



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

EPA-HQ-SFUND-2003-0010; FRL-9977-80-Region 8

National Oil and Hazardous Substances Pollution Contingency Plan;

National Priorities List: Deletion of the Davenport and Flagstaff Smelters Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete Davenport and Flagstaff Smelters Superfund Site (Site) located in Sandy City, Salt Lake County, Utah, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews (FYR), have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by [insert date 30 days from date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-2003-0010 by one of the following methods:

- <http://www.regulations.gov> . Follow on-line instructions for submitting comments

Follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

- E-mail: waterman.erna@epa.gov
- Mail: Erna Waterman, Remedial Project Manager, U.S. EPA, Region 8, Mail Code 8EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129
- Hand delivery: U.S. EPA, Region 8 1595 Wynkoop Street (EPR-SR), Denver, CO 80202-1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-2003-0010. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at:

Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, UT 84116;

Phone: (801-944-7641); Hours: M-Th: 9 a.m. – 9 p.m.; Fri-Sat: 9:00 a.m. – 5:30 p.m.

FOR FURTHER INFORMATION, CONTACT: Erna Waterman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, EPA-SR, Denver, CO 80202, (303) 312-6762, e-mail: waterman.erna@epa.gov.

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I. Introduction

EPA Region 8 announces its intent to delete the remaining portions of Davenport and Flagstaff Smelters Superfund Site from the National Priorities List (NPL) and requests public

comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

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 Davenport and Flagstaff Smelters Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA 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 such a determination pursuant to 40 CFR 300.425(e), EPA will 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 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.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. 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) EPA consulted with the State before developing this Notice of Intent to Delete.
- (2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.
- (3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;
- (4) The State of Utah, through the UDEQ, has concurred with deletion of the Site from the NPL.
- (5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, Deseret News.

The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

- (6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

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 Background and History

The 106-acre Davenport and Flagstaff Smelters Superfund Site (UTD988075719) is located 15 miles southeast of Salt Lake City at the mouth of Little Cottonwood Canyon.

Constructed in the 1870s, the Davenport and the Flagstaff smelters treated ores from mines near Alta, Utah. Lead smelting was the dominant industrial activity at the Site. Lead and arsenic were the primary products associated with ore processing. At times copper, gold, silver, and other metals were also produced at the Site. Ore processing and disposal of waste products have resulted in contamination at the Site.

The EPA proposed the Davenport and Flagstaff Smelters Superfund Site on the National Priorities List (NPL) in January 2000 and finalized listing of the Site on April 30, 2003 (68 FR 23077). The EPA proposed the Site to the NPL based on studies conducted between 1992 and 2003 due to soil and sediments contaminated with lead and arsenic. Lead levels greater than 200,000 mg/kg were detected in an investigation conducted in 2000.

The Site is divided into three operable units. Operable Unit 1 (OU1) is the southern 28 acres of the Site. It is the location of the former Davenport Smelter and current location of residential properties. Operable Unit 2 (OU2) is the middle and western part of the Site, and is comprised of 29 acres of commercial and undeveloped land. Operable Unit 3 (OU3) is the northern 49 acres of the Site. The location of the former Flagstaff Smelter, which was once agricultural land, is now mostly residential. Wastes were present on the Site for many years and, in some locations, groundwater was in direct contact with visible slag without appreciable impact on groundwater. Concentrations of contaminants of concern (COCs) in groundwater are generally below federal maximum contamination limits (MCLs).

Because portions of OU1 was deleted from the NPL on August 20, 2004 under a Partial Deletion (69 FR 51583), the remaining portions of OU1, OU2 and OU3 are the focus of this deletion.

Remedial Investigation and Feasibility Study (RI/FS)

The former smelters were the suspected source of waste within OU1, OU2 and OU3. Analysis of sample data confirmed that soil contamination was caused by deliberate use of waste as fill and environmental factors transporting smelter waste. The 1999 Baseline Human Health Risk Assessment identified arsenic and lead as contaminants of concern. This Risk Assessment established the action levels of 600 mg/kg for lead and 126 mg/kg for arsenic for surface soils. EPA completed a Focused Feasibility Study (FS) in December 2001.

Selected Remedy

Prior to the signing of the Record on Decision (ROD) in 2009, a removal action in OU1 was conducted. While the majority of OU2 land was undeveloped, there were three residences and a restaurant within OU2. EPA issued a ROD for OU2 dated September 16, 2009, an Explanation of Significant Differences (ESD) dated July, 2012 and an ESD for OU1/OU3, dated November 11, 2015. These decision documents defined the remedy as follows:

- Soils on properties with principal threat wastes (wastes that fail TCLP and/or is a characteristic hazardous waste) required stabilization and disposal in a RCRA Subtitle C Hazardous Waste Landfill.
- Excavation of a minimum of 18 inches of soil of all properties was recommended for remediation of all residential properties that had soil lead levels which exceeded the established action levels of 600 mg/kg for lead and 126 mg/kg for arsenic.
- Hand excavation would be conducted around affected areas of native vegetation.
- Institutional Controls (ICs) to make sure the remedy is protective.
- Off-Site disposal of contaminated soils and backfill with clean soil.
- Due to physical restrictions presented by topography and existing utility structures, and to preserve mature vegetation to enhance the overall remedy performance, contamination at concentrations greater than action levels could be left in place.

- If removal of contaminated soils was not feasible due to steep slopes and existing structures, these soils remained after construction activities were completed if they did not pose a threat to human health.

The Remedial Action Objectives (RAOs), as amended, were to prevent unacceptable exposure risks to current and future human populations presented by contact, ingestion, or inhalation of smelter materials, associated contaminated materials, or COCs derived from the smelter wastes.

Response Actions

In 2004, an OU1 removal action addressed 26 residential properties. Remediation work for OU2 and OU3 was conducted in two removal actions. The contractor mobilized in August 2011. The pre-final inspection of the removal action was on November 16, 2011 and the final inspection on May 29, 2012. The OU2 Construction Completion Report was signed on September 24, 2012. Little Cottonwood Canyon Partners conducted a non-time critical removal action at OU3 under an agreement with the EPA and under oversight of the UDEQ. This action allowed for redevelopment of the agricultural land for residential use.

Remediation work for OU3 began on April 26, 2006; the final inspection was conducted on September 6, 2006. The Final Close Out Report for OU3 is dated September 7, 2006. Site-wide, approximately a total of 137,000 tons were excavated and placed beneath an engineered soil and clay cap on-site. UDEQ was the lead agency for the remediation as defined in a cooperative agreement between EPA and UDEQ.

Operation and Maintenance

The Operations and Maintenance Plan consists of the following activities: inspection/observation during redevelopment construction; review of development construction plans and specification for conformance with cover requirements; storm water management and irrigation restrictions; and temporary stockpile and covering of soil and slag. Maintaining

appropriate soil cover and drainage is a required operation and maintenance IC. The State is responsible for enforcing the cap and soil ICs.

The 2009 OU2 ROD required the establishment of ICs to prevent exposure to contaminated materials and to require State review of future changes to land use. ICs that support limited commercial and residential re-use were adopted by the City of Sandy. In addition, ICs for groundwater and surface water were established by the State to prohibit use as drinking water.

Five-Year Review

Statutory Five-Year Reviews (FYR) of the Site are required because hazardous substances remain on-Site above levels which allow for unlimited use and unrestricted exposure. Two FYRs were conducted, in 2012 and 2017. Both FYRs found the remedy at the Site to be protective. The 2017 FYR identified an issue of needing to clarify roles of local authorities with respect to ICs. The issue was resolved by ensuring Salt Lake County would monitor and enforce ICs. The next five-year review is scheduled to be completed by September 2022.

Community Involvement

Major community involvement activities included establishing a local presence by meeting with local property owners and concerned citizens. Outreach efforts included community interviews, fact sheets, letters, flyers, door-to-door visits, public meetings, neighborhood meetings, public comment periods and website updates. The most recent interviews were conducted in the spring 2017 for the FYR. The EPA's Community Involvement criteria associated with 40 CFR 300.425(e)(4) require EPA to conduct interviews and/or gather community input.

Today, approximately seventy percent of the Site has been fully developed for residential and commercial land-use. The successful revitalization of this Site is sustainable, provides valuable reuse, and elevates the quality of life with revitalization for years to come.

Determination that the Site Meets the Criteria for Deletion

The implemented Site-wide remedy achieves the RAOs specified in the September 2009 OU2 ROD and the April 25, 2005 OU1/OU3 ESD for all pathways of exposure. No further Superfund responses are needed to protect human health and the environment at the Site.

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Utah, has determined that all required response actions have been implemented and no further response action is appropriate.

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.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 21, 2018.

Douglas H. Benevento,
Regional Administrator,
Region 8.

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