

## II. What Are the Administrative Requirements for This Action?

*Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We believe there will be little or no impact on any small entities because the proposed rule amendments do not impose additional requirements but instead either eliminate cross-referencing, editorial, and wording errors or clarify the applicability of existing requirements of the MACT standards established for acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register** publication.

### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

**Christine Todd Whitman,**  
*Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7225-3]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete Tulalip Landfill NPL Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Tulalip NPL Site (Site), which is located in Snohomish County, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the Tulalip Tribes have determined that the remedial action for the site has been successfully executed.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before July 8, 2002.

**ADDRESSES:** Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Superfund Records Center, Seattle, Washington 98101.

Information on the site and a copy of the docket are available for viewing at the Information Repository which is located at: Marysville Public Library, 6120 Grove, Marysville, Washington.

**FOR FURTHER INFORMATION CONTACT:** Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101; phone: (206) 553-1066, fax: (206) 553-0124; e-mail: gaines.beverly@epa.gov.

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## I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Tulalip Landfill Site, which is located in Snohomish County, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the Tulalip Tribes have determined that the remedial action for the site has been successfully executed.

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

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Tulalip Landfill Site and explains how the site meets the deletion criteria.

## II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on 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 Tulalip Tribes, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action

at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking system.

In the case of this site, the selected remedy is protective of human health and the environment and complies with Federal, State, and Tribal requirements that are legally applicable or relevant and appropriate to the remedial action.

### III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) the Tulalip Tribes have concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, tribal, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, Sec. 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.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

### IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

#### *Site Background and History*

The Site is located within the Tulalip Indian Reservation on approximately 147 acres of North Ebey Island in the Snohomish River delta, between Marysville and Everett, Washington. North Ebey Island is bordered by Ebey Slough to the north and Steamboat Slough to the south. The Seattle Disposal Company operated the landfill from 1964 until 1979, under a lease from the Tulalip Tribes. The landfill received primarily commercial and construction waste. Three to four million tons of waste is currently contained within the landfill which is also considered the source area. The landfill was subsequently closed and a perimeter berm was constructed. The surface of the landfill was graded and cover soils were placed at thickness ranging from 1 to 12 feet. However, insufficient grading of this cover material resulted in poor drainage and allowed precipitation to collect and eventually infiltrate the landfill surface. As a result, a pool of contaminated groundwater (leachate) formed within the landfill.

EPA performed a background exceedance evaluation to compare concentrations of soil and sediment contamination in the off-source area with regional soil and sediment background concentrations. Contaminants in the off-source area found to exceed background concentrations include aluminum, arsenic, chromium, and manganese. Concentrations of metals in wetland soil were highest in the areas surrounding most of the leachate seeps adjacent to the landfill berm. Due to the risk to human health and the environment posed by the site, the Tulalip Landfill was listed on the NPL on April 25, 1995.

#### *Selected Remedy*

In 1996 EPA signed the interim Record of Decision (ROD) for the Tulalip Landfill Source-area (the landfill). A presumptive remedy (landfill cover system) was selected which expedited the design and construction of the on-source remedy. In September 1998 EPA signed the Final Record of Decision for the Tulalip Landfill Superfund Site On-Source and Off-Source Remedial Action. This Record of Decision documented the selection of the final remedy for both the on-source and off-source areas of the site as described below:

#### *On-Source Remedy*

The interim on-source remedy presented in the March 1, 1996, Record of Decision was adopted as the final

remedy for the on-source area. Major elements of the remedy included:

- Capping the landfill in accordance with the Washington State Minimum Functional Standards for landfill source,
- Installing a landfill gas collection system,
- Monitoring the leachate mound within the landfill, the perimeter leachate seeps, and landfill gas to ensure the selected remedy is adequately containing the landfill wastes,
- Initiating restrictions to protect the landfill cap, and
- Providing for operation and maintenance (O&M) to ensure the integrity of the cap system.

#### **Off-source Remedy**

The remedy of the off-source area (wetlands) selected in the final ROD was designed to protect human health and the environment through the continued implementation of placing signs and institutional controls. The major element of the off-source remedy selected in this ROD was to place and maintain an adequate number of signs to prohibit access to contaminated wetland areas and the consumption of fish and shellfish from those areas.

#### *Response Actions*

On May 6, 1998, the remedial design for the on-source cover system was approved by EPA in consultation with the Tulalip Tribes. Construction of the cover system began on June 18, 1998, and took slightly more than two years to complete. EPA then conducted a pre-final inspection on September 26, 2000, in conjunction with the Tribes, and developed a punch list of outstanding items. Those items were addressed in early October 2000, and the final walk-through was conducted on October 17, 2000. At the time, EPA in consultation with the Tribes, determined that the constructed remedy was operational and functional.

The following remedial activities were performed by Washington Waste Hauling & Recycling, according to design specifications set forth in the 1998 Remedial Design package.

- Regrading and preparing a crowned shaped sub-base over the entire site by excavating and relocating waste (approximately 440,000 cy) and importing a significant amount of clean fill (approximately 410,000 cy).
- Constructing a passive gas collection system in the waste so that a gas treatment system could easily be added later if necessary.
- Placing and compacting a 12" foundation layer (sand) over the sub-

base and gas collection system (approximately 320,000 cy).

- Constructing a liner system (approximately 150 acres) over the foundation layer. The liner system includes a flexible membrane liner to minimize infiltration of water into the landfill, a geonet for drainage, and geotextile protective liner.
- Placing a 12" layer of topsoil (280,000 cy) over the liner system, construction of a surface water drainage system, and revegetating the landfill.
- Constructing a locked gate entrance to restrict the access of unauthorized persons and equipment, and posting appropriate warning signs.

The Tribes have adopted an enforceable tribal ordinance and have placed signs prohibiting access to and the consumption of shellfish in the nearby wetlands. The Tribe has also adopted deed restrictions and signed a consent decree which prevents activities that may disturb the integrity of the cap.

#### *Operation and Maintenance*

Monitoring has been and will continue to be conducted quarterly for landfill gas and leachate seeps, and monthly for leachate levels. The Operations and Maintenance (O&M) Plan was approved on June 6, 2001. O&M activities to be performed include monthly site inspections for the first year and then quarterly inspections thereafter. Items to be inspected include landfill grades (surveys), surface water control systems, erosion, vegetation, infiltration collection system, gas collection system, roads, piezometers, site security and signs.

The certificate of completion was issued on February 20, 2001. O&M will be conducted for a minimum of 30 years from that date, the first four years by Washington Waste Hauling and Recycling and the next 26 years by the Tulalip Tribes. Currently, the Tribes do not have plans for any specific future use of the site.

#### *Five-Year Review*

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since the cleanup of the Tulalip Landfill has hazardous substances remaining at the site above levels that allow unlimited use and unrestricted exposure, a five-year review will be completed prior to June 18, 2003 (five years after RA on-site mobilization).

#### *Community Involvement*

Generally, the construction of the on-site landfill cover system was not of great interest to the public. Most of the public interest was focused on the truck hauling routes to and from the site and keeping road surfaces clean. EPA's Regional community relations staff conducted an active campaign to ensure that the residents were well informed about the activities at the site through routine publication of progress fact sheets. In response to citizen concerns, some of the truck traffic was rerouted away from certain areas.

#### *Applicable Deletion Criteria*

EPA may delete a site from the NPL if "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)(ii). EPA, with the concurrence of the Tulalip Tribes, believe that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

#### *Tribal Concurrence*

In a letter dated March 20, 2002, Tulalip Tribes, concur with the proposed deletion of the Tulalip Landfill Superfund site from the NPL.

Dated: May 24, 2002.

**L. John Iani,**

*Regional Administrator, U.S. EPA, Region 10.*  
[FR Doc. 02-14209 Filed 6-6-02; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

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

#### **50 CFR Parts 223 and 224**

**[I.D. 053102A]**

#### **Listing Endangered and Threatened Wildlife and Plants and Designating Critical Habitat; Public Scoping Meetings on a Petition to List Atlantic White Marlin (*Tetrapturus albidus*)**

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

**ACTION:** Notice of scoping meetings.

**SUMMARY:** NMFS will hold 11 public scoping meetings to receive data and comments regarding the status of the Atlantic white marlin.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

**FOR FURTHER INFORMATION CONTACT:** David Bernhart, 727-570-5312; or David O'Brien, 301-713-1401;

**SUPPLEMENTARY INFORMATION:** NMFS is conducting a status review of Atlantic white marlin to determine whether this species should be provided protection under the Endangered Species Act of 1973 (ESA). Status reviews are required by section 4(b)(3)(A) of the ESA, whenever a listing petition for a species is found to present substantial information indicating that the petitioned action may be warranted. On September 4, 2001, NMFS received a petition from the Biodiversity Legal Foundation (BLF) and James R. Chambers to list Atlantic white marlin as threatened or endangered throughout its known range, and to designate critical habitat under the ESA. On December 20, 2001, NMFS found that the petition presented substantial information indicating that the petitioned action may be warranted and announced initiation of a status review (66 FR 65676). NMFS also solicited information and comments on whether the Atlantic white marlin is endangered or threatened based on the ESA listing criteria, during a 60-day comment period.

NMFS' status review for white marlin is currently underway. Within 1 year of the receipt of the petition (by September 3, 2002), a finding will be made as to whether listing the Atlantic population of the white marlin as threatened or endangered is warranted, as required by section 4(b)(3)(B) of the ESA. Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. If listing is found to be warranted for the white marlin, NMFS would publish a proposed rule and take public comment before taking any final action on listing.

To maximize public involvement in the status review and to ensure that NMFS receives the best available commercial and scientific data for its listing determination, NMFS will hold 11 public scoping meetings to receive additional data and comments on the status of Atlantic white marlin and the