5th Floor, Denver, CO 80202, (303) 312-6473.

Viewing hours: 8:00 A.M. to 4:30 P.M., Monday through Friday, excluding holidays. and Lake County Pubic Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486-0569.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 999 18th Street, Suite 300, Denver, CO 80202, Thomas.Rebecca@epamail.epa.gov, (303) 312-6552.

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I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of subunits A and B, residential waste rock piles, and the parks and playgrounds within OU 9, California Gulch 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 the § 300.425(e)(3)

of the NCP, sites partially deleted from the NPL remain eligible for remedial actions if conditions at a partially 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 partially delete. This action will be effective April 22, 2002, unless EPA receives adverse comments by March 22, 2002 on this document. 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 partial deletion before the effective date of the partial deletion and the partial 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 partially delete and the comments already received. There will be no additional opportunity to comment.

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 subunits A and B, residential waste rock piles, and the parks and playgrounds within OU 9, California Gulch Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be partially deleted from the NPL where no further response is appropriate. In making a determination to partially delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed (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 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 partially deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the partially 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 partially 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 partially deleted from the NPL, the partially deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the partial deletion of the Site:

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

(2) The State of Colorado concurred with partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of partial deletion, a notice of the availability of the parallel notice of intent to partially delete was published today in the "Proposed Rules" section of the **Federal Register** and 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 partially delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial 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 partial 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 partially delete and the comments already received.

Partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Partial 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 partial deletion of a site from the NPL does not preclude eligibility for future

response actions, should future conditions warrant such actions.

While EPA does not believe that any future response action within the subunits A and B, residential waste rock piles, and the parks and playgrounds within Operable Unit 9 will be needed, if future conditions warrant such action, the deleted areas will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of the Site-wide Surface and Ground Water, Operable Unit 12, of the California Gulch Superfund Site, which is not proposed for deletion and remains on the NPL.

IV. Basis for Partial Site Deletion

The following provides EPA's rationale for deleting the subunits A and B, residential waste rock piles, and parks and playgrounds within OU 9 of the California Gulch Site from the NPL:

Site Location

The California Gulch Superfund Site is located in Lake County, Colorado approximately 100 miles southwest of Denver. The Site is in a highly mineralized area of the Colorado Rocky Mountains covering 16½ square miles of a watershed that drains along California Gulch to the Arkansas River. The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, and Stringtown. A section of the Arkansas River from the confluence of California Gulch to the confluence of Lake Fork Creek is also included.

Subunits A and B are located within the outlying areas of Leadville zoned for residential use. The residential waste rock piles are located on the eastern side of Leadville. The majority of the parks and playgrounds are located within Leadville. A map and site coordinates of the general location of subunits A and B and the residential waste rock piles are included in the docket at the information repositories listed above. The docket also includes a map of the parks and playgrounds.

Site History

The California Gulch Superfund Site was listed on the National Priorities List on September 8, 1983, 48 FR 40658 (1983). Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years. Mining in the District began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground workings became the principal method for removing gold, silver, lead, and zinc ore. As these mines were developed, waste rock was excavated along with the

ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally slurried into tailing impoundments. The Site was placed on the NPL because of concerns about the impact of mine drainage on surface waters in California Gulch and the impact of heavy metals loading in the Arkansas River.

In order to expedite the clean up of the Site, EPA agreed, pursuant to the 1994 Consent Decree, to divide the Site into twelve Operable Units (OUs). With the exception of OU 12, the operable units pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. EPA has taken responsibility for operable units where either no responsible party could be identified, the United States was a responsible party, or cash-out settlements had been reached with the responsible parties.

Under the 1994 Consent Decree, OUs 2 through 11 were designated to deal with areas where the appropriate responsible party or the United States would conduct source remediation. OU 12, which covers the entire Site, was designated to address site-wide surface and groundwater. OU 12 will be addressed after completion of source remediation in OUs 2 through 11. The Consent Decree recognized that additional source remediation or other appropriate response actions related to surface or ground water could occur as part of OU 12 anywhere within the 16.5 square mile of the Site. As determined by the Remedial Investigation, taking of remedial measures is not appropriate for subunits A and B. Therefore, surface and groundwater within subunits A and B require no consideration for OU 12.

EPA is partially deleting the subunits A and B, residential waste rock piles, and parks and playgrounds within OU 9 because all appropriate CERCLA response actions have been completed in these areas as described in Section IV. Response actions are not complete at most of the other OUs at the Site. Those OUs will remain on the NPL are not the subject of this partial deletion. The OUs are as follows:

- OU 1 Yak Tunnel/Water Treatment Plant
- OU 2 Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
- OU 3 D&RG Slag Piles and Railroad Yard/Easement
- OU 4 Upper California Gulch
- OU 5 Asarco Smelter Sites/Slag/Mill Site

OU 6 Starr Ditch/Stray Horse Gulch/
Lower Evans Gulch/Penrose Mine
Waste Pile

OU 7 Apache Tailing Impoundments

OU 8 Lower California Gulch

OU 9 Residential Populated Areas

OU 10 Oregon Gulch

OU 11 Arkansas River Valley
Floodplain

OU 12 Site-wide Surface and Ground
Water

Operable Unit 9 of the California Gulch Site contains the Residential Populated Areas. The area encompasses the City of Leadville, Stringtown, and outlying areas zoned for residential use. Pursuant to the 1994 Consent Decree, Asarco Incorporated is responsible for conducting all appropriate response actions at OU 9.

Cultural Resources

Leadville has been classified as a National Historic Landmark. The State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) are contacted prior to remedial activities within OU 9. Procedures outlined in the EPA/SHPO/ACHP Programmatic Agreement will be followed to safeguard cultural resources. As a part of the Lake County Community Health Program, structures built before 1950 will be assessed by SHPO. SHPO will then determine the property's contributions to the historic district prior to action. Cultural Resource Mitigation activities were performed for the Non-Time Critical Removal Action in accordance with the Final Mitigation Plan for Selected Mine Waste piles, Operable Unit 9, California Gulch Superfund Site, Lake County, Colorado (September 4, 1997).

Remedial Investigation and Feasibility Study (RI/FS)

A site-wide Phase I Remedial Investigation (Phase I RI), which primarily addressed surface and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA developed the first operable unit at the Site, the Yak Tunnel. This first operable unit was designed to address the largest single source of metallic loading.

The Phase I RI was followed by a number of additional site-wide studies, including the Tailing Disposal Area Remedial Investigation Report, Baseline Human Health Risk Assessment Part A, Part B, and Part C, Ecological Risk Assessment for Terrestrial Ecosystems, Baseline Aquatic Ecological Risk Assessment, Groundwater RI, Surface Water RI, Waste Rock RI, and Site-wide Screening Feasibility Study (FS). OU 9 specific studies were also conducted,

including the Soil-Lead in Residential Populated Areas RI, Parks and Playgrounds Engineering Evaluation and Cost Analysis (EE/CA), Mine Waste Engineering Evaluation and Cost Analysis EE/CA, and the Final Residential Soil FS.

Studies have determined lead to be the primary contaminant of concern in OU 9. The Remedial Investigation, completed in May of 1994, identified soils as the primary exposure pathway to the residential population at the site. The Final Residential Soil Feasibility Study, completed in November of 1998, evaluated the residential soils of properties, yards and open space areas where lead levels exceeded the trigger level of 3,500 ppm and presented seven remedial alternatives.

Response Actions

OU 9 Response Actions for Subunits A and B

Subunits A and B are located within the outlying areas zoned for residential use within OU 9. The Remedial Investigation and Terrestrial Risk Assessment have shown that taking of remedial measures is not appropriate for subunits A and B. Proposal to partially delete subunits A and B of the Residential Populated Areas was made by the State of Colorado through the Colorado Department of Public Health and Environment on November 3, 2000.

OU9 Response Actions for Residential Waste Rock Piles

A Mine Waste Engineering Evaluation and Cost Analysis was prepared in December 1995 to identify Removal Action alternatives for the mine waste piles within OU 9. Removal (Response) Actions for the mine waste piles were described in the Non-Time Critical Removal Action Memorandum signed August 15, 1996. Activities included removal of 14 residential waste rock piles with lead concentrations greater than 3,500 ppm. Pursuant to the Action Memorandum, Asarco conducted the removal action in 1997 and 1999. Residential waste rock piles with lead concentrations greater than 3,500 ppm lead were removed and placed at end use locations. Residential waste rock piles which fell below action trigger levels were left in place.

The four piles with the highest lead concentrations were removed in 1997 and the remaining ten piles were removed in 1999. During the 1997 removal action, four piles (Hibschle #14 and #15, Wolcott #19, Hope/Last Chip #109) were removed and placed within Operable Unit 6 (OU 6). Approximately 42,400 cubic yards of waste material

were placed within the Hams Tailings Pile (OU 6), then compacted and capped with 30 inches of clean borrow soil.

During the 1999 removal action, the ten waste piles removed included:

#16 Coronado
#17 Coronado/Northern
#22 Gray Eagle/Bison
#24 Kent
#26 Pocahontas
#28 Starr
#108 Turbot
#110 Luzerne
#111 Ypsilanti
#140 Ypsilanti/Ypsilanti B

In addition, eight suspected mine shafts were identified for closure during construction. The method of closure selected for the shafts was a monolithic concrete plug. Confirmation sampling showed that removal had successfully lowered levels to below site clean up levels of 3,500 ppm lead. Thus, no long term monitoring is required. This removal action is consistent with the performance of the final remedial action for OU 9 and is considered as the final remedy for waste mine piles within OU 9.

OU 9 Response Actions for Parks and Playgrounds

A Parks and Playgrounds Engineering Evaluation and Cost Analysis (EE/CA) was prepared in November of 1994. Based on the finding that soils at all parks and playgrounds were below the trigger level of 3,500 ppm lead, EPA approved no further action for the areas addressed by the work plan.

Subsequent to the Parks and Playgrounds EE/CA, one additional playground area was identified in Leadville. A Soil Remediation Site Plan was developed under the direction of the Kids First Program, pursuant to the Record of Decision for Residential Soils. Testing revealed that soils exceeded the trigger level of 3,500 ppm lead, and remedial actions involved the removal of 231 cubic yards of soil. Existing playground equipment was also removed. The excavated area was then filled with top soil and revegetated. Soil confirmation samples indicated that the soil lead concentrations were below the established action levels of 3,500 ppm lead.

Five Year Review

Based on the successful completion of the Removal Action and the Remedial Action, there are no further response actions planned or scheduled for subunits A and B, residential waste rock piles, and the park and playgrounds within OU 9.

Because this decision results in hazardous substances remaining on site,

above health-based levels, five-year reviews of the previous response actions will be required pursuant to the NCP. These reviews will be conducted in conjunction with site-wide five-year reviews. The Second Five Year Review Report for California Gulch, signed in September of 2001, concluded that the remedy for OU 9 currently protects human health and the environment. The next five-year review at the California Gulch Site is scheduled for completion in September of 2006.

Community Involvement

The Draft Mine waste Engineering Evaluation and Cost Analysis (EE/CA) was issued for public comment. A public meeting was held on December 19, 1995 to discuss the Removal Action for the mine waste piles located within OU 9. The EPA notified the citizens of Leadville by the release of and acceptance of public comment concerning the Mine Waste EE/CA for OU 9.

In November of 1998, EPA issued a Proposed Plan describing the Agency's preferred alternative to address risks to residents from lead in soils and other sources within OU 9. A public meeting to discuss the Proposed Plan was held in Leadville on November 19, 1998. Public comment on the Proposed Plan was accepted from November 12, 1998 through December 14, 1998. EPA then issued a Record of Decision for OU 9 presenting the selected remedy for the Residential Populated Areas of OU 9, California Gulch Superfund Site.

The State of Colorado, through the Colorado Department of Health and Environment, submitted a proposal for the deletion of subunits A and B within OU 9 on November 3, 2000. The petition of partial deletion requested EPA proceed with preparation of the Notice of Intent for Partial Deletion (NOIPD).

Public Participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the partial deletion from the NPL are available to the public in the information repositories.

V. Partial Deletion Action

The EPA, with concurrence of the State of Colorado, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than five-year reviews, are necessary. Therefore, EPA is deleting subunits A and B, residential waste rock piles, and the parks and playgrounds within OU 9, California Gulch Superfund 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 April 22, 2002 unless EPA receives adverse comments by March 22, 2002. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the

effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially 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: January 30, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

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 revising the entry under Colorado for “California Gulch” to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes ¹
CO	California Gulch	Leadville	P

1 * * *

P=Sites with partial deletion(s).

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

RIN 2700–AC33

Major Breach of Safety or Security

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by revising the Major Breach of Safety or Security clause to more clearly state that a major breach of security is an act or omission by the contractor that results in various outcomes (compromise of classified information; illegal technology transfer, etc.); to clarify that two of the outcomes are equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000; and to correctly identify the Occupational Safety and Health Administration (OSHA). In addition, the guidance for award fee evaluation factors is revised to be consistent with

the Major Breach of Safety or Security clause.

EFFECTIVE DATE: February 20, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Cullen, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546; 202–358–1784; e-mail: jcullen@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises 1852.223–75, Major Breach of Safety or Security. The current major breach of security description contained in paragraph (b) of the clause includes outcomes that