ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4200–8]

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

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete a site from the national priorities list; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Adrian, MN site from the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) National Priorities List (NPL), Appendix B, and requests public comment. EPA, in consultation with the State of Minnesota, has determined that all appropriate Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) actions have been implemented and no further clean-up under the authority of CERCLA is appropriate. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action. The purpose of this notice is to request public comment on the proposed deletion of the Adrian site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 1, 1992.

ADDRESSES: Comments may be mailed to Edward J. Hanlon (HSRM–6J), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604; direct telephone number: (312) 353–9228, facsimile: (312) 886–4071. The comprehensive information on the site is available at the local information repository located at the office of John Moeger, Tanks and Spills Division, Minnesota Pollution Control Agency (MPCA), 520 Lafayette Rd., St. Paul, MN 55155; direct telephone number: (612) 297–8613. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is C. Freeman (HSMA–5J), Region V, U.S. EPA, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886–6214.

FOR FURTHER INFORMATION CONTACT: Edward J. Hanlon (HSRM–6J), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604. (312) 353–9228; or Gina Weber (P19–J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886–6128.

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I. Introduction

The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Adrian site from the National Priorities List (NPL), appendix B, of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions funded either by the Hazardous Substances Response Trust Fund (Superfund) or Potentially Responsible Parties. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on March 8, 1990 (55 FR 8813) establish the criteria the Agency uses to delete sites from the NPL. Section 300.425(e) of the NCP provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further clean-up by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate under CERCLA.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment. CERCLA, though, excludes petroleum contamination from coverage under the act and precludes use of Superfund monies from being spent to address petroleum contamination. As will be discussed further below, a determination was made to transfer responsiblity of the site to another regulatory program. The UST (Underground Storage Tanks) program, established in subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA, is the regulatory authority with jurisdiction over clean-up of releases of petroleum from leaking underground storage tanks. Clean-up responsibility for the site was transferred to the U.S. EPA UST Program and the MPCA Hazardous Waste Division (Tanks and Spills Section), which has entered into a cooperative agreement with the U.S. EPA. At this time, no further action will be conducted under CERCLA.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions, and they are authorized under CERCLA. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. Furthermore, deletion 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 in Agency management.

III. Deletion Procedures

Prior to proposing deletion from the NPL, EPA must consult with the State prior to developing the Notice of Intent to Delete. In making the determination to delete a site from the NPL, EPA must consider, in consultation with the State, whether the criteria described above found in section 300.425(e)(3) have been met. Once these actions have taken

place, EPA may begin the formal deletion process by publishing a Notice of Intent to Delete in the **Federal Register**. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket. EPA will accept comments for a period of thirty (30) calendar days starting today.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The summary will be placed in the Docket and information repository. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA determines that deletion from the NPL is appropriate after close of the public comment period, a final notice announcing the deletion will be published in the **Federal Register**.

IV. Basis for Proposed Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

The city of Adrian, with a population of approximately 1400 people, is located in west-central Nobles County in southwestern Minnesota. The area of investigation is in the north-central portion of the city along the southern bank of a channel occupied by Kanaranzi Creek. The city uses 6 water supply wells, two of which produce from outwash deposits and channels along Kanaranzi Creek. Sampling of these water supply wells in September 1983 by the Minnesota Department of Health (MDH) indicated 1,2-dichloroethane (1,2 DCA) was found at a concentration of 16 ppb in Well No. 3, exceeding the 9.4 ppb human health water quality criterion for 1,2 DCA. Well No. 4 contained 3.8 ppb 1,2 DCA. Subsequent sampling in January 1984 for benzene in the same wells showed 88–160 ppb for Well No. 3 and 90–130 ppb benzene for Well No. 4, above the human health water quality criterion of 6.6 ppb for benzene. Upon this discovery, city Wells No. 3 and No. 4 were discontinued. Two new replacements wells were installed (No. 5 and No. 6) in 1984.

The estimated 1987 population of Adrian was 1,035 residents. All households, with one exception, are connected to the municipal water supply. The nearest residence is one half block east of the contaminated area of groundwater. Several recreational facilities are located between the areas of contamination and the upper arm of Kanaranzi Creek, including a swimming pool, two ballfields, and a campground.

The September 1983 MDH sampling results prompted MPCA, on January 16, 1984, to authorize the use of Minnesota Environmental Response Liability Act (MERLA) funds to investigate the contamination and define short term and long term alternative water supplies. Barr Engineering was retained by MPCA to investigate the potential source and extent of the contamination. Barr located several underground storage tanks (UST's) and determined which might be sources of the 1,2 DCA, and other VOCs. In order to address the long term remediation needs for the well field, on October 15, 1984 the MPCA proposed to list the site on EPA's NPL.

In early 1986, IT corporation was retained by the MPCA to prepare a work plan for a more detailed Remedial Investigation (RI) which followed the quality assurance and scope requirements of CERCLA. After the site was placed on EPA's Final NPL on June 6, 1986, the MPCA entered into a Cooperative Agreement (CA) with the EPA in the fall of 1986 to conduct a Superfund Remedial Investigation/Feasibility Study (RI/FS).

Malcolm Pirnie Inc. was retained by MPCA in the fall 1986 to complete the RI report based on data from IT corporation and Barr Engineering Co. Since contaminants found in Adrian wells are typical of gasoline contamination, source investigations focused on nine UST's used for storage of gasoline and fuel oil within the Adrian well field. The RI located a contaminated groundwater plume moving west/northwest and approximately 2200 cubic yards of soil contamination,[1] and indicated that releases of petroleum fuels, gasoline and fuel oil were the likely cause of the contamination. No Superfund Feasibility Study (FS) was conducted because results of the RI indicated that the source of contamination to be leaking underground petroleum storage tanks and no further remediation was appropriate under CERCLA.

The Record of Decision for this site, which was signed by the Regional Administrator of EPA Region V on September 29, 1989, selected a "No Further Action" decision for this site under CERCLA and MERLA. In this case, "No Further Action" is envisioned under CERCLA and MERLA, but additional actions are provided for under other regulatory authorities.

This decision stems from the fact that neither MERLA nor CERCLA provide the statutory authority to address sites contaminated with petroleum products. The UST program, established in Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA, is the regulatory authority with jurisdiction over clean-up of releases of petroleum from leaking underground storage tanks. Clean-up responsibility for the site was transferred to the EPA UST Program and the MPCA Hazardous Waste Division (Tanks and Spills Section), which is acting under a cooperative agreement with the EPA. Since actions will be conducted by the MPCA to address the petroleum contamination to be addressed under the UST program, no five-year review will be conducted under CERCLA. After considering criteria regarding deletion from the NPL which are listed in the NCP and referred to above, EPA, in consultation with the State of Minnesota, has determined that all appropriate CERCLA actions have been implemented, no further clean-up under the authority of CERCLA is appropriate, and this Notice of Intent to Delete the site should be published.

Various clean-up activities pursuant to MERLA were conducted. (Activities at the site after the transfer to the UST program provided in the Record of Decision were undertaken under UST authorities.) Activated Carbon Filtration was installed and operated for city Wells No. 3 and 4 from July through November 1984. The landowners of Adrian Glass and Signs, Adrian Auto and Adrian Motel each removed two inactive underground gasoline tanks by September 1984. An inactive underground gasoline tank was removed from Adrian Tile on August 20, 1985. Between 1986 and 1991, the remaining six UST's within the area of groundwater contamination, and areas of soil contamination which could be removed in a cost-effective manner, were removed. The tanks removed prior to January 1990 were removed under the direction and oversight of MPCA's MERLA program; those after January 1990 were removed under the direction and oversight of MPCA's UST program. All remediation activities necessary to remove the sources of contamination to the groundwater have been completed.

Regarding the existing groundwater contamination which resulted from petroleum releases from the source

[1] Refer to the Record of Decision for locations and detailed discussion of the investigation.

areas, MPCA's UST program has determined the extent of the plume, and determined that the groundwater contamination has not yet reached the city of Adrian's drinking water wells which are currently in use. MPCA, through a design contractor, is currently designing a groundwater remediation remedy involving active soil venting, gas collection, and air sparging, for the purpose of removing the petroleum contaminants in the aquifer. The MPCA expects to receive a "Corrective Action Design Plan" by mid-July, 1992. Following approvals, MPCA will then solicit bids from prospective construction contractors to construct the groundwater remediation remedy.

The EPA, with the concurrence of the Minnesota Pollution Control Agency, has determined that all appropriate responses under CERCLA at the Adrian Site have been completed.

Dated: July 20, 1992.

David A. Ullrich,

Acting Regional Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 92–166; DA 92–1085]

Mobile Satellite Service in the Frequency Bands Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; establish advisory committee.

SUMMARY: The Commission requests comments on whether it should establish a Federal Advisory Committee to negotiate proposed technical rules to govern the provision of mobile satellite services in the 1610–1626.5 MHZ and 2483.5–2500 MHz frequency bands.

DATES: Comments may be filed on or before September 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau, (202) 634–1682.

SUPPLEMENTARY INFORMATION:

1. The Commission is considering establishing an Advisory Committee to negotiate regulations defining the technical rules appropriate to the provision of mobile-satellite services (MSS) in the 1610–1626.5 MHz and 2483.5–2500 MHz frequency bands subject to the adoption of a Report and Order allocating this spectrum for MSS services in ET Docket No. 92–28. The negotiations are to assist the Commission in developing regulations that will facilitate the shared use of this spectrum by the maximum number of MSS providers. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101–648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules.

2. The Commission has recently proposed to reallocate the 1610–1626.5/2483.5–2500 MHz frequency bands to MSS on a co-primary basis with other allocated services in those bands. Notice of Proposed Rulemaking, FCC 92–358 (adopted August 4, 1992). This domestic allocation would conform with the international allocation that was made at the World Administrative Radio Conference, 1992 (WARC–92). Six applications have been filed seeking authority to construct and launch MSS systems in these bands. Five applicants propose low-Earth orbit (LEO) systems; one proposes a geostationary-satellite orbit (GSO) system. The only domestic user in the bands is the National Academy of Sciences, which provides radio astronomy service in the 1610.6–1613.8 MHz band segment on a secondary basis. Geostar Positioning Corporation (Geostar) is authorized to implement a radiodetermination satellite service (RDSS) system in the entire bandwidth, but the system has not been built and Geostar is in the liquidation phase of bankruptcy.

I. Regulatory Negotiation

3. Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or substance of appropriate rules. If a consensus is reached, it is used as the basis of the Commission's proposal. If a consensus is not reached, majority and minority input may be used by the Commission in ultimately proposing regulations. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

4. When making a determination regarding the suitability of a proceeding for the negotiated rulemaking process, the Commission must consider whether:

(a) There is a need for the rule

(b) There are a limited number of identifiable interests that will be significantly affected by the rule,

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules,

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time,

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules,

(f) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) The agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. NRA section 3, 5 U.S.C. 583(a).

II. Subject and Scope of Rule Proposed for Negotiated Rulemaking

5. The Commission is proposing that the technical regulations to govern the provision of MSS in the 1610–1626.5/2483–2500 MHz frequency bands be developed through negotiation. We believe that the selection criteria listed above are met. Technical regulations are needed to establish and govern this service, should we adopt the allocations proposed in the *NPRM*, *supra*, in a manner that maximizes use of the spectrum and protects existing users from harmful interference. Affected interests are relatively small in number and these interests are likely to be adequately represented on any negotiating committee. Further, while we recognize that several of the applicants' proposed systems may be technically incompatible, we believe it is reasonably likely that the Committee could reach a consensus with respect to sharing criteria in a reasonable amount of time. We will use the consensus of the Committee as the basis for our rules to the extent possible. Nonetheless, if a consensus cannot be achieved, the majority and minority input will be considered by the Commission and will serve to expedite the issuance of a notice of proposed rulemaking and a final order. Finally, the Commission has adequate resources to devote to the negotiations.