

requirements that no longer need to apply to Arizona.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does 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, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000).

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

J. 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on December 8, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental Relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 30, 2003.

Marianne Lamont Horinko,
Acting Administrator.

■ For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.31 [Amended]

■ 2. Section 131.31 is amended by removing and reserving paragraph (a).

[FR Doc. 03-27948 Filed 11-5-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-7583-9]

Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal regulations to withdraw aquatic life water quality criteria for copper and nickel applicable to south San Francisco Bay, California. South San Francisco Bay is the area of San Francisco Bay that is located south of the Dumbarton Bridge. On May 18, 2000, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for the State of California, since the State had not complied with the Clean Water Act. This regulation is known as the "California Toxics Rule" or "CTR." On December 17, 2002, the State of California completed its adoption process to incorporate copper and nickel aquatic life water quality criteria for south San Francisco Bay. The State of California calls these criteria site-specific water quality objectives or site-specific objectives. On January 9, 2003,

the State submitted the site-specific objectives to EPA Region 9 for review and approval. On January 21, 2003, EPA Region 9 approved the copper and nickel aquatic life site-specific objectives for south San Francisco Bay.

Since the State of California now has aquatic life site-specific objectives, effective under the Clean Water Act (CWA), for copper and nickel for south San Francisco Bay, EPA has determined that the federally-promulgated copper and nickel aquatic life criteria are no longer needed for south San Francisco Bay. On June 25, 2003, EPA requested comment on its proposed action to withdraw copper and nickel criteria applicable to the south San Francisco Bay from the CTR. EPA did not receive any adverse comments concerning EPA's proposal to withdraw the copper and nickel aquatic life criteria applicable to south San Francisco Bay from the CTR and is therefore publishing this final rule.

EFFECTIVE DATE: This rule is effective November 6, 2003.

ADDRESSES: The public docket for today's final rule is available for public inspection at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 8 a.m. and 4:30 p.m. For access to the public docket, call Diane E. Fleck at 415-972-3480 or Nancy Yoshikawa at 415-972-3535 for an appointment. A reasonable fee may be charged for photocopies. The public docket may also be viewed electronically by following the instructions as provided under "How to Obtain Copies of This Document and Other Related Information."

FOR FURTHER INFORMATION CONTACT: Diane E. Fleck, P.E., Esq. (WTR-2) or Nancy Yoshikawa (WTR-5) at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105 (tel: 415-972-3480 or 415-972-3535, respectively, fax: 415-947-3537 or 415-974-3545, respectively) or e-mail at Fleck.Diane@EPA.gov or Yoshikawa.Nancy@EPA.gov. For general or administrative questions, please contact Manjali Vlcán at U.S. EPA Headquarters, Office of Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (tel: 202-566-0373, fax: 202-566-0409) or e-mail at Vlcán.Manjali@EPA.gov.

SUPPLEMENTARY INFORMATION:

Effective Date

EPA is making this final rule effective upon publication. Under the Administrative Procedures Act, 5 U.S.C. 553(d)(3), agencies must generally

publish a rule not less than 30 days prior to the effective date of the rule except as otherwise provided for by the Agency for good cause found and published with the rule. The purpose of the 30-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. See *Omnipoint Corp. v. F.C.C.*, 78 F.3d 620, 630-631 (D.C. Cir. 1996); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992).

In this instance, EPA finds good cause to make the final rule effective upon publication. In order to find good cause, an Agency needs to find that the 30-day period would be: (1) Impracticable, (2) unnecessary, or (3) contrary to the public interest. Here EPA is relying on the third reason to support its finding of good cause.

EPA finds that, in this instance, waiting 30 days to make the rule effective is contrary to public interest. As explained in this preamble, both the California Toxics Rule copper and nickel criteria and California's copper and nickel site-specific objectives, approved by EPA on January 21, 2003, apply to the south San Francisco Bay. Therefore, it may be unclear which standards are the appropriate benchmarks when making permitting and CWA section 303(d) impaired waters listing decisions. Since a 30-day delay in effectiveness of this rule would unnecessarily extend this potential confusion when making water management decisions, EPA has determined that it would be in the public interest to make this rule effective immediately.

Potentially Regulated Entities

No one is regulated by this final rule. This final rule merely withdraws Federal copper and nickel aquatic life water quality criteria applicable to south San Francisco Bay, California.

How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW-2003-0015. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under, "Water Quality Standards; Withdrawal of

Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California," at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, phone: 415-972-3480. This Docket Facility is open from 8:30 a.m. Pacific time to 4:30 p.m. Pacific time, Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the California docket facility identified earlier. Once in the system, select "search," then key in the appropriate docket identification number.

Background

On May 18, 2000, EPA promulgated a final rule known as the "California Toxics Rule" or "CTR" to establish numeric water quality criteria for priority toxic pollutants for the State of California, since the State had not complied fully with section 303(c)(2)(B) of the Clean Water Act (CWA) (65 FR 31682). The criteria, codified at 40 CFR 131.38, became the applicable water quality criteria in California effective May 18, 2000, for all purposes and programs under the CWA.

EPA acknowledged in the preamble to the CTR that the State of California was working to satisfy the requirements of CWA section 303(c)(2)(B) and anticipated that the Agency, once the State submitted its water quality standards to EPA, would approve the State-adopted water quality criteria for pollutants included in the CTR (65 FR 31684, May 18, 2000). The State of California calls these criteria site-specific water quality objectives or site-specific objectives. The water quality standards program was developed with an emphasis on State primacy. Although in the CTR EPA promulgated toxic criteria for the State of California, EPA prefers that States maintain primacy, revise their own standards, and achieve

full compliance (see 57 FR 60860, December 22, 1992).

Under the procedures set out in the National Toxics Rule, published December 22, 1992 (see 57 FR 60860, December 22, 1992), and referenced in the CTR, when a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the Federal regulations to withdraw the Federally applicable criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment is unnecessary. However, if a State adopts criteria that are less stringent than the Federally-promulgated criteria, but that in the Agency's judgement fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the Federally promulgated criteria. As described in detail below under "Site-Specific Aquatic Life Objectives for Copper and Nickel," the State of California recently adopted copper and nickel aquatic life site-specific objectives for the south San Francisco Bay which EPA subsequently approved.

On June 25, 2003, EPA requested comment on its proposed action to withdraw copper and nickel criteria applicable to the south San Francisco Bay from the CTR and received no adverse comments on the proposal (68 FR 37926, June 25, 2003).

Site-Specific Aquatic Life Objectives for Copper and Nickel

On May 22, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region, adopted site-specific water quality objectives for nickel and copper to protect aquatic life in the south San Francisco Bay. On October 17, 2002, the State Water Resources Control Board approved the site-specific objectives for copper and nickel in the lower south San Francisco Bay. On December 17, 2002, the State of California completed its adoption process to incorporate copper and nickel aquatic life water quality criteria for south San Francisco Bay. On January 9, 2003, the SWRCB submitted the site-specific objectives to EPA Region 9 for review and approval.

The saltwater aquatic life water quality criteria for dissolved copper contained in the CTR table at 40 CFR 131.38(b)(1) are: 4.8 ug/l acute (exposure for a short period of time) and 3.1 ug/l chronic (exposure for an extended [4 day] period of time). The saltwater aquatic life water quality criteria for dissolved nickel contained in

the CTR table at 40 CFR 131.38(b)(1) are: 74 ug/l acute (exposure for a short period of time) and 8.2 ug/l chronic (exposure for an extended [4 day] period of time). Both the copper and nickel criteria are further expressed as a function of the water-effect ratio (WER). The WER in the CTR is assumed to be 1 for all applicable pollutants but may be otherwise defined by the State using appropriate procedures (see 65 FR 31718).

The aquatic life water quality objectives for dissolved copper adopted by the State of California and approved by EPA for south San Francisco Bay are: 10.8 ug/l acute (exposure for a 1 hour average period of time) and 6.9 ug/l chronic (exposure for a 4 day average period of time). The aquatic life water quality objectives for dissolved nickel adopted by the State of California and approved by EPA for south San Francisco Bay are: 62.4 ug/l acute (exposure for a 1 hour average period of time) and 11.9 ug/l chronic (exposure for a 4 day average period of time).

EPA recognizes that three out of the four California criteria for copper and nickel are less stringent than the Federally promulgated criteria in the CTR. However, the site-specific objectives were developed from the results of a number of detailed studies and technical reports that were the subject of technical peer review and were part of the collaborative stakeholder process known as the "Santa Clara Basin Watershed Management Initiative." Based on this additional information, EPA determined that these adopted criteria are fully protective of the aquatic life designated uses of California's waters in the south San Francisco Bay and meet the requirements of the Clean Water Act. EPA approved California's water quality objectives on January 21, 2003. Therefore, EPA has determined that the Federal aquatic life water quality criteria for copper and nickel in these waters are no longer necessary.

Because three out of the four California criteria for copper and nickel are less stringent than the Federally promulgated criteria, on June 25, 2003, EPA requested comments on its proposed action to withdraw copper and nickel criteria from the CTR. On July 25, 2003, EPA received two letters in support of the proposed withdrawal action. No other comments were received regarding the proposed action. EPA is therefore publishing this final rule to withdraw the copper and nickel aquatic life criteria for south San Francisco Bay from the CTR.

Statutory and Executive Order Reviews

1. Executive Order 12866—Regulatory Planning and Review

This action withdraws specific Federal requirements applicable to south San Francisco Bay, California and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

2. Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it is administratively withdrawing Federal requirements that no longer need to apply to south San Francisco Bay, California.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This final rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandate Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's final rule is not subject to the requirements of UMRA section 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this final rule contains no

regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

5. Executive Order 13132—Federalism

Executive Order 13132, entitled, Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This final rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have Federalism implications under Executive Order 13132.

6. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this final rule imposes no regulatory requirements or costs on any Tribal government. It does 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, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000).

7. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This final rule is not subject to Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant, and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

10. 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective November 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 30, 2003.

Marianne Lamont Horinko,
Acting Administrator.

■ For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.38(b)(1) is amended by revising Footnote b. to read as follows:

§ 131.38 Establishment of numeric criteria for priority toxic pollutants for the State of California.

* * * * *

(b)(1) * * *

Footnotes to Table in Paragraph (b)(1):

* * * * *

b. Criteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board’s (SFRWQCB) 1986 Basin Plan that were adopted by the SFRWQCB and the State Water

Resources Control Board, approved by EPA, and which continue to apply. For copper and nickel, criteria apply to California waters except for waters south of Dumbarton Bridge in San Francisco Bay that are subject to the objectives in the SFRWQCB’s Basin Plan as amended by SFRWQCB Resolution R2–2002–0061, dated May 22, 2002, and approved by the State Water Resources Control Board. EPA approved the aquatic life site-specific objectives on January 21, 2003. The copper and nickel aquatic life site-specific objectives contained in the amended Basin Plan apply instead.

* * * * *

[FR Doc. 03–27949 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7583–1]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Gurley Pit Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Gurley Pit Superfund Site (Site), located two miles north of Edmondson, Arkansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality, have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8521 or 1–800–533–3508 (franke.ernest@epa.gov).