Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 24, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.142 [Amended]

2. In § 180.142, in the table to paragraph (b), the entry for wild rice is amended by revising the expiration date to read ''12/31/05.''

§ 180.176 [Amended]

3. In § 180.176, in the table to paragraph (b), the entry for ginseng is amended by revising the expiration date to read ''12/31/04.''

§ 180.284 [Amended]

4. In § 180.284, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; clover, forage, clover, hay; timothy, forage; timothy, hay; and timothy, seed are amended by revising the expiration dates to read ''12/31/05.''

§ 180.438 [Amended]

5. In § 180.438, in the table to paragraph (b),the entries for barley, bran; barley, grain; barley, hay; and barley, straw are amended by revising the expiration dates to read ''12/31/05.''

§ 180.442 [Amended]

6. In § 180.442, in the table to paragraph (b), the entries for citrus, dried pulp; and citrus, oil are amended by revising the expiration dates to read ''12/31/04.''

§ 180.482 [Amended]

7. In § 180.482, in the table to paragraph (b), the entry for sweet potato, roots is amended by revising the expiration date to read ''12/31/05.''

§ 180.495 [Amended]

8. In § 180.495, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; cattle, fat; cattle, meat byproducts; cattle, meat; egg; goat, fat; goat, meat byproducts; goat, meat; grass, forage; grass, hay; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; peanut, hay; poultry, fat; sheep, fat; sheep, meat byproducts; and sheep, meat are amended by revising the expiration date to read ''12/31/05'' and the entry for ''all commodities in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established'' is amended by revising the expiration date to read ''12/31/06.''

§ 180.498 [Amended]

9. In § 180.498, in the table to paragraph (b), the entries for horseradish, roots; sugarcane; and sunflower are amended by revising the expiration date to read ''12/31/05.''

§ 180.527 [Amended]

10. In § 180.527, in the table to paragraph (b), the entries for cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts; goat, fat; goat, kidney; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, meat; horse, meat byproducts; sheep, fat; sheep, kidney; sheep, meat; sheep, meat byproducts; wheat, forage; wheat, grain; wheat, hay; and wheat, straw are amended by revising the expiration date to read ''6/30/05.''

§ 180.553 [Amended]

12. In § 180.553, in the table to paragraph (b), the entry for pear is amended by revising the expiration date to read ''12/31/04.''

§ 180.1020 [Amended]

13. In § 180.1020, in the table to paragraph (b), the entry for wheat is amended by revising the expiration date to read ''12/31/04.''

[FR Doc. 03–969 Filed 1–15–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7438–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the ATSF Clovis, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the ATSF Clovis, Superfund Site (Site), located in Clovis, New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective March 17, 2003 unless EPA receives significant adverse or critical comments by February 18, 2003. If adverse comments are received, EPA will publish timely withdrawal of the direct final deletion in the **Federal Register** informing the pubic that the deletion will not take effect.

ADDRESSES: Comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX, 75202–2733, (214) 665–8157

or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas, 75202–2733, (214) 665–6427, Monday through Friday, 7:30 a.m. to 4:30 p.m; New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, Monday through Friday, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Oral comments will also be received through this date and should be directed to: Ms. Petra Sanchez, Remedial Project Manager, (6SF–LT), *sanchez.petra @epa.gov,* U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6686 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 6 is publishing this direct final notice of deletion of the ATSF Clovis, Superfund Site from the NPL.

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

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the ATSF Clovis, Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) 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.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of New Mexico on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of New Mexico concurred with 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 published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with 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 the Site from the NPL:

Site Location

The ATSF Clovis Superfund Site is locally known as the Santa Fe Lake. The affected site is a natural playa lake originally owned by Atchison, Topeka and Santa Fe Railway Company (AT&SF). As a result of a merger, Burlington Northern Santa Fe Railway Company (BNSF) now owns and operates the site and is the potentially responsible party (PRP). The ATSF Clovis site is approximately 140 acres in size and is located approximately one mile south of the BNSF railyard in Clovis, Curry County, New Mexico.

Site History

The playa lake is approximately 40 acres in size and is located near the center of the site. Surrounding land use is primarily agricultural in nature, with a small residential area located to the east of the site. Over the years, storm water run-off and wastewater discharge from the railyard was directed to the

lake. Wastewater generating sources at the railyard have included hopper car washing operations, boiler blow downs, sanitary sewers, and the oil/water separators at the diesel fueling racks. Although the railyard was constructed in the early 1900's, the majority of the discharge to the lake occurred between 1962 and 1982. Investigations of the lake water and underlying sediments were performed from 1979 to 1982 by EPA and AT&SF. In November 1981, the site was proposed for the National Priorities List (NPL). In September 1983, the site was listed on the NPL as ''ATSF (Clovis)'' with a Hazard Ranking System score of 33.62.

Remedial Investigation and Feasibility Study (RI/FS)

A Remedial Investigation (RI) of the site was conducted in 1987 and 1988 and included analyses of soil, sediment, lake water and ground water samples. Four wells were installed surrounding the lake for monitoring the ground water in the immediate vicinity of the lake. Additional samples were collected from water supply wells in the area for statistical comparison to the sample collected from the on-site wells.

Soil, sediment, lake water, and ground water samples were analyzed for the parameters listed in the Administrative Order on Consent (Consent Order) issued in 1983. The RI report was finalized in August 1988. The RI listed the parameters of potential concern (those compounds present above background values), as follows:

Soils: Barium; Boron; Chloride; Hydrocarbons; Phenolics; Sulfate;

Sediments: Boron; Chromium; Hydrocarbons; Lead; Phenolics; Total Organic Carbon;

Lake Water: Arsenic; Boron; Cadmium; Chromium; Fluoride; Lead; Phenolics; Total Dissolved Solids; Total Organic Carbon

Ground Water: Calcium; Chloride; Fluoride; Magnesium; Sodium; Sulfate; Total Dissolved Solids; Total Organic Carbon; Total Alkalinity; Bicarbonate; Conductivity.

Background values were determined through collection and analysis of ground water samples from area wells, lake water samples from area playa lakes and soil samples from unaffected areas at the site. A comparison of analytical results from the various samples collected at the site to the background analytical results was presented in the RI.

The range of concentrations of chromium and hydrocarbons in samples collected for the RI were as follows:

Media	Total chromium	Leachable chromium	Hydrocarbons
Soils, Sediments, Lake Water	5.1 to 15 mg/kg, 35 to 150 mg/kg, 0.012 to 0.059 mg/L.	<0.009 to 0.042 mg/L, 0.028 to 0.043 mg/L, not analyzed.	<5 to 3,300 mg/kg, 4,700 to 35,000 mg/kg, <0.2 mg/L.

Subsequent sampling of soils and sediments was performed to speciate the chromium and hydrocarbons. The analytical results of the subsequent sampling were used to refine the health risk assessment, which confirmed that the only potential health risk pathway was through inhalation of wind-blown dust. These results were presented in an addendum to the RI report dated September 1988.

Additional ground water sampling occurred following submittal of the RI report, at the request of the New Mexico Environmental Improvement Division (NMEID). The results of the additional sampling indicated that several monitored parameters were statistically higher in the on-site wells when compared to the background wells. However, none of the parameters were found to present a health risk. Therefore, it was determined that ground water remediation was not required. These results were presented in a second addendum to the RI report dated November 1988.

A Feasibility Study (FS) was conducted in conjunction with the RI in July 1988. The remedial alternatives focused on remediation of soils and sediments to remove the potential health risk through inhalation of wind-blown dust. Because any action involving the lake bottom sediments would require prior removal of water from the lake, management and remediation of the lake water was also a component of the remedial alternatives addressed in the FS. Since the addendums to the RI did not change any conclusions drawn in the RI and did not add any contaminants of concern to the remedial action required, no revision to the FS was required.

Characterization of Risk

An analysis of health and environmental effects was performed as part of the RI. This analysis evaluated each potential parameter of concern for health and environmental effects. It was determined that the following parameters had the potential to pose a health risk:

Soils: Barium; Hydrocarbons; Phenolics;

Sediments: Chromium; Hydrocarbons; Lead; Phenolics

Lake Water: Arsenic; Cadmium; Chromium; Lead; Phenolics;

None of the parameters detected in ground water were determined to pose a risk to human health and thus ground water was eliminated as a possible human exposure pathway. An evaluation of the risk to human health through the remaining exposure pathways was conducted for those parameters that had a potential to pose a health risk. The evaluation indicated that the only constituents found in the lake water, lake bottom sediments, and surrounding soils that had a potential health risk were chromium and hydrocarbons through inhalation of wind-blown dust.

Record of Decision Findings

On September 23, 1988, the Regional Administrator approved a Record of Decision (ROD), which summarized the findings of the RI and FS and stated what the selected remedial action included. The ROD identified the major concern for this site was the potential threat to the ground water. The ROD further stated that the results of the RI data were reviewed and EPA determined that the lake did not pose a current threat to the City water supply, but may pose a future threat if the source of contamination is not eliminated. An additional concern was stated about reduction in the water level in the lake, resulting in an increased risk from inhalation of dust produced from exposed sediments. Therefore, the following elements were selected for remedial action:

- Lake Water—Pumping, Evaporation and Disposal of Residue;
- Sediments—Dredge, On-site Biodegradation, Cap Land Treatment Area and Revegetation of Dredged Areas; and,
- Soil—In-situ Biodegradation and Revegetation.

The selected remedy resulted in the removal of the lake water (through evaporation), the removal or reduction of hydrocarbons (through biodegradation and landfarming), and isolation of metals (through placement in a capped treatment area). Thus, the selected remedy addressed both objectives (removal of future threat to

ground water and removal of exposure via inhalation of wind-blown dust). Criteria to evaluate the effectiveness of the selected remedy were developed subsequent to the ROD.

Response Actions

The selected remedy was implemented through use of a phased approach. The remedy included biodegradation of hydrocarbons through landfarming to treat the soil and sediments. A pilot study was conducted during the summer of 1991 to determine the parameters required to produce maximum degradation of contaminants. Because the primary contaminant of concern was petroleum hydrocarbons, biodegradation through landfarming was known to be effective. The focus of the pilot study was to determine the optimum mixture of water, air, nutrients, and microorganisms. The results of the pilot study indicated that there was no significant increase in biodegradation through the addition of commercially developed microorganisms and that the microorganisms present at the site were sufficient to produce effective removal of contaminants.

The biodegradation of soils and sediments began in June 1992 and continued until October 1999. The volume of lake bottom sediments treated was 57,245 cubic yards and the volume of soils treated was 125,235 cubic yards. All of the sediments were treated and placed in the On-site Storage Facility (OSF). Of the soil treated, 86,515 cubic yards met the cleanup criteria and remained in place while 38,720 cubic yards met the stabilization criteria (which is above the cleanup criteria) and was placed in the OSF for final storage. The design included the use of a dike and moat system to prevent surface water run-on into the lake basin area to allow for evaporation of the lake water and prevent surface water run-on to the treatment areas. The remedy design also incorporated the use of a spray evaporation system. The purpose of the system was to collect lake water and run-off from the treatment irrigation system and to route that water through fine mist spray nozzles to enhance evaporation.

The ROD stated that the lake water would be sprayed over the 26-acre beach area for evaporation. During the final remedial design, it was determined that evaporation would be more effective through a evaporation system that allow for continued management of storm water and irrigation water run-off throughout the bioremediation phase. Three treatment areas, divided into eleven treatment sections, were designated in order to optimize and track treatment of contaminated materials. Each beach treatment area was approximately 2.25 acres in size. To provide adequate moisture for treatment within each of the treatment sections, three separate irrigation systems were designed and installed. In addition, the irrigation system for bioremediation, also provided adequate moisture for purposes of dust control.

On-site Storage Facility—The OSF was designed to hold all treated sediments and any treated soils that stabilized prior to meeting the cleanup criteria. The Land Treatment Area described in the ROD was refined and referred to as the OSF. The primary differences between the OSF and the Land Treatment Area described in the ROD are:

- The impermeable layer of the cap was changed to high-density polyethylene (HDPE) rather than poly-vinyl chloride (PVC) due to its better durability and applicability to the site conditions.
- The depth of the excavated floor of the OSF and the height of the containment dikes were expanded beyond those of the Land Treatment Area but did not significantly change the purpose or effectiveness of the OSF. The modification incorporated a refined estimate of the volume of sediments present in the lake bottom.

Additionally, the development of a cleanup standard for the site allowed in-situ treatment of some soils. Treated soils that met the cleanup standard remained in place within the former lake basin and beach areas.

The volume of the OSF was calculated to hold all of the treated sediments and any treated soils that did not meet the cleanup criteria. An area approximately 5 acres in size was excavated to 5 feet below grade at a slope of approximately 2 percent. Following treatment and placement of all materials to be held in the OSF, the design required the OSF to be capped. The cap was designed to consist of an HDPE liner to provide an impermeable layer, with an overlying geotextile to provide for drainage of infiltrated liquids away from the liner, followed by a 12-inch soil protective layer, covered by 6 inches of topsoil. The design required vegetation of the topsoil layer with native grasses. Construction of the OSF, with the exception of the cap, was completed in May 1993.

Sediments were treated within the OSF beginning in September 1993, following placement of a layer of treated soils to provide a ''bioseed'' of microbial organisms to enhance treatment. Treated sediments remained in place within the OSF, with subsequent layers of sediments applied for additional treatment. Throughout the treatment phase, treated soils that met the stabilization criteria were placed in the OSF. Treatment of all sediments and soils was completed in October 1999. As stated previously, a total of 57,245 cubic yards of treated sediment and 38,720 cubic yards of treated soil that met the stabilization criteria is stored in the OSF.

Closure of the OSF, as well as the rest of the site, began in June 2000. Any soils that met the stabilization criteria that had not already been placed in the OSF were moved to the OSF at this time. As per the design for site restoration, construction debris removed from the treatment areas was buried within the OSF. A layer of clean soil was placed on top of the treated material and buried debris to provide a stable base for the cap. The OSF was capped as described above and construction of the cap was completed in October 2000.

Cleanup Standards

- Definition of the cleanup level of 1,000 mg/kg total recoverable petroleum hydrocarbons (TRPH);
- Definition of a stabilization criteria (less than 10 percent degradation in any two of three consecutive confirmation sampling events);
- Contaminated soils were defined as materials that are firm and coarse-grained, containing TRPH above 1,000 mg/kg;
- Sediments were defined as materials that are soft and fine-grained, located within the 4212 elevation contour present at the start of treatment;
- Layout of treatment areas within the original beach area and, later, within the original lake basin;
- Definition of the active biodegradation season as March 1 through October 31 of each treatment year;
- Method of biodegradation (aeration of soil through weekly use of disc or till-oll, maintaining moisture content between 15 and 25 percent, maintaining pH near neutral, and maintaining proper nutrient levels);
- Construction of the OSF to store all treated sediments and soils that were treated, but contained TRPH above 1,000 mg/kg (the OSF was a refinement of the Land Treatment Area discussed in the ROD);
- Addition of the option to treat sediments on top of previously treated soils, or in the OSF, rather than only in the ''treatment area'' referenced in the ROD, with a requirement that confirmation sampling of the underlying previously treated soils be conducted

following treatment of the sediments; and

• Specific sampling procedures for tracking of biodegradation.

• The remedial action to address chromium (trivalent chromium) was to isolate the sediments within the OSF.

• Confirmatory sampling was performed throughout the remediation process.

Restoration of the Site—The design included removal of the upper portion of the run-on control dike, removal of the spray evaporation system, removal of the irrigation systems, and grading of the former lake basin area to drain. The ROD stated that the moat would be filled with the material from the run-on control dike. However, the U.S. Fish and Wildlife Service (USFWS) reviewed the design for restoration as the lead trustee for a Natural Resources Damages claim filed for this site. During the review process, the USFWS requested that the moat remain in place to intercept rainfall run-off from the surrounding watershed and minimize the volume of water ponding within the former lake basin. This request was incorporated into the final restoration design, along with covering the lowest portion of the basin with approximately 6 inches of clean soil. These alterations assured the USFWS that the potential for exposure of wildlife to low-level contaminants (below the cleanup standard) would be minimized.

BNSF and the trustees reached oral agreement on the basic terms of the Natural Resource Damages Claim, including cash settlement. The parties have exchanged drafts of the settlement documents and expect to agree upon the settlement documents, including a Consent Decree, during 2002. The Consent Decree must then be entered by the U.S. District Court for the District of New Mexico.

The restoration design included vegetation of disturbed areas with native grasses. A center-point irrigation system was originally designed to provide maximum coverage of the former lake basin, dike and moat areas during bioremediation treatment, but is currently being used for site restoration. The restoration design included a planting schedule and provisions to re-seed if the vegetation was not sufficiently established following the initial planting.

Monitoring Effectiveness and Compliance

The monitoring program for the bioremediation phase of the remedial action included treatment monitoring and compliance monitoring. The treatment monitoring portion of the program included:

• Analyzing soil or sediment samples from each treatment area for hydrocarbons to determine the progress of bioremediation within that area;

• Analyzing soil or sediment samples from each treatment area for nutrients to determine if nutrient amendments (addition of fertilizer) was required; and

• Measurements of soil moisture in each treatment area to determine if irrigation was required.

The compliance monitoring portion of the program included:

• Analyzing soil core samples collected from 5 feet below the beach and lake treatment areas for all contaminants of concern to determine if migration of contaminants was occurring as a result of treatment processes; and

• Analyzing ground water samples collected from on-site wells to determine if any impact on ground water occurred as a result of treatment processes.

The analysis of health and environmental effects performed as part of the RI showed that the only contaminants of concern were hydrocarbons and chromium. However, the compliance monitoring program included additional contaminants that might potentially pose a health risk. The contaminants included in the compliance monitoring program were: Arsenic; Barium; Cadmium; Chromium; Lead; Hydrocarbons; and Phenolics.

Chloride was included in the monitoring program at the request of the New Mexico Environment Department because it was present above the secondary drinking water standard. Other parameters listed in the Consent Order were boron, fluoride, sulfate, total dissolved solids, and total organic carbon. These parameters were demonstrated not to be of concern during the RI/FS phase and were not included in the monitoring program.

The ROD required that ground water monitoring would continue after the completion of treatment.

Operation and Maintenance

BNSF will perform O&M activities at the site, including routine inspections, maintenance of the site fence, maintenance of vegetation, maintenance of the OSF cap, and ground water monitoring with EPA oversight.

To fully assess the impermeability of the OSF cap, two additional monitoring wells will be installed this fall: one immediately up-gradient of the OSF and one immediately down-gradient of the OSF. These wells will be sampled on the same schedule as the other site wells for the same parameters.

BNSF will limit access to the OSF at all times. BNSF will institute a covenant to prevent installation of water supply wells or any construction activities within the limits of the OSF. The covenant is not a requirement of the ROD and is a voluntary agreement between BNSF and EPA as part of the Operation and Maintenance Plan for the site.

Five-Year Review

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B-P, (''Comprehensive Five-Year Review Guidance,'' June 2001), a five-year review will be conducted at this site. The directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite will not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy. The first five-year review was completed on September 30, 1998. The next Five-Year Review will be completed no later than September 30, 2003.

Community Involvement

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

V. Deletion Action

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

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003. 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 . The 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 substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 23, 2002.

Lawrence E. Starfield,

Deputy Regional Administrator, 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—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under New Mexico by removing the site name ''AT&SF (Clovis)'' and the city ''Clovis.''

[FR Doc. 03–733 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 02–3565]

Petition for Declaratory Ruling Regarding the Applicability of E911 Phase II Requirements for Wireless Handsets to In-Vehicle, Embedded Telematics Units, Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for ruling from OnStar Corporation, seeking clarification that embedded telematics units are not ''handsets'' as that term is used in the Commission's orders in this proceeding, and that such units are not included in calculating the wireless licensee's enhanced 911 Phase II handset activation compliance requirements. The action is taken to establish a record on which to base a response to OnStar Corporation's request.

DATES: Comments are due on or before January 24, 2003, and reply comments are due on or before February 7, 2003.

FOR FURTHER INFORMATION CONTACT: David Siehl, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. On December 3, 2002, the OnStar Corporations (OnStar) filed a Petition for Ruling (Declaratory Ruling Petition), seeking clarification that (1) embedded telematics units are not ''handsets'' as that term is used in the Commission's orders in CC Docket No. 94–102, and (2) such units are not included in calculating the wireless licensee's E911 Phase II handset activation compliance requirements.

2. In the Wireless E911 Third Report and Order, the Commission adopted rules that imposed requirements on wireless carriers who employ a Phase II location technology requiring new, modified or upgraded handsets (such as Global Positioning Systems (GPS)-based technologies). (64 FR 60126, November 4, 1999.) These requirements included deployment schedules, penetration rates, interoperability criteria, and standards for Phase II location accuracy and reliability. The Wireless E911 Third Report and Order also amended § 20.3 of the Commission's rules to define location-capable handsets as ''portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.''

3. OnStar asserts that embedded telematics devices should not be treated as handsets and, therefore, not be subject to the Commission's E911 Phase II requirements at this time. OnStar contends that the assumptions concerning conventional handset technology on which the Commission's E911 Phase II decisions are based are not applicable to embedded telematics devices. OnStar asserts that embedded telematics developed around the use of autonomous (stand-alone) GPS while handset based Phase II technology has developed around a network assisted Global Positioning System/Advanced Forward Link Trilateration (AGPS/AFLT) handset solution.

4. In addition, OnStar contends that embedded telematics units should not be treated as handsets in calculating compliance with the underlying wireless licensee's handset activation requirements. OnStar submits that although handsets have relatively short lifecycles and are independent units routinely exchanged, retrofitting existing embedded analog telematics units with digital units is much more costly given technology and accessibility factors. OnStar contends that wireless carriers serving large populations of telematics units will lose the benefit of the five percent margin for handset compliance for E911 Phase II by December 31, 2005, with respect to ''true handsets,'' and may even exceed the five percent margin with telematics units alone.

5. We seek comment on the issues raised by the Declaratory Ruling Petition. Interested parties may file comments to the Petition on or before January 24, 2003. Reply comments are due February 7, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

6. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved with regard to the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7