



Explanation of Significant Differences Schmalz Dump Superfund Site

Site Name: Schmalz Dump Superfund Site
CERCLA ID #: WID980820096
Site Location: Route 2 Fire Lane 1, Harrison 54911
Support Agency: EPA, Region 5
Lead Agency: Wisconsin Department of Natural Resources



Harrison, Wisconsin

I. Introduction

This decision document presents an Explanation of Significant Differences (ESD) for the Schmalz Dump Superfund Site (Site), located in the City of Harrison, Calumet County, Wisconsin. The Record of Decision (ROD) addressed by this ESD is the ROD signed by EPA on September 30, 1987 for the soil capping operable unit two (OU2), and with concurrence by Wisconsin Department of Natural Resources (WDNR) on September 28, 1987.

The ESD is issued in accordance with § 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.435(c)(2)(i). The Director of the Superfund Division has been delegated the authority to sign this ESD.

This ESD will become part of the Administrative Record for the Schmalz Dump Superfund Site (NCP 300.825(a)(2)), which has been developed in

accordance with § 113 (k) of CERCLA, 42 U.S.C. § 9613 (k).

The Administrative Record is available for review at the following locations:

Site information repository located at:

University of Wisconsin, West Building
Fox Valley Public Library
1478 Midway Road
Menasha Wisconsin

United States Environmental Protection Agency
Region 5
Ralph Metcalfe Building
Record Center, Room 711
77 West Jackson Blvd., Chicago, Illinois 60604
(312) 353-5821
Monday - Friday 8:00 a.m. to 4:00 p.m.

II. Statement of Purpose

EPA prepares an ESD when it is determined by the Agency that changes to the original selected remedy are significant, but do not fundamentally alter the

remedy selected in the ROD with respect to scope, performance, or cost.

Since the 1987 ROD was signed, issues concerning institutional controls (ICs) have been identified. The 1987 ROD did not include ICs as part of the remedy yet EPA has determined that ICs are required to ensure remedy protectiveness and to ensure that the remedy continues to operate as expected.

The purpose of this ESD is to document a final decision to add ICs and a long-term stewardship (LTS) plan as components of the selected remedy to ensure long-term protectiveness at the Site and to ensure the remedy continues to operate as expected. The ICs presented in this document represent a significant, but not fundamental change from the selected remedy, and so shall be recorded in the Site Record as an ESD.

III. Site History and Contamination

Site History

The Site is located in Harrison Township in Calumet County, Wisconsin. It covers three-quarters of an acre near the northern shore of Lake Winnebago (Figure 1). Unauthorized dumping occurred at the Site from 1968 to 1979. The Site formerly included wetland areas. In 1972 and 1973, fly ash and bottom ash from a utility company were disposed of on-site. In 1978 and 1979, building demolition debris contaminated with polychlorinated biphenyls (PCBs) was disposed of on-site.

The Site was placed on the NPL on September 21, 1984. A Remedial Investigation/Feasibility Study (RI/FS) was initiated in April 1985.

EPA signed the ROD for the PCBs Operable Unit 1 (OU1) on August 13, 1985 to address the public health threat of PCB contamination at the Site. This ROD required a fence to be installed around OU1 and required removal and off-site disposal of PCB contaminated sediments and debris in an approved landfill. Follow-up sampling confirmed remaining

sediments were below the action level of 1 mg/kg. EPA signed the ROD for OU2 on September 30, 1987. The remedial design was completed in 1992, with the resulting soil cap being completed in 1994.

Following completion of the remedial action, the lead for the Site passed from the EPA to WDNR in 1995.

Operation and maintenance activities, along with monitoring, are ongoing and are performed by WDNR.

Site Contamination

The contaminants found in debris and sediment at the Site were PCBs, chromium, lead and copper. These contaminants are hazardous substances, as defined in § 104(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4. Approximately 3,500 cubic yards of PCB-contaminated soil and sediment were identified at the Site.

IV. Selected Remedy

The ROD for OU2 was signed on September 30, 1987. This ROD is available in the Superfund Enterprise Management System (SEMS) under Record Number [205625](#).

The selected remedy in the OU2 ROD included:

- installation of a low-permeability, compacted earth material cap over approximately seven acres of lead- and chromium-contaminated soil,
- implementation of groundwater monitoring for lead and chromium, and
- a voluntary well abandonment program for nearby wells.

This ESD adds ICs to the selected remedy for the soil in the capped areas of the Site. The remedial action objectives of the soil ICs include preventing direct contact with waste material, preventing interference with the capped area and ensuring proper maintenance of the area, preventing well installation

at and near the soil capped areas, and ensuring no inappropriate land uses occur near the contaminated area.

Since groundwater did not exceed State nor Federal standards, a groundwater cleanup standard was not established, nor was treatment required. Therefore, groundwater ICs are not established or modified by this ESD.

V. Description of Significant Differences and Basis for the ESD

ICs, such as deed restrictions were not required by the 1987 OU2 ROD. Subsequent to the ROD, and to ensure remedy protectiveness, EPA obtained a court order dated November 15, 1991 (SEMS number [302550](#)), against Mr. Gregory Schmalz, the owner of the capped and fenced area of the Site, that grants EPA and WDNR access to the Site and prevents Mr. Schmalz from interfering with the remedy or disturbing the cap.

Based on subsequent Site remedy protectiveness evaluations, including the most recent Five-Year Review in 2018, EPA has determined that ICs are required as part of the Site remedy to ensure long-term protectiveness, since waste materials are left in-place at levels which will not allow for unlimited use/unrestricted exposure (UU/UE). This ESD is needed to document that ICs are required as part of the final remedy cleanup decision.

Specifically, ICs are required for the soil where residual contamination is present above standards for UU/UE and for the areas where a cap is in place to prevent exposure to the waste areas. ICs are non-engineered instruments, such as administrative and/or legal controls, that help minimize the potential for exposure to contamination and protect the integrity of the remedy. Compliance with ICs is required to assure long-term protectiveness for any areas which do not allow for UU/UE.

EPA has determined that ICs are required at 1) the Schmalz Dump Site and 2) the three adjacent properties.

ICs are required on the three adjacent properties to ensure that property owners acknowledge that residual contamination may be found at their properties. Those ICs are in-place in the form of Warranty Deeds recorded in Calumet County, Wisconsin on July 22, 1999. (SEMS Document Number 940541, 940542 and 940543). Also, those properties may be included in the Continuing Obligations (COs) discussed further below.

ICs are required at the Schmalz Dump Site to meet the following objectives, among others:

- Prohibit any activity that would adversely affect the integrity of the remedy implemented at the Site including the cap and the fence.
- Maintain remedy components including the cap and the fence.
- Prohibit any residential, recreational, and commercial uses at the Site without WDNR approval.

ICs are also intended to prevent current and future property owners from interfering with the remedy or disturbing the cap if the portion of the Site owned by Mr. Schmalz and controlled by the November 15, 1991 Court Order is transferred to a new owner.

The ICs shall consist of 1) proprietary controls or deed restrictions in the form of restrictive covenants, and/or 2) governmental controls in the form of Wisconsin's COs consistent with WI regulations. COs impose legal requirements designed to protect public health and the environment in situations where contamination remains on a property. COs run with the land so that each new owner is legally responsible for complying with them. They are enforceable by WDNR under Wisconsin Statute 292.12 and, in this case, will be documented by WDNR.

The COs for this Site may require:

- Residual wastes and soil contamination to be properly managed, should they be excavated or removed.
- Groundwater wells to be properly filled and sealed when monitoring is no longer required.
- A soil cover to be maintained over waste, with WDNR approval for any changes to this barrier.
- Permission from WDNR before land use is changed and/or before additional proposed environmental work is conducted.
- LTS plan to be developed consisting of Annual Site inspections and reporting to ensure compliance with the ICs.

Additionally, this Site will be included on the Bureau for Remediation and Redevelopment Tracking System (BRRTS on the Web) at <http://dnr.wi.gov/topic/Brownfields/clean.html>, to provide public notice of residual contamination and of any continuing obligations. Sites can also be viewed on the Remediation and Redevelopment Sites Map (RRSM), a map view, under the Geographic Information System (GIS) Registry layer, at the same web address. Also, WDNR approval prior to well construction or reconstruction is required for all sites shown on the GIS Registry, in accordance with Wis. NR 812.09 (4) (w), Wis. Adm. Code. This requirement applies to private drinking water wells and high capacity wells.

The ROD, by modification of this ESD, now calls for ICs as mentioned above on all associated properties where site-related contamination has come to be located; addition of all such properties to the Wisconsin GIS Registry; and documentation of Long-term Stewardship (LTS) procedures needed to monitor, maintain and enforce the ICs at the Site.

The following table highlights the changes to the remedy.

1987 ROD	Change in Remedy Documented in ESD
No ICs required	<ul style="list-style-type: none"> • deed restrictions will be implemented. • COs that document specific obligations and compliance with all federal, state and local laws, including relevant sections of the NR 500 and NR 700 series and Ch. NR 812 of the Wisconsin Administrative Code, and Wisconsin Statute 292.12 for all contaminated property will be included on the Bureau for Remediation and Redevelopment Tracking System (BRRTS on the Web or BOTW or otherwise known as the WIGIS Registry) to provide public notice of residual contamination and of any continuing obligations. • a LTS plan that documents long-term Stewardship procedures will be developed.

VI. Support Agency Comments

EPA consulted with the WDNR and provided it the opportunity to comment on this ESD in accordance with NCP § 300.435 (c)(2) and § 300.435 (c)(2)(i) and CERCLA § 121(f). WDNR concurs with this ESD, and the concurrence letter from WDNR will be added to the site file upon receipt.

VII. Statutory Determinations

EPA has determined that these significant changes comply with the statutory requirements of CERCLA § 121, 42 U.S.C. § 9621, are protective of human health and the environment, comply with Federal and State requirements that are applicable or relevant and appropriate to the remedial action, are cost-effective, and utilize permanent solutions and alternative treatment technologies to the maximum extent practicable.

Because this remedy will result in hazardous substances, pollutants, or contaminants remaining on-site above levels that allow for unlimited use and unrestricted exposure, statutory reviews will continue to be conducted no less often than each five years after the initiation of the remedial action to ensure that the remedy is, or will be, protective of human health and the environment.

VIII. Public Participation

The public participation requirements set out in the NCP § 300.435(c)(2) have been met by publishing this ESD, making it available to the public in the Administrative Record, and publishing a notice summarizing the ESD in a major local newspaper.

IX. Authorizing Signature

I have determined the remedy for the Site, as modified by this ESD, is protective of human health and the environment, and will remain so, provided the actions presented in this report are implemented as described above.

This ESD documents the significant changes related to the remedy at the Site. EPA selected these changes with the concurrence of WDNR.

9/24/2018

X 

Douglas Ballotti
Acting Director, Superfund Division
Signed by: DOUGLAS BALLOTTI

FIGURE 1 – Site Location

