

US EPA ARCHIVE DOCUMENT

does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. §180.462, is amended by adding alphabetically "chickpeas" to the table in paragraph (a), and by removing and reserving paragraph (b) to read as follows:

§180.462 Pyridate; tolerances for residues.

(a) General. \* \* \*

Commodity	Parts per million
* * * * *	* * *
Chickpeas .....	0.1
* * * * *	* * *

(b) Section 18 emergency exemptions. [Reserved]

\* \* \* \* \*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-6173-2]

Project XL Site-Specific Rulemaking for OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The EPA is implementing a project under the Project XL program for the OSi Specialties, Inc. plant, a wholly owned subsidiary of Witco Corporation, located near Sistersville, West Virginia (the "Sistersville Plant"). The terms of the XL project are defined in a Final Project Agreement ("FPA"). Following public review and comment, the FPA

was signed by delegates from the EPA, the West Virginia Division of Environmental Protection ("WVDEP"), and Witco Corporation on October 17, 1997. The EPA published a final rule, applicable only to the Sistersville Plant, on September 15, 1998 (See 63 FR 49384). That action was a site-specific regulatory deferral from the Resource Conservation and Recovery Act ("RCRA") organic air emission standards, commonly known as RCRA Subpart CC. The EPA expects this XL project to result in superior environmental performance at the Sistersville Plant, while deferring significant capital expenditures, and thus providing cost savings for the Sistersville Plant.

Since publication of the final rule on September 15, 1998, it has come to the EPA's attention that the **Federal Register** notice contained a typographical error in the regulatory language that could result in some confusion regarding the time allowed for an owner or operator to conduct a performance test. Today's action makes the technical corrections to that published regulatory text.

EFFECTIVE DATE: This technical correction to the final rule is effective on October 7, 1998.

ADDRESSES: Docket. Three dockets contain supporting information used in developing the September 15, 1998 published final rule, and are available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603-9230. Refer to RCRA docket numbers F-98-MCCP-FFFFF, F-98-MCCF-FFFFF, and F-98-MCCA-FFFFF.

A duplicate copy of each docket is available for inspection and copying at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA, 19103-2029, during normal business hours. Persons wishing to view a duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 814-2394.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste and Chemicals Management Division, 1650 Arch Street, Philadelphia, PA, 19103-2029, (215) 814-2394.

## SUPPLEMENTARY INFORMATION:

## Outline

The information presented in this preamble is organized as follows:

- I. Authority
- II. Background
  - A. Overview of Project XL
  - B. Overview of the OSi Sistersville Plant XL Project
- III. Administrative Requirements
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  - C. Executive Order 12866
  - D. Regulatory Flexibility
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13045
  - G. National Technology Transfer and Advancement Act
  - H. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  - I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - J. Submission to Congress and the General Accounting Office
  - K. Pollution Prevention Act
  - L. Immediate Effective Date

## I. Authority

This regulation is being published under the authority of sections 1006, 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6921–6927, 6930, and 6974).

## II. Background

## A. Overview of Project XL

The site-specific regulation published on September 15, 1998, implements a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—“excellence and Leadership”—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA’s effort to reinvent environmental protection (See 60 FR 27282, May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations.

## B. Overview of the OSi Sistersville Plant XL Project

The EPA is implementing a project under the Project XL program for the OSi Specialties, Inc. plant, a wholly owned subsidiary of Witco Corporation, located near Sistersville, West Virginia

(the “Sistersville Plant”). The terms of the XL project are defined in a Final Project Agreement (“FPA”). Following public review and comment, the FPA was signed by delegates from the EPA, the West Virginia Division of Environmental Protection (“WVDEP”) and Witco Corporation on October 17, 1997. The EPA published a final rule, applicable only to the Sistersville Plant, on September 15, 1998 (See 63 FR 49384). That action was a site-specific regulatory deferral from the Resource Conservation and Recovery Act (“RCRA”) organic air emission standards, commonly known as RCRA Subpart CC. The air emission and waste management requirements are set forth in the September 15, 1998 final rule, which was intended to provide site-specific regulatory changes to implement this XL project. The EPA expects this XL project to result in superior environmental performance at the Sistersville Plant, while deferring significant capital expenditures, and thus providing cost savings for the Sistersville Plant.

Following publication of the final rule on September 15, 1998, it came to the EPA’s attention that the **Federal Register** notice contained a typographical error in the regulatory language that could result in some confusion regarding the time allowed for an owner or operator to conduct a performance test. Paragraphs (f)(2)(ii)(B)(1) of the subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers, in both 40 CFR part 264 and 265, contained a typographical error as published on September 15, 1998 at 63 FR 49392 and 63 FR 49400. As published in the **Federal Register**, paragraph (f)(2)(ii)(B)(1) stated that “Within sixty (120) days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test . . . .” In compiling the regulatory language for the September 15 final rule, both numbers were inadvertently included; one in text and the other numerically. It was the EPA’s intent that the plant have 120 days to perform the test rather than sixty (60) days. This intent is indicated in the September 15, 1998 final rule preamble at 63 FR 49387, where EPA explains that the proposed initial performance test deadline of 60 days is being extended by 60 days. Today’s action makes the necessary technical corrections to the regulatory text in both parts 264 and 265 in order to correct the regulatory text and clarify that 120 days are allowed for the performance test.

## III. Administrative Requirements

## A. Docket

Three RCRA dockets contain supporting information pertaining to today’s action and the September 15, 1998 published rulemaking: (1) RCRA docket number F-98-MCCP-FFFFF; (2) RCRA docket number F-98-MCCF-FFFFF, and (3) RCRA docket number F-98-MCCA-FFFFF. The public may review all materials in these dockets at the EPA RCRA Docket Office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

A duplicate copy of each docket is available for inspection and copying at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA, 19103-2029, during normal business hours. Persons wishing to view a duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 814-2394.

## B. Paperwork Reduction Act

This technical correction action applies only to one company, and requires no information collection activities subject to the Paperwork Reduction Act; therefore, no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

## C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the proposed regulatory action is “significant” and, therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to lead to 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 in 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, or 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.

Executive Order 12866 does not cover rules of particular applicability. As a result, this action does not fall within the scope of the Executive Order.

#### D. Regulatory Flexibility

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Publication No. L. 104-121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it only affects one facility, the OSi Sistersville Plant, located near Sistersville, West Virginia. The Sistersville Plant is not a small entity, and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required.

#### E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

As noted previously, the rule is applicable only to the Sistersville Plant, located near Sistersville, West Virginia. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The EPA has also determined that the 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 technical correction notice is not subject to the requirements of sections 202 and 205 of the UMRA.

#### F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This technical correction notice is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866 and does not involve decisions based on environmental health or safety risks.

#### G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's notice does not put forth any technical standards as part of the clarifying amendments; therefore, consideration of voluntary consensus standards was not required.

#### H. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide the OMB a description of the extent of EPA's prior consultation with

representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's technical correction notice does not create a mandate on State, local or tribal governments. The notice does not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

#### I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's document does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

#### J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The EPA is not required to submit a rule report regarding today's document under Section 801 because this is a notice of particular applicability.

#### K. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. Today's technical correction notice in no way affects the pollution prevention alternatives and measures previously incorporated into the final subpart CC rules.

#### L. Immediate Effective Date

The EPA has determined to make today's notice effective immediately. The EPA believes that the corrections being made in today's notice are corrections of obvious errors in the published rules (i.e., typographical errors). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B).

#### List of Subjects in 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, TSD, Waste determination.

Dated: September 29, 1998.

**Jay Benforado,**

*Acting Associate Administrator, Office of Reinvention.*

For the reasons set forth in the preamble, parts 264 and 265 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

#### PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

#### Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraph (f)(2)(ii)(B)(1) to read as follows:

##### § 264.1080 Applicability.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(1) Within 120 days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

\* \* \* \* \*

#### PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

#### Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers.

4. Section 265.1080 is amended by revising paragraph (f)(2)(ii)(B)(1) to read as follows:

##### § 265.1080 Applicability.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(1) Within 120 days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

\* \* \* \* \*

[FR Doc. 98-26885 Filed 10-6-98; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-6172-2]

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

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

**ACTION:** Notice of deletion for the Naval Security Group Activity Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the United States Navy, Naval Security Group Activity Superfund Site (Site) located in Sabana Seca, in the Municipality of Toa Baja, Puerto Rico, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board have determined that the Site poses no significant threat to public health or the environment and, therefore, no further response actions pursuant to CERCLA are appropriate. **EFFECTIVE DATE:** October 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Ingrisano, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway—18th Floor, New York, NY 10007-1866, (212) 637-4337.

**SUPPLEMENTARY INFORMATION:** The Site to be deleted from the NPL is: the United States Navy, Naval Security Group Activity Superfund Site, Sabana Seca, Puerto Rico.

A Notice of Intent to Delete for this Site was published on July 30, 1998 (63 FR 40687). The closing date for comments on the Notice of Intent to Delete was August 31, 1998. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.