

Under RCRA section 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) 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 Takings" 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective February 14, 2005.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians lands, Intergovernmental relations, 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: December 7, 2004.

**A. Stanley Meiburg,**  
Deputy Regional Administrator, Region 4.  
[FR Doc. 04-27363 Filed 12-13-04; 8:45 am]  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7844-6]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final deletion of the York County Solid Waste and Refuse Authority Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the York County Solid Waste and Refuse Authority Superfund Site (Site) located in Hopewell Township, York County, Pennsylvania, 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 Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP) 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 February 14, 2005, unless EPA receives adverse comments by January 13, 2005. 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: Larry Johnson, Community Involvement Coordinator (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103 ((215) 814-3239).

#### Information Repositories:

Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following location: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103 (phone: (215) 814-5364, open Monday through Friday 8 a.m. to 4:30 p.m.) and the Mason-Dixon Public Library, Main Street, Stewartstown, Pennsylvania 17363.

#### FOR FURTHER INFORMATION CONTACT:

Romuald A. Roman, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103 (phone: (215) 814-3212; fax: (215) 814-3002; e-mail: [roman.romuald@epa.gov](mailto:roman.romuald@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction

EPA Region III is publishing this direct final deletion of the York County Solid Waste and Refuse Authority 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 February 14, 2005 unless EPA receives adverse comments by January 13, 2005 on this notice or the parallel notice of intent to delete published in the Proposed Rules section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, 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.

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 York County Solid Waste and Refuse Authority Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to 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 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 that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the 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 Commonwealth of Pennsylvania on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The Commonwealth of Pennsylvania concurred with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final 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 the 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 notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely 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:

### A. Site Location

The York County Solid Waste and Refuse Authority Superfund Site (Site) is located in Hopewell Township, York County, Pennsylvania, approximately two miles northwest of the center of Stewartstown Borough, Pennsylvania. The Site consists of a 135-acre inactive municipal landfill containing three unlined cells and a plume of contamination emanating from these cells. Adjacent to the former landfill is a currently operating, permitted landfill of approximately 45 acres that is not part of the NPL Site.

### B. Site History

The York County Solid Waste and Refuse Authority (YCSWRA) was established in 1971 and commenced landfill operations at the Site by 1974. The landfill operated between 1974 and 1985 and received approximately 400

tons of waste daily. The landfill ceased operation in 1985 and was closed in accordance with a closure plan approved by the Pennsylvania Department of Environmental Resources (PADER, now the Pennsylvania Department of Environmental Protection or PADEP).

An investigation conducted by PADER between 1982 and 1984 revealed that volatile organic compounds (VOCs) were migrating from the landfill and contaminating adjacent residential wells. In 1984, YCSWRA entered into an Agreement for Amicable Action and Consent Decree with PADER (1984 PADER Agreement) which required YCSWRA to, among other things, construct a lined landfill, implement a ground water treatment and monitoring program for the Site, and provide potable water to the residents whose water was contaminated by the Site. In 1984 and 1985, YCSWRA installed additional ground water monitoring wells, constructed and started operating the adjacent lined landfill, and constructed and started operating the ground water contamination containment/extraction and treatment system for the Site. The treatment system currently in operation consists of seventeen pumping wells and three air stripping treatment towers. Effluent from the air stripping towers is discharged to two National Pollutant Discharge Elimination System (NPDES) permitted outfalls on streams adjacent to the former landfill. Additionally, YCSWRA currently supplies and maintains a point-of-entry carbon filter treatment system for eight residents and provides bottled drinking water to two residents whose domestic wells do not appear to have been impacted by the Site.

EPA completed a Preliminary Assessment/Site Investigation (PA/SI) for the Site in July 1984. The PA/SI confirmed the earlier findings that ground water beneath and beyond the landfill was contaminated with VOCs and that contamination had migrated to adjacent wells. EPA proposed the Site for inclusion on the National Priorities List (NPL) in April 1985. The Site was finalized on the NPL on July 22, 1987.

In December 1987, PADER and the YCSWRA entered into a Consent Order and Agreement requiring YCSWRA to perform a Remedial Investigation and Feasibility Study (RI/FS) at the Site to ascertain the nature and extent of contamination and evaluate cleanup actions. The RI/FS was started in 1988 and was finalized in 1994. The Risk Assessment (RA) completed during the RI/FS identified ground water contamination beneath and beyond the

boundaries of the Site as posing an unacceptable level of risk.

On December 29, 1994, EPA issued a Record of Decision (ROD) selecting remedial action for implementation at the Site. The selected remedy consisted of the following components:

1. Continued operation of the currently existing ground water extraction and air stripper treatment system at the landfill;
2. Continued operation and maintenance of the point of entry ground water carbon filter treatment systems and/or provision of bottled water for affected private wells as necessary;
3. Continued maintenance of the landfill's soil and vegetated cap and the passive gas venting system currently in place at the landfill;
4. Continued sampling of ground water and treated water to ensure that treatment components are effective and ground water remediation is progressing toward required cleanup levels;
5. Implementation of a monitoring program to assess the effectiveness of the ground water treatment system and its impact on down-gradient surface water and wetland habitat;
6. Implementation of a monitoring program to assess the impact of the treated effluent discharge on the environmental quality of surface waters and sediments in the streams where the outfalls are located;
7. Deed restrictions to prohibit the installation of new on-Site wells in areas of contamination that do not meet applicable or relevant and appropriate requirements (ARARs), which restrictions can be withdrawn when ARARs are achieved; and
8. Deed restrictions to prohibit the excavation or disturbance of the soil cap which results in exposing the fill materials.

In 1997, the YCSWRA entered into a Consent Order (1997 Consent Order) with EPA which required YCSWRA to implement a removal action consisting of certain actions selected by EPA in the ROD. The 1997 Consent Order did not expressly require that YCSWRA continue implementation of the pump and treat, maintenance, and sampling activities called for in the 1984 PADER Agreement; rather, the 1997 Consent Order required that YCSWRA describe to EPA, on a monthly basis, all actions undertaken at the Site to comply with that 1984 PADER Agreement. Since 1997, YCSWRA has complied with the 1997 Consent Order by, among other things, identifying all actions taken at the Site pursuant to the 1984 PADER Agreement, performed monitoring to assess the effectiveness of the actions

taken pursuant to the 1984 PADER Agreement on down gradient surface water and wetland habitat and the impact of the treated effluent discharge on the environmental quality of surface waters where outfalls are located, implemented deed restrictions to prohibit the extraction of groundwater from the Site for drinking water and other residential uses; and implemented deed restrictions to prohibit all extraction or disturbance of the soil cap which may result in the exposure of fill material (except for certain limited exceptions). Deed restrictions were developed and placed in the deed to the Site by filing the restrictions with the Recorder of Deeds. The deed restrictions prohibit the use of ground water at the Site and prohibit unauthorized excavation or disturbance of the soil cap. The continued need for deed restrictions will be reevaluated during the Five-Year Reviews which will be conducted for the Site.

On September 27, 2004 EPA issued an Explanation of Significant Differences (ESD) which announced a significant, but not fundamental, change to the remedial action selected in the ROD. The ESD eliminated the items numbered 1–4 in the list above from the components of the remedial action. EPA made this change because (a) the 1984 PADER Agreement requires that YCSWRA conduct these actions under PADEP's oversight, (b) based on YCSWRA's past performance under the 1984 PADEP Agreement, EPA expects that YCSWRA will continue to conduct these actions under PADEP's oversight, and (c) YCSWRA is required, under the 1997 Consent Order with EPA, to report to EPA all actions taken to comply with the 1984 PADEP Agreement on a monthly basis. The ESD explained that EPA will continue to monitor YCSWRA's performance of these actions that are required by the 1984 PADEP Agreement through the monthly reports received pursuant to the 1997 Consent Order.

#### C. Characterization of Risk

An assessment of the risk associated with the Site was conducted during the Remedial Investigation to characterize the current and potential threats to human health and the environment based on reasonable maximum exposures to contaminants in the ground water, soil, migration of contaminants to surface water, sediments, and exposure to the air. The Risk Assessment (RA) identified ground water contamination beneath and beyond the boundaries of the Site as posing an unacceptable level of risk. The RA was used to evaluate the need

for remedial action and to determine the levels to which site related contaminants would need to be treated to ensure the protection of human health and the environment. Current land use in the vicinity of the Site is residential and agricultural and is expected to remain as such in the future. Ground water beneath the Site is classified as a source of drinking water and contaminants from the Site have migrated towards private drinking water wells through the ground water flow system. Residents who obtain water from private wells which have an in-place point of entry (POE) carbon filter treatment systems filter treatment system. The supply, maintenance and proper disposal of the filters is conducted by YCSWRA and is required by the 1984 PADER Agreement.

Currently there is a 3½–13 foot vegetated soil cover over the former landfill. As a result no risk to human health or the environment is currently present nor should any future risk occur as long as the cap integrity is maintained.

#### D. Future Activity

##### Operation and Maintenance

The YCSWRA maintains a permanent office at the landfill and performs regularly scheduled monitoring and response activities which include monitoring NPDES discharges, flow rates from remediation wells, depth-to-water in remediation wells, water quality in remediation and monitoring wells, water quality in residential wells, and groundwater flow; maintaining residential filters; and maintaining the cap and vegetative cover. Pumping and treating, which is being completed under the 1984 PADER Agreement, has been successful in containing contaminated ground water and in providing a potable water supply to residents with impacted wells. Pumping and treating will be continued until the maximum contaminant levels (MCLs) for each contaminant of concern or background, which ever is more stringent, is achieved and maintained throughout the entire plume of contamination for a period of 12 consecutive quarters. Residential filtration units will continue to be maintained for those residences whose wells are affected.

##### Five-Year Reviews

The NCP requires that if EPA selects remedial action that results in any hazardous substances remaining at a site above levels that allow for unlimited use and unrestricted exposure, EPA must conduct a review of such remedial

action no less often than every five years following initiation of that remedial action to ensure that human health and the environment are being protected. EPA has determined as a matter of policy that such reviews will also be conducted if a removal action leaves hazardous substances on site above levels that allow for unlimited use and unrestricted exposure and no remedial action has taken or will take place. Since ground water contamination remains at the Site above levels that allow for unlimited use and unrestricted exposure, EPA will use the five-year review process to ensure protection of human health and the environment. EPA completed the first five-year review of the Site on September 30, 2002. In that five-year review, EPA determined that the immediate threats have been addressed and the actions taken have been protective of human health and the environment. EPA plans to complete the next five year review prior to September 30, 2009.

#### *E. 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. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

#### **V. Deletion Action**

The EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M of the existing treatment system which will be completed under the 1984 PADER Agreement and five-year reviews, are 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 of a notice of intent to delete. This action will be effective February 14, 2005 unless EPA receives adverse comments by January 13, 2005 on a parallel notice of intent to delete published in the Proposed Rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion 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 substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 26, 2004.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

■ 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 “York County Solid Waste and Refuse Authority, Hopewell Township, PA.”

[FR Doc. 04–27168 Filed 12–13–04; 8:45 am]

**BILLING CODE 6560–50–P**

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

#### **Office of Inspector General**

#### **42 CFR Part 1003**

**RIN 0991–AB30**

#### **Medicare and State Health Care Programs; Fraud and Abuse: OIG Civil Money Penalties Under the Medicare Prescription Drug Discount Card Program**

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** In accordance with section 1860D–31 of the Social Security Act, this rule finalizes OIG's new authority for imposing civil money penalties (CMPs) against endorsed sponsors under the Medicare prescription drug discount card program that knowingly engage in false or misleading marketing practices; overcharge program enrollees; or misuse transitional assistance funds.

**DATES:** The interim rule amending 42 CFR part 1003 became effective on June 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, Office of External Affairs, (202) 619–0089.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### *A. OIG Civil Money Penalties*

In 1981, Congress enacted the civil money penalty statute, section 1128A of the Social Security Act (the Act) (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat increases in fraud and abuse. The civil money penalty (CMP) law authorized the HHS Secretary and the Inspector General to impose CMPs and program exclusions on individuals and entities whose wrongdoing caused injury to HHS programs or their beneficiaries. Since 1981, the CMP provisions have been expanded to apply by reference to numerous types of fraudulent and abusive activities.

##### *B. The Medicare Prescription Drug, Improvement, and Modernization Act*

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003, as enacted by Public Law 108–173 and codified in section 1860D–31 of the Act, provides for a voluntary prescription drug discount card program for Medicare beneficiaries entitled to benefits, or enrolled, under Part A or enrolled under Part B, excluding beneficiaries entitled to medical assistance for outpatient prescription drugs under Medicaid, including section 1115 waiver demonstrations. Eligible beneficiaries may access negotiated prices on prescription drugs by enrolling in drug discount card programs offered by Medicare-endorsed sponsors.<sup>1</sup> The Medicare drug discount card program is intended to serve as a transitional program providing immediate assistance to Medicare beneficiaries with prescription drug costs during calendar years 2004 and 2005 while preparations are made for implementation of the Medicare drug benefit under Medicare Part D in 2006.

The implementing regulations establishing the requirements for the MMA program were published in the **Federal Register** as an interim final rule with comment period by the Centers for

<sup>1</sup> Eligible beneficiaries may enroll in the Medicare drug discount card program beginning no later than 6 months after the date of enactment of MMA and ending December 31, 2005. After December 31, 2005, beneficiaries enrolled in the program may continue to use their drug discount card during a short transition period beginning January 1, 2006 and ending upon the effective date of a beneficiary's outpatient drug coverage under Medicare Part D, but no later than the last day of the initial open enrollment period under Part D.