J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA approved Pennsylvania's antidegradation policy, which is consistent with 40 CFR 131.12(a) and provides the same level of protection as the federally promulgated antidegradation policy. This rule withdraws a redundant antidegradation policy.

K. Congressional Review Act

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 rule 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 of the rule 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) and will be effective on December 15, 2008.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: September 9, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

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

§ 131.32 [Removed and Reserved]

■ 2. Section 131.32 is removed and reserved.

[FR Doc. E8–21464 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–8715–1]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final Notice of Deletion of the Berks Landfill 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 Berks Landfill Superfund Site (Site), located in Spring Township, Berks 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 deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania (Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: This direct final deletion is effective November 14, 2008, unless EPA receives adverse comments by October 15, 2008. 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: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: matzko.kristine@epa.gov.*
- *Fax:* 215–814–3002, Attn: Kristine Matzko (3HS21)
- *Mail:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103. Such deliveries are only accepted during business hours, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 *http://www.regulations.gov* or e-mail. 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:

Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215–814–5254. Business hours are Monday through Friday 8 a.m. to 5 p.m.

Township of Spring Municipal Office, 2800 Shillington Road, Reading, Pennsylvania 19608, 610–678–5393. Business hours are Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Kristine Matzko, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, (3HS21) 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814–5719, e-mail *matzko.kristine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of 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 conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective November 14, 2008, unless EPA receives adverse comments by October 15, 2008, on this document. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, 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, 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 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

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 Commonwealth 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 Commonwealth with this notice and the parallel Notice of Intent to Delete for review prior to their publication today, and the Commonwealth, through the PADEP, has concurred on the deletion of the Site from the NPL.

(3) 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, Reading Eagle. 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 proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice 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 following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Site is located in the Township of Spring, Berks County, Pennsylvania, about seven miles southwest of the City of Reading. The Site is several miles north of Route 222 between Wheatfield and Chapel Hill Roads.

Originally, the Berks Landfill property was an iron ore mine, and then the property was used for waste disposal.

The Berks Landfill was in operation from the 1950s to the 1980s. The Site consists of a 49-acre eastern landfill and a 19-acre western landfill. Initially, the western landfill was used for disposal, and then the eastern landfill was used

for disposal. There were two additional disposal areas referred to as the northern disposal area and the area behind the equipment building. These areas were used when access to the eastern or western landfill was not available.

In 1975, the eastern landfill was granted a solid waste permit by the Pennsylvania Department of Environmental Resources (PADER) to accept municipal and demolition refuse. In 1986 landfilling operations ended, and both the eastern and western landfills were closed.

Immediately adjacent to the landfills, and within the Site boundary, is a property formerly used to weigh the disposal trucks. After this function was no longer required, an auction business, Zerbe's Auction House, used one of the buildings. Presently, there are garages on the property used to store large equipment, and another building is used as an office. Also, north of the landfills is a former residential property that is now vacant.

Sampling of on-site groundwater wells in the late 1980s detected volatile organic compounds (VOCs) at concentrations above their respective drinking water standards or Maximum Contaminant Levels (MCLs), promulgated at 40 CFR Part 141 pursuant to the Safe Drinking Water Act, 42 U.S.C. Section 1412.

EPA listed the Site on the NPL on October 4, 1989, because of the Site's potential to negatively affect residential well water (54 FR 41015).

From 1990 to 1993 a series of protective measures were installed at the Site including the following: A fence was erected around the eastern landfill; the existing cap on the eastern landfill was repaired; and a pumping station was constructed to convey the leachate from the ponds to the local wastewater treatment plant.

Remedial Investigation and Feasibility Study (RI/FS)

In 1991 EPA entered into an Administrative Order on Consent with a group of responsible parties (RPs) to conduct a Remedial Investigation and Feasibility Study. The Remedial Investigation (RI) involved extensive programs of subsurface exploration, field testing, sampling, chemical analyses, geotechnical analyses, and data evaluation conducted between December 1991 and January 1994. The RI defined the geology, hydrogeology, construction of the existing landfill caps, and other features of the Site; assessed wetlands, and aquatic and terrestrial habitats; determined the nature and extent of constituents detected at the Site; and determined the potential fate mechanisms and transport pathways available to these constituents. The results of the RI were presented in the Remedial Investigation Report, which was submitted to EPA on March 13, 1995, and approved by EPA on March 29, 1996.

The results of the RI showed that VOCs were present in on-site groundwater. The groundwater was shown to discharge to the surface water drainageways and the Cacoosing Creek tributary system; however, these VOCs were not detected in surface water. The most important geologic feature identified during the RI was an intrusive diabase mass which almost entirely encircles the Site and lies beneath the Site in a bowl-like configuration. As a result of its orientation, low permeability and higher hydraulic pressures at depth, the diabase exhibits significant control over the groundwater flows at the Site.

A Feasibility Study (FS) was conducted between April 1996 and February 1997 to develop and evaluate appropriate remedial alternatives. The objectives of the FS were to prevent exposure to on-site groundwater via potable use, to monitor the groundwater, to repair the existing caps, and to repair the leachate management system. The Final Baseline Risk Assessment was submitted to EPA on July 1, 1996, and approved by EPA on November 27, 1996. The FS Report was approved by EPA on February 19, 1997.

Record of Decision Findings

A proposed plan that set forth EPA's preferred remedial alternative for the Site was released for public comment in May 1997. A Record of Decision (ROD) dated July 22, 1997 identified EPA's selected remedy for the Site. The remedy in the ROD consisted of the following components: Institutional controls to prevent future consumption of on-site groundwater, to restrict future development at the Site and to limit future earth moving activities at the Site; long-term monitoring including installation of a sentinel monitoring well cluster, sampling of residential wells and monitoring on-site wells, combustible landfill gases, and the adjacent aquatic habitat; operation and maintenance of the leachate management system; and repair of the landfill cap for the eastern landfill and maintenance of the eastern and western landfill caps. The groundwater remedy set forth in the ROD was natural containment and natural attenuation with long-term monitoring.

The remedial action objectives set forth in the ROD were the following: The prohibition of future consumption of on-site groundwater; long-term monitoring to ensure that MCLs or Maximum Contaminant Level Goals (MCLGs) continue to be maintained at the point of compliance; continued effective collection of site leachate; and repair and maintenance of the existing landfill caps.

The prohibition on groundwater consumption is limited to the point of compliance. The boundaries for the point of compliance are the eastern, western, and southern Site property boundaries and the northern boundary is Wheatfield Road.

Response Actions

In 1998 EPA issued a Unilateral Administrative Order (Docket No. III–98–071–DC) (UAO) to eighteen parties (Respondents) ordering them to design and construct the remedy described in the ROD. In accordance with the UAO, a subgroup of the Respondents developed a remedial design for the repair of the landfill cap and leachate collection system.

The Remedial Design Work Plan, submitted to EPA on July 1, 1998, provided the framework, schedule, and process that would be utilized to complete the design for the remedy in the ROD.

The Final Remedial Action Design Report was submitted to EPA on September 15, 1999, and included the design drawing package, technical specifications, the Operation, Maintenance, and Monitoring (OM&M) Plan including a Sampling and Analysis Plan, the Institutional Control Plan, Permit Requirements, Access Plan, the Construction Quality Assurance Plan (CQAP), and the Soil Erosion and Sediment Control Plan. EPA approved this final remedial design on September 30, 1999.

Following the approval of the remedial design, the Remedial Action Work Plan (RAWP) provided the methodologies, plans, and schedules of activities required to be completed prior to initiating construction of the Remedial Action (RA). The RAWP was submitted to EPA on January 7, 2000, and was approved by EPA on January 13, 2000.

The Remedial Action Construction Bidding Documents were issued by the Respondents, which included the CQAP, the RAWP, and the Health and Safety Plan. A pre-bid meeting was held at the Site on February 8, 2000. Bids were received on February 29, 2000, and the Remedial Action Contractor (RAC) was selected on March 16, 2000.

The Revised Construction Management Plan (CMP) and the RAC's

Health and Safety Plan were submitted to EPA on May 9, 2000, and approved by EPA on May 25, 2000. A pre-construction meeting was held at the Site on May 23, 2000, followed by RAC mobilization to the Site between May 29 and June 5, 2000. The RA construction activities commenced on June 5, 2000.

EPA and its contractor, the U.S. Department of Interior's Bureau of Reclamation, as well as PADEP, provided oversight of the construction of the remedy.

The components of the RA construction activities included construction and repair of access roads including laying of 7,000 feet of inspection trails on the western landfill, removal of surface debris, removal of existing tree and shrub vegetation, mowing of vegetation, clearing and grubbing of construction areas, repair of an area with exposed waste, repair of erosional features, repair of bare spots, repair of existing slopes, repair of the existing leachate management system including relining the 3 leachate ponds for a total volume of 1.5 million gallons, installation of the sentinel monitoring well, decommissioning of five groundwater monitoring wells, installation of nine gas monitoring probes, planting of 300 wetland trees, and revegetation of disturbed areas. The RA construction activities were substantially completed on October 31, 2000.

EPA conducted a pre-final inspection of the Site on October 31, 2000. A list of uncompleted minor items was identified during the pre-final inspection and was completed by the RAC by November 10, 2000. EPA completed its final inspection on November 14, 2000 and issued a Preliminary Project Close Out Report (PCOR) on December 22, 2000. The PCOR concluded that the Respondents had constructed the remedy in accordance with the Remedial Design plans and the performance-based specifications, and had initiated activities necessary to achieve performance standards and site completion.

The final Remedial Action Completion Report was submitted to EPA on July 27, 2001. The Remedial Action Construction Report documented that the RA construction at the Site was completed in accordance with the UAO and the Remedial Design, and met the performance standards in the ROD.

Cleanup Standards

The ROD established a natural containment and natural attenuation groundwater remedy. The results of the groundwater sample analyses have continued to demonstrate the effectiveness of the natural groundwater containment system and that the ROD performance standards are being met. VOCs detected on-site have not been detected in either the off-site sentinel or residential wells which demonstrates the containment of the groundwater. Detections of cis-1,2-dichloroethene (cis-1,2-DCE) and vinyl chloride (VC) in on-site groundwater monitoring wells in the eastern landfill indicate that natural biological attenuation of the chlorinated ethene compounds (i.e., trichloroethene (TCE)) is occurring. Further, the TCE concentrations have been declining in a well in the eastern landfill.

The sentinel well was installed in order to monitor the natural containment and natural attenuation groundwater remedy set forth in the ROD. The sentinel well, located on a property northwest of the Site, is downgradient of the Site in the direction of groundwater flow at the point where groundwater discharges to the Cacoosing Creek tributary. The sentinel well is sampled for VOCs and metals. There have been no exceedances of MCLs for VOCs in the sentinel well. Three metals (aluminum, iron, and manganese) were previously detected in the sentinel well above their respective MCLs. Currently, aluminum results are within the range of its secondary MCL and iron and manganese are less than their respective MCL. Since the Site was historically an iron-ore mine, the presence of some concentrations of metals is a naturally occurring event.

EPA and the Respondents have sampled the groundwater the residents use as their drinking water. The residents selected for the sampling are downgradient of the Site in the general direction of groundwater flow. Residential groundwater is sampled for VOCs and total metals. None of the residents have treatment systems on their groundwater as a result of site conditions. There have been no detections of VOCs related to the Site in the residential wells and metals are either not detected or detected below the MCLs.

The ROD performance standards for groundwater off-site have been achieved. The performance standard for groundwater states that there shall be no exceedances of MCLs off-site. The VOCs detected on-site above MCLs are not detected in the off-site sentinel well or residential wells, thereby demonstrating compliance with the performance standard. The metals detected on-site above MCLs are detected in the off-site sentinel well within the range of the secondary MCL or below the MCL, thereby also demonstrating compliance with the performance standard.

Three VOCs are detected above the MCL in on-site wells: cis-1,2-DCE, TCE, and VC. These VOCs detected in the on-site wells above MCLs are not detected in the off-site wells. One well (well C3D) on the eastern landfill shows declining concentrations of cis-1,2-DCE, TCE, and VC. The two other wells are at the base of the eastern landfill: One well (G–5) shows consistent levels of VC and the second well (MP–18S) shows declining TCE concentrations and consistent levels of cis-1,2-DCE and VC. The remaining wells in the groundwater monitoring system have either no detections or low-level detections of VOCs.

Three on-site wells (C7S, G5, G12) have detections of metals (aluminum, iron, and manganese) above their respective MCLs. In most cases, the concentrations of these metals in the on-site wells are decreasing over time. The metals detected on-site above MCLs are detected in the off-site sentinel well within the range of the secondary MCL for aluminum or below the MCL for iron and manganese. Since the Site was historically an iron-ore mine, the presence of some concentrations of metals is a naturally occurring event.

Landfill gas is monitored for combustible gases, carbon monoxide, hydrogen sulfide, and oxygen. The landfill gas monitors are located between the edge of the eastern landfill and the perimeter of the northeast corner of the Site and also near two buildings (closed auction house and the equipment building). As part of the remediation, passive landfill gas vents were installed in the eastern landfill.

There have been detections of combustible gases near the closed auction house and equipment building. In response to the detections, there is ambient air monitoring being conducted inside the buildings and continuous monitors for combustible gases have been installed in the buildings. The interior monitors have not detected landfill gases in the buildings. Landfill gases will continue to be monitored around these buildings and any other future structures.

Vapor intrusion is not considered a pathway of concern based on site conditions and monitoring results. The sentinel well and residential wells have not detected VOCs. The diabase naturally contains the groundwater and discharges the groundwater to the local stream prior to the residential properties, so there is no hydraulic connection to the Site. The landfills are covered, the on-site groundwater concentrations have demonstrated

degradation and declining levels, there are restrictions on use of the property, and landfill gases are monitored inside and outside the buildings on-site.

Operation and Maintenance

Operation, maintenance, and monitoring commenced in December 2000. The OM&M Plan included with the Remedial Action Design Report was modified based on as-built conditions following RA construction activities. An updated OM&M Plan was submitted to EPA on May 4, 2001, and approved by EPA on September 24, 2001. The OM&M Plan included operations, maintenance, and monitoring requirements for the first five calendar years following the completion of the RA construction (i.e. 2001 to 2005). The OM&M Plan described specific monitoring procedures to be implemented to meet the performance standards, including regular groundwater monitoring of existing on-site monitoring wells, off-site residential wells, and a sentinel well; routine monitoring of combustible gas levels adjacent to on-site buildings and at the landfill perimeter; and periodic monitoring of surface water, sediment and benthic macroinvertebrates within adjacent streams. On July 28, 2006 EPA approved a new monitoring and inspection schedule for the next five calendar years (i.e. 2006 to 2010).

The OM&M Plan specifies an annual frequency of monitoring the groundwater wells, the residential wells, and the sentinel well for VOCs, metals, field parameters, natural attenuation parameters, and groundwater levels. The monitoring schedule also includes an annual frequency for monitoring landfill gas.

Fourteen groundwater and landfill gas monitoring events have been conducted since the completion of the RA construction in accordance with the EPA-approved monitoring schedules, including events during calendar years 2000 through 2007. Results of each monitoring event are presented in an Operation, Maintenance, and Monitoring Report, and submitted to EPA. Following each monitoring event, letters are sent to residents regarding the sampling results of their wells and a letter is sent to the local sewer authority regarding the results of the leachate sampling.

Two aquatic habitat assessments (sampling of surface water, sediment, and macroinvertebrates) have been conducted in accordance with the monitoring schedule since the completion of the RA construction, including one event in 2001 and one event in 2004. The results of these assessments were presented in an Aquatic Habitat Assessment Report following each event, and compared with the aquatic habitat assessment conducted in 1999 prior to the RA construction. The results of the aquatic habitat assessments have demonstrated good surface water and sediment quality at locations downstream of the Site, and that in general, the aquatic habitats at the downstream locations are healthy and productive, supporting a relatively diverse and pollution intolerant population of macroinvertebrate species.

In addition to the monitoring schedule, the OM&M Plan describes specific operation and maintenance procedures to be implemented to meet the performance standards set forth in the ROD including inspection, repair (as necessary), and continued operation and maintenance of the leachate collection system (collection piping, ponds and pumping station); and long-term maintenance of the forested and non-forested portions of the eastern and western landfill caps and adjacent disposal areas (northern disposal area and the area behind the equipment building). The operations and maintenance schedule specifies routine inspections of the Site access controls, landfill caps, leachate management system, groundwater monitoring well network, and landfill gas monitoring probe network. The leachate collection system is inspected monthly. The eastern landfill cap and surface water management features are inspected annually. The eastern landfill is mowed once a year.

The historical results of the monitoring events and an analysis of the data trends, along with the results of the inspection and maintenance events, are presented in the Annual Report completed after each calendar year of OM&M, and submitted to EPA. The Annual Reports have documented that the performance standards for the operation and monitoring of the leachate management system and landfill cap continue to be met.

The remedy for the Site includes institutional controls. Institutional controls refer to non-engineering measures, such as legal controls, intended to limit human activity in such a way as to prevent or reduce exposure to hazardous substances and protect a remedy. The institutional controls selected by EPA in the ROD call for the placement of legal controls to prevent future consumption of on-site groundwater, to restrict future development at the Site, and to limit future earth moving activities at the Site.

In the ROD EPA selected six performance standards for institutional controls. Three of the performance standards provide specific restrictions on groundwater use in order to prevent drinking water uses and to protect the natural containment and attenuation remedy. One performance standard restricts earth moving activity in specified areas. The remaining two performance standards state that title restrictions, along with other appropriate means, shall be used to implement the first four performance standards and that the title restrictions should be recorded with the Berks County Recorder of Deeds.

In the UAO EPA ordered that specific restrictions be placed on four parcels, named as Parcel A, Parcel B, Parcel C, and Parcel D, (Section VIII of the UAO—Access To and Use of the Site). Parcel A is the parcel with the two landfills and the leachate lagoons. Parcel B is the parcel with the closed auction house, equipment building, and the portion of the landfill referred to as the ''area behind the equipment building.'' Parcel B also provides access to the landfills, Parcel A. Parcel C is the former residential property which is now vacant. Parcel D is the property that contains the sentinel well. The UAO tailored the restrictions for each parcel based on the appropriate uses of each parcel, the necessary institutional control, and the performance standards in the ROD.

The use restrictions required in the UAO for Parcel A include restrictions on limiting the use of the property, restrictions on groundwater use, restrictions on land disturbance, and restrictions on activities such as hunting, fishing, and tree removal. A notice containing a recitation of the restrictions in the UAO for Parcel A was filed by the parcel owner with the Berks County Recorder of Deeds as an additional institutional control on February 19, 2007.

An 11-acre portion of Parcel B that is on the south side of Wheatfield Road directly adjacent to the landfills was purchased by the current owner in 2005. Prior to the 2005 sale, EPA issued a comfort letter to the prospective purchaser. EPA also sent a letter to Township of Spring on the acceptable uses of the 11-acre portion of Parcel B, information about the remedy, and protections that were necessary to maintain the remedy. The current owner uses the 11-acre portion of Parcel B for his business and plans to add a storage unit business. The other portion of Parcel B, which is a residential area, is on the north side of Wheatfield Road and is not considered part of the Site.

A deed dated March 18, 2005 contains the appropriate use restrictions for the 11-acre portion of Parcel B. The restrictions listed in the deed include restrictions on groundwater use, restrictions limiting the use of the property, restrictions on land disturbance, and limitations on activities to protect the remedy. The deed with the use restrictions are institutional controls.

For Parcel C the current owner of the 11-acre portion of Parcel B also bought Parcel C to maintain the property as open space. Parcels B and C are adjacent to one another. A deed dated July 10, 2006 contains restrictions on the use of the parcel consistent with the UAO. The restrictions listed in the deed include restrictions on groundwater use, restrictions limiting the use of the property, restrictions on land disturbance, and limitations on activities to protect the remedy. The deed with the use restrictions are institutional controls.

Regarding Parcel D, the owner of Parcel D signed a letter agreement dated August 14, 2002 with the UAO Respondents granting the Respondents access to install a sentinel well and to collect groundwater samples. The letter agreement also provides for groundwater use restrictions and prohibitions on interfering with the well. The letter agreement is an institutional control.

Five-Year Review

Since the remedy for the Site utilized containment of the hazardous materials as a method to reduce risk, EPA will conduct five-year reviews to insure that the remedy is functioning as designed and preventing exposure to human health and the environment. EPA completed the first statutory Five-Year Review on August 2, 2005 and has determined that the remedy for Berks Landfill remains protective of human health and the environment. EPA plans to complete the next five-year review by August, 2010.

Community Involvement

To ensure that the community was well informed about activities at the Site, a series of outreach activities were performed. Public meetings at key points in the remedial process were held such as a meeting on the proposed remedy in 1997 and the construction of the remedy in 2000. Since then, in 2005 as part of the five-year review, EPA placed an advertisement in the Reading Eagle and mailed a fact sheet notifying residents of the five-year review. In addition, residents whose water is tested receive annual information on their well water test results. As part of the deletion, EPA will place an advertisement in the local paper notifying the community of the public comment period, the process for submitting comments, and location of the deletion docket.

Determination That the Site Meets the Criteria for Deletion in the NCP

This Site meets all the requirements in the NCP and the criteria specified in OSWER Directive 9320.2–09–A–P, *Close Out Procedures for National Priorities List Sites.* Specifically, sampling performed during operation, maintenance, and monitoring verifies the Site has achieved the ROD remedial action objective that no site-related contaminants exceed MCLs off-site and that all components of the remedy selected by EPA in the ROD have been implemented. Operation, maintenance, and monitoring are, and will continue to be, performed by the Respondents pursuant to the 1998 UAO.

V. Deletion Action

The EPA, with concurrence of the Commonwealth through the PADEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and monitoring and five-year reviews, 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 November 14, 2008 unless EPA receives adverse comments by October 15, 2008. 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 waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 5, 2008.

Donald S. Welsh,

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.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry under Pennsylvania for ''Berks Landfill'', ''Spring Township''.

[FR Doc. E8–21305 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 2

Testimony by Employees and the Production of Documents in Proceedings Where the United States Is Not a Party

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule amends Part 2 of Title 45 of the Code of Federal Regulations, which provides that employees and former employees of the Department of Health and Human Services (HHS or Department) may not provide testimony as part of their official duties in litigation where the United States or a federal agency is not a party, without the approval of the head of the agency. The purpose of these amendments is to modify the definition of ''employee'' contained in 45 CFR part 2. Under these amendments, the definition of employee will be revised to reflect changes in Medicare contracting, including changes brought about by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). In addition, the definition of employee will be modified to include employees of a state agency performing survey, certification, or enforcement functions under Title XVIII of the Social Security Act or Section 353 of the Public Health Service Act. Further, the definition of employee with respect to employees of entities covered by the