

by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### IX. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 3, 2002.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.371 is amended by adding text and a table to paragraph (b) to read as follows:

#### **§ 180.371 Thiophanate-methyl; tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of thiophanate-methyl and its metabolite (methyl 2-benzimidazolyl carbamate (MBC)) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Blueberry .....	1.5	6/30/04
Citrus .....	0.5	6/30/04

\* \* \* \* \*

[FR Doc. 02-23266 Filed 9-11-02; 8:45 am]

**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 300**

**[FRL-7373-8]**

#### **National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Republic Steel Quarry Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 5 is publishing a direct final notice of deletion of the Republic Steel Quarry Superfund Site (Site), located in Elyria, Ohio, 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 notice of deletion is being published by EPA with the concurrence of the State of Ohio, through the Ohio Environmental Protection Agency, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

**DATES:** This direct final deletion will be effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002. 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:** Comments may be mailed to: Sheila Sullivan, Remedial Project Manager (RPM) (SR-6J), ([sullivan.sheila@epa.gov](mailto:sullivan.sheila@epa.gov)) U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL, USA 60604-3590, (mail code: SR-6J) or at (312) 886-5251 or 1-800-621-8431 Monday through Friday 9 a.m. to 4 p.m.

#### *Information Repositories:*

Comprehensive information about the Site and the site deletion docket are available for viewing and copying at the Site information repositories located at: 1. EPA Region 5 Administrative Records, 77 West Jackson Blvd., Seventh Floor, Chicago, IL, USA 60604-3590, (312) 886-0900, Monday through Friday 8 a.m. to 4 p.m.; 2. Elyria Public Library, 320 Washington Ave., Elyria, OH 44035, (440) 323-5747, Monday through Thursday 9 a.m. to 8:30 p.m., Friday through Saturday 9 a.m. to 5:30 p.m., Sunday 1 to 4 p.m.; 3. Ohio Environmental Protection Agency—Northeast District Office, 2110 E. Aurora Road, Twinsburg, OH 44087, (330) 963-1200, Monday through Friday 8 a.m. to 5 p.m.

#### **FOR FURTHER INFORMATION CONTACT:**

Sheila Sullivan, Remedial Project Manager at (312) 886-5251, [Sullivan.Sheila@EPA.Gov](mailto:Sullivan.Sheila@EPA.Gov) or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7253, [Beard.Gladys@EPA.Gov](mailto:Beard.Gladys@EPA.Gov), or 1-800-621-8431, U.S. EPA Region 5 (SR-6J), 77 W. Jackson Blvd., Chicago, IL, USA, 60604-3590, Monday through Friday 9 a.m. to 4 p.m.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. Introduction
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III. Deletion Procedures  
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## I. Introduction

EPA Region 5 is publishing this direct final notice of deletion of the Republic Steel Quarry Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is proceeding without prior publication of a notice of intent to delete. This action will become effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002, on this document. If adverse comments are received within the 30-day public comment period on this document, 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 Republic Steel Quarry Superfund 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

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall 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 (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have 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.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. 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) The EPA consulted with the State of Ohio on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.
- (2) The State of Ohio concurred with deletion of the Site from the NPL.
- (3) Concurrently with the publication of this direct final notice of deletion, a notice of intent to delete, published today in the "Proposed Rules" section of the **Federal Register**, is also being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties. 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 prepared a site deletion docket which contain copies of documents supporting the deletion. The site deletion docket has been placed in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, 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 a decision on the deletion based on 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 Location

The Republic Steel Quarry (RSQ) Site is located in the City of Elyria, Ohio, and is situated east of West River Road and west of the west branch of the Black River. The City of Elyria is located southwest of Cleveland in Lorain County in northeastern Ohio, and can be found on the Grafton USGS quadrangle map in Township 6 North, Range 17 West. The Site consists of a four-acre water-filled quarry that is surrounded by seven acres of densely vegetated land. A fence now surrounds the Site perimeter. The water depth of the quarry is approximately 60 feet and the sides of the quarry rise to about 25 feet above the water surface. The quarry walls are formed by Berea Sandstone at and below the quarry water level. Above the Berea Sandstone, the walls consists of large vertically stacked sandstone blocks that were used as retaining walls during quarrying operations. Water from the quarry discharges via an outlet directly into the Black River.

### Site History

The RSQ Site was operated as a sandstone quarry during an unknown period of time prior to 1950. From 1950 to 1975, the Republic Steel Corporation discharged about 200,000 gallons per day of waste pickle liquor and rinse water from steel pickling operations to the quarry. The waste pickle liquor, consisting largely of sulfuric acid and dissolved metal oxides, was pumped through an aboveground pipe to a ditch which flows into the quarry. Republic Steel Corporation was later acquired by LTV Steel Corporation, which is presently operating the steel plant south of the quarry. In 1976, the discharge ditch leading to the quarry was dammed. The City of Elyria purchased the quarry and the seven surrounding acres of land from Republic Steel Corporation in 1977, with the intention of establishing a municipal park on the property in the future. In 1983, a site investigation by the U.S. EPA Field Investigation Team (FIT) detected heavy

metals in the groundwater. The Site was subsequently proposed for the National Priorities List (NPL). Both the City of Elyria and LTV Steel Corporation challenged the Site's placement on the NPL, which was finalized in 1986 and later upheld by the court in 1990. A Remedial Investigation (RI), conducted between 1987 and 1988, indicated that onsite soils were contaminated. To a lesser degree, the groundwater, quarry sediments and surface water, and potentially fish tissue had also been impacted. A Record of Decision (ROD) memorializing the selected remedial action (RA) for the Site was issued in September 1988. The ROD determined that the focus of the RA would be the excavation and disposal of contaminated soil. In addition to the soil removal, the ROD called for further studies of fish tissue and groundwater, which were to be addressed in a Supplemental Investigation for the Site. Both components of the RA were completed in 1990. In 1993, EPA entered into a settlement with LTV Steel in bankruptcy court. The U.S. EPA settled with the City of Elyria in 1993.

#### **Remedial Investigation and Feasibility Study (RI/FS)**

The RI revealed that all contamination caused by Republic Steel's disposal practices was limited to quarry sediments, the pickle liquor discharge ditch and several soil locations around the quarry's edge. As part of the RI, a baseline risk assessment was performed in which human health risks were evaluated with respect to carcinogenic and noncarcinogenic risk under various current and future exposure scenarios. The risks were driven by carcinogenic polynuclear aromatic hydrocarbons (cPAHs) and heavy metals—the major Site contaminants. Both the quarry and the Black River, which borders the Site on the east, are used for recreational purposes such as swimming and fishing. Drinking water is currently supplied to surrounding residents via the City of Elyria municipal water supply system.

A Feasibility Study (FS) typically succeeds the RI and is conducted to determine the best approach to cleaning up a site using nine specific criteria. An FS was not conducted for this Site because the contaminants exceeding risk-based action levels in the soils were limited in volume and distribution to specific areas or hotspots. The contaminated sediments are confined to the quarry bottom and are not readily accessible to humans, except via the fish consumption pathway. In addition, the groundwater was not being used as a potable water source.

#### **Record of Decision**

The ROD was issued in September 1988 and prescribed the excavation and removal of 100 cubic yards of combined sediment and soils exceeding an Action Level of 300 ppb for cPAHs. These soils were primarily located in the pickle liquor discharge ditch and the boat ramp areas around the southern edge of the quarry. The quarry and the surrounding land were to be fenced. The ROD also specified that a fish species survey, fish tissue bioassays and groundwater resampling be conducted during a Supplemental Investigation in order to recalculate the risks using actual fish tissue data and more recent groundwater data. Since groundwater at the time was not used as a potable water supply, nor was it expected to be used in the future, the ROD did not include groundwater treatment. The contaminated quarry sediments were to be left in place since they lay below the mixing zone and fish were not likely to come in contact with them. U.S. EPA further concluded that quarry remediation would likely entrain contaminated sediments in the water, thereby increasing the likelihood of exposure to the contaminants by fish. Humans consuming the fish would also be subject to increased risk.

#### **Characterization of Risk**

As part of RI process, a baseline risk assessment was conducted for the Site. The assessment considered all exposures likely to result from current and future uses of the Site. For current uses, such as trespassing, recreational fishing and swimming, one exposure scenario—the ingestion of fish from the quarry, produced significant carcinogenic and noncarcinogenic risks. Significant carcinogenic and noncarcinogenic risks are respectively defined as an upper bound excess lifetime cancer risk exceeding  $1 \times 10^{-6}$  and a Hazard Index (HI) exceeding one. The maximum carcinogenic risks were driven by the potential uptake of cPAHs and mercury from the quarry sediment to fish tissue. These risks were determined to be nearly four times greater, or  $4 \times 10^{-6}$ , than the above-stated thresholds for significant carcinogenic risk.

Under future use conditions, the RI baseline risk assessment of residential exposures resulted in an upper bound excess lifetime cancer risk greater than  $1 \times 10^{-6}$ . This risk was driven by direct contact and incidental ingestion of soil and groundwater. With regard to the groundwater ingestion pathway, the maximum carcinogenic and noncarcinogenic respective risks,  $3 \times$

$10^{-5}$  and an HI exceeding one, were based on the detection of methylene chloride and acetone in groundwater during the RI; however, a second sampling did not confirm their presence. These chemicals were assumed to be present for the purposes of producing a protective baseline risk assessment. The conflicting results necessitated a third sampling event which failed to detect and confirm the presence of these chemicals.

#### **Response Actions**

The Remedial Action (RA) was completed by U.S. EPA in 1990 and was implemented in two phases. The first phase focused on resolving the risk issues concerning groundwater and fish tissue that were raised during the RI baseline risk assessment. This involved determining the requirements for the upcoming fish/biota species survey and fish tissue bioassays, and additional groundwater monitoring for the Supplemental Investigation. The second phase involved addressing the contaminated soil and sediments.

Obtaining data for the first phase was critical because time constraints had prevented the collection and analysis of actual fish tissue samples during the RI itself. Instead, the fish tissue concentrations had to be estimated using a conservative sediment to fish tissue model that incorporated quarry sediment data collected during the RI. According to the exposure conditions in the baseline risk assessment, if the Site were not remediated, then fish caught and consumed on a regular basis from the quarry would pose an unacceptable noncarcinogenic risk to humans due to the levels of cPAHs and mercury. This risk needed to be verified using actual fish tissue samples. The tissue samples and fish species survey were further warranted because the Ambient Water Quality Criteria (AWQC), which are used to define risk-based acceptable surface water concentrations for the protection of aquatic organisms, were exceeded for mercury, manganese and copper in the quarry water. The subsequent 1990 Supplemental Investigation risk recalculation found that the previous assumptions made during the modeling of mercury and cPAHs concentrations in fish tissue, in lieu of actual data, were too conservative and unreliable. The recalculated maximum carcinogenic and noncarcinogenic risks to humans from consumption of fish tissue were based on the more recent fish tissue data obtained during the Supplemental Investigation. These risks, which were respectively revised to an upper bound excess lifetime risk of  $6 \times 10^{-7}$  and a

HI of one, fall within the acceptable risk range. Because the risk recalculations performed during the Supplemental Investigation confirmed that no unacceptable risks were posed to humans consuming fish from either the quarry or the Black River, U.S. EPA did not recommend to the Ohio Department of Health that a fish advisory be issued.

The additional groundwater monitoring was performed because beryllium and bis(2-ethylhexyl)phthalate had been reassigned higher cancer potency factors by U.S. EPA since the completion of the RI baseline risk assessment. During the Supplemental Investigation, the risks from groundwater were recalculated using the semi-volatile and inorganic contaminants previously identified in the RI, but omitted the two unconfirmed chemicals, methylene chloride and acetone. The carcinogenic and noncarcinogenic groundwater risks respectively increased to  $3 \times 10^{-4}$  and exceeded one for the HI, due to the higher cancer potency factor assigned to beryllium and the inclusion of bis(2-ethylhexyl)phthalate as a groundwater contaminant in the recalculation. There are currently no users of groundwater at the Site or within at least one-half mile of the Site, hence there was no imminent risk presented to humans at the time from groundwater. Further, the groundwater is not expected to be used as a potable water source in the future because in-place deed restrictions prohibit the use of the groundwater on the property. This is detailed in the "Operations and Maintenance" section of this notice.

U.S. EPA performed the second phase of the RA addressing contaminated soil and sediments after the potentially responsible parties declined to perform the cleanup. U.S. EPA's Technical Assistance Team delineated the extent of soil contamination in 1989. The affected areas involved soils from the pickle liquor discharge drainage ditch and the boat launch areas at the southern edge of the quarry. In February 1990, 150 cubic yards of material were removed from these identified hotspots. In June 1990, an additional 40 cubic yards of soil from the pickle liquor ditch were removed after confirmatory sampling indicated that the RA cleanup goal of 300 ppb for cPAHs had not been achieved. The soils were to be disposed of offsite according to Resource Conservation and Recovery Act Land Disposal Restrictions (57 FR 2676). Although not specified in the ROD, the quarry and the surrounding land were to be fenced.

### *Cleanup Standards*

The cleanup standards used in the 1988 ROD were determined by risk-based chemical-specific legally applicable or relevant and appropriate requirements (ARARs). The ROD established that the cleanup should primarily focus on soils. The soil removal criterion designated that all soils for which the sum of the four cPAHs, i.e., benzo(a)anthracene, chrysene, benzo(b)fluoranthene and benzo(k)fluoranthene, exceeded 300 ppb—the Action Level for cPAHs, should be removed. This Action Level was based on a  $1 \times 10^{-6}$  excess lifetime cancer risk from incidental ingestion and skin contact exposure to soil. Since the Supplemental Investigation risk recalculation of 1990, the toxicity criteria for cPAHs have been revised to less stringent values. Therefore, the excess lifetime cancer risk from exposure to cPAHs in the soils is below  $1 \times 10^{-6}$  and is considered to be within the acceptable risk range. Acceptable groundwater concentrations were defined by the primary and secondary drinking water standards or maximum contaminant levels (MCLs). At the time of the RI and Supplemental Investigation, the mean and maximum concentrations of beryllium and iron exceeded their respective MCLs. Also, the mean and maximum concentrations of manganese and phenol exceeded Ohio Water Quality Standards. Since there has been no human exposure to groundwater, nor are future exposures anticipated, these contaminant levels are not considered hazardous to human health. The AWQC were used to define acceptable surface water concentrations for the protection of aquatic organisms in the quarry and the Black River. The average and maximum concentrations of manganese and mercury exceeded the AWQC for the consumption of fish, however mercury was not detected in the surface water samples. Finally, risk-based criteria for the evaluation of sediment contaminants were developed by modeling the sediment to fish tissue uptake of quarry contaminants. Mercury concentrations were calculated using a conservative sediment/water partitioning mode, hence contaminant concentrations in the water column were expected to be less than the predicted values.

### *Operation and Maintenance*

The RSQ Site is currently owned and maintained by the City of Elyria. An existing state-superfund contract with the Ohio EPA indicates that Ohio EPA will assure all future Operation and Maintenance (O&M) of the RA for the

expected life of the actions. To date, it has not been necessary for the Ohio EPA to directly undertake O&M activity at the RSQ Site because the City of Elyria has assumed this responsibility. The State will be responsible for O&M in any subsequent phase, if necessary. Since issuing the first Five-Year Review for the Site on September 28, 1998, the U.S. EPA and the Ohio EPA have determined that while the 1988 ROD has been protective and minimal exposure to remaining Site contaminants has occurred, the remedy needs to be expanded to include institutional control measures at the Site. The Ohio EPA further supported the application of enforceable institutional controls in order to facilitate its future O&M responsibilities at the Site. In September 2001, U.S. EPA issued an Explanation of Significant Differences (ESD) to the ROD which memorialized the addition of institutional controls and deed restrictions to the RA. Since becoming part of the RA, the implementation of the institutional controls and deed restrictions is also subject to O&M. As the local authority and Site owner, the City of Elyria will continue to assume responsibility for the observance of the institutional controls and deed restrictions. The City's commitment to observe and implement the institutional controls and deed restrictions is memorialized in documents which are located in the two Site information repositories and the Site Administrative Record.

### *Five-Year Review*

From 1997 to 1998, the first statutory Five-Year Review was conducted by EPA at the Site because concentrations of contaminants exceeding health-based levels remained in the deep quarry sediments. The findings of the Five-Year Review investigation, which involved sampling of all Site media, provided the basis for recommending significant changes to the ROD. The results of the investigation indicated that while the Site has no formal use, trespassing is well established. The fence would normally limit access, however, frequent vandalism has reduced its effectiveness. The Five-Year Review risk recalculation indicated that no unacceptable onsite or offsite risks are posed to casual trespassers. This finding is consistent with the results of the 1990 Supplemental Investigation risk recalculation. Thus, while cPAH concentrations in onsite soil exceed the ROD-designated Action Level of 300 ppb in certain areas of the Site enclosed by the fence, the revised toxicity criteria for cPAHs indicate that the soil concentrations of cPAHs pose less

carcinogenic risk than previously thought.

Under current Site conditions, the maximum carcinogenic risk estimate for a trespasser exposed to on-site soils is  $2 \times 10^{-7}$ . This risk was driven by the potential for ingestion of arsenic which was detected during the investigation, in the on-site soil at lower than background soil concentrations. Regular or habitual use of the quarry via swimming or fish consumption may present unacceptable noncarcinogenic risks. The potential risks from the quarry water are attributable to the presence of iron and manganese near the bottom of the 60-foot water column. It was assumed that exposure to these contaminants via swimming is negligible since swimmers are unlikely to frequent the deep water. The potential noncarcinogenic risk due to quarry fish consumption is driven by mercury in fish tissue.

Under future recreational and residential use, the groundwater consumption and soil ingestion pathways would each pose unacceptable risks. Future park patrons (children) would be at risk from soil ingestion due to arsenic and iron concentrations. Iron toxicity was not assessed in the previous risk calculations because no toxicity criteria were available at the time and iron is an essential human nutrient. The noncarcinogenic risks attributable to the groundwater ingestion pathway are due to antimony, iron, thallium, manganese and arsenic. Antimony, iron, manganese and thallium exceeded their respective MCLs in two of the monitoring wells. Arsenic and beryllium presented an unacceptable cumulative carcinogenic risk via the ingestion pathway; however, individually these contaminants did not exceed their respective MCLs. Bis(2-ethylhexyl phthalate, a contaminant present in the Supplemental Investigation, was not included in the Five-Year Review risk recalculation because it was not detected above its MCL. The Five-Year Review investigation confirmed the 1990 Supplemental Investigation conclusion that groundwater must not be made available as a potable water source since this would present a risk to any and all users.

The Five-Year Review ecological risk assessment determined that the Black River, including the region located near the quarry discharge outfall, has not been impacted by the RSQ Site and the Ohio Water Quality Standards are being met. This finding applies to surface water, sediment, and aquatic organisms, including fish and aquatic receptors, such as piscivorous birds and terrestrial

organisms inhabiting the vicinity of the Black River. The benthic organisms inhabiting the quarry sediments are currently subject to adverse impacts from the sediment contaminants, however, these impacts would be intensified by sediment remediation due to the unavoidable resuspension of contaminants.

The recommendations of the Five-Year Review for limiting or preventing such exposures included restoring the fence to functional condition, posting warning signs, and conducting monthly inspections of the fence, with increased vigilance in warm weather, to detect and repair vandalism to the fence and signs. The Review further recommended that groundwater monitoring be performed during future Five-Year Reviews to determine whether contaminant levels are increasing or decreasing in the groundwater with respect to the MCLs. However, since there are no current or anticipated future exposures to groundwater due to the availability of the Elyria municipal water supply, no human health risks are presented. The U.S. EPA recommended that the City of Elyria enact land use restrictions so that no residential development could occur and that the use of groundwater as a potable water source would be prohibited for current and future commercial/industrial or public purposes.

In response to U.S. EPA's recommendation, the City of Elyria passed an emergency Resolution of Intent on November 1, 1999 to prohibit certain uses of the Site as a result of the Five-Year Review findings. In September 2001, U.S. EPA issued an ESD to the ROD which memorialized the addition of institutional controls and deed restrictions to the RA. The ESD specifically set forth the following eight conditions: (1) Restrict property use of the to H-I (Heavy Industrial) uses only; (2) prohibit the use of groundwater as a source of drinking water; (3) require the use of the City of Elyria municipal water supply as the source of potable water for any industrial or commercial development or public use; (4) post warning signs to keep off the quarry Site; (5) maintain the perimeter fence; (6) prohibit fishing, swimming and boating in the quarry; (7) prohibit public access or use of the quarry, its sediments and soil; and, (8) conduct and sufficiently inspect the Site to ensure that the previous controls are complied with.

The City of Elyria enacted a Declaration of Restrictions for the RSQ Site on June 21, 2002, authorized by Elyria City Ordinance No. 2002-119. The Declaration institutionalized the

preceding eight conditions of the ESD and will run with the land, binding all current and future owners. Should a violation of the ordinance occur, the City will be able to take the appropriate enforcement action. U.S. EPA believes that the addition of institutional controls and deed restrictions will prevent or appropriately limit human contact with the Site, thereby enhancing the remedy's overall protectiveness. The next (second) Five-Year Review is scheduled for completion by September 30, 2003. The second Five-Year Review investigation will include, but will not be limited to the collection and analysis of samples from the RSQ Site groundwater, soil, surface water and fish tissue. A Five-Year Review Report documenting the results of the remedy assessment will be made available in the Site information repositories after September 30, 2003.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

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

The EPA, with the concurrence of the State of Ohio, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and Five-Year Reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is proceeding without prior publication. This action will be effective November 12, 2002, unless EPA receives adverse comments by October 15, 2002. 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 as appropriate, 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: August 28, 2002.

**Norman Niedergang,**

*Acting Regional Administrator, Region V.*

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.

#### **Appendix B—[Amended]**

2. Table 1 of appendix B to part 300 is amended under Ohio (“OH”) by removing the site name “Republic Steel Corp. Quarry” and the city “Elyria”.

[FR Doc. 02–22981 Filed 9–11–02; 8:45 am]

**BILLING CODE 6560–50–P**

#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 648**

[Docket No. 020215032–2127 02; I.D. 082702D]

##### **Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Adjustment to 2002 Quotas; Commercial Quota for New York**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

#### **ACTION:** Commercial quota adjustment

**SUMMARY:** NMFS issues this notification announcing an adjustment to the 2002 commercial Atlantic bluefish quota for the State of New York. This action complies with regulations implementing the Fishery Management Plan for Atlantic Bluefish (FMP), which requires that landings in excess of a state’s commercial quota be deducted from a state’s respective quota the following year. The public is advised that a quota adjustment has been made and is informed of the revised quota for the affected state.

**DATES:** Effective September 12, 2002 through December 31, 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

Myles A. Raizin, Fishery Policy Analyst, 978–281–9104.

#### **SUPPLEMENTARY INFORMATION:**

Regulations implementing Atlantic bluefish management measures are found at 50 CFR part 648, subpart J. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160. The final specifications for the 2001 Atlantic bluefish fishery set a total commercial quota equal to 9.58 million lb (4.35 million kg) (66 FR 23625; May 9, 2001). New York’s quota share was calculated to be 995,204 lb (451,544 kg). However, in 2001, New York received an addition to its quota of 200,000 lb (90,704 kg) via transfers from other states under provisions at § 648.160(f). Therefore, New York’s final adjusted 2001 quota was 1,195,204 lb (542,289 kg).

Section 648.160(e)(2) provides that all landings in a state shall be applied against that state’s annual commercial quota. Any landings in excess of the state’s quota must be deducted from that state’s annual quota for the following year.

Based on dealer reports and other available information, NMFS has determined that the State of New York landed 1,411,268 lb (640,231 kg) of Atlantic bluefish in 2001, thus exceeding its 2001 adjusted commercial quota by 216,064 lb (98,033 kg). Landings for other states were below their respective quotas.

On June 6, 2002, final specifications for the 2002 commercial Atlantic bluefish became effective (67 FR 38909). Total commercial harvest was specified at 10.5 million lb (4.76 million kg). New York’s share of the commercial quota for 2002 totaled 1,090,436 lb (494,753 kg). Consistent with the regulations regarding the disposition of overages, New York’s 2002 Atlantic bluefish commercial quota is hereby reduced by 216,064 lb (98,033 kg) from 1,090,436 lb (494,753 kg) to 874,372 lb (396,721 kg).

#### **Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2002.

**Virginia M. Fay,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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