

*Executive Order 13175—Consultation and Coordination With Indian Tribal Government*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, 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. The basis for this determination is the fact that our decision affects the Pennsylvania regulatory program and will have no effect on Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 13.5A(2)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the fact that the required amendment simply requires the State of Pennsylvania to submit information sufficient to demonstrate that the revenues generated by the collection of

the reclamation fee will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the required amendment simply requires the State of Pennsylvania to submit information sufficient to demonstrate that the revenues generated by the collection of the reclamation fee will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 2009.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 938.16 [Amended]**

■ 2. In § 938.16, add paragraph (h) to read as follows:

\* \* \* \* \*

(h) By November 1, 1991, Pennsylvania shall submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in § 86.17(e), will assure that the Surface Mining Conservation and Reclamation

Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency.

\* \* \* \* \*

[FR Doc. E9-6403 Filed 3-23-09; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-1986-0005; FRL-8784-7]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final Notice of Partial Deletion of the Mouat Industries Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of the surface and subsurface soil components of the Mouat Industries Superfund Site (Site), located in the Town of Columbus, Stillwater County, Montana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Montana (State), through the Montana Department of Environmental Quality (MDEQ) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than five year reviews and operation and maintenance, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the surface and subsurface soils component of the Mouat Industries Superfund Site. The groundwater component will remain on the NPL and is not being considered for deletion as part of this action.

**DATES:** This direct final partial deletion will be effective May 26, 2009 unless EPA receives adverse comments by April 23, 2009. If adverse comments are

received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <http://www.regulations.gov>: Follow on-line instructions for submitting comments.

- *E-mail*: [hoogerheide.roger@epa.gov](mailto:hoogerheide.roger@epa.gov).
- *Fax*: (406) 457-5056.

- *Mail*: Roger Hoogerheide, Remedial Project Manager; U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626.

- *Hand delivery*: U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID no. EPA-HQ-SFUND-1986-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or are available for viewing and copying at the Site information repositories located at: U.S. EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, MT 59626, (406) 457-5000. Viewing Hours: Mon-Fri 8 a.m. to 5 p.m., excluding holidays. Stillwater County Library, 27 North 4th Street; PO Box 266, Columbus, MT 59019-0266, 406-322-5009. Hours: (Library hours vary).

**FOR FURTHER INFORMATION CONTACT:** Roger Hoogerheide, Remedial Project Manager, 8MO, [hoogerheide.roger@epa.gov](mailto:hoogerheide.roger@epa.gov), U.S. EPA, Region 8—Montana Office, 10 W. 15th St., Suite 3200, Helena, Montana 59626, (406) 457-5031 or 1-866-457-2690, extension 5031.

**SUPPLEMENTARY INFORMATION:**

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- I. Introduction
- II. NPL Deletion Criteria
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- IV. Basis for Site Partial Deletion
- V. Partial Deletion Action

**I. Introduction**

EPA Region 8 is publishing this direct final Notice of Partial Deletion for the Mouat Industries Superfund Site from the National Priorities List. This partial deletion pertains to all surface and subsurface soils at the Mouat Industries Superfund Site. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Mouat Industries Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from

the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *May 26, 2009* unless EPA receives adverse comments by *April 23, 2009*. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial 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 for Partial Deletion 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 Mouat Industries Superfund Site and demonstrates how the Site meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

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

- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above

levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

### III. Deletion Procedures

The following procedures apply to deletion of the surface and subsurface soil components of the Site:

1. EPA has consulted with the State prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "proposed Rules" section of the **Federal Register**.

2. EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the MDEQ, has concurred with the partial deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in the Billings Gazette. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Mouat Industries Superfund Site from the NPL.

4. The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

5. If adverse comments are received within the 30-day public comment period on this partial deletion, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's right or obligations. Deletion of a portion 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 Partial Site Deletion

The following information provides EPA's rationale for deleting the surface and subsurface soils of the Mouat Industries Superfund Site from the NPL.

#### *Site Background and History*

The Mouat Industries Superfund Site, CERCLIS ID MTD021997689, is located on Clough Avenue, Town of Columbus, Stillwater County, Montana. The Site is located in the flood-plain of the Yellowstone River and is less than 0.6 miles north of the present river channel in the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 27, T2S, R20E. The Site is approximately 4.5 acres. Clough Avenue and a railroad line are to the north of the Site and East 1st Avenue South and the Columbus Airport are to the south. The Site is adjacent to 13th Street and a parcel of open land that is owned by the Town of Columbus to the east and the Timberweld manufacturing facility is to the west. Land use at the Site is designated as light and heavy industrial. Residential areas lie within 0.5 miles of the Site. The portion of the Site that is fenced is owned by the Town of Columbus (Town) and Timberweld Manufacturing (Timberweld) owns the portion of the Site that is not fenced. The fenced portion of the Site is currently not being used and has a vegetative cover. Timberweld manufactures laminated beams and arches and supplies complete roof systems for a variety of structures including clubhouses, retail centers, banks, fine homes and churches around the United States and uses its portion of the Site as an open storage area for its products. Institutional Controls allow for redevelopment of this property as long as performance standards adopted under Chapter 17.76.030 and other requirements of the Town of Columbus Ordinance No. 328 (Superfund Overlay District) are followed.

The Town has owned the eastern portion of the Site since 1933. In 1960, the Town acquired the western portion of the Site which was later sold to Timberweld. Aerial photos of Columbus indicate industrialization of the area occurred between 1954 and 1957. A chromium processing plant was constructed on the Site in 1957 by William G. Mouat and Mouat Industries. Under a 5 year lease agreement with the Town, Mouat operated the plant beginning in 1957. In 1962, the lease was extended through August 6, 1967.

Mouat's operation processed chromite ore mined from the Stillwater Mining Complex in south-central Montana into high-grade sodium dichromate which was sold as a corrosion inhibitor. The process subsequently generated sodium sulfate process wastes containing sodium chromate and sodium dichromate. These hexavalent chromium (Cr VI) containing compounds leached from the sodium sulfate waste piles into underlying soils and eventually into the groundwater. Additionally, normal facility operations resulted in sodium dichromate spills. The chromium processing plant was built and operated from 1957 to 1962. Chromium wastes were created during this time, but not after 1962.

In May of 1963, the Monte Vista Company (MVC) purchased the plant and equipment, and received an assignment of Mouat's lease for a portion of the Site. As mentioned above, Mouat's lease expired in 1967. Once this lease ended, MVC executed a five year lease directly with the Town. This lease was effective from January 1, 1969 until December 31, 1973.

In 1968, Mouat assigned its interest in the agreements it had with MVC to the Anaconda Minerals Company (AMC). AMC was involved with the Site until 1973 and during this time AMC took actions to address concerns the Town had about the Site. In 1969, AMC removed approximately 468 tons of stockpiled chromium salts from the Site yard. A portion of these salts were drummed and placed in the manufacturing building. The remainder was simply placed on the building's floor. The Site was then graded and gravel was laid over a portion of the yard.

In 1973, AMC performed sampling activities at the Site, identifying chromium in soils, surface water, and groundwater. Drainage ditches were also constructed around the manufacturing building to route storm water flow away from the building and yard. In an attempt to address visible chromium salts, sulfuric acid and ferrous sulfate were applied to the soil and mixed into a portion of the yard west and south of the building. The acid addition was done with the intent of reducing the Cr VI to the more stable and less soluble trivalent chromium (Cr III). AMC also removed tons of the drummed and stockpiled material from the manufacturing building to an off-Site location in Butte, Montana. In 1974, MVC removed equipment from the Site and demolished the processing building.

Timberweld entered into a lease with the Town for additional space on the

Site in 1975 to expand existing operations. During the same year, Timberweld discovered what was later found to be chromium precipitate coming up onto their property. Unsure of the source of this material, Timberweld covered both the leased and owned portions of their property with a foot of gravel, in an effort to protect the laminate wood products from the precipitate.

Groundwater sampling in 1977 defined a hexavalent chromium plume migrating from the Site and spreading southeast toward the Yellowstone River. EPA and the Montana Solid Waste Management Bureau conducted a Preliminary Site Investigation in June 1979. Further groundwater, surface water and soil sampling was conducted by EPA in September 1980, August 1983, July 1984, and April 1985. In early 1984, a complaint of unusual cattle deaths downgradient of the Site at the Wegner Ranch was reported to the Montana Department of Health and Environmental Sciences. In 1984 and 1985, inspections were conducted in attempts to determine whether a release of Site contaminants may have been associated with cattle deaths. However, no report indicated that the death of cattle was tied to the chromium contamination.

Hexavalent chromium is a hazardous substance as defined by CERCLA Section 101(14), and designated as such under 40 CFR part 117 and 40 CFR part 302. EPA proposed the facility for the NPL in 1984, 29 FR 40320 (Oct. 15, 1984). The Site received a Hazard Ranking System score of 31.66. The listing was final in 1986, 51 FR 21054 (June 10, 1986).

The contaminated surface and subsurface soils at the Mouat Industries Superfund Site were addressed through two Action Memorandums, signed in 1990 and 1991, while two other Action Memorandums, signed in 1996 and 2008, addressed Site controls and groundwater.

#### *Removal Actions*

The remediation of the Site was addressed through removal authority. The removal actions addressing surface and subsurface soils are discussed below.

In 1990, EPA issued an Action Memorandum to initiate a time-critical removal action to (1) secure the Site and to mitigate the threat of direct contact to hazardous materials by Timberweld's workers and nearby individuals, and (2) provide run-on, run-off drainage control for the Site. Approximately 1,400 feet of 6-foot industrial chain link fencing with two 20-foot wide gates with locks were

installed around the Site to restrict public access to chromium-containing soils and secured a portion of the area that used to be Timberweld's storage yard. The Town performed all Site drainage controls. Due to the potential for direct contact with the high levels of chromium, EPA fenced the Site using time-critical removal authority and used Superfund Trust Fund money.

After the time-critical removal action was completed, it was determined that there was still a threat to public health posed by the Site through exposure to CrVI contaminated soils, surface water and groundwater through the direct contact, inhalation and ingestion pathways. The threats met the removal criteria specified in the NCP at 40 CFR Section 300.415(b)(2)(i), (ii), (iv), (v). A second Action Memorandum was issued in 1991 which specified treatment of CrVI contaminated soils on-Site as the primary removal alternative with off-site disposal of soils as a back up.

After efforts to negotiate an Administrative Order on Consent with the responsible parties failed, EPA issued Unilateral Administrative Order (UAO) Docket No. CERCLA-VIII-92-05 on November 12, 1991 to FMC Corporation, MVC, Mouat, Timberweld, and the Town of Columbus requiring the excavation and treatment of chromium-contaminated soil. EPA specified removal clean-up standards as follows:

- Soil inside the EPA perimeter fence for which total chromium in the extract Toxicity Characteristic Leaching procedure (TCLP chromium) was greater than 0.5 mg/L was to be excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.
- Soil outside the EPA fence for which TCLP chromium was greater than 0.1 mg/L was to be excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.

FMC Corporation began implementing the provisions of the UAO in December 1991. After preliminary work, including sampling and preparation of work plans, full-scale treatment of contaminated soils began on June 28, 1993. The treatment process included soil screening, chemical addition for chromium reduction, and Portland cement addition for soil fixation. Performance standards for treated soils were established as follows:

- The TCLP chromium was to be equal to or less than 0.5 mg/L;
- The total chromium in any extract obtained by the Multiple Extraction Procedure was to be equal to or less than 5.0 mg/L;
- The unconfined compressive strength of each block was to be equal

to or greater than 50 pounds per square inch; and

- The permeability of treated soil was to be equal to or less than that of the background soils.

On-site soil treatment operations were conducted through October 31, 1993. During that period approximately 14,000 cubic yards of chromium-containing soil were treated, creating approximately 7,000 blocks. The treated soils were formed into 5' x 5' x 6' blocks for curing, testing, and placement. The treatment process converted hexavalent chromium to the less toxic and immobile trivalent chromium. Analytical results showed that all blocks met performance standards.

In 1994, in response to changing project conditions, EPA decided to change the removal action to the backup alternative of off-Site disposal as outlined in the 1991 Action Memorandum. The soils excavated in 1994 by FMC, for which the TCLP chromium exceeded the clean-up standard were removed from the Site by rail for disposal at appropriately permitted off-Site disposal facilities. Soil that tested as hazardous (TCLP chromium greater than or equal to 0.5 mg/L of leachable chromium) was sent to the USPCI hazardous waste treatment and disposal facility at Grassy Mountain, Utah. Soil that tested as non-hazardous (TCLP chromium less than 0.5 mg/L of leachable chromium) was sent to the East Carbon Development Corporation nonhazardous waste disposal facility at East Carbon, Utah. Off-Site disposal of the remaining affected soils began on July 7, 1994 and was completed by October 1, 1994. Approximately 19,400 cubic yards of chromium-contaminated soils were excavated and transported for off-Site disposal.

Upon completion of contaminated soil excavation and transport off-site, treated soil blocks formed in 1993 were placed in the excavation area and stacked until approximately 3 feet above original grade over the eastern two-thirds of the Site. After all response actions contemplated in the 1991 Action Memorandum were completed, the Site was graded to modest slopes to promote precipitation runoff. The western portion of the property was surfaced with a gravel cover to allow vehicular and storage use of the area. The eastern portion was covered with soil and seeded to establish a vegetative cover.

#### *Cleanup Goals*

Response activities were conducted in accordance with the Unilateral Administrative Order and the Action Memorandums for the Site. Soil inside

the EPA perimeter fence for which total chromium in the extract Toxicity Characteristic Leaching procedure (TCLP chromium) was greater than 0.5 mg/L were excavated to elevation 3564 or to the clay-gravel interface, whichever was lower. Soil outside the EPA fence for which TCLP chromium was greater than 0.1 mg/L were excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.

For waste left on-Site, each block of treated soil was sampled and analyzed for compliance with performance standards. Analytical results show that all blocks met the cleanup standard in the TCLP extract. The maximum chromium concentration in any TCLP extract was 0.47 mg/L and most values were less than 0.1 mg/L. EPA's oversight contractor, the U.S. Bureau of Reclamation, also reported that

\* \* \* all EPA split samples for 28-day cure treated soils \* \* \* met performance criteria \* \* \* for TCLP extractable total chromium, total chromium in (the more aggressive) multiple extraction testing, and unconfined compressive strength. Moreover, the close correspondence between EPA and FMC split samples indicates that FMC data base was appropriate for guiding remedial site operations \* \* \*

#### *Institutional Controls*

Long term protectiveness is dependent upon institutional controls over land use and groundwater use, established by the town of Columbus. A zoning ordinance was approved in March 1995 which created a special Superfund Overlay District (SOD) for both the block placement area and contaminated groundwater. These institutional controls are described in the 1996 Action Memorandum. The ordinance became enforceable in April 1995. Requirements of the SOD are enforced by the zoning authority of Columbus. The SOD currently covers surface, subsurface and groundwater within the block placement areas and surrounding protective zones.

The following land use restrictions are included in the ordinance:

- Excavation into the blocks of treated soil is prohibited.
- Vehicle loads on the graveled portion of the block placement area are limited.
- Any use of the soil-covered block placement area, unless those areas are paved or covered with gravel, is prohibited.
- The property owner is required to maintain the Site cover, drainage facilities, and fences.

- Specifications for construction on the block placement area are established.

Initially, groundwater use restrictions applied to the entire SOD. Those restrictions prohibited new wells or other groundwater extraction systems and prohibited groundwater use from existing wells or other groundwater extraction systems, except for lawn irrigation use, use of the existing golf course pond and groundwater monitoring. Compliance with performance standards triggered the relaxation of ground water use restrictions within the SOD in accordance with provisions of the 1996 response action. Based on improvements in groundwater quality since adoption of the SOD, the USEPA approved lifting of groundwater use restrictions within the SOD in a May 2005 letter to the Town of Columbus.

In 2008, the five-year review recommended revisiting the SOD. Due to residual groundwater contamination levels above MCLs within the block placement area, groundwater use restrictions should be maintained within this area. A fourth Action Memorandum was issued in 2008 based on these recommendations from the Five-Year Review and had four (4) purposes:

1. It clarified Points of Compliance for groundwater at the Site.
2. It ensured that the restriction on groundwater use in the Block Placement Area will be maintained as long as institutional controls are necessary.
3. It clarified the 30 year groundwater monitoring requirement identified in the June 21, 1996 Action Memorandum.
4. It required MDEQ and EPA to prepare a Post Removal Site Control Plan pursuant to Section 300.415(l)(3) of the NCP.

#### *Modification in the Town of Columbus' Superfund Overlay District Ordinance*

Town Council met on March 3, 2008, and passed the second reading of the Superfund Overlay District Amended Ordinance to restrict groundwater use in the block placement area. It became effective thirty days later.

#### *Operation and Maintenance*

The operation and maintenance is currently limited to maintenance of fencing and the vegetative cap over the block placement area and is the responsibility of the Town of Columbus and Timberweld.

As part of the future work to be performed at the Site, the Town will continue to provide access to the Site and to enforce ICs through the SOD. EPA and MDEQ also agree to meet with

the Town to discuss Site land use and groundwater restrictions at least once every five years. These meetings are intended to help all parties better understand the issues associated with these restrictions as well as to notify the EPA and MDEQ of any upcoming land use changes that may require a more comprehensive review.

These requirements are documented in the Post Removal Site Control Plan.

#### *Five-Year Review*

Five-year reviews are required since waste remains on-Site above levels that allow for unlimited use and unrestricted exposure. The last five-year review was completed on March 13, 2008. No major concerns were identified during this review. The removal actions as implemented are currently protective of human health and the environment. Protectiveness is achieved through groundwater and land use restrictions within the block placement area. The next Five-Year Review is scheduled for the 1st quarter of Federal Fiscal Year 2013.

#### *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 partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Billings Gazette to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

#### *Determination That the Criteria for Deletion Have Been Met*

The response actions were successful in restoring the Site surface and subsurface soils to concentrations at or below the cleanup standard of less than 0.5 mg/L TCLP chromium. For waste left on-Site, each block of treated soil was sampled and analyzed for compliance with this standard. Analytical results show that all blocks met the cleanup standard in the TCLP extract. The maximum chromium concentration in any TCLP extract was 0.47 mg/L and most values were less than 0.1 mg/L.

EPA has consulted with the MDEQ, the Town of Columbus, Timberweld Manufacturing and FMC Corporation on the proposed partial deletion of the surface and subsurface soils from the NPL prior to developing this Notice of Partial Deletion. EPA and MDEQ have also determined that the responsible

parties have implemented all appropriate response actions as specified in the Unilateral Administrative Orders and Action Memorandums and no further response action by responsible parties is appropriate other than continued maintenance of institutional controls. EPA and MDEQ have also determined through the Five-Year Review that all response actions have been completed such that any release from the block placement area where waste has been left in place poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

The State, through MDEQ, has concurred on the proposed deletion and provided such concurrence in writing. EPA also provided the State 30 working days for review of the partial deletion notice prior to its publication in the **Federal Register**.

#### V. Partial Deletion Action

The EPA, with concurrence of the State through the MDEQ, has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. Therefore, EPA is deleting the surface and subsurface soils component of the Mouat Industries Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective May 26, 2009, unless EPA receives adverse comments by April 23, 2009. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 10, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

■ 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 by revising the entry under Montana for “Mouat Industries Superfund Site” to read as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>a</sup>
MT	Mouat Industries.	Columbus ....	***P
*	*	*	*

<sup>a</sup> \* \* \*

\*\*\*P = sites with deletion(s).

[FR Doc. E9–6142 Filed 3–23–09; 8:45 am]

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#### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Part 102–72

**[FMR Amendment 2009–03; FMR Case 2009–102–1; Docket 2009–0002; Sequence 2]**

**RIN 3090–AI86**

#### Federal Management Regulation; FMR Case 2009–102–1, Delegation of Authority To Perform Ancillary Repair and Alteration Work in Federally Owned Buildings Under the Jurisdiction, Custody or Control of the General Services Administration

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is amending the Federal Management Regulation (FMR) to delegate to Executive agencies the authority to perform ancillary repair and

alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in sections 102–72.66 through 102–72.69.

**DATES:** *Effective Date:* April 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at [stanley.langfeld@gsa.gov](mailto:stanley.langfeld@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2009–03, FMR Case 2009–102–1.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The GSA Federal Acquisition Service established Ancillary Repair and Alterations as a Special Item Number (SIN) in the GSA Multiple Award Schedule. The SIN provides for the acquisition of ancillary repair and alteration services when it is a minor part of a project and is required to support a product or service that is purchased under the same GSA Multiple Award Schedule from the same vendor.

An Executive agency may not perform ancillary repair and alteration work in a federally owned building under the jurisdiction, custody or control of GSA using this SIN without first obtaining a delegation of authority from the Administrator of General Services. To promote efficiency and economy, 41 CFR sections 102–72.66 through 102–72.69 delegate such ancillary repair and alteration authority to all Executive agencies in accordance with the terms, conditions and limitations set forth in those sections.

##### B. Executive Order 12866

The GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

##### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the