

explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 3, 2002.

Christine Todd Whitman,
Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.6 is amended by:
a. Revising paragraph (e)(1)(i);
b. Adding 6 sentences to the beginning of paragraph (e)(3)(v); and
c. Revising the introductory text to paragraph (e)(3)(vii).

The revisions and additions read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(3) * * *

(v) The owner or operator must submit to the Administrator a copy of the startup, shutdown, and malfunction plan at the time it is first adopted. The owner or operator must also submit to the Administrator a copy of any subsequent revisions of the startup, shutdown, and malfunction plan. Such revisions must be submitted at the time they are adopted if the revisions are required in order to adequately address an event involving a type of malfunction not included in the plan, or the revisions alter the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modify the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part. All other revisions to the startup, shutdown, and malfunction plan may be submitted with the semiannual report required by § 63.10(d)(5). The owner or operator may elect to submit the required copy of the initial startup, shutdown, and malfunction plan, and of all subsequent revisions to the plan, in an electronic format. If the owner or operator claims that any portion of a startup, shutdown, and malfunction plan, or any revision of the plan, submitted to the Administrator is confidential business information entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission. * * *

* * * * *

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * *

3. Section 63.10 is amended by revising the second sentence of paragraph (d)(5)(i) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each malfunction. * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7393-3]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The Industrial Latex site is located in the Borough of Wallington, Bergen County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Industrial Latex site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Industrial Latex site protect public health and the environment without any further monitoring or restriction.

DATES: The EPA will accept comments concerning its intent to delete on or before January 8, 2003.

ADDRESSES: Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007-1866.

Comprehensive information on the Industrial Latex site is contained in the Administrative Record and is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007-1866.

Hours: 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637-4308.

Information on the Site is also available for viewing at the Information

Repository located at: John F. Kennedy Memorial Library, 92 Hathaway Street, Wallington, New Jersey 07057, (973) 471-1692.

FOR FURTHER INFORMATION CONTACT:

Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007-1866, phone: (212) 637-3914; fax: (212) 637-4393; e-mail: vaughn.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces its intent to delete the Industrial Latex site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund).

The Industrial Latex site (Site) is the property known as 350 Mount Pleasant Avenue in Wallington, Bergen County, New Jersey. The 9.67-acre site is located in a mixed residential/industrial area. An elementary school is located directly across the street. An outdoor recreation field forms the southern border of the site and an active railway forms the eastern border. Directly across the railroad tracks is the Borough of Wood-Ridge, New Jersey. The property is currently vacant.

At the Site, EPA conducted a Remedial Investigation and Feasibility Study (RI/FS), conducted a risk assessment, selected a remedy, and implemented the selected remedy in two phases.

EPA will accept comments concerning its intent to delete for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 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 has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed 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 to the environment and, therefore, taking of remedial measures is not appropriate.

EPA will not conduct any further activities at this Site because EPA believes that it is suitable for unlimited use and unrestricted exposure. If new information becomes available which indicates the need for further action, EPA may initiate such actions under § 300.425(e)(3) of the NCP. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

III. Deletion Procedures

The following procedures were used for the intended deletion of the Industrial Latex Superfund Site.

1. EPA conducted an RI/FS to characterize and evaluate site contamination, conducted a risk assessment, and, in a Record of Decision (ROD) dated September 30, 1992, selected a remedy to address contaminated soil, vats, drums, and buildings at the Site. On April 10, 1996, EPA modified the remedy in an Explanation of Significant Differences.

2. Completion of the remedy was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

3. EPA conducted a ground water investigation and issued a No Action ROD for ground water on September 27, 2001. Ground water represented the final operable unit at the site.

4. EPA has recommended the deletion of the Industrial Latex site and has prepared the relevant documents.

5. The State of New Jersey, through the New Jersey Department of Environmental Protection, has concurred with the deletion decision in a letter dated August 29, 2002.

6. Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper and appropriate notice has been distributed to federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

7. EPA has placed all relevant site documents in the site information repositories identified above.

8. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the deletion. EPA will prepare a Responsiveness Summary, if appropriate, for comments received during the public comment period which will address the concerns raised. The Responsiveness Summary will be made available to the public at the information repositories. If, after review of all public comments, EPA determines that the deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of the Industrial Latex site does not actually occur until the final Notice of Deletion is published in the **Federal Register**.

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for deletion of the Industrial Latex site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

The Industrial Latex Corporation manufactured natural and synthetic rubber compounds, and chemical adhesives from 1951 to 1983. The company used solvents in the manufacturing process and polychlorinated biphenyls (PCBs) as a fire retardant. Poor operational procedures and on-site waste dumping resulted in widespread surface and subsurface soil contamination. When operations ceased in 1983, about 1,600

open or leaking drums remained on the property.

In 1986, EPA removed and disposed of open drums, liquids, and other immediate threats. The site was proposed for inclusion on the National Priorities List in May 1988 and finalized in March 1989. EPA then initiated an RI/FS to determine the nature and extent of contamination at the Industrial Latex site, and to develop and evaluate alternatives to address the contamination.

Based on the RI/FS and after receiving public input, EPA issued a ROD in September 1992, which outlined the cleanup plan for the site. The plan included: (1) Excavation of contaminated soil and on-site treatment by low temperature thermal desorption, followed by backfilling on the site; (2) excavation and off-site disposal of buried drums; (3) dismantling and off-site disposal of vats; and (4) demolition and off-site disposal of two buildings on the site.

On April 10, 1996, EPA issued an Explanation of Significant Differences changing or eliminating a number of remediation goals specified in the ROD. These changes were based on sampling conducted after the ROD was signed. The four remaining site-related contaminants of concern at the Industrial Latex site were PCBs, bis(2-ethylhexyl)phthalate, 3,3'-dichlorobenzidine, and arsenic.

Because the results of the ground water investigation were inconclusive, the 1992 ROD called for a subsequent investigation. This investigation was completed in August 2001 and a ROD was signed on September 27, 2001. The ROD selected a no action remedy for ground water at the site. No action was needed because the ground water at the site poses no unacceptable risk to human health or the environment.

The cleanup of the site was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

During the soil remediation, approximately 53,600 cubic yards of material were excavated, treated on-site via low temperature thermal desorption, and then backfilled on the site.

The site has been cleaned up to an unrestricted, residential use standard. All activities at the Industrial Latex site are complete and the site poses no unacceptable risk to human health or the environment. Therefore, no operation and maintenance activities or

institutional controls are required at the site. A five-year review of the remedy is also not required.

Public participation activities for the Industrial Latex site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The RI/FS, the RODs and the ESD were subject to a public review process. All other documents and information which EPA relied on or considered in recommending that no further activities are necessary at the Industrial Latex site, and that the site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL.

In a letter dated August 29, 2002, the New Jersey Department of Environmental Protection concurred with EPA.

List of Subjects in 40 CFR Part 300

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

Dated: September 17, 2002.

Jane M. Kenny,

Regional Administrator—Region II.

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CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Transcripts of Witness Testimony in Investigations

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board ("CSB" or "Board") proposes a new rule concerning transcripts of the testimony of witnesses appearing at Board depositions. The proposed rule provides that witnesses have the right to petition

to procure a copy of a transcript of their testimony, except that due to the nonpublic nature of Board depositions, witnesses (and their counsel) may for good cause be limited to inspection of the official transcript of their testimony.

DATES: Submit comments on or before January 8, 2003.

ADDRESSES: Address all comments concerning this proposed rule to Raymond C. Porfiri, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite C-100, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, 202-261-7600.

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board is mandated by law to "investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages." 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures for conducting investigations under this provision in 40 CFR 1610 and has spelled out the rights of witnesses to be represented in such proceedings (section 1610.1) and rules concerning attorney misconduct, (section 1610.2) and sequestration of witnesses and exclusion of counsel (section 1610.3). The Board has determined that it would be useful to add a provision concerning the taking, handling, and inspection of transcripts of Board depositions.

In proposing this regulation, the Board is following section 555(c) of the Administrative Procedure Act, which provides:

A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

On its face, section 555(c) recognizes that it is sometimes necessary to balance a compelled witness' right to have access to his or her testimony, and an agency's need to limit the dissemination of sensitive matters revealed in such testimony.

Board depositions are nonpublic investigatory proceedings. Attendance at depositions is limited to the minimum number of necessary CSB staff, the witness, and one attorney representing the witness. Depositions are not open to multiple attorneys