

that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 15, 2004. This will incorporate SJVUAPCD Rule 1002 into the federally-enforceable SIP. There are no sanction or FIP clocks associated with our previous action on this rule.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). 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 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. 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. 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 2, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(320)(i)(A)(2) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(320) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Rule 1002, adopted on February 22, 1989 and revised on April 16, 2003.

\* \* \* \* \*

[FR Doc. 04-836 Filed 1-14-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region 2 Docket No. NY66-271a, FRL-7610-5]

### Approval and Promulgation of State Plans for Designated Facilities; New York

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines, as promulgated by EPA. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants. The State Plan revision consists of moving the federally approved MSW requirements from Subpart 360-2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) to Part 208 of title 6 NYCRR.

**DATES:** This direct final rule is effective on March 15, 2004, without further notice, unless EPA receives adverse comment by February 17, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Electronic comments could be sent either to [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007-1866.

New York State Department of  
Environmental Conservation, Division  
of Air Resources, 625 Broadway,  
Albany, New York 12233.

Environmental Protection Agency, Air  
and Radiation Docket and Information  
Center, Air Docket (6102), 401 M  
Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Kirk  
Wieber, Air Programs Branch,  
Environmental Protection Agency,  
Region 2 Office, 290 Broadway, 25th  
Floor, New York, New York 10007-  
1866, (212) 637-3381 or  
[Wieber.Kirk@epa.gov](mailto:Wieber.Kirk@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On July 19, 1999 (64 FR 38582), EPA conditionally approved and subsequently on May 10, 2001 (66 FR 23851), EPA fully approved the New York State Plan for regulating existing Municipal Solid Waste (MSW) Landfills. The reader is referred to the July 19, 1999 and May 10, 2001, rulemaking actions for a more detailed description and the rationale of EPA's approval of the New York MSW Landfills State Plan. As part of that State Plan, New York adopted revisions to State rules to control air emissions from

existing landfills in the State. The New York State rules for MSW Landfills were primarily found in Subpart 360-2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) of the State of New York, entitled "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills". On July 19, 1999, EPA approved the revisions to Part 360-2.21 as meeting EPA guidelines and policy.

##### **II. State Submittal**

On December 24, 2001, and supplemented on June 25, 2003, New York submitted to EPA a revision to the State Plan for MSW Landfills. The revision consisted of the adoption of Part 208, of title 6 NYCRR, entitled, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" and the removal of Subpart 360-2.21. Part 208 replaces the MSW landfill provisions that were previously contained in Subpart 360-2.21. New York made this change because the MSW landfill requirements would be more effectively implemented under the State "Air Regulations", *i.e.*, Part 200 series of regulations of title 6 NYCRR rather than the State "Solid Waste Management Regulations", *i.e.*, Part 360 series of regulations of title 6 NYCRR. Specifically, this change would avoid duplication of conditions of permits and duplication of effort between the State Divisions of Air Resources and Solid and Hazardous Materials. The only difference among the two rules is the addition of compliance milestones into Part 208, as required by 40 CFR 60.23 for all state plans. These milestones specify the increments of progress a landfill must achieve between the time the landfill first becomes subject to Part 208 and the time it is in compliance with Part 208.

##### **III. Conclusion**

EPA has evaluated New York's revision to the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Clean Air Act, EPA guidelines and policy. EPA has determined that removal/relocation of the MSW Landfill requirements from Subpart 360-2.21 of title 6 NYCRR entitled, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" to Part 208 of title 6 NYCRR entitled, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" is approvable.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed

rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective March 15, 2004, without further notice unless the Agency receives adverse comments by February 17, 2004.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

##### **IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 tribal implications because it will 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). New York's State plan applies to all affected sources regardless of whether it has been identified in its plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications nor does 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). 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]

BILLING CODE 6560-50-P

### 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]

BILLING CODE 6560-50-P

### 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