DATES: The hearing will be held on Thursday, February 29, 1996, from 9:00 am to 5:00 pm. The extension for the comment period will allow comments to be received by EPA on or before February 22, 1996.

In addition, pursuant to Section 307(d)(5), the public may submit rebuttal and supplemental information for thirty (30) days after the public hearing. This comment period will end on March 29, 1996.

ADDRESSES: The hearing will take place at the Marriott Hotel, 1999 Jefferson Davis Highway, in Arlington, Virginia (accessed from the Crystal City Metro stop). Comments should be submitted (in duplicate if possible) to: Central Docket Section, Environmental Protection Agency, Attn: Air Docket No. A–92–50, Washington, DC 20460. Docket A–92–50 contains the rulemaking record. The docket is available for public inspection between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC, 20460. A reasonable fee may be charged for copying. The fax number is (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton, Center for Federal Guidance and Air Standards, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, Washington, DC 20460, (202) 233–9773.

SUPPLEMENTARY INFORMATION: This meeting is open to any member of the public. As noted in the notice reopening the comment period (60 FR 50161, No. 188, September 28, 1995), requests to participate in the public hearing should be made in writing to the Director, Lawrence G. Weinstock, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, by February 15, 1996. Requests may also be faxed to EPA at (202) 233–9629 or 233–9626. Requests to participate in the public hearing should also include an outline of the topics to be addressed, the amount of time requested, and the names of the participants. EPA may also allow testimony to be given at the hearing without prior notice, subject to time restraints and at the discretion of the hearing officer. Three (3) copies of testimony should be submitted at the time of appearance at the hearings.

Dated: January 23, 1996.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 96–1557 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 131

[WH–FRL–5408–3]

Water Quality Standards for Surface Waters in Arizona

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 State of Arizona. The proposed standards address those six aspects of Arizona's water quality standards that EPA, Region 9 disapproved in 1993 and 1994. EPA is taking this action at this time pursuant to a court order to propose such standards by January 31, 1996. The proposed standards would establish standards for waters that are exempt from State-adopted standards due to a State rule related to mining, designate fish consumption as a use for certain waters, and make certain provisions in the State's standards related to ''practical quantitation limits'' inapplicable for Clean Water Act purposes. In addition, this notice proposes requirements related to implementation of certain narrative criteria in the State's standards, and solicits comment on the policies that EPA, Region 9, intends to use to implement these criteria as they relate to nutrients, chronic toxicity, and the effects of mercury on wildlife.

DATES: EPA will hold a public hearing on its proposed actions on February 29, 1996, in Phoenix, AZ. EPA will consider written comments on the proposed actions received by February 28, 1996, or March 8, 1996.

ADDRESSES: Comments should be addressed to Catherine Kuhlman, Chief, Permits and Compliance Branch, W–5, Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. The public hearing will be held February 29, 1996, from 2 p.m. to 4 p.m. at the Arizona Department of Environmental Quality (ADEQ) Public Meeting Room, South Mall, ADEQ, 3033 North Central Ave., Phoenix, AZ 85012. This action's administrative record is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. For access to the docket materials, call (415) 744–1978 for an appointment. In the event of a government shutdown, also call (415) 744–1978 for information. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Gary Wolinsky, Permits and Compliance Branch, W–5, Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, telephone: 415–744–1978.

SUPPLEMENTARY INFORMATION:

A. 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. Section 303(c) provides that a water quality standard shall include a designated use or uses to be made of the water and criteria necessary to protect the uses. 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 is to approve or disapprove any new or revised standards. Id.

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

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

In September 1993, EPA, Region 9, disapproved portions of Arizona's standards pursuant to section 303(c) of the CWA and 40 CFR 131.21. The portions of Arizona's standards disapproved in September 1993 relate to: The exclusion of mining-related impoundments from water quality standards; the absence of ''fish consumption'' as a designated use for certain water bodies; the absence of implementation procedures for the State's narrative nutrient standard; the absence of biomonitoring implementation procedures for the State's narrative toxicity criterion; and the inclusion of ''practical quantitation limits'' in Arizona's standards. In April

1994, EPA, Region 9, also disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

Arizona is addressing the disapproved elements during the course of its current triennial review of its standards. The Arizona Department of Environmental Quality (ADEQ) has held public meetings and received public comment and, on December 29, 1995, published proposed revisions to its standards. See, 1 Ariz. Admin. Reg. 2811. ADEQ has indicated that it intends as part of its current rulemaking to revise the provision exempting mining impoundments. ADEQ has also indicated that it intends to revise its standards to add the fish consumption use to waters which Arizona has already designated as having the aquatic and wildlife (cold water fishery) or aquatic and wildlife (warm water fishery) uses. ADEQ has also indicated that it intends to delete its list of practical quantitation limits (PQLs) from its water quality standards regulations. Under ADEQ's anticipated timetable, revised water quality standards pursuant to the current triennial review will become effective no later than October 1996.

In addition, ADEQ completed a ''use attainability analysis'' (UAA) related to the fish consumption use for effluent dominated waters, and a UAA related to fish consumption and full body contact uses for ephemeral waters in the State. EPA, Region 9, approved those UAAs in November 1995.

ADEQ is participating, with EPA, Region 9, and the U.S. Fish and Wildlife Service, in the development of an interim approach to protect predatory wildlife from mercury until appropriate numeric criteria can be developed. Moreover, ADEQ intends to complete implementation procedures for the State's narrative toxic and nutrient criteria. ADEQ is developing its guidance document pertaining to the narrative nutrient standard. ADEQ has also committed to develop implementation procedures for its narrative toxic criterion. ADEQ expects to submit the final guidance document pertaining to its narrative criterion to EPA no later than December 1996.

Although Arizona has made progress in revising its standards, it has not yet completed its process for revising the portions of the State's standards to address EPA, Region 9's disapprovals in September 1993 and April 1994.

On November 1, 1995, the United States District Court for the District of Arizona ordered EPA, within 90 days, to prepare and publish proposed regulations setting forth revised or new water quality standards for those standards disapproved in September 1993 and April 1994. *Defenders of Wildlife* v. *Browner,* Docket No. Civ 93–234 TUC ACM. Consistent with the Court's order, this Federal Register notice proposes standards related to the mining exclusion, fish consumption designated use, PQLs, and implementation policies and procedures as they relate to the disapproval. This notice also describes policies that EPA, Region 9, intends to use in order to implement State narrative criteria as they relate to toxicity, nutrients, and mercury. The Court's order also directs EPA to promulgate final water quality standards 90 days after proposal unless Arizona has adopted revised or new water quality standards which EPA determines are in accordance with the CWA.

Finally, it should be noted that EPA's longstanding practice in the water quality standards program is to remove any final federal rule after the State adopts appropriate rules which meet the CWA requirements and are approved by EPA. Thus, EPA strongly encourages the State to adopt appropriate standards so that EPA can remove any final rule adopted subsequent to this proposal.

B. Proposed Standards

1. Mining Exclusion

In September 1993, EPA, Region 9, disapproved the exclusion related to mining contained in the State's standards at Arizona Administrative Rules and Regulations, R18–11–103.2. That exclusion provides that Arizona's standards do not apply to:

> ''Man-made surface impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores, including pregnant leach solution ponds, raffinate ponds, tailing impoundments, decant ponds, concentrate or tailing thickeners, blowdown water ponds, ponds and sumps in mine pits associated with dewatering activity, ponds holding water that has come into contact with process or product and that is being held for recycling, spill or upset catchment ponds or ponds used for on-site remediation provided that any discharge from any such surface impoundment to a navigable water is permitted under the National Pollutant Discharge Elimination System program.''

In its December 1995 notice, ADEQ proposed to delete R18–11–103 in its entirety, and proposed to revise R18–11–102 to provide that Arizona's standards do not apply to:

> ''Man-made surface impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores, including pits, pregnant leach solution ponds, raffinate ponds, tailing impoundments, decant ponds, concentrate or tailing thickeners, blowdown water ponds, ponds and sumps in mine pits associated with dewatering activity, ponds holding water that has come in contact with process or product and that is being held for recycling, spill or upset catchment ponds, or ponds used for on-site remediation that are located on either lands that were not and are not surface waters or that are located on fast lands.''

Under the rules proposed by ADEQ in December 1995, the term ''fast lands'' means

> ''land that was once a surface water but no longer remains a surface water because it has been and remains legally converted to land by the discharge of dredged or fill material that: (1) Was authorized by a section 404 permit; (2) exempt from section 404 permit requirements; or (3) occurred before there was a section 404 permit requirement for the discharge of the dredged or fill material.''

See, proposed R18–11–101.24.

Under section 303 of the CWA, States must adopt standards for waters of the United States within the State. States need not adopt standards for any water body which is not a water of the United States. EPA has defined waters of the United States to include, among other waters, rivers and streams the use, degradation, or destruction of which would affect or could affect interstate commerce; impoundments of such waters are also waters of the United States. See, 40 CFR 122.2.

While many of the mining impoundments which Arizona apparently intended to exclude from standards by R18–11–103.2 may not be waters of the United States, the rule's blanket exemption does not distinguish among water bodies based upon their status as waters of the United States, and therefore has the potential to exclude from standards a water body that is a water of the United States. For example, mining-related impoundments made by damming a natural stream or river would appear to be exempt from Arizona's standards under R18–11–103.2 if any discharge from the impoundment is permitted under section 402 of the CWA or if the stream or river is fully dammed so that any release to a water of the United States is prevented.

In order to ensure that the standards governing waters of the United States in Arizona are consistent with the CWA, EPA is proposing to adopt standards for any waters of the United States not governed by State standards due to R18–11–103.2. Under the rule proposed by EPA, if a water of the United States governed by R18–11–103.2 is an impoundment of a water of the United States, it would have the standards of the water body impounded. If a water of the United States governed by R18–11–

103.2 is not such an impoundment, under the proposed rule it will have the standards of the waterbody to which it is a tributary. Under the proposed rule, only those water bodies which are waters of the United States will be governed by such standards. Water bodies described in R18–11–103.2 which are not waters of the United States are, of course, not subject to water quality standards under the CWA, including the standards that would be adopted in this rulemaking.

EPA is seeking comment on the Federal rule proposed in this notice. In particular, EPA is seeking comment identifying any cases in which a commenter believes that a water of the United States would have an inappropriate water quality standard if the proposed Federal rule is adopted. EPA is also seeking comment on the exclusion which Arizona has proposed in its December 29, 1995, notice.

2. ''Fish Consumption'' Use

Arizona has designated several uses for its waters, including uses defined as ''fish consumption,'' ''aquatic and wildlife (cold water fishery),'' ''aquatic and wildlife (effluent dominated water),'' ''aquatic and wildlife (ephemeral),'' and ''aquatic and wildlife (warm water fishery)''. See, R–18–11–101, and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations.

In September 1993, EPA disapproved the lack of the ''fish consumption'' (FC) use for water bodies which Arizona designated as having an ''aquatic and wildlife'' use. For the standards to be approvable, EPA stated that the State must either revise its standards to include the FC use, or submit ''use attainability analyses'' (UAAs), for the subject waters. A UAA is a scientific assessment showing whether it is feasible to attain a particular use. See, 40 CFR 131.3(g) and 131.10(j).

ADEQ has completed UAAs showing that it need not designate the FC use for those effluent dominated or ephemeral waters which it has not already designated as having the FC use. EPA approved those UAAs in November 1995.

In December 1995, ADEQ proposed to revise its standards to add the FC use to waters within the State which have the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use. See, proposed R–18–11–104 and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. However, ADEQ has not completed that revision to its regulations.

Section 101(a)(2) (33 U.S.C. 1251(a)(2)) of the CWA establishes water quality goals for the nation, including a goal of water quality which provides for the protection and propagation of fish and wildlife and provides for recreation in and on the water by 1983. EPA's rules regarding the establishment of water quality standards confirm that such standards should, whenever attainable, provide water quality which satisfies the section 101(a)(2) goal. See, e.g., 40 CFR 131.2, 131.3(i), 131.6, and 131.20(a). In addition, whenever a State has designated uses that do not include the uses specified in section 101(a)(2), the State must conduct a UAA. 40 CFR 131.10(j). Section 101(a)(2) states that water quality should provide for the protection of fish, and EPA has implemented this provision in the past by seeking to ensure that such fish are suitable for human consumption. See, e.g., 40 CFR 131.36 (containing toxics criteria for those states not complying with section 303(c)(2)(B) of the CWA). Accordingly, EPA is proposing to designate the fish consumption use for those waters in Arizona having an ''aquatic and wildlife'' use, in those cases where the requirements for completing a UAA have not been met.

The proposed Federal rule would add the FC use to 100 stream segments or other water bodies. The affected stream segments and water bodies are listed in proposed section 131.31(c). Each of the affected waters has already been designated by Arizona as having the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use. EPA believes that only six NPDES permits allow discharges to the affected waters, and that none of those permits would have to be modified at this time to assure the FC use is met.

EPA is seeking comment on the proposed addition of the FC use to the waters described.

3. Practical Quantitation Limits

Arizona prescribed practical quantitation limits (PQLs) in the regulations establishing its water quality standards. See, R18–11–120, and Appendix C of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. Arizona's regulations define ''practical quantitation limit'' as the ''lowest level of quantitative measurement that can be reliably achieved during routine laboratory operations.'' (R18–11–101.37.) In September 1993, EPA, Region 9, disapproved Arizona's inclusion of the PQLs in its regulations. EPA, Region 9, stated that, in order for the standards to be approvable under section 303(c), they must protect the designated uses and must not be compromised by constraints related to analytical methods. EPA, Region 9, further stated that Arizona may choose to include the PQLs in a policy or guidance document separate from the standards regulations.

Inclusion of specific numeric PQLs in water quality standards is inappropriate because the criteria must be set at levels protective of the designated uses. See section 303(c)(2)(A). While constraints in the ability of analytical methods to detect pollutants below certain levels may be an appropriate factor in assessing compliance of a particular discharger with water quality-based effluent limitations, the inclusion of pollutant-specific numeric PQLs in the water quality standards themselves has the potential to compromise the criteria adopted by the State in its standards.

In December 1995, ADEQ proposed deleting the PQLs now prescribed in Appendix C from its regulations and adopting the PQLs in a guidance document. See, proposed R18–11–120. ADEQ has not completed its proposed rulemaking, nor has it completed its procedures for adopting the PQLs in the form of guidance.

EPA is proposing to adopt a provision in this federal rule that would modify the purpose of the PQLs prescribed in Arizona's water quality standards regulations, but this provision would not otherwise modify Arizona's water quality standards regulations as they relate to derivation of water quality criteria. Under the proposed Federal rule, the practical quantitation limits in Appendix C would not be water quality standards for the purposes of the CWA. EPA is seeking comment on the proposal.

C. Implementation Policies

Certain of the disapproved elements of Arizona's standards relate to procedures for implementing the state's narrative water quality criteria contained in R18–11–108. EPA has proposed two water quality standard provisions that would require the identification of appropriate procedures and methods for interpreting and implementing the state's narrative criteria with respect to toxicity and nutrients, and the implementation of a monitoring program related to mercury, in order to implement the requirements of R18–11–108. See proposed sections 131.31 (e) and (f). As EPA explained in its disapproval actions, such policies and procedures may be contained either in water quality standards regulations themselves, or may be included in a standards submission as policy or

guidance documents. EPA's position is that there are advantages to detailing such implementation procedures in the form of guidance rather than regulation, since guidance leaves the implementing agency flexibility in addressing the multitude of conditions and circumstances that can arise in implementation of the criteria. Guidance can also be revised more readily in response to advances in our understanding of these issues. Therefore, in addition to proposing the language contained in sections 131.31 (e) and (f), EPA is soliciting public comment on guidance documents EPA intends to use in carrying out this provision. The particulars of these proposals are discussed below.

EPA is proposing the language in sections 131.31(e) and (f) in compliance with section 303(c)(4) of the CWA and the District Court's order in *Defenders of Wildlife*. However, as stated in EPA's disapprovals, EPA does not believe that it is necessary that the State itself adopt regulatory provisions addressing these implementation issues. Therefore, should the State adopt acceptable policies and procedures prior to promulgation of a final rule by EPA, the Agency would not include the regulatory provisions in the final rule.

1. Implementation Policy for Narrative Nutrient Criteria

In September 1993, EPA disapproved the lack of implementation procedures for Arizona's narrative nutrient criteria. Arizona's narrative nutrient criteria provides that navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses. See, R18–11–108.A.6. At the time of the disapproval, Arizona had not adopted an implementation process for its narrative criteria. EPA noted at the time of the disapproval that Arizona had not shown that its narrative criteria provided protection substantially equivalent to that provided by numeric criteria related to nutrients that EPA had adopted for various waters in Arizona. See, 40 CFR 131.31.

EPA is proposing section 131.31(e) to address this deficiency in the State's standards and is soliciting comment regarding use of a policy to guide the Region's implementation of Arizona's narrative nutrient criteria set forth in ''EPA, Region 9, Policy for the Implementation of Arizona's Narrative Nutrient Criteria.'' Region 9's policy as set forth in that document is a general statement of policy, intended to guide the Region's implementation of its activities related to the narrative nutrient criteria, particularly the development of permit conditions in Section 402 NPDES permits to ensure the narrative criteria are met.

The document which EPA, Region 9, intends to use as its implementation policy for the narrative nutrient criteria is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Copies of the document may be obtained by contacting Gary Wolinsky at the address noted above. EPA, Region 9, is seeking comment on the policy.

2. Implementation Policy for Narrative Toxicity Criterion

In September 1993, EPA, Region 9, disapproved the lack of implementation procedures for Arizona's narrative toxicity criterion. Arizona's narrative toxicity criterion provides that navigable waters shall be free from pollutants in amounts or combinations that are toxic to humans, animals, plants and other organisms. See, R18–11–108.A.5. At the time of the disapproval, Arizona had not adopted implementation procedures for toxicity. EPA, Region 9, believed that, without procedures or a policy governing toxicity, the narrative criterion may not fully protect Arizona's designated uses.

EPA is proposing section 131.31(e) to address this deficiency in the State's standards and is soliciting comment regarding EPA's intent to utilize a biomonitoring implementation policy for Arizona's narrative criterion as it relates to chronic toxicity. The policy is set forth in ''EPA, Region 9, Policy on Using Biomonitoring to Implement Arizona's Narrative Toxicity Criterion''. Region 9's policy as set forth in that document is not a rule, but a general statement of policy to guide the Region's implementation of its activities related to the narrative toxicity criterion, particularly the Section 402 NPDES permit program and development of permit conditions to ensure the narrative criterion is met.

The document which EPA, Region 9, intends to use as its biomonitoring implementation policy for Arizona's narrative criterion as it relates to chronic toxicity is available for review and copying at Environmental Protection Agency, Region 9, Water Management Division, 75 Hawthorne St., San Francisco, CA 94105. Copies of the document may be obtained by contacting Gary Wolinsky at the address noted above. EPA, Region 9, is seeking comment on the policy.

3. Water Quality Criteria Protective of Wildlife for Mercury

Arizona has established numeric criteria for mercury for ''aquatic and wildlife,'' ''fish consumption,'' ''domestic water source'' and other uses designated for its waters. See, Appendix A of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. As part of its consultation with EPA regarding Arizona's water quality standards pursuant to the Endangered Species Act, the U.S Fish and Wildlife Service (FWS) determined that Arizona's mercury criteria for protection of aquatic and wildlife uses were developed without consideration of bioaccumulative effects for predatory wildlife, and the FWS identified the adoption of mercury criteria protective of wildlife as a means to remove jeopardy to endangered species in the context of the Endangered Species Act.

Based upon FWS's determinations, EPA, Region 9, in April 1994 disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

While the FWS identified the adoption of a mercury criterion protective of wildlife as a reasonable and prudent alternative to avoid jeopardizing endangered and threatened wildlife species, further discussions between EPA, ADEQ, Arizona Game and Fish Department, and the FWS have led to the development of an alternative program to address the problem of mercury's impacts on endangered species. At present, there is inadequate information regarding mercury's impacts on wildlife in Arizona for EPA to develop a scientifically sound wildlife criterion for this pollutant. For this reason, EPA, the State and FWS worked to develop an alternative program for addressing potential problems associated with the impacts of mercury on wildlife. EPA intends the program will help ensure that existing protection for wildlife contained in the State's narrative criterion for toxicity will be properly implemented.

EPA is therefore proposing section 131.31(f) to address this deficiency in the State's standards, and is soliciting comment upon EPA's intent to implement a monitoring and source identification program to ensure that the requirements of this provision are met. The program is described in ''EPA, Region 9, Monitoring and Source Identification Program for Mercury to Assess Attainment of Arizona's Narrative Toxic Criterion.'' One of the program's objectives is to assess the magnitude and extent of mercury bioaccumulation in the prey base of the

bald eagle in Arizona. Under the program, EPA, ADEQ, the Arizona Game and Fish Department, and FWS will conduct a tissue monitoring program to evaluate the threat posed by mercury to bald eagles nesting along watercourses in Arizona. A concurrent monitoring program of the International Boundary Water Commission in the lower Colorado River basin will assess the bioaccumulation of mercury in the prey base of the brown pelican and the Yuma clapper rail. The program is not designed to immediately develop a specific mercury water quality criterion for the protection of wildlife. It instead is designed to identify water bodies where the bioaccumulation of mercury may affect endangered species, to guide the development of more extensive sampling programs to identify and quantify the contribution of mercury sources in watersheds where mercury is found to be bioaccumulating in aquatic prey species, and to guide the development of controls for such sources including, where appropriate, the adoption of site-specific water quality criteria.

EPA believes that Arizona's narrative criterion for toxicity contained in section R18–11–108.A, as supplemented by proposed section 131.31(f) and the program described above, are the most reasonable approach at this time for protecting the designated uses, including use of Arizona water by listed threatened and endangered wildlife species. EPA is currently engaged in consultation with the FWS regarding this approach. The Service has indicated its overall approval of this approach to dealing with the problem of mercury as it relates to the protection of wildlife. On January 17, 1996, the Service in a letter to EPA, Region 9, revised its determination which initially identified adoption of a mercury criteria as a reasonable and prudent alternative for removing jeopardy to endangered species.

EPA will consider comment upon the program, for the purpose of determining whether modifications to the program are warranted. The program description is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Copies of the documents may be obtained by contacting Gary Wolinsky at the address noted above.

C. 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 establish standards for waters which are presently unprotected by State-adopted standards due to the State's mining exclusion, would add the fish consumption use to various waters which presently do not have the protection afforded by that designation, and would remove the potential restriction on the protectiveness of the standards presented by the PQLs in the standards regulations. Today's action also provides protection for endangered and threatened species by seeking comment designed to improve the policies which EPA, Region 9, intends to use to guide its implementation of the State's nutrient- and toxicity-related criteria.

EPA has initiated section 7 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 January 17, 1996, the FWS in a letter to EPA, Region 9 agreed that various elements of EPA's proposal will improve the water quality standards program in Arizona and are not likely to adversely affect listed species nor result in the destruction or adverse modification of critical habitat.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the 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, of 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.

E. Executive Order 12875, Enhancing the Intergovernmental Partnership

In compliance with Executive Order 12875 EPA has involved state, local, and tribal governments in the development of this rule. EPA, Region 9, consulted with ADEQ through conference calls, meetings and review of draft and final documents. In addition, EPA held a meeting on December 14, 1995, in Phoenix, AZ, with members of the potentially affected public including municipalities, industries and environmental groups, to discuss the proposed action. EPA has scheduled a public hearing on the proposed action for February 29, 1996.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to assess whether its regulations create a disproportionate effect on small entities. Among its provisions, the Act directs EPA to prepare and publish an initial regulatory flexibility analysis (IRFA) for any proposed rule which may have a significant impact on a substantial number of small entities. For purposes of this proposed rulemaking, small entities are small dischargers, whether industrial or municipal.

The Agency concludes that this proposed rule would not have a significant impact on a substantial number of small entities. This proposed rule is limited to waters within Arizona and would not substantially impact the terms and conditions that dischargers would need to meet to comply with water quality standards. The requirements affect monitoring requirements that most likely will be included in future renewals of National Pollutant Discharge Elimination System (NPDES) permits and in new NPDES permits. There may be treatment process changes required in individual cases where the pollutant specific monitoring requirements identify non-compliance. EPA expects these process changes to be rare.

G. 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.

Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. These consultation requirements build on those of Executive Order 12875 (''Enhancing the Intergovernmental Partnership'').

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.

EPA has 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.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Paperwork Reduction Act

This proposed action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection requirement (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.* It should be noted that the monitoring program required in proposed Section 131.31(f) is not intended to impose additional reporting or recordkeeping burden on the State.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: January 23, 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 131.31 is amended by adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 131.31 Arizona.

* * * * *

(b) A water of the United States to which State adopted standards are not applicable by operation of R18–11–103.2 is subject to the water quality standards of the water of the United States from which it is impounded or, if not impounded from a water of the United States, the water quality standards of the water of the United States to which it is a tributary.

(c) The following waters have, in addition to the uses designated by the State, the designated use of fish consumption as defined in R18–11–101:

COLORADO MAIN STEM RIVER BASIN: Hualapai Wash, Jacob Lake, Lonetree Canyon Creek, Peeple's Canyon Creek, Red Canyon Creek, Sawmill Wash, Warm Springs Creek

LITTLE COLORADO RIVER BASIN: Boot Lake, Camillo Tank, Chilson Tank, Cow Lake, Crisis Lake (Snake Tank #2), Daves Tank, Deep Tank, Horse Lake, Long Lake—upper, Mud Lake, Pine Tank, Potato Lake, Puerco River, Quarter Circle Bar Tank, Rogers Reservoir, Sponseller Lake, Vail Lake, Zuni River

MIDDLE GILA RIVER BASIN: Aqua Fria River (Camelback Road to Avondale WWTP), Antelope Creek, Beehive Tank, Black Canyon Creek, Centennial Wash Ponds, Galena Gulch, Gila River (Felix Road to the Salt River), Gila River (Painted Rock Dam to the Colorado River), Hassayampa Lake, Hit Tank, Lynx Creek, Painted Rock Lake, Perry Mesa Tank, Queen Creek (Headwaters to the Superior WWTP), Queen Creek (Below Potts Canyon), Turkey Creek

RED LAKE BASIN: Red Lake

RIO MAGDALENA BASIN: Holden Canyon Creek, Sycamore Canyon Creek

RIO YAQUI BASIN: Abbot Canyon, Blackwater Draw, Buck Canyon, Dixie Canyon

Dry Canyon, Gadwell Canyon, Glance Creek, Gold Gulch, Johnson Canyon, Mexican Canyon, Mule Gulch (Headwaters to Bisbee WWTP), Soto Canyon

SALT RIVER BASIN: Coon Creek, Gold Creek, Salt River (I–10 bridge to the 23rd Avenue WWTP)

SAN PEDRO RIVER BASIN: Buehman Canyon Creek, Copper Creek, Garden Canyon Creek, San Pedro River (Redington to the Gila River), Turkey Creek

SANTA CRUZ RIVER BASIN: Agua Caliente Wash, Arivaca Creek, Bog Hole Tank, Cienega Creek (Headwaters to I–10), Cienega Creek (Below Del Lago dam), Davidson Canyon (I–10 to Cienega Creek), Empire Gulch (Below Empire Ranch Spring), Gardner Canyon Creek, Harshaw Wash, Huachuca Tank, Nogales Wash, Santa Cruz River (International Boundary to Nogales WWTP), Soldier Lake, Sonoita Creek (Above the town of Patagonia), Tanque Verde Creek, Tinaja Wash, Williams Ranch Tanks

UPPER GILA RIVER BASIN: Apache Creek, Bitter Creek, Chase Creek, Evans Pond, Markham Creek, Pigeon Creek, San Simon River

VERDE RIVER BASIN: Aspen Creek, Barrata Tank, Bitter Creek (Headwaters to the Jerome WWTP), Bitter Creek (Below 2.5 km downstream of the Jerome WWTP), Fossil Springs, Foxboro Lake, Granite Creek, Horse Park Tank, Meath Dam Tank, Willow Valley Lake

WILLCOX PLAYA: High Creek, Willcox Playa

(d) Appendix C (entitled ''Practical Quantitation Limits (PQLs)) of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations

shall not be applicable as a water quality standard for the purposes of the CWA.

(e) To implement the requirements of R18–11–108.A.5 and R–18–11–108.A.6 with respect to toxicity and nutrients, EPA shall identify appropriate procedures and methods for interpreting and implementing these requirements.

(f) To implement the requirements of R18–11–108.A.5 with respect to effects of mercury on wildlife, EPA (or the State with the approval of EPA) shall implement a monitoring program to assess attainment of the water quality standard.

[FR Doc. 96–1550 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5407–1]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Folkertsma Refuse Site from the National Priorities List; Request for Comments.

SUMMARY: The United States Environmental Protection Agency (US EPA) Region V announces its intent to delete the Folkertsma Refuse Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which US EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by US EPA, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, US EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before February 28, 1996.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd. (HSR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Kent County Public Library, 4293 Remembrance N.W., Walker, Michigan, 49554. Requests for copies of documents should be directed formally to the Region V Docket Office. The name, address and phone number of the Regional Docket Officer is Jan Pfundheller, U.S. EPA, Region V, 77 W. Jackson Blvd.(J–7J), Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Karen Sikora, Remedial Project Manager at (312) 886–1843, Gladys Beard, Associate Remedial Project Manager at (312) 886–7253, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd. (HSR–6J), Chicago, IL 60604 or Denise Gawlinski, Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd.(P–19J), Chicago, IL 60604, (312) 886–9859.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Folkertsma Refuse Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The 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. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in the NCP 40 CFR 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact Jan Pfundheller, Docket Officer at the U.S. EPA Region V Office, 77 W. Jackson Blvd. (J–7J), to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The Folkertsma Refuse site is a former industrial landfill located at 1426 Pannell Road NW., in Walker, Michigan. The City of Walker, which borders the