

application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 2, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

- 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for “Saint Mary’s Hospital” to read as follows:

§ 52.1220 Identification of plan.

*	*	*	*	*
(d)	*	*	*	*

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
St. Mary’s Hospital	10900008–003	03/01/10	08/12/10, [Insert page number where the document begins].	Only conditions cited as “Title I condition: SIP for SO ₂ NAAQS.”
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

* * * * *
 [FR Doc. 2010–19822 Filed 8–11–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9188–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Deletion of the Rogers Road Municipal Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Rogers Road Municipal Landfill Superfund Site (Site), located near Jacksonville, Pulaski County, Arkansas

from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), 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 Superfund.

DATES: This direct final rule will be effective October 12, 2010 unless EPA receives adverse comments by September 13, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the

direct final notice of 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–1987–0002 by one of the following methods:

http://www.regulations.gov (Follow the on-line instructions for submitting comments)

E-mail: walters.donn@epa.gov.

Fax: 214–665–6660

Mail: Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508.

Hand Delivery: Donn Walters, Community Involvement, U.S. EPA Region 6 (6SF–TS), 1445 Ross Avenue, Dallas, TX 75202–2733. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-SFUND-1987-0002 EPA 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 hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at:

U.S. EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, (214) 665-7362 by appointment only Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Jacksonville City Hall, 1 Municipal Drive, Jacksonville, AR 72076, (501) 982-3181, Monday through Friday, 8 a.m. to 5 p.m.;

Arkansas Department of Environmental Quality (ADEQ), 5301 Northshore Drive, North Little Rock, Arkansas 72118, (501) 682-0744, Monday through Friday 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Shawn Ghose M.S., P.E., Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF-RA), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6782 or 1-800-533-3508 or ghose.shawn@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 6 office is publishing this direct final notice of deletion of the Rogers Road Municipal Landfill Superfund Site (Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the 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 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 Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if conditions warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective October 12, 2010 unless EPA receives adverse comments by September 13, 2010. 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. The 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 Rogers Road Landfill

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

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) The EPA consulted with the State of Arkansas prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the ADEQ, 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, Jacksonville Times. 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 this Site from the NPL:

A. Site Background and History

The Rogers Road Municipal Landfill Superfund Site (Site; EPA ID ARD981055809) encompasses about 10 acres in Pulaski County, outside the city limits of Jacksonville, Arkansas, approximately 12 miles northeast of Little Rock, Arkansas. An estimated 10,000 people live within three miles of the Site and are supplied by municipal drinking water. Less than one-half mile west of the Rogers Road Municipal Landfill Superfund Site is the Jacksonville Municipal Landfill Superfund Site. Because of the proximity of the two sites and the similarities in their features and characteristics, the Superfund site-related activities were carried out concurrently. Within a one-half mile radius of the Site, the population was estimated between 153 and 204. Sometime prior to 1974, the residents of Rogers Road were supplied with

municipal water by the City of Jacksonville.

The City of Jacksonville purchased the land comprising the Rogers Road Landfill in September 1953 and operated a municipal landfill on the property. Open burning and trenching were the primary methods of waste disposal used at the Site. The dates of operation of the Rogers Road Landfill remain a matter of dispute and varying testimony and representations in a number of judicial and administrative venues. However, it is undisputed that after October 1974, operation of the Rogers Road facility had ceased. The landfill was formally closed in July 1973, when the predecessor agency to the ADEQ, the Arkansas Department of Pollution Control and Ecology, refused to grant a landfill permit, because of the high water table and poor drainage in the area.

Specific waste types and quantities were not recorded by the Site owner/operators; however, in addition to municipal waste, several drums of industrial waste from a local herbicide manufacturer, Vertac Chemical Corporation (Vertac), were believed to have been disposed of in the landfill. On-site soil and about 30 decaying drums were found to be contaminated with dioxin (2,3,7,8-tetrachlorodibenzo (P) dioxin expressed as 2,3,7,8-TCDD equivalents), the herbicides 2,4-D and 2,4,5-T, and the pesticide dieldrin.

In early 1986, the City of Jacksonville fenced the Site to prevent public access. The Rogers Road Municipal Landfill was identified to EPA on May 10, 1983, through a citizen's complaint. At that time, EPA was conducting a site inspection of the Jacksonville Landfill. After a field investigation, the Rogers Road Municipal Landfill was proposed for inclusion on the National Priorities List (NPL) of uncontrolled hazardous waste sites on January 22, 1987 (52 FR 2492). The site was added to the NPL on July 22, 1987 (52 FR 27620).

B. Remedial Investigation and Feasibility Studies

A Remedial Investigation (RI) was conducted between November 1988 and March 1990, and a risk assessment was performed based on the analytical findings of the RI. The results of the RI and risk assessment and prior investigations are summarized in the RI Report (Peer and Resource Applications, Inc., 1990a). The Feasibility Study (FS) was also released at this time (Peer and Resource Applications, 1990b). Onsite soil and decaying drums were found to be contaminated with dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin [TCDD] equivalents), the herbicides 2,4-D and

2,4,5-T, and the pesticide dieldrin (EPA, 1996).

The investigations undertaken at the Rogers Road landfill revealed that contaminants in the soil comprised the principal threat posed by the site. The contamination in the soil was limited to the drum disposal area. A remedy was chosen based on the following criteria:

- Remedy the contaminated soil using thermal treatment and soil cover to ensure it no longer presents a threat to human health or the environment.
- Eliminate the health risks due to ponded water onsite by filling in the existing site trenches with clean fill.
- Establish a method of long term monitoring to ensure that the soil cover is properly maintained and the groundwater quality is adequately monitored.

The remedial actions undertaken to meet these criteria are described in the Section on Remedial Action.

C. Selected Remedy

The Remedial Investigation (RI) for the Site, which described the nature and extent of contamination, was released to the public in July 1990. The Feasibility Study (FS) was also released at this time. A 60-day public comment period began on July 9, 1990, and ended on September 7, 1990. In addition, a public meeting was held on July 18, 1990, to present the results of the RI/FS and to accept public comment.

EPA reviewed the results of the July 1990 RI/FS conducted by the EPA contractor, Peer Consultants, and all public comments received. On September 27, 1990, a Record of Decision (ROD) for the Site was issued. The selected remedy included:

- Excavation of contaminated soil and debris containing greater than 10 parts per billion (ppb) equivalent 2,3,7,8-TCDD and backfilling the excavated area;
- Transportation of the excavated material to the Vertac Chemical Corporation Superfund Site in Jacksonville, Arkansas;
- Incineration of the excavated contaminated material and disposal of residuals at Vertac;
- Steam-cleaning and disposal of large items of refuse removed from contaminated areas at the Rogers Road Site;
- Covering soil, debris and water meeting the criteria stated below with twelve inches of soil:
 - (1) 2,3,7,8-TCDD concentrations > 1.0 and ≤ 10 ppb,
 - (2) Cumulative Hazard Index > .7 for 2,4,5-T; 2,4,5 TP; and dieldrin; or
 - (3) Dieldrin > 37 ppb;
- Backfilling the site trench;

- Institutional controls such as fence maintenance and land-use restrictions limiting ground water use on and immediately downgradient of the site; and

- Ground water monitoring for at least 5 years.

On June 20, 1994, a Consent Decree (CD) between EPA and the City of Jacksonville regarding the Site was entered in Federal District Court. This CD and the CD for the nearby Jacksonville Landfill Site were the first in the country between a municipality and EPA that utilized this type of mixed work settlement. Under the agreement, EPA performed the work that involved handling the hazardous substances, including picking-up the hot spots of contamination, transporting the material to Vertac, incineration, and decontamination.

The city performed the non-hazardous work, including fencing, backfilling, grading, re-vegetating, inspection and maintenance, installation of additional ground water wells, ground water sampling and analysis and land-use controls.

D. Response Actions

On August 22, 1995, Ecology and Environment (E&E), the EPA Technical Assistance Team (TAT) and the Emergency Response Cleanup Service (ERCS) contractor, Riedel-Peterson, mobilized to begin remedial operations at the Site. After preliminary road work was completed, excavation of contaminated soil was initiated.

During the action, Riedel-Peterson recontainerized contaminated material that was in decaying drums and excavated soil. This material, along with investigation-derived waste such as contaminated personal protective equipment, was transported to the Vertac Site for treatment at the incinerator. Confirmation soil samples were collected after this initial excavation to verify the degree of contaminant removal and to determine the areas of moderate contamination (2,3,7,8-TCDD concentrations > 1.0 and ≤ 10 ppb and dieldrin > 37 ppb) which would later be covered with clean soil.

A total of 200 cubic yards of contaminated soil and 76 drums of hazardous materials (including 19 drums of investigation-derived wastes) were transported to Vertac and incinerated. This is a higher volume than the 130 cubic yards estimated in the ROD. Despite this increase in volume, remedial activities went smoothly. Incineration at Vertac began on October 20, 1994, and ended on December 4, 1994. The January 20, 1995, Technical Assistance Report for

the Rogers Road Municipal Landfill written by E&E, details the Remedial Action (RA) activities performed by EPA and its contractors.

The total cost for the RA was \$129,070.00 for the excavation, preliminary sampling, and transportation of the waste and \$1.07 million for the confirmatory sampling and incineration at Vertac.

During the fall of 1994, the City of Jacksonville continued regrading activities and installed the three additional ground water monitoring wells between the Jacksonville Landfill and the Rogers Road Landfill as required by the ROD and CD. The city demobilized in late October when heavy rains in the area made passage through the Site difficult. City activities recommenced in July 1995 when the Site was sufficiently dry for vehicles to pass. The city regrading activities were completed in September 1995. A list of all Site activities undertaken by the city is included in the weekly activity reports in the Site file.

Demonstration of Quality Assurance/Quality Control (QA/QC) for Cleanup Activities

Because of the simplicity of this action, one work plan was submitted which encompassed the Remedial Design (RD) and RA activities at the Site, consistent with the ROD and the CD. The Quality Assurance Project Plan for the RA detailed the strict sampling and analytical program. All procedures and protocol for confirmatory sample analysis included in this document were in accordance with EPA procedures. The selection of the locations for confirmatory sampling and a graphical presentation of the concentrations of contaminants at these locations are documented in the January 20, 1995, Technical Assistance Report (the Remedial Action Completion Report) for the Rogers Road Municipal Landfill.

A total of 93 soil samples were taken during the RA to confirm attainment of clean-up standards. Samples were collected from points on a 14 x 14 foot grid pattern extending outside of the boundary of contamination as established during the Remedial Investigation. Eighty-six of these samples were analyzed for dioxin and related compounds and 13 were analyzed for dieldrin, in accordance with the Quality Assurance Sampling Plan (QASP) prepared for the Remedial Action by the TAT.

EPA provided direct oversight of the excavation and confirmatory soil sampling activities. The Jacksonville Community Relations Office maintained

administrative support for the project five days a week.

The QA/QC program utilized throughout the remedial action was sufficiently rigorous and was adequately complied with to enable EPA to determine that all analytical results are accurate to the degree needed to assure satisfactory execution of the remedial action consistent with the ROD and the RD/RA work plan.

Construction was completed in early 1995. A site inspection occurred on September 20, 1995, which showed that the remedial objectives had been achieved. The EPA also checked the Site on September 1, 1998. At that time, the constructed remedy was still performing as designed and was controlling the risks to human health and the environment as specified in the ROD. The soil cover was in excellent shape with no evidence of subsidence, erosion, animal burrows, or standing water. The grass cover was well-established and provided thorough coverage of the soil cover. The site fences had been maintained and there was no evidence of trespassers.

E. Clean-Up Standards

The remedial action (RA) cleanup activities at the Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. Specifically, confirmatory sampling conducted at the conclusion of the cleanup verified that the site achieved the ROD cleanup standards: All contaminated soil and debris containing greater than 10 part per billion (ppb) equivalent 2,3,7,8-TCDD were excavated and all soil and debris with 2,3,7,8-TCDD concentrations > 1.0 and ≤ 10 ppb, or with a Cumulative Hazard Index > .7 for 2,4,5-T; 2,4,5 TP and dieldrin were either excavated or covered with one foot of clean soil. In addition, no soil was left on-site with a dieldrin concentration above 37 ppb. Ground water samples taken in November 1994, June 1995, December 1995, October 1996, and November 1997, did not show dioxin contamination, nor did they show any site-related, statistically significant concentrations of organic contaminants or inorganic (metals) contaminants above acceptable health-based levels. The sampling results documented in the Technical Assistance Report showed that the drum disposal area excavation exceeded the 1 ppb dioxin cleanup level and was remediated to 0.01 ppb or 10 ppt level of dioxin.

The confirmatory sampling at the Site and backfilling of the Site with clean soil provide assurances that the Site will

no longer pose a threat to human health or the environment as long as the institutional controls are enforced and the soil cover is maintained. The source of contaminants identified in the ROD, the disintegrating drums and adjacent contaminated soil, has been addressed through excavation and covering with a clean soil cover. The cleanup also eliminated the impacts to the ground water from the chemicals of concern at the Site (*i.e.*, the possible source of contamination had been removed).

At this time, the Site has been cleaned up to eliminate the exposure pathway by the remedy required by the ROD. Health concerns are adequately addressed by institutional controls. Institutional controls were required by the Site remedy and were imposed in 2008 in the form of an Environmental Protection Easement and Declaration of Restrictive Covenants recorded in Pulaski County, Arkansas. The property interest was conveyed by the Site owner to the City of Jacksonville with a third party beneficiary enforcement interest granted to the EPA. This instrument prevents disturbance of remedial components in the fenced, capped area of the Site, and it prohibits all residential, agricultural, food service, and ground water uses of that area as well. In addition, development of that area in any form not expressly prohibited, can only be undertaken with the prior notice to, and review and approval of, the EPA. Any ground water use within the 20.2 acre tract that includes the fenced area (1.38 acres) and adjoining areas is prohibited without prior notice and approval of the EPA, and no development of any kind can take place in that tract without 90 days prior notice to the EPA. These restrictions provide a significant margin of protection and a buffer for any potential exposure pathways. In addition, the institutional controls provide broad access rights to the Site for EPA for carrying out remedial maintenance, surveillance, inspection, investigation, and response, among other things.

The discontinuance of the ground water monitoring past 1997 have been justified in an Explanation of Significant Differences (ESD) signed in August 2009. Public notice of the ESD was published in Jacksonville Times in September 2009.

F. Operations and Maintenance

The Site is designed to require very little maintenance. Site operations and maintenance (O&M) activities that have been performed by the city of Jacksonville since the 1995 site completion include routine site

inspections to ensure that positive drainage (as defined in the CD Statement of Work) is occurring and that the perimeter fence is intact. These activities have maintained the protectiveness of the remedy

The city of Jacksonville, as agreed upon in the CD and accompanying Statement of Work and as detailed in the Remedial Action (RA) Work Plan, has assumed all responsibility for O&M at the Site. Plans for O&M are in place and are sufficient to maintain the protectiveness of the remedy. The city is fulfilling its obligation to perform the O&M and it is expected that the city of Jacksonville will be able to provide future maintenance with a minimal amount of work.

In June 1999 Arkansas Department of Environmental Quality (ADEQ) provided a State concurrence for Deletion. However, Deletion was put on hold pending resolution of land use restrictions on the property. The implementation of Institutional Control (IC) was delayed by significant legal questions surrounding title to the property of the Site. Eventually, legal agreement was reached after extended negotiations between EPA, the city of Jacksonville, and the Site owners as to the form of restrictive covenants to be recorded in the deed records for Pulaski County, Arkansas. Restrictive covenants were then executed by the heir to the property and recorded in the deed records for the site on February 29, 2008.

G. Five-Year Review

The EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA Section 121(c). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Five-year reviews for this Site were completed in September 2000 and September 2005. The 2005 FYR identified a gap of 20 feet in the fence surround the capped area. The fence was repaired in May 2010. In each of these reviews EPA determined that the remedy is protective of human health and the environment and is functioning as intended.

The next five-year review will occur no later than September 2010.

H. Community Involvement

Because of the high community interest in the nearby Vertac Corporation Superfund Site, a Community Relations Office, staffed by an EPA contractor, was established in

1990. The purpose of this office is to disseminate information to citizens and the press and to give citizens a focal point for their questions.

An active campaign to notify local residents and receive input prior to the Site excavation and transportation was conducted. Landowners adjacent to the Site were visited and transportation was coordinated with local authorities and representatives of the Little Rock Air Force Base which is located near the transportation route.

A community open house meeting was held on August 22, 1994, to discuss the remedial action and receive citizen input.

A Site close-out open house and ribbon-cutting ceremony were held on September 25, 1995.

Public participation activities required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied, and documents which EPA generated and/or relied on are available to the public in these information repositories.

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

The NCP specifies that EPA may delete a site from the NPL if "all appropriate responsible parties or other persons have implemented all appropriate response actions required" or "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". 40 CFR 300.425(e)(1). EPA, with concurrence of the State of Arkansas, through the Department of Environmental Quality by a letter dated July 3, 2008, believes these criteria for deletion have been satisfied. Therefore, EPA is proposing the deletion of the site from the NPL.

V. Deletion Action

The EPA, with concurrence of the State of Arkansas through the Arkansas Department of Environmental Quality, has determined that all appropriate responses under CERCLA, other than operation, maintenance, 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 October 12, 2010 unless EPA receives adverse comments by September 13, 2010. 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: August 4, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

■ 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 to Part 300—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing “Rogers Road Municipal Landfill”, “Jacksonville, Arkansas”.

[FR Doc. 2010–19924 Filed 8–11–10; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 541 and 552

[**GSAR Amendment 2010–04; GSAR Case 2008–G511 (Change 47) Docket 2009–0008; Sequence 1**]

RIN 3090–A185

General Services Administration Acquisition Regulation; Rewrite of GSAR Part 541, Acquisition of Utility Services

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to improve the acquisition of utility services. Two clauses specific to utility services are being added to this part, they are the availability of funds clause

which replaces the FAR clause and the disputes clause which supplements the FAR clause.

DATES: *Effective Date:* September 13, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755. Please cite Amendment 2010–04, GSAR case 2008–G511 (Change 47).

SUPPLEMENTARY INFORMATION:

A. Background

This rule is part of the GSAM Rewrite Project to revise the regulation in order to maintain consistency with the Federal Acquisition Regulation (FAR), update regulations, and implement streamlined and innovative acquisition procedures. The GSA Acquisition Manual (GSAM) incorporates the GSAR as well as internal agency acquisition policy.

On February 15, 2006, GSA published in the **Federal Register** at 71 FR 7910, an Advanced Notice of Proposed Rulemaking (ANPR) with a request for comments on the entire GSAM. As a result, no public comments were received on GSAR part 541. In addition, applicable statutes, GSA Acquisition Letters, Public Buildings Service (PBS) Procurement Instructional Bulletins, and GSA delegations of authority were considered in developing the initial draft. Prior to publication of a proposed rule, there was internal review and comment.

The proposed rule aligned GSAR part 541 to the structure of FAR part 41. This rule added GSA-unique clauses in GSAR Subpart 541.5—Solicitation Provisions and Contract Clauses.

Two GSA-unique clauses are prescribed under GSAR subpart 541.5. These clauses are outlined in GSAR section 541.501, Solicitation provisions and contract clauses, and shall be inserted by contracting officers in all utility contracts and solicitations. The first clause, GSAR 552.241–70, Availability of Funds for the Next Fiscal Year or Quarter is added as regulatory text for inclusion in all GSA utility solicitations and contracts instead of FAR 52.239–19. The second clause, GSAR 552.241.71/552.233–71, Disputes (Utility Contracts), was relocated from GSAM part 533 and added to this subpart to specifically align with utility acquisitions.

Discussion of Comments

A proposed rule for GSAR part 541 was published in the **Federal Register** on May 19, 2009, at 74 FR 23374. The public comment period for GSAR part 541 closed on July 20, 2009. A total of 2 comments were received by the close of the comment period.

Comment: One commenter stated that the proposed rule adds a new clause GSAR “552.241–xx, Availability of Funds for the Next Fiscal Year or Quarter” and FAR 52.232–19 is not currently used in Utility contracts (which generally last for many years) since the clause is to be used in one-year IDIQ or requirements contracts which cross fiscal years. The respondent would like to use GSAR 552.232–73, which doesn’t require fill-ins instead of the new clause added to GSAR part 541.

Response: GSA does not concur with the commenter. The new clause is specific to utility acquisitions and is not intended to be limited to a one-year acquisition. Furthermore, the clause at GSAR 552.232–73 that the commenter would prefer to use was deleted from the GSAR on recommendation of GSA’s Office of General Counsel. The new clause has fill-ins for the contracting officer which can coincide with the acquisitions period of performance.

Since this is a utilities contract, the explicit language in 31 U.S.C. 1308 allows GSA to obligate and record amounts quarterly (in accordance with our apportionment). This satisfies the recordation statute.

Additionally, in order to limit GSA’s legal liability to the contractor and satisfy the Anti-Deficiency Act (ADA), GSA has to have an ADA clause that sets limits on the amount of our liability (either by amount of money or by set period of time) and the clause must provide that the limit can only be increased by affirmative action of the Government.

Comment: The second commenter stated that the proposed rule moves the existing GSAR clause 552.233–71 (Disputes-Utilities Contracts) from GSAR part 533 to GSAR part 541.

However, preceding GSAR change #24, which is the rewrite of GSAR part 533, deleted the clause in entirety since the use of FAR clauses is preferred. The subject clause was deleted from the Public Building Service (PBS) contract writing system clause module. In the meantime, there is no authority to use the clause in the GSAR and no prescription to use it.

Response: GSA does not concur with the commenter. There are no FAR clauses which adequately address disputes for utility contracts. However,