

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal 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.

VII. Congressional Review Act

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: September 14, 2006.

Lois Rossi,
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), 346a and 371.

■ 2. Section 180.555 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

| Commodity | Parts per million |
|-----------------------|-------------------|
| * * * * * | * |
| Soybean, forage | 10.0 |
| Soybean, hay | 25.0 |
| Soybean, seed | 0.08 |
| * * * * * | * |

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[FR Doc. 06–8060 Filed 9–21–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[Docket ID No. EPA–HQ–SFUND–1994–0009; FRL–8221–6]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Army Materials Technology Laboratory Superfund Site from the National Priorities List.

SUMMARY: EPA Region 1 is publishing a direct final notice of deletion of the Army Materials Technology Laboratory Superfund Site (Site), located in Watertown, Massachusetts, 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). EPA is publishing this direct final notice of deletion with the concurrence of the Commonwealth of Massachusetts, through the Department of Environmental Protection (MADEP), because EPA determined that all appropriate response actions under CERCLA—other than operation and maintenance and five-year reviews—have been completed and further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective November 21, 2006 unless EPA receives adverse comments by October 23, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the direct final 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–1994–0009, by one of the following methods:

- www.regulations.gov: Follow the on-line instruction for submitting comments.
- E-mail: keckler.kymberlee@epa.gov.
- Fax: (617) 918–0385.
- Mail: Kymberlee Keckler, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023.
- Hand delivery: 1 Congress Street, Suite 1100 (HBT), Boston,

Massachusetts 02114–2023. Such deliveries are only accepted during 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–1994–0009. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at 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 www.regulations.gov or e-mail. The 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 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 that you submit. If EPA cannot read your comment because of 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.

Information Repository: All documents in the docket are listed in 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 www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 1, Superfund Records Center, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023 and at the Watertown Free Public Library, 123 Main Street, Watertown, MA 02472. The EPA Superfund Records Center is open Monday through Friday from 9 a.m. to 5 p.m. and the Watertown Free Library is open Monday through Thursday from 9 a.m. to 9 p.m., Friday and Saturday from 9 a.m. to 5 p.m., and

Sunday from 1 p.m. to 5 p.m. The EPA Superfund Records Center’s telephone number is (617) 918–1440 and the Watertown Free Library’s telephone number is (617) 972–6431.

FOR FURTHER INFORMATION CONTACT: Kymberlee Keckler, Remedial Project Manager, U.S. Environmental Protection Agency, 1 Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114–2023, (617) 918–1385, Fax (617) 918–0385, E-mail: keckler.kymberlee@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA, Region 1, is publishing this direct final notice of deletion of the Army Materials Technology Laboratory 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 40 CFR 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 actions.

EPA is taking this action without prior publication of a notice of intent to delete because it considers this action to be non-controversial and routine. This action will be effective November 21, 2006 unless EPA receives adverse comments by October 23, 2006 on this notice or the parallel notice of intent to delete published in the Proposed Rules section of today’s **Federal Register**. If adverse comments are received within the 30-day public comment period on this direct final notice of deletion, EPA will publish a timely withdrawal of this direct final notice of 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 not be an additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Army Materials Technology Laboratory Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA’s intent 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 release 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 (RI) has shown that the release poses no significant threat to public health or the environment and, therefore, 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 will be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the actions remain protective of public health and the environment. In the case of this Site, a five-year review is necessary because not all hazardous substances, pollutants, and contaminants have been removed from the Site. If new information becomes available that 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 the application of the hazard ranking system.

In the case of the Army Materials Technology Laboratory, the selected remedies are protective of human health and the environment. The Army will maintain the institutional controls and will perform annual inspections. The first five-year review was conducted by EPA, the MADEP, and the Army in January 2002. The second five-year review was completed in March 2006. Copies are located at the repository noted previously. The remedies were deemed protective. Reviews will be conducted every five years hereafter.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Massachusetts on the deletion of the Site from the NPL before developing this direct final notice of deletion.

(2) The Commonwealth of Massachusetts concurred with the deletion of the Site from the NPL on September 8, 2006.

(3) Concomitantly with the publication of this direct final notice of deletion, a notice of the availability of the notice of intent to delete the Site from the NPL will be published in a major local newspaper of general circulation at or near the Site and will be 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) EPA and the Army placed copies of the 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 notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will withdraw this direct final notice of deletion before its effective date and will respond 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 Army Materials Technology Laboratory (Site) lies in Middlesex County, Massachusetts, 6 miles northwest of Boston, and occupies approximately 48 acres within the town of Watertown, MA. The surrounding city population is approximately 34,000.

Developed land adjacent to the Site is a mix of residential and commercial uses. The Site borders the Charles River to the south.

Site Background and History

The AMTL facility was established in 1816 and was originally used for the storage, cleaning, repair, and issuance of small arms. During the mid-1800s, the mission was expanded to include ammunition and pyrotechnics production; materials testing and experimentation with paints, lubricants, and cartridges; and the manufacture of breech loading steel guns and cartridges for field and siege guns. The mission, staff, and facilities continued to expand until after World War II, at which time the facility encompassed 131 acres, including 53 buildings and structures, and employed 10,000 people. Arms manufacturing continued until an operational phasedown was initiated in 1967 and much of the property was transferred to the General Services Administration (GSA). In 1968, GSA sold approximately 55 acres to the Town of Watertown. This property was subsequently used for the construction of apartment buildings, the Arsenal Mall, a public park, and a playground. AMTL contained fifteen major buildings and fifteen associated structures. In 1960, the Army's first material research nuclear reactor was completed at AMTL. The reactor was used actively in molecular and atomic structure research activities until 1970 when it was deactivated. The research reactor was decommissioned under the jurisdiction of the Nuclear Regulatory Commission in 1992 and the structure was demolished in 1994. In 1987, the U.S. Army Toxic and Hazardous Material Agency initiated preliminary site studies, the first stage of the facility's closure plan. In late 1993, Congress recommended the closure of the facility. On September 29, 1995, AMTL was officially closed and reverted to a caretaker status.

The AMTL was placed on the EPA National Priorities List (NPL) as a Superfund Site in May 1994 and in 1995 the Army signed an Interagency Agreement with the EPA stipulating that site investigations and cleanup actions would follow CERCLA/Superfund Amendments and Reauthorization Act, under the regulatory guidance of the National Contingency Plan 40 CFR part 300. A Technical Review Committee was formed at the time that has subsequently become the Restoration Advisory Board. In 1994, AMTL was placed on the Base Realignment and Closure list.

In August 1998, 36.5 acres of the 48-acre CERCLA site were transferred from the ownership of the U.S. Army. At that time, the Watertown Arsenal Development Corporation (WADC) acquired 29.44 acres of the Site. The Town of Watertown took ownership of 7.21 acres. In March 2005, the remaining 11 acres of the Site were transferred to the Commonwealth of Massachusetts, Department of Conservation and Recreation (DCR). The DCR was formed in 2003, when the Metropolitan District Commission, or "MDC" merged with the Massachusetts Department of Environmental Management, or "DEM." As set forth below, the MDC has managed a portion of the site since the 1920s. At the time of each transfer, the United States of America, acting by and through the Secretary of the Army, granted the MADEP a Grant of Environmental Restriction and Easement for each appropriate zone of the AMTL Site. The purpose of the grant is to provide a mechanism for the creation and enforcement of the necessary land use controls as required by the CERCLA Records of Decision (RODs) for the Site (September and July 1996). The first grant re-designated areas into lots for property transfer and future deed tracking. Environmental Zones 1, 2, and 3 (the parcel initially transferred to WADC) were designated as Lot 1. Lot 1 was sold to Charles River Business Center Associates (CRBCA) in December 1998. CRBCA sold the Lot 1 property to the President and Fellows of Harvard College (Harvard) in May 2001. Environmental Zone 4 (the parcel transferred to the Town of Watertown) was designated as Lot 2. Zones 1, 2, 3, and 4 were deleted from the NPL through the partial deletion process on November 22, 1999.

Zone 5, the Charles River Park, is the subject of the second grant. Although this park was AMTL property, it was managed by the MDC since the 1920's under a lease from the Army. Since then, the land has been maintained as open and recreational space. In 1948, the MDC leased approximately two acres of the riverfront property to the Watertown Yacht Club.

Because of the complexity of this industrial facility, the Site was divided into three areas for investigation. EPA designated these three areas as operable units. The operable units are described in detail below.

OU1—Outdoor Areas

Operable unit 1 (OU1) addresses most outdoor soils and all underlying groundwater. The indoor areas and petroleum related cleanups are

addressed under the Commonwealth of Massachusetts cleanup authority. Environment Zones 1–5 (Areas A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, T, and metal hot spots) are all included in the OU1 ROD. These areas exceeded expected future use and/or ecological risk levels for metals, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and pesticides. The ROD required soil excavation and off-site disposal/reuse of contaminated soils exceeding cleanup goals and was signed on September 26, 1996. The ROD for OU1 also documented that no further action was necessary under CERCLA for the groundwater at the entire AMTL site. Two Explanations of Significant Differences (ESD) have been signed for OU1. The first ESD addressed Lot 1 and was signed on January 12, 1998. The second ESD addressed the Charles River Park and was signed on June 7, 2001. The ESDs changed the subsurface PAH cleanup levels to levels protective of construction workers. The first ESD revised PAH cleanup goals were applied at Areas B, E, G, and L4. These cleanup goals were also applied to the Charles River Park (Zone 5: Areas M, N, O, P, and Q) as part of the second ESD.

OU2—Charles River

OU2 encompasses approximately two miles of the Charles River adjacent to the AMTL property. This area of the river has received contaminants from the AMTL site via storm drainage, direct discharges, and erosion. The ROD for this operable unit documented that no further action was necessary under CERCLA for these sediments because the contaminants are present at levels that are indistinguishable from the concentrations associated with exposure to urban background conditions in the Lower Charles River Basin. The OU2 ROD was signed on September 29, 2005.

OU3—Area I

Area I is located northeast of Building 131 at the intersection of Talcott Street and Kingsbury Avenue (Zone 3). The ROD for OU3 was signed before the OU1 ROD for residential cleanup of soils contaminated with PAHs and pesticides above cleanup levels. This area was segregated from OU1 to enable faster redevelopment. The OU3 ROD was signed on June 28, 1996.

Remedial Investigation/Feasibility Study (RI/FS) Results and Record of Decision (ROD) Findings for Operable Units 1 and 3

OUs 1 and 3—RI/FS Results

Remedial Investigations of these two operable units were conducted between 1987 and 1995 and generally found the following contamination across the facility.

Groundwater: With the exception of one well, all upgradient wells showed detectable quantities of chlorinated solvents, suggesting that off-site sources have caused or aggravated on-site groundwater contamination. Based on a site water table map, groundwater flow paths indicate the potential for groundwater to flow away from the site in an area in the northwestern part of the site before flowing toward the Charles River. No evidence of on-site contamination migrating off-site was found in groundwater samples collected from on-site wells because the majority of contamination was detected in the upgradient wells. The on-site, and farthest downgradient, wells bordering the Charles River showed the lowest levels of contamination. Although some contamination is present in certain areas of on-site groundwater, this does not pose a current or future risk because the groundwater is not used as a water supply, and no significant migration of contamination is occurring. The site

groundwater meets the Commonwealth of Massachusetts definition of a non-drinking water aquifer (GW–3) as defined in 310 C.M.R. Part 40. Therefore, there is no risk to human receptors. Groundwater does discharge from the site into the Charles River. A model of contaminant contribution via groundwater to the Charles River was developed. This model, as presented in the FS, shows that no significant concentrations of contaminants are migrating to the river from the site groundwater. Hence, there is no risk to human health or the environment from site groundwater and no further action was documented in the OU1 ROD for all groundwater across the AMTL facility.

Surface soils: Semi-volatiles, pesticides, polychlorinated biphenyls (PCBs), and metals were detected at levels exceeding the Massachusetts Contingency Plan (MCP) S–1/GW–1 standards (the most protective). These detections were scattered and in hot spots, as opposed to site-wide distribution. PCBs were detected at levels above the EPA action level. The analytical results showed that the total uranium activity in all soils was below the Federal maximum allowable standards.

Sub-surface soils: Volatile organics, semi-volatile organics, polycyclic aromatic hydrocarbons (PAHs), pesticides, and metals were found at many sampling locations above MCP S–1/GW–1 standards.

Surface water and sediments: Surface water contained arsenic and lead exceeding human health Ambient Water Quality Standards. Sediments were contaminated with low levels of metals and pesticides above sediment screening values.

A summary of the contaminants of concern for soil and the corresponding cleanup levels follows:

| Soil contaminant of concern | Maximum concentration (mg/kg) | ROD cleanup level (mg/kg) (surface and subsurface soils) | ESD cleanup level (mg/kg) (subsurface soils only) | Zone where cleanup level pertains** |
|------------------------------|-------------------------------|--|---|-------------------------------------|
| Benzo(a)anthracene | 32.0 | 8.5 | 1760.0 | 2, 3, 4 & CRP. |
| Benzo(a)pyrene | 37.0 | 2.0 | 154.0 | 2, 3, 4 & CRP. |
| Benzo(b)fluoranthene | 15.0 | 7.9 | 1760.0 | 2, 3, 4 & CRP. |
| Benzo(k)fluoranthene | 24.0 | 6.2 | 17600.0 | 2, 3, 4 & CRP. |
| Chlordane | 9.4 | 1.4* | | 4 & CRP. |
| Chrysene | 34.0 | 11.1 | 176000.0 | 3, 4 & CRP. |
| DDD | 3.5 | 13.7 | | 4 & CRP. |
| DDE | 6.3 | 0.14 | | 4 & CRP. |
| DDT | 5.2 | 0.17 | | 4 & CRP. |
| Dibenzo(a,h)anthracene | 3.3 | 0.27 | 154.0 | 3 & CRP. |
| Dieldrin | 4.0 | 0.35 | | 4 & CRP. |
| Indeno(1,2,3-cd)pyrene | 14.0 | 3.0 | 1760.0 | 2, 3, 4 & CRP. |
| Arochlor 1260 (PCB) | 4.9 | 1.0 | | 3 & 4. |

*Cleanup goal for chlordane in Zone 3 was 1.5 mg/kg based on human health risk.

**No cleanup goals were developed in the ROD for Zone 1.

Human health risks for both OU1 and OU3 were evaluated for current use and for future use. The future use included a residential scenario, which is the most protective assessment for human health. Risks were unacceptably high under the residential conditions (maximum cancer risks $3E-05$ and maximum Hazard Index 0.4) and therefore remediation was required. Some areas were remediated to commercial risk levels and required a Grant of Environmental Restriction.

Ecological risk scenarios include exposure to site groundwater in the Charles River and exposure to site soils in the limited open space areas. Although contaminants in groundwater could migrate toward the Charles River, the level of contamination is not expected to adversely affect aquatic organisms. Most of the AMTL Site is not prime terrestrial habitat owing to the lack of open space. Suitable habitat for terrestrial vegetation and wildlife is restricted to the southeastern corner of the site. Major risk drivers were metals and pesticides. Receptors evaluated in the risk assessment with unacceptable hazard indices were: Northern short-tailed shrew, white-footed mouse, American robin, song sparrow, and earthworms. Cleanup goals were not determined for metals because on-site metals were found to be generally consistent with normal background levels. Any areas with metals contamination posing an unacceptable localized risk were co-located with pesticides and remediated.

OU2-RI Results

Various investigations were performed between 1979 and 2005. In 1979, the Army completed a study to verify where storm water pipes were located and identified seven storm water pipes at AMTL that discharged either directly or through the storm water system into the Charles River. In 1994, 1998, and 2003 surface water and sediment samples were taken upstream and downstream of the outfalls. The 2003 sampling event also included biological and toxicological studies of the river conditions. The Charles River was divided into four reaches for the purposes of evaluation in the baseline ecological risk assessment.

There are numerous existing and historical sources of pollutants to the Charles River, an urban riverine system. Chemicals detected in surface water at the Charles River OU were found at low concentrations that were either below human health based risk screening levels, consistent with upstream background conditions, or indistinguishable from the urban

background conditions of the Charles River.

Sediments were found to be contaminated by PAHs, inorganics, low levels of pesticides and PCBs, and extremely low levels of several radionuclides.

Potential human receptors included the people engaging in water-related activities along and on the river or eating fish caught from the river. These activities were considered for resident adults and children and park visitors. Based on the nature of contamination and anticipated activities, the exposure routes evaluated for this portion of the Charles River included:

- Ingestion and dermal contact with river water and sediments;
- Ingestion of contaminated fish; and
- External exposure to radiation released from radionuclides in sediments.

An advisory concerning the consumption of fish was issued by MDPH in 1996 for the Lower Basin of the Charles River owing to elevated PCBs.

Results of the HHRA revealed that all cancer and non-cancer risk levels were within the acceptable thresholds specified in the National Contingency Plan. The estimated excess chemical carcinogenic risk to adults ranged from 1×10^{-10} for ingestion of surface water to 2×10^{-6} for ingestion of sediment. The excess carcinogenic risk from radionuclides ranged from 5×10^{-11} for ingestion of surface water to 8×10^{-10} for ingestion of fish. Chronic hazard index values for children ranged from 0.00003 for ingestion of surface water to 0.01 for ingestion of fish and for dermal exposure to sediment.

Based on all of the site data, EPA concluded that the potential for ecological risks contributed by the former AMTL facility are indistinguishable from the anthropogenic urban background conditions that characterize the Lower Charles River Basin. EPA considered (1) the weight assigned to each measurement endpoint; (2) the magnitude of the response observed in each measurement endpoint; and (3) the summation of the degree of agreement among the outcomes of each measurement endpoint. There are elevated levels of many constituents (and a potential for ecological risk) present in all four reaches and the majority of these compounds are present at concentrations consistent with upstream reference locations. In general, the potential for ecological risk to benthic invertebrates was found to be low to moderate, with an even lower

potential risk to finfish and vertebrate wildlife, respectively.

A No Further Action ROD was signed for OU2 because of consistency of the AMTL site conditions with urban background and the similar potential for ecological risks across sampling reaches.

OU1, OU2, and OU3 ROD Findings

OU1 ROD Findings

On September 26, 1996, the Army and EPA signed a Record of Decision documenting the remedial action selected for OU1. The MADEP concurred. The major components included:

- Excavation of areas with contaminated soils above cleanup goals;
- Confirmatory soil sampling after contaminated soil removal;
- Off-site landfill disposal or reuse of the excavated soil;
- Backfilling with clean soils;
- Institutional controls to limit future use and to restrict site access; and
- Five-year reviews.

Two Explanations of Significant Difference (ESD) were signed for this OU. The first ESD addressed Lot 1 and was signed on January 12, 1998. The second ESD addressed the Charles River Park and was signed on June 7, 2001. Both ESDs changed the subsurface PAH cleanup levels to levels protective of construction workers. The revised PAH cleanup goals were applied at Areas B, E, G, and L4 with the first ESD. These cleanup goals were also applied to the Charles River Park (Zone 5: Areas M, N, O, P, and Q) with the second ESD.

OU2 ROD Findings

A No Further Action ROD was signed on September 29, 2005 because the potential for risks contributed by the former AMTL facility were indistinguishable from urban background conditions. MADEP concurred.

OU3 ROD Findings

The ROD for OU3 was signed on July 28, 1996. The major components include:

- Excavation of areas with contaminated soils that were above cleanup goals;
- Confirmatory soil sampling within excavations after contaminated soil removal;
- Off-site landfill disposal or reuse of the excavated soil;
- Backfilling of clean fill soils into the excavations.

There are no institutional controls in place that are applicable to OU3. The MADEP concurred.

Response Actions for OU1 and OU3

OU1 Remedial Action

Soil clean-up goals were established in the ROD for different zones at AMTL based on their intended future use. The clean-up goals were developed to allow a mix of future uses at the site, including residential, commercial, and recreational scenarios. The only exception was for the contaminants of concern and for the Zone 3 where the residential cleanup level was slightly higher than the ecologically protective level for chlordane. In addition, during remediation and excavation activities, the Army and regulators determined that a construction worker scenario was a more realistic and appropriate exposure scenario for soils at a depth greater than one foot below ground surface (bgs) at Zones 1 and 2. Because the Baseline Risk Assessment did not include the construction worker exposure scenario, additional risk assessment work was performed. The construction worker exposure scenario recognized that periodic maintenance and/or installation of subsurface utilities/structures would be required in the future. In general, the construction worker exposure scenario differs from the commercial exposure scenario by evaluating risks from contaminated soils below one foot bgs using an exposure duration that mimics the potential need to perform periodic subsurface utility work. The top one foot of soil meets the appropriate risk-based clean-up goals and no changes were made to the cleanup goals in the surface soils. In addition, the subsurface soil construction worker exposure scenario is recognized as an appropriate risk scenario for the public benefit reuse areas (Zone 4) because the open space user will not likely excavate below one foot and will be protected by the one foot of soil meeting its risk-based clean-up goals. The Revised clean-up goals were documented in an ESD, dated January 12, 1998. Remedial action objectives remained the same—mitigate the risks to human health and the environment posed by direct contact with and incidental ingestion of contaminated soils. The revised cleanup goals were applied at Areas B, E, G, J, and L. The confirmation samples taken before the revision of the clean-up goals indicated that the soils below one foot met these goals and the excavations were considered complete.

Remedial Action for the northern zone of the AMTL site was started on November 20, 1996, and completed on July 27, 1998. All soils were disposed off-site in accordance with state and federal requirements. Implementation of

the required Institutional Controls took place during the transfer.

In 1997, the Army began remedial activities within the Charles River Park parcel. Two areas (Areas N & O) within the 11-acre Park parcel were remediated but work in the remainder of the Park was suspended. The excavation volumes required to achieve soil clean-up levels specified in the ROD were significantly larger than previously estimated. This resulted in a significant potential increase in estimated costs of the remedy for the Charles River Park parcel.

The Army applied the revised cleanup goals (previously documented in the January 1998 ESD) to the Charles River Park parcel at elevations greater two foot bgs level since several areas required the removal of the top two feet of soil in order to address elevated ecological risks. This change was documented in an ESD dated June 7, 2001.

Riverbank excavations at areas P, Q, and M were terminated at two feet bgs since no revised clean-up goals were exceeded. A terraced wetland was constructed in Areas P and Q to provide protection from boat wakes and wind-driven waves. A breakwater structure was constructed at the toe of the bank. Vegetated plugs, shrubs, and trees were planted above the breakwater and erosion matting was placed on the slope.

The entire Charles River Park zone was mulched, seeded, and fertilized. Remedial Action for the Charles River Park zone was completed on December 22, 2003. All soils were disposed off-site in accordance with state and Federal requirements. Implementation of Institutional Controls for this zone took place during the transfer process.

In August 1998, 36.5 acres were transferred from the ownership of the U.S. Army. The Watertown Arsenal Development Corporation (WADC) acquired 29.5 acres of the site and the Town of Watertown took ownership of 7 acres. In March 2005, the remaining 11 acres of the site, the Charles River Park parcel, were transferred from the Army to the Commonwealth of Massachusetts, Department of Conservation and Recreation (DCR). At the time of each transfer, the Army issued a Grant of Environmental Restriction and Easement for each appropriate zone of the AMTL Site to the MADEP. The purpose of the Grants is to provide a mechanism for the creation and enforcement of the necessary land use controls as required by the CERCLA RODs for the site (July and September 1996). The WADC and Town of Watertown parcels were

deleted from the NPL through the partial deletion process on November 22, 1999.

The Charles River Park parcel is the subject of the second grant and this deletion process. Although the park was site property, it has been managed by the DCR since the 1920's under a right of way (ROW) from the Army. Since then, the land has been maintained as recreational space and a portion as a road. The ROW gave the right to use the property for a park, to construct improvements on the property that are reasonably related to park purpose, and to care for and manage the property. The ROW also gave the DCR police jurisdiction of the property. In 1948, the DCR's predecessor, Metropolitan District Commission, leased approximately two acres of the riverfront property to the Watertown Yacht Club for the hauling and storage of boats. A clubhouse and a three-bay maintenance garage with a boat winch currently occupy the area not used to store boats. The DCR and the club are currently negotiating a permit to continue boating operations at the site.

The Army submitted the Final Project Close-Out Reports (dated May 1998 and March 2002, respectively) and they were approved by both EPA and Massachusetts DEP. The joint EPA and MADEP inspection required by the NCP pursuant to 40 CFR 300.515(g) was conducted on June 23, 2003. As a result of the inspection, EPA determined that the remedy was "operational and functional" under 40 CFR 300.435(f)(2).

OU3 Remedial Action

Remedial Action (RA) for Area I started on August 26, 1996, and was completed on January 10, 1997. The Final Project Close-Out Report (December 1996) was approved by EPA and Massachusetts DEP. All soils were disposed off-site in accordance with state and Federal requirements. No institutional controls were needed as the ROD specified clean-up goals (Zone 3) were protective of residential exposure to soils.

Operation and Maintenance Activities

The Army is responsible for conducting annual inspections of the institutional controls and ensuring that erosion control and bank stabilization project remains effective over the long-term.

Five-Year Reviews

CERCLA requires a five-year review of all sites with hazardous substances remaining above health-based levels for unrestricted use of the site. Since hazardous substances will remain on-

site above levels allowing unlimited use and unrestricted exposure, a statutory five-year review will be conducted by the Army pursuant to CERCLA section 121(c) and as provided in OSWER Directive 9355.7-03B-P, *Comprehensive Five-Year Review Guidance*.

The five-year review process will evaluate whether human health and the environment remain protected by the remedies. The first five-year review was performed in 2001 and documented in March 2002 by the Army. The Army completed its second five-year review in March 2006. EPA and MADEP

concurred with the Army's assessment that the remedies were protective of human health and the environment. For future five-year reviews, EPA will review the Army's annual reports and conduct a five-year review inspection. The Army will provide the next five-year review in March 2011.

The first 5-year review, dated March 7, 2002 concluded:

- For OU1, the remedy was determined to be protective of human health and the environment as long as a limited amount of soil in Area E exceeding the applicable cleanup goals

was removed. The soils were since excavated at Area E, shipped offsite, and used as landfill daily cover. All confirmation samples met the ROD criteria. The excavation was backfilled with clean soils and new benchmarks were installed to identify the area.

- The protectiveness of OU2 was not determined because the remedy had not yet been chosen.

- For OU3, the remedy was determined to be protective of human health and the environment.

| Restricted area | Inspection description | Frequency |
|--|--|-------------------|
| Charles River Park Open Area | Inspect to determine that the use does not allow residential, daycare or school activities except those incidental to recreational park activities. Inspect area to ensure no excavation, drilling or otherwise disturbance of the soils located two feet or more below surface grade have occurred. Inspect benchmarks for eroded areas and reduction in grade and repair as necessary. Ensure that benchmarks remain visible. Breakwater Treatment Inspection: <ul style="list-style-type: none"> • Inspect rock toe for separation and/or settlement. • Inspect coir fascine for proper anchoring. • Inspect for scour between plant carpets and coir fascine. | Annually in June. |
| Charles River Park Wooded Area | Inspect to ensure use does not allow residential, daycare, or school activities except those activities incidental to recreational park activities. | Annually in June. |
| Watertown Yacht Club Open Area | Inspect to ensure use does not allow residential, daycare, or school activities except those activities incidental to recreational park activities. Inspect benchmarks for eroded areas or reduced grade and repair as necessary. Ensure that benchmarks remain visible. Inspect area to ensure no excavation, drilling or otherwise disturbance of the soils located two feet or more below surface grade have occurred. | Annually in June. |
| Structures at the Watertown Yacht Club | Inspect to ensure use does not allow residential, daycare, or school activities except those activities incidental to recreational park activities. Inspect area to ensure no excavation, drilling or disturbance of the soils below the building foundations and slabs have occurred. Inspect area to ensure no excavation, drilling or disturbance of the building foundations and slabs in a manner that would likely result in human contact with underlying soils has occurred. | Annually in June. |
| North Beacon Street | Inspect to ensure use does not allow residential, daycare, or school activities except those activities incidental to recreational park activities. Inspect area to ensure no disturbance of the roadway or sidewalk pavement that would compromise their integrity or would be likely to result in human contact with the underlying soils has occurred. | Annually in June. |
| North Beacon Street Wooded Area | Inspect to ensure use is restricted to no residential, daycare, or school activities except those activities incidental to recreational park activities. | Annually in June. |
| Buildings: 142, 244, 245, & 111 | Inspect to ensure use does not allow residential, daycare or school uses Inspect to ensure that no transportation, disposal, or deposition of soils from within the parcel occurs, unless in compliance with the Soil Management Protocol set forth in Paragraph 4 of the Grant. Inspect area to ensure no excavation, drilling or otherwise disturbance of the building foundations and that would likely result in human contact with underlying soils has occurred. | Annually in June. |
| Areas: L4, E, B & G | Inspect to ensure use does not allow residential, daycare or school (children under 18 years old), hotel, motel, community center (children under 18 years old), and/or recreational/activities uses. Inspect benchmarks for eroded areas and reduction in grade and repair as necessary. Ensure that benchmarks remain visible. Inspect to determine no soils, located at a depth of one foot or more below the surface grade, were removed unless disposed as required in the Grant. | Annually in June. |
| Buildings: 97, 60, 652, & 312 | Inspect to ensure use does not allow residential, daycare or school (for children under 18 years of age), hotel, motel, community center (for children under 18 years of age), and/or recreational uses or activities uses. Inspect to determine that no transportation, disposal, or deposition of soils from within the parcel occurs, unless in compliance with the Soil Management Protocol set forth in Paragraph 4 of the Grant. Inspect area to ensure no excavation, drilling or otherwise disturbance of the building foundations and slabs in a manner that would likely result in human contact with underlying soils have occurred. | Annually in June. |

| Restricted area | Inspection description | Frequency |
|-----------------------------------|--|-------------------|
| Building 39 | Inspect to ensure that use does not allow residential, daycare or school (children under 18 years old), hotel, motel, community center (children under 18 years old), and/or recreational uses or activities uses. | Annually in June. |
| Buildings 131, 117, & 313-S | Inspect area to ensure no excavation, drilling or otherwise disturbance of the building foundations and slabs that would likely result in human contact with underlying soils have occurred. | Annually in June. |

The second five-year review, completed in March 2006, concluded that the remedy at OU1 (the only site where hazardous materials remain on-site) is protective of human health and the environment in the short-term because there is no evidence of exposure. However, there was concern that some bank erosion occurred along the Charles River adjacent to Charles River Park (in areas where the Army was not required to remediate). In order for the remedy to remain protective in the long term, the Army must stabilize the riverbank adjacent to Areas P and Q before the next five-year review. While the integrity of the two-foot soil coverage required by the ROD and ESD remains intact along the riverbanks, the Army will undertake preventive measures to ensure long-term site integrity. This work began in September 2006 and is expected to be completed before the end of the year.

Community Involvement

In addition to the regular community meetings discussed below, community relations activities for the Army Materials Testing Laboratory NPL Site have included the following: development of a community relations plan, public meetings and site tours during the RI and remedy selection process, public comment periods on proposed plans, and publication and distribution of fact sheets updating the status of site cleanup.

In 1989, the Army established a Technical Review Committee (TRC) to enhance community involvement. In 1993 the TRC transitioned into a Restoration Advisory Board (RAB). The purpose of the TRC and RAB was to serve as a forum where representatives of the community, regulators, and the Army could discuss and exchange information on environmental cleanup issues and progress at the Site. The TRC and RAB provided an opportunity for stakeholders to participate in the decision-making process by reviewing and commenting on documents and proposed remedial actions. Through the TRC and RAB, cleanup decisions were discussed and approved.

During fiscal year 2006, a fact sheet that discussed the intention to delete the site from the NPL was distributed to

the RAB. EPA will also announce the deletion of the Site from the NPL once the deletion has been completed with fact sheet and public notice.

V. Deletion Action

EPA, with concurrence from the Commonwealth of Massachusetts, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without earlier publication of a notice of intent to delete. This action will become effective November 21, 2006 unless EPA receives adverse comments by October 23, 2006 or a parallel notice of intent to delete is published in the Proposed Rule section of today's **Federal Register**. If adverse comments are received, EPA will withdraw this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will respond to comments, as appropriate, and continue with the traditional 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. If EPA receives no adverse comment(s), this deletion will become effective November 21, 2006.

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: September 12, 2006.

Robert W. Varney,
Regional Administrator, U.S. EPA—New England.

■ 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 2 of Appendix B to part 300 is amended by removing the entry for “Materials Technology Laboratory (US ARMY), Watertown, MA.”

[FR Doc. 06–7966 Filed 9–21–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS–3145–F]

RIN 0938–AN36

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities; Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule adopts the substance of the April 15, 2004 tentative interim amendment (TIA) 00–1 (101), *Alcohol Based Hand Rub Solutions*, an amendment to the 2000 edition of the Life Safety Code, published by the National Fire Protection Association (NFPA). This amendment allows certain health care facilities to place alcohol-based hand rub dispensers in egress corridors under specified conditions. This final rule also requires that nursing facilities at least install battery-operated single station smoke alarms in resident rooms and common areas if they are not fully sprinklered or they do not have system-based smoke detectors in those areas. Finally, this final rule confirms as final the provisions of the March 25, 2005 interim final rule with changes and responds to public comments on that rule.

DATES: Effective Date: These regulations are effective on October 23, 2006. The incorporation by reference of certain