

rule approves state negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state declaration that a rule implementing a federal standard, is unnecessary and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This 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.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective January 29, 2002 unless EPA receives adverse written comments by December 31, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

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

Dated: November 14, 2001.

**Norman Niedergang,**

*Acting Deputy Regional Administrator,  
Region 5.*

For the reasons stated in the preamble, part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart O—Illinois

2. A new center heading and § 62.3335 are added to read as follows:

EMISSIONS FROM SMALL MUNICIPAL WASTE COMBUSTION UNITS WITH THE CAPACITY TO COMBUST AT LEAST 35 TONS PER DAY OF MUNICIPAL SOLID WASTE BUT NO MORE THAN 250 TONS PER DAY OF MUNICIPAL SOLID WASTE AND COMMENCED CONSTRUCTION ON OR BEFORE AUGUST 30, 1999

#### § 62.3335 Identification of plan—negative declaration.

On June 25, 2001, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as small Municipal Waste Combustors are located in the State of Illinois.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 281

[FRL-7110-8]

#### Minnesota; Final Approval of State Underground Storage Tank Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on the State of Minnesota's application for final approval.

**SUMMARY:** The State of Minnesota has applied for approval of its Underground Storage Tank Program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Minnesota's application and has reached a final determination that Minnesota's Underground Storage Tank Program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is granting final approval to the State of Minnesota to operate its Underground Storage Tank Program for petroleum and hazardous substances.

**EFFECTIVE DATE:** Final approval for the State of Minnesota's Underground Storage Tanks Program shall be effective on December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886-6136.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA)

authorizes the Environmental Protection Agency (EPA) to approve State Underground Storage Tank Programs to operate in the State in lieu of the Federal Underground Storage Tank (UST) Program. To qualify for final authorization, a State's Program must: (1) Be "no less stringent" than the Federal Program for the seven elements set forth at RCRA Section 9004(a) (1) through (7); and (2) provide for adequate enforcement of compliance with UST standards of RCRA Section 9004(a). Note that RCRA Sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in States with Programs approved by the EPA under RCRA Section 9004. Thus, the Agency retains its authority under RCRA Sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

On May 11, 2000, the State of Minnesota submitted an official application to obtain final program approval to administer the Underground Storage Tank Program for petroleum and hazardous substances. On August 6, 2001, the EPA published a tentative decision announcing its intent to grant Minnesota final approval. Further background on the tentative decision to grant approval appears at 66 FR 40954-40957, August 6, 2001.

Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application. The EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. Since there was no public request, the public hearing was cancelled. No public comments were received regarding the EPA's approval of Minnesota's Underground Storage Tank Program.

The State of Minnesota is not approved to operate the Underground Storage Tank Program in Indian Country within the State's borders.

## B. Decision

I conclude that the State of Minnesota's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Minnesota is granted final

approval to operate its Underground Storage Tank Program for petroleum and hazardous substances. The State of Minnesota now has the responsibility for managing all regulated underground storage tank facilities within its border and carrying out all aspects of the Underground Storage Tank Program except with regard to Indian Country where the EPA will have regulatory authority. Minnesota also has primary enforcement responsibility, although the EPA retains the right to conduct enforcement actions under Section 9006 of RCRA.

## C. Administrative Requirements

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal Governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Local, and Tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal Governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling Officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local or Tribal Governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. Minnesota's participation in the EPA's State Program approval process under RCRA Subtitle I is voluntary. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own and/or operate underground storage tanks, they are already subject to the regulatory requirements under the existing State requirements that the EPA is now approving and, thus, are not subject to any additional significant or unique requirements by virtue of this action. Thus, the requirements of Section 203 of the UMRA also do not apply to today's rule.

### *Regulatory Flexibility Act (RFA) (as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that own and/or operate underground storage tanks are already subject to the State underground storage

tank requirements which the EPA is now approving. This action merely approves for the purpose of RCRA Section 9004 those existing State Requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13045 (Children's Health)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a State program.

*Compliance With Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the 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 does not have Tribal implications. It 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. Minnesota is not approved to implement the RCRA Underground Storage Tank Program in Indian Country. This action has no effect on the Underground Storage Tank Program that the EPA implements in the Indian Country within the State. Thus, Executive Order 13175 does not apply to this rule.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the 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."

Under Section 6 of Executive Order 13132, the EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and Local Governments, or EPA consults with State and Local Officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has Federalism implications and that preempts State

law unless the Agency consults with State and Local Officials early in the process of developing the proposed regulation.

This action does not have Federalism implications. It 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, because it affects only one State. This action simply provides the EPA approval of Minnesota's voluntary proposal for its State Underground Storage Tank Program to operate in lieu of the Federal Underground Storage Tank Program in that State. Thus, the requirements of Section 6 of the Executive Order do not apply.

*National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, § 12(d) (15 U.S.C. 272) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*Executive Order 13211 (Energy Effects)*

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

**List of Subjects in 40 CFR Part 281**

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: November 14, 2001.

**Norman Niedergang,**

*Acting Regional Administrator, Region V.*

[FR Doc. 01-29778 Filed 11-29-01; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-7109-3]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final notice of deletion of the Fort Devens-Sudbury Training Annex Superfund Site from the National Priorities List.

**SUMMARY:** EPA-New England is publishing a direct final notice of deletion of the Fort Devens-Sudbury Training Annex Superfund Site (Site), located in Stow, Sudbury, Maynard, and Hudson, 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). This direct final notice of deletion is being published by EPA with the concurrence of the Commonwealth of Massachusetts, through the Department of Environmental Protection (MADEP) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective January 29, 2002 unless EPA receives adverse comments by December 31, 2001. 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:** Comments may be mailed to Christine Williams, Remedial Project Manager, U.S. Environmental Protection Agency-New England, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114-2023, (617) 918-1384, Fax (617) 918-1291, e-mail: [williams.christine@epa.gov](mailto:williams.christine@epa.gov)

**Information Repository:** Comprehensive information about the Site is available for viewing and copying at the Site information repository located at: Devens—RFTA, by appointment only Monday through Friday 8 am to 5 pm, (978) 796-3835 or (978) 796-2205.

**FOR FURTHER INFORMATION CONTACT:**

Christine Williams, Remedial Project Manager, U.S. Environmental Protection Agency, One Congress Street, Suite 1100 (HBT), Boston, Massachusetts 02114-2023, (617) 918-1384, Fax (617) 918-1291, e-mail: [williams.christine@epa.gov](mailto:williams.christine@epa.gov)

**SUPPLEMENTARY INFORMATION:****Table of Contents**

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

**I. Introduction**

EPA-New England is publishing this direct final notice of deletion of the Ft-Devens Sudbury Training Annex 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 § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 29, 2002 unless EPA receives adverse comments by December 31, 2001 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 notice or the notice of intent to delete, 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 be no 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 Ft-Devens Sudbury Training Annex Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the site from the NPL unless adverse comments are received during the public comment period.

**II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has 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 action remains protective of public health and the environment. In the case of this Site, a five-year review is necessary since all hazardous substances, pollutants and contaminants have not been removed from the Site. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without the application of the hazard ranking system.

In the case of the Ft. Devens Sudbury Training Annex, the selected remedies are protective of human health and the environment. The Army will maintain the landfill cover and will perform long-