

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[WI69-01-7295b; FRL-5552-2]

Approval and Promulgation of Implementation Plan; Wisconsin; Site-Specific SIP Revision for the GenCorp Inc.-Green Bay Facility**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on November 17, 1995. This revision is an alternative control method for controlling volatile organic compound (VOC) emissions from storage tanks at the GenCorp Inc.-Green Bay facility. The EPA has approved Wisconsin's general rule for the storage of VOCs. The approved rule states that any deviation from the specifically required control methods found in the State's rule must be proven to be equivalent in controlling the VOC emissions before being approved into the SIP. Because GenCorp Inc. has chosen a different control method than those listed specifically in Wisconsin's rule, a site-specific SIP revision is required to evaluate the control method being used at the Green Bay facility.

In the final rules of this Federal Register, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by September 30, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. EPA, Region 5, Air and Radiation Division, 77 West

Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. EPA, Region 5, Chicago, Illinois 60604, (312) 353-6960.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 5, 1996.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 96-21909 Filed 8-28-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5559-2]

Clean Air Act Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the South Coast Air Quality Management District (South Coast or District) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of South Coast's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this Federal Register, EPA is promulgating interim approval of South Coast's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 30, 1996.

ADDRESSES: Written comments on this action should be addressed to: Ginger Vagenas, Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415/744-1252), Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 14, 1996.

Felicia Marcus,
Regional Administrator.

[FR Doc. 96-21951 Filed 8-28-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 131

[FRL-5601-8]

Water Quality Standards for Pennsylvania**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule and request for comments.

SUMMARY: EPA is proposing water quality standards that would be applicable to waters of the United States in the Commonwealth of Pennsylvania. The proposed standards address aspects of Pennsylvania's water quality standards that EPA disapproved in 1994. EPA is taking this action at this time pursuant to a court order. The proposed standards would establish an antidegradation policy, making available additional water quality protection than currently provided by Pennsylvania's "Special Protection Waters Program."

DATES: EPA will hold a public hearing on its proposed actions on October 16, 1996 from 1 PM to 4 PM. EPA will consider written comments on the proposed actions received by October 16, 1996.

ADDRESSES: Comments should be addressed to Evelyn S. MacKnight,

Chief, PA/DE Branch, Office of Watersheds, 3WP11, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. The public hearing will be held at the Hilton Hotel, at One North Second Street, Harrisburg, PA 17101. This action's administrative record is available for review and copying at Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. For access to the docket materials, call Denise Hakowski at 215-566-5726 for an appointment. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Evelyn S. MacKnight, Chief, PA/DE Branch, 3WP11, Office of Watersheds, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA. telephone: 215-566-5717.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

Today's proposal would establish a Federal antidegradation policy applicable to waters of the United States in the Commonwealth of Pennsylvania. Entities potentially affected by this action are those dischargers (e.g., industries or municipalities) that may request authorization for a new or increased discharge of pollutants to waters of the United States in Pennsylvania. This list is not intended to be exhaustive, but rather a guide for readers regarding entities potentially affected by this action. Other types of entities not listed could also potentially be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), States are required to develop water quality standards for waters of the United States within the State. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA reviews the submittal and makes a determination whether to approve or disapprove any new or revised standards.

Minimum elements which must be included in each State's water quality standards regulations include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those designated uses, and an antidegradation policy consistent with

EPA's water quality standards regulations (40 CFR 131.6). States may also include in their standards policies generally affecting the standards' application and implementation (40 CFR 131.13). These policies are subject to EPA review and approval (40 CFR 131.6(f), 40 CFR 131.13).

Today's proposed rule involves antidegradation. 40 CFR 131.12 requires States to adopt antidegradation policies that provide three levels of protection of water quality. Under 40 CFR 131.12(a)(1), referred to as Tier 1, existing instream water uses and the level of water quality necessary to protect the existing uses are to be maintained and protected. Existing uses are those uses that existed on or since November 28, 1975. Tier 1 represents the "floor" of water quality protection afforded to all waters of the United States. Under 40 CFR 131.12(a)(2), referred to as Tier 2 or High Quality Waters, where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

Finally, under 40 CFR 131.12(a)(3), known as Tier 3 or Outstanding National Resource Waters (ONRWs), where a state determines that high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Section 303(c)(4) (33 U.S.C. 1313(c)(4)) of the CWA authorizes EPA to promulgate water quality standards for a State when EPA disapproves the State's water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed in a State to meet the CWA's requirements.

In June 1994, EPA Region 3 disapproved portions of Pennsylvania's standards pursuant to Section 303(c) of

the CWA and 40 CFR 131.21, including portions of the antidegradation policy, known in Pennsylvania as the Special Protection Waters Program, relating to protection of existing uses, criteria used to define High Quality Waters and protection afforded to Exceptional Value Waters as equivalent to ONRWs.

The Pennsylvania Department of Environmental Protection ("Pennsylvania" or "the Department") responded to EPA's disapproval on September 2, 1994. In that letter, the Department made a commitment to consider enhancements to Pennsylvania's High Quality Waters program through a public review and discussion process. At that time, the Department stated it did not intend to reconsider the protection of existing uses or the protection of ONRWs because it felt that existing authorities met the intent of EPA's regulation. Since that time, the Department has initiated a regulatory negotiation process which is considering changes to all three tiers of Pennsylvania's antidegradation policy. By letter dated October 5, 1994, EPA determined that Pennsylvania had not issued new or revised water quality standards that addressed its disapproval of the antidegradation policy elements.

Following a public meeting on January 11, 1995, and a public hearing on April 20, 1995, Pennsylvania offered to EPA a plan to reassess its antidegradation policy, or Special Protection Waters Program. Pennsylvania initiated a regulatory negotiation, or "reg-neg", to involve stakeholders in the process. The reg-neg group began meeting in June 1995 and issued an interim report on April 1, 1996, recommending to Pennsylvania officials how some provisions of the Commonwealth's regulation should be changed. EPA has participated in the reg-neg process in an advisory capacity and informed the reg-neg group of this rulemaking action.

Based on these negotiations, the Department announced in the Pennsylvania Bulletin, May 4, 1996, the availability of proposed changes to the antidegradation provisions of the Commonwealth's water quality standards. The Department also held a public hearing on June 18, 1996, to seek comment on those regulations. EPA is continuing to work with Pennsylvania in reviewing any proposed or final changes to Pennsylvania regulations. The reg-neg group met on August 1, 1996 to discuss its final recommendations. The group decided that the member organizations of the reg-neg group would submit separate reports to the Department to offer

recommendations in the Commonwealth's regulation.

On April 18, 1996, concerned with the time that had elapsed since EPA's disapproval, the United States District Court for the Eastern District of Pennsylvania ordered EPA to prepare and publish proposed regulations setting forth revised or new water quality standards for the Commonwealth's antidegradation provisions disapproved in June 1994. *Raymond Proffitt Foundation v. Browner*, Civil Docket No. 95-0861 (E. D. Pa.). The court stated that EPA was not to delay its rulemaking anymore to accommodate the Commonwealth's schedule. Consistent with the Court's order, this Federal Register notice proposes standards related to Pennsylvania's antidegradation policy.

EPA's long-standing practice in the water quality standards program has been to suspend adoption of Federal rules if a State adopts appropriate rules and EPA approves them during the Federal promulgation process. In addition, if a State adopts rules that are approved by EPA following a final Federal promulgated rule, EPA's practice is to withdraw the Federal rule. Thus, notwithstanding today's proposal, EPA strongly encourages the Commonwealth to pursue its on-going effort to adopt appropriate standards which will make Federally promulgated standards unnecessary.

C. Proposed Standards

1. Ensuring That Existing Uses Will Be Maintained and Protected as Required Under 40 CFR 131.12(a)(1)

In June 1994, EPA, Region 3, disapproved Pennsylvania's water quality standards at 25 PA Code §§ 93.1, 93.4 and 93.9 because those provisions taken together do not ensure full consistency with the broad protection required by Tier 1 of the Federal antidegradation requirements, which requires that existing uses shall be maintained and protected. See 40 CFR 131.12(a)(1).

Pennsylvania's definition of existing uses in 25 PA Code 93.1 is consistent with Federal regulations and was approved by EPA in June 1994. However, Pennsylvania's regulations in 25 PA Code § 93.4(d)(1) make the application of that existing use definition inconsistent with Federal requirements. Pennsylvania regulation at 25 PA Code § 93.4 explicitly protects existing uses only through Pennsylvania's designated use process. Specifically, Pennsylvania's regulation at 25 PA Code § 93.4(d)(1) provides that when an evaluation of technical data

establishes that a waterbody attains the criteria for an existing use that is more protective of the waterbody than the current designated use, that waterbody will be protected at its existing use until the conclusion of a rulemaking action. After the rulemaking action the waterbody will be protected only at its designated use.

In some cases the designated use will not adequately protect the existing use. For instance, Pennsylvania regulation requires that the waterbody attain the criteria for the more protective designated use as a condition of upgrading to that more protective use. In cases where the existing use is not protected by the current (lower) designated use, and the waterbody does not attain criteria necessary for the higher designated use, the existing uses may not be adequately protected. Even where the Department has identified that an existing use merits additional protection and where the technical evaluation of water quality allows for an upgraded designated use, there is no requirement that the Commonwealth permanently protect the existing use. The overall effect of Pennsylvania's regulation is that if the Commonwealth, in its rulemaking proceeding, does not revise its designated use to protect the existing use, that existing use would not thereafter be afforded adequate protection.

Pennsylvania's September 2, 1994 response to EPA's disapproval expressed the view that its approach to the protection of existing uses is substantially equivalent to the Federal regulation, and is actually preferable to the EPA approach because of its technical justification requirements and public participation requirements. Although EPA believes that Pennsylvania's regulatory procedure to compare use designations with existing uses is an appropriate step in updating use designations, Federal regulations do not allow existing use protection to be removed as could occur through Pennsylvania's use designation rulemaking.

EPA's guidance interprets the Tier 1 antidegradation policy to require that "[n]o activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use whether or not that use is designated in a State's water quality standards." See EPA's "Questions & Answers on: Antidegradation" August 1985, page 3. The purpose of Tier 1 of the antidegradation policy is to maintain and protect the existing uses and the water quality necessary to sustain the existing uses. Tier 1 protection applies to all waters,

including those waters that have exceptionally good water quality and also to those that presently do not meet water quality standards.

In order to ensure that the standards governing Tier 1 antidegradation protection in Pennsylvania are consistent with the CWA, EPA is proposing to adopt language that ensures existing uses shall be maintained and protected in accordance with 40 CFR 131.12(a)(1). This regulation, if finalized, will be the applicable antidegradation Tier 1 policy in Pennsylvania notwithstanding differences with Pennsylvania Regulations at 25 PA Code 93.4(d)(1). The practical effect of the language will be to protect all existing uses, including providing protection for existing uses that may be more specific, or require more protection, than Pennsylvania's designated uses.

Pennsylvania has recently proposed changes to its antidegradation policy that would protect existing uses without formal rulemaking through Pennsylvania's use designation process. See 25 *Pennsylvania Bulletin* 2131-32 (May 4, 1996). If Pennsylvania promulgates this proposal as a final rule, it may make a Federal promulgation unnecessary.

2. Ensuring the Pennsylvania's High Quality Designation Adequately Protects All Waters That Qualify for Protection Under the Federal Tier 2 Set Forth in 40 CFR § 131.12(a)(2)

In order to afford equivalent protection to that afforded by Tier 2 of the Federal policy set forth in 40 CFR § 131.12(a)(2), Pennsylvania has developed a Special Protection Waters Program which utilizes the designational approach, i.e., designates specific waters as High Quality. The High Quality Waters Policy is set forth in 25 PA Code §§ 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Waters Handbook (November 1992). High Quality Waters are defined in Pennsylvania's water quality standards as "[a] stream or watershed which has excellent quality waters and environmental or other features that require special water quality protection". 25 Pa Code § 93.3. Once designated as High Quality, those waters are afforded a level of protection consistent with EPA's Tier 2.

In June 1994, EPA disapproved a portion of Pennsylvania's High Quality Waters Policy because the policy requires that a stream must possess "excellent quality waters and environmental or other features * * *" to receive Special Protection. That definition may exclude waters that

would be protected under the Federal Tier 2 policy. The Federal policy provides Tier 2 protections to all waters with water quality exceeding levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. In contrast, Pennsylvania's High Quality Waters Policy also requires such waters to include "environmental or other features that require special water quality protection."

Pennsylvania's 1994 305(b) report indicates that Pennsylvania's more restrictive policy can be under protective. Of the 24,947 stream miles assessed (out of 53,962 total miles), 20,307 fully support Pennsylvania's designated stream uses; in contrast, Pennsylvania's current program only protects approximately 13,000 stream miles as High Quality and 1300 as Exceptional Value. In addition, various Department Special Protection water quality reports cite water quality data showing that specific waters had excellent water quality but still did not receive High Quality protection because of a lack of other environmental, recreational or special amenities.

The proposed Federal rule makes available Federal Tier 2 protection for Pennsylvania waters on the basis of water quality alone. EPA is proposing to accomplish that by promulgating the language in 40 CFR 131.12(a)(2). This promulgation would have the effect of making Tier 2 protection available to all waters whose quality "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water."

Another option for accomplishing this would be simply to promulgate the definition of High Quality Water from 25 Pa Code § 93.3 but without the phrase "and environmental or other features which require special criteria." EPA seeks comments on each of these options.

Under either option, the current State process for reviewing proposals to lower water quality would be unchanged; the only effect of the Federal promulgation would be to require that waters whose quality exceeds water quality standards not be prevented from being protected at the High Quality designation because they lack "environmental or other features".

In Pennsylvania's September 2, 1994 response to EPA's disapproval, the Department indicated that it would consider enhancements to its High Quality Waters program. However, due to the potential effects of such a change, Pennsylvania wanted to provide an opportunity for public review and discussion of alternatives prior to

proposing regulatory changes. As discussed above, the Department convened a group of interested stakeholders representing conservationists, the regulated community and government (including EPA) in a regulatory negotiation process. The group discussed a variety of options for drafting a new High Quality Waters regulation, including revising the High Quality Waters definition to delete the requirements for "and environmental or other features." See 25 *Pennsylvania Bulletin* 2131-32 (May 4, 1996). If Pennsylvania were to finalize this proposal prior to the completion of the Federal rulemaking, it may make the Federal promulgation unnecessary.

3. Ensuring That Pennsylvania's Highest Quality Waters May Be Provided a Level of Protection Fully Equivalent to Tier 3 of the Federal Policy

Pennsylvania considers its Exceptional Value Waters designation as part of the Special Protection Waters Program to be equivalent to Tier 3. The Exceptional Value Policy is set forth in 25 PA Code §§ 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Handbook, which contains implementation procedures for Exceptional Value protection. The Code and the Handbook must be read together to understand the effect of the Exceptional Value policy.

As described in the Handbook, Pennsylvania requires Exceptional Value Waters to be protected at their existing quality to the extent that no adverse measurable change in existing water quality would occur as a result of a point source permit. A change is considered measurable "if the long-term average in-stream concentration of the parameter of concern can be expected, after complete mix of stream and wastewater, to differ from the mean value established from historical data describing background conditions in the receiving stream" or at selected Pennsylvania reference sites.

This level of protection accorded to Exceptional Value Waters is not sufficient to assure that water quality shall be maintained and protected as required by the Federal Tier 3 requirement at 40 CFR 131.12(a)(3). For example, it may only protect against lowering of water quality when point sources are involved. 40 CFR 131.12 requires that water quality be maintained and protected; the pollutant source is not a determining factor. In addition, prohibited changes in water quality are based on measurable instream concentrations. For many pollutants, especially highly

bioaccumulative ones, using measurable instream concentration to detect change would not be appropriate because detection levels can be substantially higher than the instream concentrations and, in some cases, the criteria. In such circumstances, significant lowering of water quality, including exceedances of criteria, could occur without "measurable" instream concentrations changing as defined by Pennsylvania's rule. In such instances, control of discharge concentrations, rather than measurable instream concentrations, is appropriate.

Moreover, Pennsylvania's rule defines measurable change as based on a long-term average instream concentrations compared to mean historical data. In practice this can lead to significantly increased discharges and pollutant loads. Also, the concentration difference is determined "after complete mix of stream and wastewater". Depending on mixing characteristics, this "mixing zone" can be substantial and could constitute a large portion of the designated segment where significant lowering of water quality can occur. Any new or increased mixing zone will lower water quality in at least a portion of the waterbody. Finally, discharge permits for sewage treatment facilities handling less than 1000 gallons per day (gpd) and for storm water are exempt from the Exceptional Value requirements.

EPA disapproved the Commonwealth's Exceptional Value designation on June 6, 1994 because it does not fully satisfy Federal requirements for Tier 3 in 40 CFR 131.12(a)(3). While the Exceptional Value category is an excellent vehicle to provide protection to important waters in the Commonwealth, for the reasons above Pennsylvania's implementation of it is not entirely consistent with the requirements of 40 CFR 131.12(a)(3). EPA's recommendation that no new or expanded discharges should be permitted to Tier 3 waters, except for those discharges anticipated to be short-term or temporary in nature, reflects the fact that, based on the reasons above, in many circumstances "no new or increased discharge" is the only method to assure that water quality is fully maintained and protected in ONRWs.

In response to EPA's disapproval, Pennsylvania stated in its September 2, 1994 letter that it believed that EPA lacked the legal authority to compel the Commonwealth to adopt a "no discharge" approach. EPA's October 5, 1994, response to Pennsylvania explained that the practice of prohibiting discharges to ONRWs, while not specified in EPA's regulation, is the

recommended and most effective approach for ensuring that existing water quality is maintained.

EPA believes that, in practice, Pennsylvania's policy of "no adverse measurable change" could allow potentially significant discharges and loading increases from point and nonpoint sources. At the same time, Pennsylvania has been successful in designating approximately 1300 stream miles in the Commonwealth as Exceptional Value, often with significant controversy. EPA recognizes that this success might not have occurred if new discharges were strictly prohibited.

In light of this situation, EPA is proposing language that will create a new level of antidegradation protection in Pennsylvania, a level of protection above that afforded by the Exceptional Value designation. This proposal will provide Pennsylvania the opportunity to designate appropriate Pennsylvania waters as ONRWs, to which no new or expanded discharges would be allowed. This ONRW provision is not intended to replace or supplant the Exceptional Value category and designations already in place in Pennsylvania, but rather to supplement them. It would give the citizens of the Commonwealth the opportunity to request the highest level of protection be afforded to particular waters where appropriate. EPA would not designate waters as ONRWs; that would be the Commonwealth's prerogative.

EPA is proposing to accomplish this by promulgating language derived from 40 CFR 131.12(a)(3). The proposed language would state that where waters are identified by the Commonwealth as ONRWs, their water quality shall be maintained and protected. Consistent with the recommended interpretation in its National guidance, EPA Water Quality Standards Handbook at 4-8 (2nd ed. 1994), EPA would interpret that provision to prohibit, in waters identified by the Commonwealth as ONRWs, new or increased dischargers, aside from limited activities which have only temporary or short-term effects on water quality.

EPA notes that there may be other formulations that meet the requirements of 40 CFR 131.12(a)(3) and which provide a level of protection substantially equivalent to today's proposed rule. Pennsylvania's reg-neg group discussed this issue but did not reach an agreement to recommend that Pennsylvania create a new Tier 3 ONRW category of protection. If Pennsylvania adopts either EPA's recommended interpretation or such an alternative formulation, and it is approved by EPA

as meeting the requirements of 40 CFR 131.12(a)(3), EPA would expect to propose to withdraw this portion of its rule.

EPA is seeking comment on its proposal to create a new category of protection for Pennsylvania waters, which would give the Commonwealth a mechanism to provide protection from new or increased discharges.

D. Relationship of This Rulemaking to the Great Lakes Water Quality Guidance

On March 23, 1995, pursuant to section 118(c)(2) of the CWA, EPA published Final Water Quality Guidance for the Great Lakes System (60 FR 15366), which applies to the Great Lakes System, including a small portion of Pennsylvania waters. The Guidance includes water quality criteria, implementation procedures and antidegradation policies, which are intended to provide the basis for consistent, enforceable protection for the Great Lakes System. In particular, the antidegradation requirements are more specific than those set out in 40 CFR 131.12. Pennsylvania and the other Great Lakes States and Tribes must adopt provisions into their water quality programs which are consistent with the Guidance, or EPA will promulgate the provisions for them.

Today's rulemaking, which is being undertaken pursuant to section 303 of the Act, is independent of, and does not supersede, the Guidance. Regardless of the outcome of today's rulemaking, Pennsylvania must still adopt an antidegradation policy for its waters in the Great Lakes Basin consistent with the Guidance, or EPA will promulgate such provisions for them. At that time, EPA will withdraw any portion of today's rule which is inconsistent with such Great Lakes provisions and which applies to Pennsylvania waters within the Great Lakes basin.

E. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), Federal agencies must assure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or adversely affect designated critical habitat of such species. Today's proposal would extend antidegradation protection for waters that presently may be unprotected or under-protected by Commonwealth-adopted standards potentially improving the protection afforded to threatened and endangered species. This action is consistent with comments made by the U.S. Fish and

Wildlife Service (FWS) regarding EPA's disapproval in June 1994.

EPA initiated section 7 informal consultation under the Endangered Species Act with the FWS regarding this rulemaking, and requested concurrence from the FWS that this action is unlikely to adversely affect threatened or endangered species. On July 31, 1996, the FWS sent a letter to EPA indicating that they could not concur with a finding of no adverse affect to threatened or endangered species. EPA may need to initiate formal consultation with the FWS if further discussions do not result in concurrence. The FWS has proposed five options that would allow it to make a "not likely to adversely affect" determination. Those options can be found in the FWS July 31, 1996 letter, and are included as part of the administrative record available at ADDRESSES above. EPA is also seeking comments on the five options that the FWS has proposed.

F. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether today's proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than \$100 million and would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866.

G. Executive Order 12875, Enhancing the Intergovernmental Partnership

In compliance with Executive Order 12875 EPA has involved State and local

governments in the development of this rule. Prior to this rulemaking action, EPA participated with the Pennsylvania Department of Environmental Protection and a group of stakeholders, which included governmental agencies, conservation groups, public interest groups and the regulated community, in a fourteen month regulatory negotiation (reg-neg) process. The reg-neg group was charged to recommend program modifications to Pennsylvania's regulations on antidegradation. The reg-neg process touched on many issues relevant to today's proposal, including a comprehensive discussion on the nature and intent of the Federal regulation. In preparing for today's proposal, EPA has also consulted with the Department extensively and informed them and the reg-neg group of our rulemaking process. EPA has scheduled a public hearing on the proposed action for October 16, 1996.

H. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency is required under 5 U.S.C. 553 to publish a general notice of rulemaking for any proposed rule, an agency must prepare an initial regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 & 605. The purpose of the RFA is to establish procedures that ensure that Federal agencies solicit and consider alternatives to rules that would minimize their potential impact on small entities.

EPA has determined that any costs imposed by this rule would not impose a significant impact on a substantial number of small entities. Therefore, for the reasons discussed in more detail below, no regulatory flexibility analysis has been prepared. Despite these conclusions, however, EPA has considered the potential effects of this rule on small entities to the extent that it can, and has included that analysis in the administrative record of this rulemaking. EPA specifically invites public comment on its determination.

First, the proposed changes with respect to Tier 3, ONRWs, in Pennsylvania will have no predictable economic impact on current dischargers who may be small entities. Promulgation of the proposed provision will merely result in an opportunity for the Commonwealth to provide a higher level of protection than presently available under the State regulation. By

itself, this rule does not impose any burdens on dischargers. Any economic impact on small entities in Pennsylvania would arise only as the result of future decisions by the Commonwealth which are not attributable to EPA's rulemaking action here. Furthermore, any economic impact is dependent on two unknown variables. The first is whether the Commonwealth, in fact, will choose to reclassify any Commonwealth waters as ONRWs. The second is whether, in the event of reclassification, any current, small entity discharger that wished to increase its discharges would need to install additional wastewater treatment in order to comply with ONRW limits. Because this rule does not impose any predictable impacts, EPA believes that no RFA analysis is required.

Second, with respect to Tier 2, High Quality Waters, this rule similarly does not impose any predictable impacts with the one exception described below. It is true that EPA's proposal would likely require the Commonwealth of Pennsylvania to increase the number of waters that are classified as High Quality Waters. However, any economic consequences that would flow from this are largely uncertain because they are wholly dependent on discretionary State decisions and the activities of individual dischargers.

Thus, in the event that some waters received Tier 2 protections as a result of today's rule, a discharger wishing to increase its discharge with a resulting degradation of a High Quality Water, could request Pennsylvania to authorize the discharge (and a resulting lowering of the water quality for the affected waters). If Pennsylvania granted the request, there would be no economic cost to the discharger other than the cost of its request to Pennsylvania. In the event Pennsylvania denied the request, the discharger would bear the cost of whatever additional controls are required to meet the standards for High Quality Water. Thus, depending on further action by the Commonwealth of Pennsylvania, there could be some or no economic consequences flowing from adoption of EPA's proposal. Given these facts, EPA cannot predict with any certainty the economic consequences of EPA's action, and consequently, concludes for purposes of this rulemaking, that no RFA analysis is required.

As noted, this proposal could increase the number of dischargers (and presumably small entity dischargers) having to supply the necessary documentation to support a request for a discharge that would lower water quality for new Tier 2 High Quality

Waters in Pennsylvania. EPA did examine the costs of making such submittals and concluded that, relying on conservative assumptions, this cost would not impose a significant economic impact on a substantial number of small entities.

Third, with respect to Tier 1, the proposal will not have a significant impact on a substantial number of small entities. Because of a number of factors, it is difficult to predict what, if any, effect the Tier 1 proposal would have on small entities. There is uncertainty whether any waterbodies will have existing uses not protected by current use designation. EPA expects this to be a rare occurrence. Since 1993, EPA has reviewed dozens of Pennsylvania stream use redesignations and has identified only three streams where the fishery designation would not fully protect the existing use; even in those cases, Pennsylvania adequately protected those fisheries as existing uses by changing the designation. Based on this information, EPA concludes that the Tier 1 proposal would not have a significant impact on a substantial number of small entities.

Accordingly, pursuant to section 605(b) of the RFA, the Administrator is certifying that today's proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities. EPA solicits public comment on EPA's analysis and conclusions conducted pursuant to the Regulatory Flexibility Act.

I. 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, 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 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 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 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 small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to antidegradation designations within the Commonwealth of Pennsylvania. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Paperwork Reduction Act

This proposed action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: August 22, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations 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 131.32 is added to read as follows:

§ 131.32 Pennsylvania.

(a) *Antidegradation policy.* This antidegradation policy shall be applicable to all waters of the United States within the Commonwealth of Pennsylvania, including wetlands.

(1) Existing in-stream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Commonwealth finds, after full satisfaction of the inter-governmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Commonwealth shall assure water quality adequate to protect existing uses fully. Further, the Commonwealth shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint sources.

(3) Where high quality waters are identified as constituting an outstanding National resource, such as waters of National and State parks and wildlife refuges and water of exceptional recreational and ecological significance, that water quality shall be maintained and protected.

(b) (Reserved)

[FR Doc. 96-21945 Filed 8-28-96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO-330-1020-00-24 1A]

RIN 1004-AB89

Grazing Administration, Exclusive of Alaska; Development and Completion of Standards and Guidelines; Implementation of Fallback Standards and Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Department of the Interior (Department) proposes to amend the livestock grazing regulations of the Bureau of Land Management (BLM) to allow the Secretary of the Interior (Secretary) discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the six month period ending August 12, 1997. The amendment would allow the Secretary to provide additional time for the BLM to collaborate with resource advisory councils (RACs) and the public to develop State or regional standards and guidelines. Without this proposed change to the regulations, fallback standards and guidelines would go into effect on February 12, 1997, despite the fact that work on State or regional standards and guidelines might be nearly complete.

DATES: Comments on the proposed rule must be received by September 30, 1996 to be assured of consideration. Comments received or postmarked after this date may not be considered in the preparation of the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, DC 20240, or the Internet address: WoComment@WO0033wp.wo.blm.gov. [For Internet, include "Attn: AB89", and your name and return address.] You may also hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC. Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Salt, (202) 208-4896.