EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's SIP revisions, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 22, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2010–33281 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0001; FRL–9246–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the AT&SF Albuquerque Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) proposes to delete, from the National Priority List (NPL), 40 CFR part 300, appendix B, 62 acres of the AT&SF Albuquerque Superfund Site (Site). The Site is located in Albuquerque, Bernalillo County, New Mexico. After this deletion, this 62 acres will no longer be part of the Site and only the 27 acres making up the southern half of the Site will remain a listed Superfund Site (see the Environmental Protection Easement and Declaration of Restrictive Covenants in the docket). The only contaminated medium that was identified on the northern 62 acres of the Site was soil. This soil was remediated so that the concentration levels of hazardous substances that remain are consistent with future industrial or commercial use. This notice of intent for partial deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department (NMED), because EPA has determined that all appropriate response actions for this parcel under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: Comments must be received by February 4, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1994–0001, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail: coltrain.katrina@epa.gov.*
- *Fax:* 214–665–6660, Attention: Katrina Higgins-Coltrain.
- *Mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. 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–1994–0001. 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 at *http://www.regulations.gov* or in hard copy at:

- U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424;
- Albuquerque Public Library, Main Downtown Branch, 501 Copper Avenue, NW., Albuquerque, New Mexico 87102, Contact: John Vittal; and,
- New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 6 is publishing this notice of intent to delete the soil and ground water associated with the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site (Site) from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of CERCLA 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 62-acre parcel of the AT&SF Albuquerque Superfund Site (EPA Site Identification number NMD980622864) 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, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments concerning its proposal for partial deletion for thirty (30) days from the date of publication in the **Federal Register**.

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 AT&SF Albuquerque Superfund Site and demonstrates how the northern 62-acre parcel meets the partial deletion criteria.

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 northern 62-acre parcel of the Site:

(1) EPA consulted with the State of New Mexico, through the NMED, prior to developing this notice of intent for partial deletion.

(2) EPA has provided the state 30 working days for review of this notice prior to today's publication;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of New Mexico, through the NMED, concurred with the intent for partial deletion of the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site from the NPL by letter dated November 4, 2010;

(5) Concurrently with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in the major local newspaper, Albuquerque Journal. The newspaper notice announces the 30-day public comment period concerning the notice of intent for partial deletion of the Site from the NPL.

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

If comments are received on this document within the 30-day public comment period, EPA will evaluate and respond appropriately to the comments before making a final decision to partially delete the northern 62-acre parcel. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to partially delete the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site, the Regional Administrator will publish a

final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the Site information repositories listed above.

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

The following information provides EPA's rationale for deleting the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site from the NPL.

Site Background and History

The AT&SF Albuquerque Superfund Site (Site) is located at 3300 Second Street, SW., in the South Valley area of the City of Albuquerque, Bernalillo County, New Mexico. It is the location of the former The Atchison, Topeka and Santa Fe Railway Company Tie Treating Plant (facility) where creosote and other compounds were used in the wood preservation process. The Burlington Northern and Santa Fe Railway Company (BNSF Railway), a successor railroad corporation to the Atchison, Topeka and Santa Fe Railway Company (AT&SF) and a wholly owned subsidiary of the Burlington Northern Santa Fe Corp., is the owner of the Site. Although, the Site encompasses approximately 89 acres, the former treatment process area was primarily located on the southern 27-acre parcel, and the tie storage area was primarily located on the northern 62-acre parcel. A detailed map and coordinates of the northern 62-acre parcel (actual size is 62.6121 acres) is located in the deletion docket. The Site was proposed for inclusion on the EPA NPL October 14, 1992 [57 FR 47204] and made final on December 16, 1994 [59 FR 65212, 65221 (December 16, 1994)]. The EPA Site Identification number is NMD980622864.

The facility operated as a wood pressure treatment plant from March 1908 to January 1972. The facility primarily used creosote and creosote petroleum mixtures for the manufacture of pressure treated wood products, including railroad cross ties, bridge ties, switch ties, bridge timbers, road crossing materials, bridge piling materials, lumber, stock pen posts and fence posts. From 1914 through 1926, some materials were treated with zinc chloride, followed by a creosote-petroleum mixture. Additionally, documents from the 1950s and early 1960s refer to experiments and small scale projects performed using solutions containing 2% to 10% pentachlorophenol. In 1972, the plant was totally dismantled, and the only physical feature remaining on-site was the wastewater reservoir/wastewater sump.

The Site can be divided into five general areas of environmental impacts from the plant's former wood treating operations. The plant treatment process area covered approximately 27 acres of the facility and included four areas of environmental impact: The wood treatment area, the drip tracks, the wastewater reservoir, and the wastewater discharge ditch. The remaining area of environmental impact was the tie storage area which was located on the northern 62 acres. The northern 62 acres is the area proposed for partial deletion; therefore, the following discussion pertains to actions taken on the northern 62-acre parcel.

In 1996, three areas were excavated from the northern 62-acre tie storage area, and were backfilled with clean soil after confirmation testing.

In 1987, approximately 25 acres of the northern 62-acre tie storage area were redeveloped for industrial purposes by BNSF. This redevelopment occurred when an auto unloading facility, with an associated intermodal ramp for unloading and loading containers and trailers on railcars, was built. It is an active facility currently in operation. The northern 62-acre parcel also includes an estimated 17- to 20-acre parcel under consideration for purchase by an industrial concrete distribution company (company). BNSF and the company retain an open dialogue regarding the potential parcel sale and redevelopment.

Remedial Investigation and Feasibility Study (RI/FS)

The field investigation was considered a comprehensive approach that addressed the Site as one operable unit. From 1987 to 1999, five distinct phases of investigation were completed to define the extent of impact on soil and ground water. The field activities included sampling and characterization through geophysical surveys, hand auger, direct push, cone penetrometer, drill rig, ground water monitoring well installation (permanent and temporary), aquifer tests, and ground water modeling.

Ground Water Contamination

The CERCLA RI/FS for the Site was conducted under an Administrative Order on Consent entered between the EPA and AT&SF (now BNSF) in 1994. The RI/FS was completed by TRC Environmental Corporation in 2001 for BNSF and was approved by the EPA. Among the findings of the RI/FS was the fact that most of the organic contamination found at the Site occurs as a dense non-aqueous phase liquid (DNAPL) containing organic compounds that slowly dissolve into the ground water and preferentially adsorb to soil particles in the aquifer matrix. The RI report indicates that DNAPL is present in the subsurface as either "free phase" or "residual phase". The free phase is that portion of the DNAPL that can continue to migrate and sink into the aquifer, whereas the residual phase is that portion of the DNAPL that is trapped in pore spaces by capillary forces and cannot generally migrate as a separate liquid. Both occurrences of the DNAPL act as continuing sources of contamination to ground water. The RI estimated that there are between 59,300 and 70,000 gallons of DNAPL associated with the southern 27-acre plant treatment process area and adjacent southern property. No identified DNAPL sources or related ground water contamination were identified in the three ground water zones underlying the northern 62-acre parcel. Ground water contamination associated with the southern 27-acre parcel is not expected to impact the ground water underlying the northern 62-acre parcel due to current ground water flow in the east-southeast direction and the placement of institutional controls restricting ground water extraction within the northern 62-acre parcel.

Soil Contamination

As expected, the nature of contamination across the Site is fairly typical of a wood treating operation. These contaminants consist of polynuclear aromatic hydrocarbons. In addition, zinc contamination of the soil was identified in the process area. The RI estimated that the volume of contaminated soil was 5,600 cubic yards. Although the plant used pentachlorophenol in the 1960s, its use is not believed to be as significant as the use of other preservatives at the plant, as there have not been significant levels of associated 2,3,7,8-tetrachloro-dibenzo-para-dioxin (TCDD or dioxin)

detected in wastes present at the Site. As such, dioxin is not considered a contaminant of concern (COC) at this Site.

The northern 62-acre parcel was used as the tie storage area. This area was where the treated ties were stored and allowed to dry. Releases to this area would be restricted largely to drippings from treated products. Creosote drippings would accumulate at locations where ties were repeatedly stacked, but these accumulations may tend to dry out between loads. With the advent of vapor drying in 1953, the amount of drippings was reduced to some extent.

The tie storage area was investigated in two stages. However, prior to these stages, six shallow boreholes were hand augered to a depth of 18 inches and a composite sample was collected and analyzed for semivolatile organics and arsenic. This was followed by a grid investigation of this area in October 1994, which included an additional 24 locations.

Using a grid layout, 24 shallow hollow-stem auger boreholes were logged continuously to a depth of 5 feet. The first sample was collected from the first natural soil encountered below any fill material, usually at a depth of approximately 3 inches to 2 feet. If a clay or silt layer was encountered in the upper 2 feet of soil, a sample was collected from the top of this layer. Of the 24 sample locations, one sample was collected at each of 19 locations and two samples were collected at each of five locations. Results from the 24 sample locations were compared to the Agency for Toxic Substances and Disease Registry (ATSDR) health-based concentrations for creosote constituents considered by ATSDR to be a potential threat to public health if exceeded. Three locations were identified with concentrations of one or more creosote constituents above the ATSDR health-based concentration. These health-based concentrations were being used as the screening comparison criteria at the time of the 62-acre tie storage area investigation because the preliminary remediation goal (PRG) of 8 mg/kg benzo(a)pyrene (BAP) equivalent had not yet been derived. However, when the PRG was issued, the data from the 24 sample locations were reviewed and compared with the 8 mg/kg BAP equivalent PRG. This resulted in the identification of the same three areas of concern originally identified during the investigation. No additional sample locations exceeded the 8 mg/kg BAP equivalent PRG.

Based upon the results of this first stage, the three areas of concern underwent a second investigation in March 1995. Using the 8 mg/kg BAP equivalent PRG, the soil from areas with high concentrations of creosote constituents was excavated and stockpiled inside the southern 27-acre fenced area to be managed as part of the soil remediation in July 1996. Depths of excavation ranged from 2 to 7 feet, and confirmation samples did not identify exceedances of the PRG of 8 mg/kg BAP equivalent. The highest BAP equivalent reported for soil was 0.572 mg/kg, while the highest zinc concentration reported for soil was 55.6 mg/kg.

The removal of soil from the northern 62-acre tie storage area in 1996 was motivated by BNSF's plans to expand its auto unloading facility. The future land use for this area was anticipated to be industrial. BNSF expected that the available land would be developed into a railroad switching yard and an expansion to the intermodal facility used for unloading automobiles from railcars. However, these plans for construction are no longer considered viable by BNSF.

Selected Remedy

The Record of Decision (ROD) was signed on June 27, 2002. The principal threat and low-level threat wastes at the Site were to be addressed through in-situ solidification/stabilization and run-off/run-on management for soil; an aggressive performance-based approach for remediation of contaminated ground water consisting of ground water restoration through pump and treat and DNAPL source removal with hot spot treatment; and institutional controls. Based on RI data and subsequent ground water sampling, ground water contamination was not identified under the northern 62-acre parcel. Therefore, the only medium of concern for the northern 62-acre parcel was soil. As such, only the soil remedial action objectives and associated cleanup levels selected in the ROD are presented here. [The ROD was later amended through an Explanation of Significant Differences; however, these changes did not effect the northern 62-acre parcel and were specific to the southern 27-acre parcel.] The selected cleanup levels for soil are 7.8 mg/kg BAP equivalent based on an industrial/commercial use scenario and 200 mg/kg zinc based on an ecological scenario. The selected Remedial Action Objectives for soil included:

- Prevent the ground water from being impacted above the maximum contaminant levels through transport of COCs from the unsaturated zone.
- Prevent storm water runoff from areas that exceed any remediation goals.
- Prevent the inhalation, ingestion, and dermal contact of contaminated soils for future on-site commercial/industrial/utility workers exposed to the soil.
- Prevent contaminated soils from becoming airborne and leaving the Site as dust.
- Prevent ecological receptors from being adversely impacted by on-site contamination.

The selected remedial action (RA) would not result in the Site being available for unlimited use and unrestricted exposure because Site contaminants in the soil will only be addressed to levels protective of future industrial or commercial use. As specified in the ROD, five-year reviews as well as operation and maintenance and institutional controls (ICs) will be necessary for this RA, and will include both the 62- and 27-acre parcels.

On February 27, 2008, an Environmental Protection Easement and Declaration of Restrictive Covenants was filed by BNSF, after approval by EPA and NMED, and recorded by the County Clerk of Bernalillo County, New Mexico. These ICs run with the land and restrict the use or development of the Site property and the use or development of ground water on or underlying the property. Specifically, the ICs prevent any use or development that would threaten or damage remedial components on the Site, which would include potential damage to the cap or underlying in-situ solidified/stabilized contaminated soil. Further, at least 30 days prior to any development or property conveyance, the EPA and NMED shall be notified in writing. Further, any development within the 27-acre southern parcel of the Site requires prior EPA review and written approval of development, along with certification that remediation goals have been met. Regardless of any development or property conveyance, BNSF's obligations under the Consent Decree for Site cleanup remain in effect, and the Site, including both the 27- and 62-acre parcels, remains subject to inspections and five-year reviews.

In addition to the Environmental Protection Easement and Declaration of Restrictive Covenants, the New Mexico Office of the State Engineer instituted a temporary IC in the form of a moratorium on new permits for ground water wells within a 200-ft buffer zone of the currently identified ground water plume surface area while remedial action is being performed. This moratorium was filed on January 29, 2009, to protect human health and minimize interference with the ground water remediation activities taking place

on the adjacent 27-acre parcel until all ground water remediation goals have been met. This moratorium will remain enforceable until ground water remedial action goals associated with the southern 27-acre parcel are met.

Data collected during the RI, in conjunction with the excavation of soil from the three areas of concern within the northern 62-acre tie storage treatment area, indicate that the soil and ground water meet the cleanup levels established in the ROD. Although a PRG of 8 mg/kg BAP equivalent was used during the RI soil excavation, the RI data and subsequent confirmation sample results were compared with the ROD soil cleanup levels of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc to ensure that the RI soil excavation met the soil cleanup levels in the ROD. The highest BAP equivalent reported for soil was 0.572 mg/kg, while the highest zinc concentration reported for soil was 55.6 mg/kg. These confirmation soil data results meet the ROD cleanup levels. No ground water contamination exceeding the ROD ground water cleanup levels for the northern 62-acre parcel was identified.

Due to its proximity to the adjacent rail line, an estimated 17- to 20-acre parcel of the northern 62-acre parcel is being considered for purchase from BNSF by an industrial concrete distribution company (company). In support of the redevelopment potential and ongoing sales negotiations, the company completed a characterization study of the parcel of interest in 2006 that included both ground water and soil sampling. Ground water data collected from four monitoring wells did not identify ground water contamination areas of concern; however, soil data did identify areas of concern.

In response to the study's finding, BNSF conducted additional soil sampling and remediation activities in 2007. Soil data collected from the 17- to 20-acre parcel exceeded the soil cleanup levels identified in the ROD, and resulted in the excavation of soil and asphalt waste from the northern 62-acre parcel. The excavated material was stockpiled on the southern 27-acre fenced area for inclusion in the soil remediation action. Subsequent confirmation samples from excavated areas indicated that ROD soil cleanup levels were met. The highest BAP equivalent reported for soil was 7.4 mg/kg, and the highest zinc concentration reported for soil was 179 mg/kg.

Cleanup Goals

The quality assurance/quality control (QA/QC) program for the Site was conducted in accordance with the work plans prepared to implement the RI and the RA construction activities. The EPA, in conjunction with NMED, conducted regular oversight throughout the implementation of the RI and remedial activities. Also, EPA and NMED reviewed and commented on all project plans and reports for the Site.

The quality assurance project plan incorporated EPA and State comments and requirements. The EPA and NMED reviewed the RI excavation work, confirmation sample collection, and data analysis completed in 1996. The EPA and NMED reviewed RA construction work completed on the 62-acre parcel in 2007 for compliance with QA/QC protocols. The RI excavation activities at the Site were determined to be consistent with the RI work plans and construction practices, while the 2007 RA construction activities were determined to be consistent with the ROD, and remedial design and RA work plans and specifications. No deviations or non-adherence to QA/QC protocols or specifications were identified.

All sampling equipment was properly maintained, inspected, and decontaminated as necessary during sampling events in accordance with instructions and protocols established in the field sampling plans and quality assurance project plans. The EPA analytical methods and contract laboratory program-like procedures and protocols were used for all confirmation and monitoring samples for soil using a private laboratory contracted by the potentially responsible party (PRP).

Based on remedial, third party, and supplemental Site investigation results, soil excavation on the northern 62-acre parcel addressed all identified soil areas that exceeded the ROD soil cleanup levels of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc. All confirmation sampling results are below the established cleanup level of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc indicating that all soil remedial action objectives have been met. The excavated areas were backfilled with suitable materials meeting Site-specific cleanup levels and graded for proper drainage. In addition, ground water data have not identified areas of ground water contamination beneath the northern 62-acre parcel. The required ICs for protection of human health and the environment were filed on the subject property restricting land and ground water use.

Operation and Maintenance and Institutional Controls

Operation and maintenance actions for the northern 62-acre parcel of the Site proposed for partial deletion are limited. No treated soil repositories are located on this portion of the property and no ground water contamination plumes have been identified there. This portion of the property is currently fenced and partially reused as an auto unloading facility. The 62-acre parcel is under restricted land use (industrial only), and is under restricted ground water use controls which support ongoing remedial actions associated with the southern 27-acre parcel. Site inspections to determine whether land and ground water use restrictions are being met and to confirm that the ICs remain in place will be conducted at a minimum of once per year.

Five-Year Review

Since hazardous substances remain on-site at levels which do not allow unrestricted use and exposure, the Site's land and ground water use is restricted. The Site is subject to five-year reviews to ensure the continued protectiveness of the remedy consistent with section 121(c) of CERCLA, 42 U.S.C. 9621(c), 40 CFR 300.430(f)(4)(ii), and the current guidance on Five-Year Reviews (EPA 540–R–01–007, OSWER No. 9355.7–03B–P, *Comprehensive Five-Year Review Guidance,* June 2001). The NCP requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remain on-site at concentrations which do not allow for unlimited use and unrestricted exposure. Based on the five-year review results, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. The first five-year review will be completed no later than September 29, 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. Throughout the Site's history, the community has been interested and involved with Site activity. The EPA has kept the community and other interested parties updated on Site activities through informational meetings, fact sheets, and public meetings. 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.

In support of the partial deletion proposal, the EPA and NMED held an open house on October 14, 2010. The purpose of the meeting was to present and discuss the partial deletion

proposal. A fact sheet on the proposal was also mailed to the community.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP [40 CFR 300.425(e)] states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of New Mexico, has determined that all appropriate response actions under CERCLA for the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site, other than operation, maintenance, and five-year reviews, have been implemented, and no further response action by the PRP is appropriate.

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.

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.

Dated: December 17, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–33109 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 101027536–0540–02]

RIN 0648–BA38

Endangered and Threatened Species, Designation of Critical Habitat for Southern Distinct Population Segment of Eulachon

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

ACTION: Proposed rule; request for comment.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for the southern Distinct Population Segment (DPS) of Pacific eulachon (*Thaleichthys pacificus*), which was recently listed as threatened under the Endangered Species Act (ESA). We have proposed 12 specific areas for designation as critical habitat within the states of California, Oregon, and Washington. The proposed areas are a combination of freshwater creeks and rivers and their associated estuaries which comprise approximately 470 km (292 mi) of habitat. Three particular areas are proposed for exclusion after evaluating the impacts and benefits associated with tribal land ownership and management by Indian tribes, but no areas are proposed for exclusion based on economic impacts.

We are soliciting comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed designation, as well as the benefits to the southern DPS of eulachon from designation. We will consider additional information received prior to making a final designation.

DATES: Comments on this proposed rule must be received by close of business on March 7, 2011. A public meeting has been scheduled for January 26, 2011 from 3:30–5:30 p.m. and 6–8 p.m. at the Doubletree Hotel, 1000 NE Multnomah Street, Portland, OR 97232. Requests for additional public hearings should be made in writing by February 22, 2011.

ADDRESSES: You may submit comments on the proposed rule, identified by RIN 0648–BA38, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 503–230–5441, *Attn:* Marc Romano.
- *Mail:* Chief, Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 Lloyd Blvd, Suite 1201, Portland, OR 97232.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. NMFS may elect not to post comments that contain obscene or threatening content. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule, list of references and supporting documents (including the Draft Eulachon Biological Report (NMFS 2010b); the Draft Eulachon Economic Analysis (NMFS 2010c); and, the Draft Eulachon Section 4(b)(2) Report (NMFS, 2010d)) are also available electronically at *http://www.nwr.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Marc Romano, NMFS, Northwest Region, Protected Resources Division, at the address above or at 503–231–2200, or Jim Simondet, NMFS, Southwest Region, Protected Resources Division, Arcata, CA 707–825–5171, or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2010, we listed the southern DPS of Pacific eulachon as threatened under the ESA (75 FR 13012). During the public comment period on the proposed rule to list the southern DPS of eulachon, we requested and received some information on the quality and extent of eulachon freshwater and estuarine habitat (73 FR 13185; March 12, 2008). However, at the time of listing, we concluded that critical habitat was not determinable because sufficient information was not available to: (1) Determine the geographical area occupied by the species; (2) identify the physical and biological features essential to conservation; and (3) assess the impacts of a designation. During promulgation of the final rule to list eulachon, we were working to compile the best available information necessary to consider a critical habitat designation. We have now researched, reviewed and summarized this best available information on eulachon, including recent biological surveys and reports, peer-reviewed literature, the NMFS status report for eulachon (NMFS 2010a), the proposed rule to list eulachon (74 FR 10857; March 13, 2009), and the final listing determination for eulachon (75 FR 13012; March 18, 2010) and had discussions with and considered recommendations by State, Federal, and tribal biologists familiar with eulachon. We used this information to identify the geographical area occupied, specific areas that may qualify as critical habitat for the southern DPS, as well as potential impacts associated with the designation and proposed exclusions.

We considered various alternatives to the critical habitat designation for