



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-10012-98-Region 8]

National Oil and Hazardous Substances Pollution Contingency Plan;

National Priorities List:

Partial Deletion the Anaconda Co. Smelter 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 the Beryllium Operable Unit 9 (OU9), the Flue Dust OU11 and the Arbiter OU12 of the Anaconda Co. Smelter Superfund Site (Site) located in Anaconda, MT, 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 Montana, through the Department of Environmental Quality (MDEQ), have determined that all appropriate response actions at these identified parcels 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.

This partial deletion pertains to three Operable Units; the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12). The other areas of the Site will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1983-0002, 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: Charles Coleman at coleman.charles@epa.gov.
- Phone: Public comment by phone may be made by calling (406) 457-5038 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-1983-0002. 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 Confidential Business Information (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 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 <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: Charles Coleman, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 10 West 15th Street, Suite 3200, Helena, Montana 59626, (406) 457-5038, email: coleman.charles@epa.gov.

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I. Introduction

EPA Region 8 announces its intent to delete three Operable Units of the Anaconda Co. Smelter Superfund Site (Site); the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12), from the National Priorities List (NPL) and request 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 those 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). This partial deletion of the three Operable Units of the Anaconda Co. Smelter Superfund Site (Site); the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12), is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

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

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 where to access and review information that demonstrates how the deletion criteria have been met for the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12) of the Anaconda Co. Smelter Superfund Site

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 Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12) of the Site:

- (1) The EPA consulted with the State before developing this Notice of Intent for Partial Deletion.
- (2) The EPA has provided the state 30 working days for review of this action 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 Montana, through the MDEQ, has concurred with the deletion of the the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12) of the Anaconda Co. Smelter Superfund Site from the NPL.
- (5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the *Federal Register*, a notice is being published in the Anaconda Leader and Montana Standard. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.
- (6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, made these items available for public inspection, and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this action, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12). 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 Beryllium (OU9), the Flue Dust (OU11) and the Arbiter (OU12) of the Anaconda Co. Smelter Superfund Site, the Regional Administrator will publish a final Notice of Partial 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 included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion 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 Partial Site Deletion

The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket. The material provides explanation of EPA's rationale for the partial deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

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.

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

Dated: July 29, 2020

Gregory Sopkin,
Regional Administrator,
Region 8.

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