

### B. Administrator's "Determination"

The CWA provides that the Administrator may determine that a revised or new standard is necessary to meet the requirements of the CWA. Section 303(c)(4)(B). If such a determination is made, EPA must promptly propose a revised or new federal standard to augment or replace the state's or authorized tribe's water quality standards, and promulgate the proposed standard within 90 days of proposal. See CWA 303(c)(4). Since this provision was enacted by Congress in 1972, there have been recurring instances of confusion or misunderstanding about what constitutes such a determination. EPA is considering clarifying in the water quality standards regulation that an Administrator's determination must be signed by the Administrator or his/her duly authorized designee, and must include a statement that the document constitutes a determination under section 303(c)(4)(B) of the CWA. In the listening sessions, EPA will invite views from the public on these changes.

### C. Designated Uses

Section 101(a)(2) of the Act establishes a goal, wherever attainable, of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. The water quality standards regulation requires that the state or authorized tribe perform a use attainability analysis (that is, a structured scientific assessment of factors affecting attainment of designated uses) and submit this assessment to EPA in order to remove certain designated uses, including any designated use that is specified as a national goal in section 101(a)(2) of the CWA. See 40 CFR 131.10. The regulation does not, however, specify which uses, if any, must be adopted to replace the use that is being removed. EPA is considering clarifying that designated uses reflecting the CWA 101(a)(2) goals of the CWA are presumed attainable unless otherwise demonstrated and that states and authorized tribes must designate such uses unless they have conducted a use attainability analysis to support a lesser designated use and EPA has approved that action. EPA is also considering clarifying that the highest attainable use(s) closest to the section 101(a)(2) goal must be adopted if a CWA 101(a)(2) goal use is unattainable. In the listening sessions, EPA will invite views from the public on these changes.

### D. Variances

The current regulation allows states and authorized tribes to adopt variances as general policies for applying and implementing their water quality standards. See 40 CFR 131.13. The regulation does not provide a definition of, a description of, or any requirements for the use of variances. EPA is considering establishing regulatory requirements for variances to ensure proper use of variances and reduce the possibility of inappropriate use. In the listening sessions, EPA will invite views from the public on these clarifications, and what the regulatory requirements should include.

### E. Triennial Reviews

The CWA and the current water quality standards regulation require states and authorized tribes to review their water quality standards at least once every three years, and modify standards or adopt new standards as appropriate. CWA 303(c); 40 CFR 131.20. EPA is considering revising the regulatory requirements to clarify that states and authorized tribes must solicit and consider public comments in determining the scope of each such triennial review. EPA is also considering establishing a new triennial review requirement that states and authorized tribes must evaluate whether their existing water quality criteria continue to be protective of designated uses, taking into consideration any new information, including EPA's most recent national recommended CWA 304(a) water quality criteria, that has become available since the state or tribal criteria were adopted or last revised. In the listening sessions, EPA will invite views from the public on these changes.

### F. Updates To Reflect Court Decisions

EPA is considering making three clarifications to the water quality standards regulation to codify the results of court decisions over the years. First, EPA is considering revising the definition of "water quality standards" in 40 CFR 131.3 to reflect the results of and EPA's actions on remand from *Florida Public Interest Research Group Citizen Lobby, Inc., Save our Suwannee, Inc., et al. v. EPA, et al.*, 386 F.3d 1070 (11th Cir. 2004) concerning Florida's Impaired Water Rule (IWR). That court decision and EPA's response to it more clearly define which of state or tribal provisions constitute water quality standards that need to be submitted to EPA for review and approval. EPA is considering revising 40 CFR part 131 to reflect these developments.

Second, EPA is considering specifying that authorizing provisions for

compliance schedules for implementing water quality-based effluent limits in NPDES permits must be adopted as part of a state's or tribe's water quality standards, and therefore be submitted to EPA for review and approval. See *In the Matter of Star-Kist Caribe, Inc.*, 1990 WL 324290 (EPA), 3 EAD 172 (April 16, 1990).

Third, EPA is considering clarifying that states and authorized tribes must submit to EPA records of public participation that has occurred in reviewing and revising state or tribal water quality standards. These records would include public comments, and the state's or tribe's responses to the comments. This change would reflect the results of *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996).

In the listening sessions, EPA will invite views from the public on these changes.

### IV. Other EPA Outreach

EPA expects to conduct outreach with additional stakeholders as well as local, state, and tribal governments before proposing any revisions to the water quality standards regulation. This outreach includes discussions and consultation with federally-recognized Indian tribes, consistent with Executive Order 13175 (Tribal Consultation); consultation with representatives of elected officials of state and local government, consistent with Executive Order 13132 (Federalism); and consultation with state water quality program officials as co-regulators. EPA will continue outreach efforts prior to finalizing any revisions.

Dated: July 22, 2010.

**Ephraim S. King,**

*Director, Office of Science and Technology.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1986-0005; FRL-9183-1]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Intent To Delete the SMS Instruments, Inc. Superfund Site

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, is issuing a Notice of Intent to Delete the SMS Instruments, Inc. Superfund Site (Site),

located in Deer Park, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate remedial actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by August 30, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1986-0005, by one of the following methods:

*Web site:* <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

*E-mail:* [dannenber.mark@epa.gov](mailto:dannenber.mark@epa.gov).

*Fax:* To the attention of Mark

Dannenberg at 212-637-3966.

*Mail:* To the attention of Mark Dannenberg, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007-1866.

*Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866 (*telephone:* 212-637-4308). Such deliveries are only accepted during the Records Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-1986-0005. EPA's policy is that all comments received will be included in the Docket without change and may be made available online at <http://www.regulations.gov>,

including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider CBI or otherwise protected through <http://www.regulations.gov> or via e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via e-mail, your e-mail address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD-ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

*Docket:* All documents in the Docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at <http://www.regulations.gov> or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866, *Phone:* 212-637-4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m.

and

New York State Department of Environmental Conservation, Region 1, SUNY @ Stony Brook, 50 Circle Road, Stony Brook, New York 11790, *Phone:* 631-444-0240.

**FOR FURTHER INFORMATION CONTACT:**

Mark Dannenberg, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S.

Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007-1866; telephone at 212-637-4251; fax at 212-637-3966; or e-mail at [dannenber.mark@epa.gov](mailto:dannenber.mark@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the SMS Instruments, Inc. Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Deletion Notice based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the "Rules" section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 20, 2010.

**Judith A. Enck,**

*Regional Administrator, EPA, Region 2.*

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