

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 131

[FRL-7519-4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend 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." Thereafter, on May 22, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region (the RWQCB), adopted amendments to its Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The amendments contained 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. The State of California's State Water Resources Control Board (SWRCB) and Office of Administrative Law (OAL) then reviewed and approved the Basin Plan amendments containing the site-specific objectives. On January 9, 2003, the SWRCB submitted the Basin Plan amendment containing 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. In this proposed rule, EPA is proposing to withdraw the copper and nickel aquatic life criteria for south San Francisco Bay from the CTR.

DATES: All written comments received on or before July 25, 2003, will be considered in preparation of the final rule. Comments postmarked after this date may not be considered.

ADDRESSES: You should address written comments to Diane E. Fleck, P.E., Esq., Water Division (WTR-2), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attention Docket ID No. OW-2003-0015. Please send an original and three copies of comments and enclosures (including references). You may also submit comments electronically or through hand-delivery or courier. Follow the detailed instructions as provided under "How and To Whom to Submit Comments."

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 Brian Thompson at U.S. EPA Headquarters, Office of Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (tel: 202-566-0382, fax: 202-566-0409) or e-mail at Thompson.Brian@EPA.gov.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

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

How To Obtain 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. PST to 4:30 p.m. PST, Monday through Friday, excluding legal holidays. A reasonable fee will 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 submit or 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. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work towards providing electronic access to all of the publicly available docket materials through the EPA electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the

version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available through the docket facility.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

How and To Whom To Submit Comments

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." While EPA is not required to consider these late comments, we will make every attempt to consider them.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKETS.* Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID OW-2003-0015. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to Fleck.Diane@EPA.gov, Attention Docket ID No. OW-2003-0015. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the address identified in the following paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Diane E. Fleck, P.E., Esq., Water Division (WTR-2), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attention Docket ID No. OW-2003-0015.

3. *By Hand Delivery or Courier.* Deliver your comments to the address identified in the preceding paragraph, attention Docket ID OW-2003-0015. Such deliveries are only accepted during the docket's normal hours of operation from 8:30 a.m. PST to 4:30 p.m. PST, Monday through Friday, excluding legal holidays.

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 is 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).

In a rulemaking similar to the CTR, EPA determined that if the State's criteria were no less stringent than the promulgated Federal criteria, EPA would withdraw its criteria without notice and comment. However, if the State adopted criteria that were less stringent than the Federally-promulgated criteria, but in the Agency's judgment fully met the requirements of the Act, EPA would provide an opportunity for public comment before withdrawing the Federally-promulgated criteria (see 57 FR 60860, December 22, 1992). 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.

In today's action, EPA is proposing to amend the CTR by withdrawing aquatic life copper and nickel criteria applicable to south San Francisco Bay, California.

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 and submitted the revised Water Quality Control Plan to EPA on January 9, 2003. The aquatic life water quality criteria for copper contained in the CTR table at 40 CFR 131.38(b)(1) for saltwater are: 4.8 ug/l dissolved acute (exposure for a short period of time) and 3.1 ug/l dissolved chronic (exposure for an extended [4 day] period of time). The aquatic life water quality criteria for

nickel contained in the CTR table at 40 CFR 131.38(b)(1) for saltwater are: 74 ug/l dissolved acute (exposure for a short period of time) and 8.2 ug/l dissolved 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 (or 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 copper adopted by the State of California and approved by EPA for south San Francisco Bay are: 10.8 ug/l dissolved acute (exposure for a 1 hour average period of time) and 6.9 ug/l dissolved chronic (exposure for a 4 day average period of time). The aquatic life water quality objectives for nickel adopted by the State of California and approved by EPA for south San Francisco Bay are: 62.4 ug/l dissolved acute (exposure for a 1 hour average period of time) and 11.9 ug/l dissolved chronic (exposure for a 4 day average period of time).

Under the procedures set out in the National Toxics Rule, published 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.

On October 17, 2002, the State Water Resources Board adopted the site-specific objectives for copper and nickel in the lower south San Francisco Bay. The objectives were subsequently submitted to EPA on January 9, 2003, for its review and approval. EPA recognizes that three out of the four California criteria for copper and nickel are less stringent than the federally CTR promulgated criteria. 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 met the requirements of the Clean Water Act. EPA approved California's water quality objectives on January 21, 2003. Therefore, EPA 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, EPA is requesting comments on its action to withdraw copper and nickel criteria from the CTR. EPA will address public comments in a subsequent final rule based on this proposed rule. Any parties interested in commenting must do so at this time.

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 proposed 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 proposing to withdraw 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 proposed 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) (Public Law 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and 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.

List of Subjects in 40 CFR Part 131

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

Dated: June 20, 2003.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is proposed to be 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):

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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.

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[FR Doc. 03–16231 Filed 6–24–03; 8:45 am]

BILLING CODE 6560–50–P