



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103**

**SUBJECT:** Request for Ceiling Increase and Change in Scope of Work  
for a Removal Action at the West Virginia Tire Disposal, Inc. Site,  
Summersville, Nicholas County, West Virginia

**FROM:** Christine Wagner, On-Scene Coordinator  
Western Response Section (3SD32)

**THRU:** Michael Towle, Chief  
Preparedness and Response Branch (3SD30)

**TO:** Paul Leonard, Director  
Superfund and Emergency Management Division (3SD00)

**SITE ID #:** B3BJ

**I. PURPOSE**

This Action Memorandum (“Action Memo”) is to request and document approval of additional funding and a change of scope for a time-critical removal action at the West Virginia Tire Disposal, Inc. Site (“Site”) in Summersville, Nicholas County, West Virginia (“WV”). West Virginia Tire Disposal, Inc. (“WVTD”) has a permit to operate a commercial waste tire monofill facility (“facility”) at the Site.

On February 9, 2022, the West Virginia Department of Environmental Protection (“WVDEP”) contacted the National Response Center (“NRC”) to report the release of hazardous substances and/or oil from a tire fire at the WVTD facility. As a result of the fire, oil and/or hazardous substances were released into and from a retention pond (“pond”) on Site to Bryant Branch of Peters Creek. Peters Creek discharges to the Gauley River which is a national recreation area. This natural recreation area is protected to preserve significant and natural and scenic resources.

The EPA On-Scene Coordinator (“OSC”) performed a removal site evaluation under the authority of 40 C.F.R. § 300.410. Based on the release and potential release of hazardous substances, pollutants, or contaminants, on February 17, 2022, the OSC activated emergency funds of \$250,000 under Delegation 14-2 to control a release from the pond and other discharge areas of the Site. Additional funds are necessary to mitigate the imminent and substantial threat posed by the release of hazardous substances, pollutants, or contaminants into the environment. A ceiling increase of \$1,440,000 is requested, bringing the total Site ceiling to \$1,690,000.

This Action Memo will also change the scope of this time-critical removal action to add additional tasks, including dewatering and treating contaminated water from the pond, which has been severely impacted by the fire; removing and treating contaminated sediments; flushing wetlands areas, and removing potential sources of contamination.

## **II. SITE DESCRIPTION AND BACKGROUND**

### **A. Site Description**

#### **1. Removal Site Evaluation and State Response**

On December 25, 2021, a tire fire occurred at the WVTD facility located at 26 Bryant Branch Road in Summersville, Nicholas County, WV. Local volunteer Fire Departments from Nicholas County and nearby Fayette County responded. Representatives from WVDEP's Office of Homeland Security and Emergency Response also responded. WVDEP observed oil and carbon had migrated to the pond by that evening. WVDEP advised the facility operator to hire a contractor to mitigate the fire and control offsite migration of contamination.

The contractor selected by WVTD performed an assessment visit to the Site on December 26, 2021 and began logistical planning to respond to and manage the fire and control contamination that had migrated to the pond. The pond outlets to a surface stream, Bryant Branch of Peters Creek. The facility operator did not provide adequate financial surety to the contractor for the initial good faith estimate. On December 27, 2021, WVDEP hired the same contractor originally contacted by the facility operator. The contractor mobilized personnel and equipment to the Site on December 28, 2021 and was fully engaged in firefighting operations by the next day.

The contractor also initiated measures to control oily runoff from the pond. Protective measures were installed in two of the four permitted outfalls (#3 and #4) at the Site. Outfalls #1 and #2 were not affected by the fire. The contractor also installed booms, underflow dams, and carbon filters at various discharge locations on the Site. WVDEP's contractor also constructed a diversion trench to direct water not affected by the fire away from the pond. A closed cell of approximately 3 million tires is present on the Site property but was not involved in the fire.

The contractor initiated efforts to remove fire-related runoff from the pond. These efforts included vacuum and skimming operations. The oily substance was stored in frac tanks on Site.

In January of 2022, WVDEP collected water samples from the outfalls. The results showed the presence of several hazardous substances including, but not limited to, benzene, phenol, styrene, and 4-methy-2-pentanone ("MIBK"), all of which are listed hazardous substances in 40 CFR § 302.4. Burning tires can produce volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"). The substances listed above fall into these categories of hazardous substances.

On February 9, 2022, WVDEP notified the NRC (Report # 1328557) about the Site. WVDEP spoke with the EPA Duty Officer and requested EPA assistance on scene. On February 10, 2022, the OSC responded to the Site and met with WVDEP. The WVTD facility is owned and operated by one individual, while the land on which the facility is located is owned by West Virginia Land Management, Ltd. (“WV Land Mgmt.”) which leases the Site property to WVTD. At the time of EPA’s arrival, containment and control measures were being performed by a contractor hired by WVDEP. Neither the facility owner nor the Site property owner was present on scene.

In accordance with 40 CFR § 300.135(j) of the NCP, EPA notified the natural resource trustees. The OSC was advised that federally listed mussels and the candy darter fish may be present in the area of the release. U.S. Fish & Wildlife Service has proposed to list the candy darter as threatened under the federal Endangered Species Act. Nearly half of the 35 known candy darter populations have disappeared since the species was first described in 1932.

On February 11, 2022, the OSC received permission to perform a visual assessment of the Site. The OSC was accompanied by a representative of WVDEP and the contractor working on the Site. The OSC observed an oil-like substance and solids covering the pond downgradient from the WVTD facility. The contractor had placed containment measures such as harbor boom, turbidity curtain, underflow dams, and absorbent boom in the areas of potential release. The contractor was also actively performing vacuum (“vac”) operations to remove the oil-like substance from the surface of the pond.

The OSC identified several major areas where response actions are necessary. The OSC observed a heavy oil-like thick sheen on a pond downgradient from the fire area. This oily substance will hereinafter be referred as “oil-like” substance. The OSC also observed seepage of the oil-like substance from the staging area where the burned tires were placed. The oil-like substance impacting the environment is not subject to the petroleum exclusion under CERCLA, as it is oil commingled with hazardous substances and is a waste byproduct of the tire fire.

On February 12, 2022, the OSC met on Site with the facility operator. The OSC requested access to perform sampling as part of a removal assessment under 40 CFR § 300.410. The facility operator agreed and signed a consent to enter. The OSC asked the facility operator if he was willing to hire a contractor to continue response actions. The facility operator stated he would get back in contact with EPA on February 14, 2022.

The OSC also contacted a representative for the Site property owner WV Land Mgmt. on February 12, 2022. The representative agreed to sign a consent to enter for EPA to continue its removal site assessment, including sampling. The representative for the property owner requested split samples. On February 12, 2022, the OSC activated its START contractor to arrive on Site beginning February 14, 2022, to perform sampling.

Bryant Branch of Peters Creek flows through the Site. Peters Creek is a tributary to the Gauley River, a navigable waterway under the definition in the Oil Pollution Act. Due to the potential threat of discharge to a navigable waterway, on February 14, 2022, the OSC requested funding from the USCG National Pollution Funds Center to take response actions to mitigate the discharge of oil into Bryant Branch of Peters Creek. The OSC requested funding from the USCG National Pollution Funds Center in the event any necessary response actions were performed strictly under the OSC's authority under the Clean Water Act, as amended by the Oil Pollution Act. To date, EPA has not expended any of these funds on contractor costs. On February 15, 2022, the OSC sent the facility operator a Notice of Federal Interest under the Oil Pollution Act.

On February 15, 2022, the facility operator informed the OSC he had reached out to a contractor who would be on scene the next day. On February 16, 2022, the OSC and WVDEP met on Site with the proposed contractor. The proposed contractor declined to perform the work. WVDEP informed EPA that WVDEP and their contractor planned to demobilize from the Site on February 18, 2022. At this time, the fire had been successfully extinguished.

During the week of February 14-18, 2022, EPA's contractor collected samples from the pond, the pit where the fire occurred ("tire fire pit") and areas around the burned tire pile ("quenched tire pile"). Split samples were sent to the property owner.

The area where the tire fire occurred is approximately 100 feet in elevation higher than the pond. Stormwater from the tire fire pit and the quenched tire pile flows directly to the pond. The pond is not accessible by vehicle. The only access is by walking approximately 2000 feet through muddy bogs or by all-terrain vehicle.

## **2. Physical Location**

West Virginia Tire Disposal, Inc. is located at 26 Bryant Branch Road in Summersville, Nicholas County, WV. The facility is off Route 39, 1.5 miles northwest of Summersville along Bryant Branch.

The Site is located on an approximate 328-acre parcel, which includes the pond that discharges to Bryant Branch of Peters Creek, an office trailer with scale, a maintenance shed, and a residence which is currently unoccupied. The office trailer and scale are located on the upper portion of the Site near where the tire fire occurred. This is the area where tires were previously dropped off for disposal when WVTD was operational.

A private residence is located west of the Site. However, the Site access road is the only access to this residence. A permitted tire monofill is also located on the Site, although this monofill may not be situated on the same parcel as this residence. Approximately 66 trailers, some of which contain tires, are also staged on the Site property.

The facility operates under a Solid Waste Disposal Permit from WVDEP that is effective from May 17, 2017, through May 16, 2022. The facility was authorized to receive whole, baled,

split, cut, or shredded tires. The facility is currently under a February 21, 2020, Cease and Desist Order issued by WVDEP and is currently not permitted to receive waste tires and may not resume operations until WVDEP inspects the facility and determines that WVTD is in compliance with its permit and all related laws and regulations.

According to research performed by EPA's contractor, there are no historic or cultural sites located at the Site or on adjacent properties. There are several cemeteries located in the area, but they are located at higher elevations than the Site and would not be impacted by runoff or storm events/flooding events.

The nearest historical/cultural site is the Martin Hamilton House, National Register site identifier (ID) 99001403, located approximately 1.6 miles southeast of the Site. It is located on State Route (SR) 39, in Summersville, Nicholas County, West Virginia.

The City of Summersville is known for recreational tourism. Summersville Lake, located approximately twelve miles from the Site, is the largest lake in West Virginia and is a major recreation destination, attracting nearly 1 million visitors annually. The Lake offers many recreational opportunities, including a campground, beach, picnic shelters, playgrounds, boat launch, marina, hiking trails, rock climbing, fishing, and hunting opportunities, and some of the most scenic views in the country.

The Gauley River, to which the Bryant Branch flows approximately 17 miles downstream, is popular for whitewater rafting.

The area around the Site is mostly residential, with private homes located off WV Route 39. Public water is supplied in the area, although homes in the area may also use private residential wells. EPA has identified at least one home in the area that uses a private well for drinking water. The OSC continues coordination with the Nicholas County Health Department to identify additional drinking water wells.

EPA has also performed an environmental justice screening of the Site.

### **3. Quantities and Types of Substances Present**

The pond on Site is directly downgradient from the quenched tire pile at an elevation at least 100 feet lower than the tire fire area. Hazardous substances have been identified in the pond, tire fire pit area, and quenched tire pile area.

Approximately 18,000 gallons of oil-like substance have already been removed from the pond. The pond is continually covered with the oily substance and sediments heavy with rubber granules.

A heavy sediment load has settled in the pond. Sediment on the south end fills the pond to the surface.



1 Heavy Sediment fills the pond to the surface on the south end

EPA’s contractor collected samples from the pond, the tire fire pit, and from areas at the toe of the quenched tire pile.

Hazardous substances detected in the pond sample include the following, among others:

Hazardous Substance (as listed at 40 CFR § 302.4)	Concentration (“mg/kg”)
Cumene	5.74
Styrene	7.98
Toluene	20.4
Xylene	34.4
4-nitro phenol	24.8
Benzene	4.79
Ethyl Benzene	18

During EPA’s assessment, samples were also collected from the tire fire pit and around the quenched tire pile. In addition to several of the hazardous substances listed above, the hazardous substance, phenol, was detected in the tire fire pit at a concentration of 7.24 mg/kg.

Six samples were collected from the base of the quenched tire pile. Additional hazardous substances detected in this area include phenanthrene (6.29 mg/kg) and pyrene (6.26 mg/kg).

Composite samples collected from the pond, tire fire pit, and quenched tire pile were also analyzed for hazardous waste for volatile and semi-volatile organic compounds. All results were below the regulatory limits for hazardous waste as described in 40 CFR § 261.

#### **4. Release or Threatened Release of Hazardous Substance, Pollutant, or Contaminant into the Environment**

The OSC has documented the release of hazardous substances into the environment at the Site, as defined by Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”).<sup>1</sup>

#### **5. National Priority List (“NPL”) Status**

The Site is not currently listed on the NPL. The OSC will coordinate with the EPA Site Assessment Manager regarding all activities performed under this removal action.

### **B. Other Actions To Date**

#### **1. Previous Actions**

The facility is under a Solid Waste Disposal Permit from WVDEP that is effective from May 17, 2017, through May 16, 2022. Under the permit, the facility is authorized to receive construction debris, and whole, baled, split, cut, or shredded tires.

On February 21, 2020, WVDEP issued Order No. MM-20-19 to WVTD in response to violations that occurred at the facility from the time period of April 2016 through December 2019. Among other tasks, the Order required WVTD to submit a Plan of Corrective Action (“POCA”) outlining action items and completion dates for how and when WVTD would achieve compliance with its permit and all pertinent laws or rules.

On October 4, 2021, an Order for Case No. CC-34-2015-C-63 was entered in the Circuit Court of Nicholas County. The purpose of the Order was to properly address WVTD’s continuing violations at the facility that had been observed and documented by WVDEP personnel during multiple inspections of the facility. As a result of the court hearing, WVTD agreed to accomplish several action items that would ultimately result in compliance.

On December 25, 2021, a tire fire occurred in the shredder area of the facility. Local volunteer Fire Departments from Nicholas County and nearby Fayette County responded. Representatives from WVDEP’s Office of Homeland Security and Emergency Response also responded. WVDEP observed oil and carbon had migrated to the pond by that evening. WVDEP advised WVTD that it was necessary for the company to hire a contractor to mitigate the fire and control offsite migration of contamination.

The contractor made an assessment visit to the Site on December 26, 2021, and began making logistical plans to respond to and manage the fire and control contaminants that had migrated to the stormwater management pond, which outlets to Bryant Branch of Peters Creek.

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<sup>1</sup> 42 U.S.C. § 9601(22).



WVTD did not provide adequate financial surety to the contractor, and, as a result, WVDEP hired the contractor to continue fire suppression and environmental protective measures.

The contractor excavated the burning tires from a pit near the shredder and staged them for further quenching. This area of the burned tires is now known as the quenched tire pile. The size of the quenched tire pile has an estimated surface area of 29,000 square feet and is approximately 25-30 feet high.



**2 Tire Fire Pit on upper portion of Site**



**3 Quenched pile of burned tires**

The fire was investigated but a cause has not yet been determined. The fire did not affect the existing monofill of tires north of the Site.





**4 Permitted monofill. This area was not affected by the tire fire**

On February 7, 2022, WVDEP issued another order (WV Order SW-22-001) because of the fire. The Order required WVTD to take certain actions including, but not limited to, sampling of the burned area for hazardous waste determination, preparing a disposal plan for the burned materials based on the waste characterization sampling, sampling soil between the burned tire pile and the pond, and providing a proposed remediation plan. To date, WVTD has not complied with the terms of this Order.

On February 9, 2022, WVDEP requested EPA's assistance at the Site to take over the response action.

On February 18, 2022, WVDEP and its contractor demobilized from the Site.

On February 25, 2022, WVDEP issued a Notice of Violation to WVTD for non-compliance with the requirements of the WV Order issued on February 7, 2022.

## **2. Current Actions**

EPA responded to the Site on February 10, 2022 and performed a removal site evaluation in accordance with 40 CFR § 300.410. As a result of this assessment, EPA activated emergency response funds on February 18, 2022, to begin a removal action to control the release of hazardous substances, pollutants, or contaminants from the pond and to prevent harm to Bryant Branch of Peters Creek.

EPA has maintained a continual Site presence since this time. The OSC was informed by the owner and operator of WVTD that a contractor had been hired to continue response actions beginning February 21, 2022. However, that contractor failed to show up to begin the work.

On February 23, 2022, EPA issued an Administrative Order for access to WVTD and Robert L. Thompson, the principal of WVTD. Mr. Thompson signed a Notice of Intent to Grant

Access in compliance with the access order on February 24, 2022.

EPA's contractor has been performing response actions seven (7) days/week to control runoff from the pond. These actions include, but are not limited to, vacuuming surface oil from the pond; maintaining and reinforcing containment and control measures at two outfalls from the Site; installing containment measures including berms and dams at surface water overflow areas; pumping and redirecting water from an upgradient retention area, and constructing diversion trenches to direct unaffected stormwater from entering the pond.

On February 25, 2022, heavy rain caused the pond to overflow. The oil-like substance migrated to Outfall #3 and the retention trench on the east side of the Site. The OSC spoke with WVDEP and advised that emergency actions to discharge subsurface water from the pond through activated carbon were necessary. During this discharge operation, the discharge water was pumped to a diversion trench, visually monitored, and additional containment measures were installed.



**5 Retention downgradient from Outfall #3 impacted by pond overflow**

Since the event of February 25, 2022, EPA's contractor has been creating diversion paths to direct stormwater away from the pond. A retention area located downgradient from the quenched tire pile, but upgradient from the pond, has been upgraded to allow stormwater to collect here and be pumped away from the pond. WVDEP has been on Site and advised of all work EPA is performing.

During the period of late February to early March of 2022, the OSC has determined that any cumulative rainfall will cause the pond to overflow. The OSC has also observed that contaminated sediments continue to discharge oil-like substances that rise to the surface. Despite continuous vacuum operations, the pond remains covered in an oil-like substance and granules from the fire.



6 Despite vac operations, oil-like substances continue to surface

### C. State, Tribal, and Local Authorities

WVDEP requested EPA assistance to perform the necessary response actions in the absence of the potentially responsible parties' failure to do so. The OSC and WVDEP communicate on most days, and representatives from WVDEP frequently visit the Site to assess conditions.

The OSC also has been coordinating with the Nicholas County Officer of Emergency Management.

### III. THREATS TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

Section 300.415(b) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP")<sup>2</sup> lists factors to be considered in determining the appropriateness of a removal action. As discussed immediately below, subparagraphs (b)(2)(i), (ii), (v), (vii), and (viii) directly apply to the conditions as they exist at the Site.

#### A. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants. 40 C.F.R. § 300.415(b)(2)(i).

The oil-like substance on the pond contains hazardous substances consistent with tire fire contamination. Continuous mitigation efforts are necessary to prevent the hazardous substances, pollutants, or contaminants from impacting the environment and surface waters. Local residents may fish in this area.

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<sup>2</sup> 40 C.F.R. § 300.415(b).

A study performed by scientists at Oregon State University found that tire leachate may have detrimental effects on aquatic environments. A study that exposed various shrimp organisms to tire leachate found that this type of environment had significant impacts on swimming behaviors that the researchers believed could lead to an increased rate of predation and challenges to find food in the wild. (*“Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”*, *Science News*, 3/1/22)

Bryant Branch of Peters Creek runs through the Site. Peters Creek enters the Gauley River approximately 16.9 miles downstream. U.S. Fish & Wildlife Services (“USFW”) has informed the OSC that Peters Creek and the Gauley River are high quality streams. Gauley River also is a state mussel stream. USFW would expect a heavy oil-like substance to pose a threat to sensitive mussel populations in the Gauley River and potentially other aquatic species in Peters Creek, although no mussels are expected in Peters Creek. Birds also populate the area. Birds using the pond may become contaminated by the oily substance, and this may affect their ability to fly.

Prior to initiation of the removal action on February 17, 2022, USFW had preliminarily opined that Bryant Branch of Peters Creek may be a critical habitat of the Candy Darter, proposed as a threatened species of fish under the federal Endangered Species Act. USFW has recently determined that there are, in fact, likely no known federally listed aquatic species near the Site. However, the Virginia spiraea, a federally threatened shrub, is located along the Gauley River. Where possible, equipment and material staging areas should be located outside of areas of natural/native vegetation.

The Site is unsecured. An unpaved road leads directly from Route 39 to the Site. No employees or representatives of WVTD are present on Site. During response actions, the OSC encounters visitors almost daily. Because the road to the Site is the only access for the neighboring resident, a gate is not practicable. Several persons have entered the Site with the intention of dropping of used tires. During EPA’s absence, there is no accountability of persons who may access the Site.

**B. Actual or potential contamination of drinking water supplies or sensitive ecosystems. 40 C.F.R. § 300.415(b)(2)(ii).**

Although the City of Summersville has a public drinking water system, the OSC has confirmed that the residence nearest to the Site has a private drinking water well. The OSC also confirmed with the Nicholas County Health Department that other private drinking water wells may be located in the area.

**C. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 C.F.R. § 300.415(b)(2)(v).**

The OSC has already observed a release from the pond during heavy rain. Without active maintenance of containment devices such as boom, underflow dams, and berms, the hazardous substances will release directly into Bryant Branch in an uncontrolled manner. Vacuum

operations must continue to control the source of hazardous substances on the surface of the pond. Furthermore, the pond is covered with contaminated heavy contaminated solids and sediments. Additional removal actions are needed to permanently remove the contamination from the pond.

**D. The availability of other appropriate federal or state response mechanisms to respond to the releases. 40 C.F.R. § 300.415(b)(2)(vii).**

WVDEP has requested the OSC's assistance in responding to the releases at the Site. WVDEP has indicated that West Virginia does not have the resources to conduct the necessary response actions. The OSC is also coordinating with Nicholas County government officials.

**E. Other situations or factors that may pose threats to public health or welfare of the United States or the environment. 40 C.F.R. § 300.415(b)(2)(viii).**

In addition to the hazardous substances contained in the pond, tire granules that are released when the tires are burned, create a thick cover on the water. This cover may affect the oxygen content of the surface waters, potentially leading to permanent environmental damage. Additional removal actions are necessary to control the releases of hazardous substances, pollutants, or contaminants.

**IV. ENDANGERMENT DETERMINATION**

Based on the removal site evaluation performed by the OSC at the Site, the OSC has determined that conditions at the Site pose an imminent and substantial threat to public health, welfare, and the environment due to the release and potential additional release of hazardous substances, pollutants, or contaminants.

**V. PROPOSED ACTIONS AND ESTIMATED COSTS**

The overall objectives of the removal action are to remove the source(s) of hazardous substances, pollutants, or contaminants and to take actions necessary to protect the public health or welfare and the environment.

**A. Proposed Action Description**

The response actions described in this memorandum directly address actual or potential releases of hazardous substances on-Site that may pose an imminent and substantial endangerment to public health, or welfare, or the environment. The overall objectives of the removal action are to remove the contamination from the pond and source areas to prevent additional releases of hazardous substances, pollutants, or contaminants from the Site

The following removal actions were identified in EPA's Special Bulletin and are ongoing to mitigate the imminent and substantial threat posed by the uncontrolled release of hazardous substances, pollutants, or contaminants:

1. Mitigate potential discharge of an oil-like substance containing hazardous substances, pollutants, or contaminants from areas including, but not limited to pond, outfalls, surface drainage areas, retention areas, or any other areas where the oil-like substance, as described above, is being released to the environment;
2. Remove and contain the oil-like substance containing hazardous substances, pollutants, or contaminants from pond, shoreline, retention areas or other areas contaminated with such substances.
3. Dispose of off-site oil-like substance and debris containing hazardous substances, pollutants, or contaminants.
4. Direct and pump stormwater away from pond for the purpose of reducing volume to prevent overflow from the Pond.
5. Excavate waste tire debris from the pond followed by staging, containment, and off-site disposal.
6. Control runoff from burned tire pile area.
7. Provide logistical support items on the property including, but not limited to, command post trailer(s), portable toilets, rehab areas, etc.
8. Provide site security as needed to prevent unauthorized access to work areas.

Additional actions which comprise the proposed change in scope of work include:

9. Dewater the Pond to remove surface and subsurface contamination. Process the water from the Pond through a temporary treatment system to remove hazardous substances and suspended solids. Discharge treated water to surface water (Bryant Branch) in accordance with discharge criteria promulgated under West Virginia environmental law. The OSC will coordinate closely with WVDEP to identify appropriate discharge limits, pump rates, and sampling criteria.
10. Remove all solids contaminated by oil-like substance from the Pond and on-Site retention areas.
11. Add stabilizing agent to contaminated solids removed under Paragraph 10, above, to prevent leaching of hazardous substances, pollutants or contaminants. Dispose of these contaminated solids on-Site in existing cells permitted under West Virginia law.
12. Flush with water oil-like substance from the natural wetland areas on Site, including the north end of the Pond, where cattails are abundant, and the banks of the entire Pond. Vacuum oil-like substances from the wetlands' surface to containment for disposal.
13. Properly dispose of offsite all hazardous substances, pollutants, and contaminants recovered at the Site above in accordance with 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, except as provided in Paragraph 11, above.

14. Conduct actions necessary to facilitate removal activities, including but not limited to clearing vegetation and debris and establishing access roads.

The extent of any migration of the hazardous substances from the Site, as well as the groundwater conditions at the Site, are currently unknown. Accordingly, in addition to the removal activities described above, the OSC will continue to perform removal site evaluation to determine the extent of any groundwater contamination related to releases at the Site. This removal site evaluation will include possible sampling of groundwater wells to determine the environmental fate and transport of Site-related hazardous substances, pollutants, or contaminants over time.

**Contribution to Remedial Performance**

The Site is not currently on the NPL. All actions performed as described would be consistent with any long-term remedial actions that may be necessary.

**B. Applicable or Relevant and Appropriate Requirements (ARARs)**

The proposed removal action will attain Federal and State applicable or relevant and appropriate requirements (“ARARs”) to the extent practicable considering the exigencies of the situation.<sup>3</sup> The OSC coordinates frequently with WVDEP and has already been in contact with the WVDEP Division of Water and Waste Management regarding state ARARs. The OSC will continue to work with WVDEP and EPA Region 3’s Water Division to identify other ARARs or guidance that may be considered in the implementation of the removal action.

**C. Estimated Costs**

<b>Estimated Costs</b>	<b>Previous Action</b>	<b>This Action</b>	<b>Total</b>
Extramural Costs:			
	\$250,000	\$1,200,000	\$1,450,000
Unallocated Costs:			
Extramural Costs Contingency (20% of Subtotal, Extramural Costs)		\$240,000	\$240,000
<u>Total Removal Action Project Ceiling</u>	\$250,000	\$1,440,000	\$1,690,000

<sup>3</sup> 40 C.F.R. § 300.415(j).



## **VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

If the actions described in this Action Memorandum are delayed or not conducted, the release or threat of release of hazardous substances or pollutants or contaminants will continue to exist at the Site. Without immediate actions to mitigate the release and potential release of hazardous substances or pollutants or contaminants at the Site, potential threats posed to human and ecological receptors may increase.

## **VII. OUTSTANDING POLICY ISSUES**

There are no outstanding policy issues pertaining to the Site.

## **VIII. ENFORCEMENT STATUS**

EPA has identified one or more potentially responsible parties for the Site. The OSC is coordinating with the EPA Cost Recovery Branch and the Office of Regional Counsel to pursue all enforcement actions pertaining to the Site. See the attached Confidential Enforcement Addendum, which is predecisional and not for public release.

The total cumulative EPA costs for this removal action, based on full cost accounting practices, that will be eligible for cost recovery are estimated below as:

Direct Extramural Cost:	\$ 1,690,000
Direct Intramural Costs:	<u>\$ 84,000</u>
Subtotal	\$ 1,774,000
Indirect Costs (66.79% of above)	\$ 1,184,855
Estimated EPA Costs for the Removal Action:	\$ 2,958,855

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$ 2,958,855.<sup>4</sup>

## **IX. RECOMMENDATION**

This decision document represents the selected Removal Action for the West Virginia Tire Disposal Site, located in Summersville, Nicholas County, WV developed in accordance

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<sup>4</sup> Direct Costs include direct extramural and direct intramural costs. Indirect Costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery

with CERCLA and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Removal Action at the Site.

By signing this Action Memorandum, you are also hereby supplementing the existing administrative record for this removal action with the documents listed below, pursuant to Section 113(k) of CERCLA and EPA Delegation No. 14-22.

(Refer to existing administrative record for documents 1-7. *See* February 17, 2022 Special Bulletin)

8. National Response Center Report #1328557
9. Email from TetraTech to OSC containing estimated areas of pond and tire pile
10. Nicholas County Records Parcel: Book 462, Page 26, Parcel No. 18/0065 0000 0000
11. WV Permit SWF-4026/WV0109550
12. Email from TetraTech to EPA (2/28/22) identifying historical/cultural Sites
13. Summersvillewv.org
14. Richwooders.com
15. wvpublic.org
16. email from Nicholas County Health Department to EPA (3/9/22) regarding possible wells in area of Site
17. Toxicity of Tire Rubber Microplastics to Freshwater Sediment Organisms (Carrasco-Navarro, Sorvari, Kukkonen, 2001)
18. “Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”, Science News, 3/1/22
19. OSC memo to file 3/11/22 regarding conversation with local resident regarding fishing in the area
20. Pace Analytical Reports (3 reports for VOCs, SVOCs, and TCLP analyses) 2/24/22  
“Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”, Science News, 3/1/22
21. Email from USFW dated 2/23/22 to OSC identifying sensitive populations on Peters Creek and the Gauley River
22. Maps

Because conditions at the West Virginia Tire Disposal Site meet the removal action requirements of the NCP, I recommend your approval of the proposed Removal Action. The total Removal Action Project Ceiling, if approved, will be \$ 1,690,000.

**X. ACTION BY THE APPROVING OFFICIAL**

I have reviewed the above-stated facts and based upon those facts and the information compiled in the documents described above. I hereby determine that the release or threatened release of hazardous substances at and/or from the Site presents or may present an imminent and substantial endangerment to the public health or welfare or to the environment. I concur with the recommended Removal Action as outlined.

**APPROVED:**

\_\_\_\_\_  
Paul Leonard, Director  
Superfund and Emergency Management Division  
EPA Region III

**DISAPPROVED:**

\_\_\_\_\_  
Paul Leonard, Director  
Superfund and Emergency Management Division  
EPA Region III

Attachments:

Confidential Enforcement Memo  
Special Bulletin 2/17/22