

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). This action merely approves a state rule implementing a Federal standard, 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 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan 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 state plan 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 state plan 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. 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. 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).

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 March 15, 2004. 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, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: December 29, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 04-889 Filed 1-14-04; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[Region 2 Docket No. PR11-267w, FRL-7610-4]

#### Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico Removal of Direct Final Rule

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

**ACTION:** Removal of direct final rule.

**SUMMARY:** Due to receipt of an adverse comment, EPA is removing the direct final rule which approved the "State Plan" submitted by the Commonwealth of Puerto Rico to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Commercial and Industrial Solid Waste Incineration (CISWI) units. The direct final rule was published on October 31, 2003 (68 FR 62019). As stated in the direct final rule, if adverse comments were received by December 1, 2003, a timely withdrawal would be published in the **Federal Register**. EPA subsequently received an adverse comment. EPA will address the comments in a subsequent final action based upon the proposed action also published on October 31, 2003 (68 FR 62040). EPA will not institute a second comment period on this action.

**DATES:** This action is effective January 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kirk Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381 or at [Wieber.Kirk@epa.gov](mailto:Wieber.Kirk@epa.gov).

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

Environmental protection, Air pollution control, Acid gases, Carbon monoxide, Commercial and industrial solid waste, Intergovernmental relations, Organics, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 29, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

■ 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. 7401-7671q.

#### Subpart BBB—Puerto Rico

■ 2. Subpart BBB is amended by removing § 62.13108 and the undesignated center heading.

[FR Doc. 04-892 Filed 1-14-04; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-7609-8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Selected Perimeter Area of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Selected Perimeter Area of the RMA/NPL Site poses no significant threat to public health or the environment and, therefore, no further

remedial measures pursuant to CERCLA are appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being deleted at this time. The rest of the On-Post and Off-Post OUs will remain on the NPL. This partial deletion of the Selected Perimeter Area will not change Appendix B of 40 CFR part 300, which was previously amended in January 2003 (68 FR 2699) to reflect that a partial deletion of 1.5 square miles from the RMA/NPL Site had occurred.

**EFFECTIVE DATE:** January 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Williams, Remedial Project Manager (8EPR-F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6660. Information on the RMA/NPL Site as well as the Deletion Docket and the Responsiveness Summary for this partial deletion are available at EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312-6473. The Administrative Record for the RMA/NPL Site, which includes the Deletion Docket and Responsiveness Summary for the partial deletion of the Selected Perimeter and Surface Deletion Areas, is maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022-1748, (303) 289-0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

**SUPPLEMENTARY INFORMATION:** The Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site is located in southern Adams County, Colorado, approximately eight miles northeast of downtown Denver. The On-Post operable unit (OU) of the RMA/NPL Site addresses the source areas of contamination within the boundaries of RMA proper. The Off-Post OU addresses contamination north and northwest of the RMA proper boundaries. The Selected Perimeter Area consists of 4,930 acres along the perimeter of the On-Post OU in Commerce City, Colorado.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of

the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being deleted at this time. The Off-Post OU and the rest of the On-Post OU will remain on the NPL.

On July 28, 2003, EPA published a Notice of Intent for Partial Deletion (NOIDp) in the **Federal Register** (68 FR 44259) and local newspapers which proposed to delete the Selected Perimeter Area from the RMA/NPL Site. Comments received during the public comment period primarily focused on the application of institutional controls and five-year reviews once the proposed property is deleted, as well as understanding how the boundaries of the Selected Perimeter Area were chosen. EPA also received 17 letters of support for proceeding with the partial deletion and two letters which provided recommendations but did not state a preference regarding the deletion.

In our Responsiveness Summary, EPA explained how institutional controls are currently in place for the entire On-Post OU as required by the 1989 Federal Facilities Agreement, 1992 RMA National Wildlife Refuge Act, and 1996 Record of Decision for the RMA/NPL Site. These documents require the transfer of the 100-foot wide areas along the perimeter of the On-Post OU to State/local governments for road widening "be subject to perpetual restrictions that are attached to any deed to such property." Use restrictions for the remainder of the deleted Selected Perimeter Area will be managed by the U.S. Fish and Wildlife Service as outlined in the Interim RMA Institutional Control Plan, in coordination with the U.S. Army. The effectiveness of the institutional controls will be assessed as part of five-year reviews.

Five-year reviews for the RMA/NPL Site are conducted in accordance with EPA's Comprehensive Five-Year Review Guidance. As the lead agency for the RMA/NPL Site, the Army is responsible for conducting each site-wide, five-year review regardless of land transfer. While the Army cannot transfer this responsibility, they can contract with another agency or third party to conduct the actual five-year review activities. The next year-long, five-year review process, which includes public participation, is expected to begin in late 2004 so it can be completed by the December 2005 schedule.

EPA's responsiveness summary further explained how only areas which met the criteria of "Responsible parties

or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)) were considered for deletion. Not all property that met the deletion criteria were included in EPA's proposal for deletion. However, the Selected Perimeter Area, in combination with the Surface Deletion Area, will allow the U.S. to effect the 1992 RMA National Wildlife Refuge Act and provide a direct benefit to communities adjacent to RMA by making the 100-foot-strips available for road widening which will ease access to Denver International Airport. The remainder of the Selected Perimeter and Surface Deletion Areas will provide for the establishment of a refuge of significant size encompassing the southern zone and the existing Visitor Center, the areas of highest public use.

The 17 entities who support the partial deletion cited their confidence in the environmental studies and the thoroughness of the cleanup activities conducted by the Army and Shell to meet standards set by EPA, the State of Colorado, and the Tri-County Health Department. EPA agrees that completion of the remedy requirements as well as recent site-wide studies adequately demonstrate that the Selected Perimeter Area does not present a threat to the environment or human health and it is appropriate to delete the Selected Perimeter Area from the RMA/NPL Site.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

#### **Lists of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 5, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

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