



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA-HQ-SFUND-1986-0005; FRL-10011-65-Region 2]**

#### **National Oil and Hazardous Substances Pollution Contingency Plan;**

#### **National Priorities List: Deletion of the FMC Dublin Road Superfund Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the FMC Dublin Road Superfund Site (Site), located in the Towns of Shelby and Ridgeway, Orleans County, NY, 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 an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the New York Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final rule is effective **[insert date 60 days after date of publication in the Federal Register]** unless the EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are

received, the 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:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <https://www.regulations.gov>. Follow on-line 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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.
- Email: [rodrigues.isabel@epa.gov](mailto:rodrigues.isabel@epa.gov)
- Phone: Public comment by phone may be made by calling (212) 637-4271 and following the directions provided for public comment.

- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via <https://www.regulations.gov>.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-1986-0005.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or e-mail. The <https://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 <https://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 because of 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 <https://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 electronically in <https://www.regulations.gov>. The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID-19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

**FOR FURTHER INFORMATION CONTACT:** Isabel R. Fredricks, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19<sup>th</sup> Floor, New York, NY 10007, 212 637-4248, email: [rodrigues.isabel@epa.gov](mailto:rodrigues.isabel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Introduction**

EPA Region 2 is publishing this direct final Notice of Deletion of the FMC Dublin Road Superfund Site, from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and 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 responsible parties or by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL are eligible for Fund-financed remedial actions if future conditions warrant such action.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses the FMC Dublin Road Superfund Site and demonstrates how it meets the deletion criteria. Section V of this preamble 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**

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 prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the “Proposed Rules” section of the *Federal Register*.
- (2) EPA has provided the State 30 working days for review of this document and the parallel Notice of Intent to Delete prior to their publication today, and the

State of New York through the New York State Department of Environmental Conservation, has concurred on the deletion of the Site from the NPL.

- (3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;
- (4) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper known as Lockport Sun and Journal. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.
- (5) 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.
- (6) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely document of 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 EPA placed copies of documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

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

The EPA, with concurrence of the State, has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed have been completed. 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. This action will be effective **[insert date 60 days after date of publication in the Federal Register]** unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it 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.

Peter Lopez,  
Regional Administrator,  
Region 2.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION  
CONTINGENCY PLAN**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

**Appendix B to Part 300—[Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the entry “NY”, “FMC Corp. (Dublin Road Landfill)”, “Town of Shelby”.

[FR Doc. 2020-15723 Filed: 7/20/2020 8:45 am; Publication Date: 7/21/2020]