

Dated: March 7, 2002.

John Ashcroft,

Attorney General.

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BILLING CODE 4410-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-7157-1]

Withdrawal of the Federal Designated Use for Shields Gulch in Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In July 1997, EPA promulgated new use designations for five water bodies in the State of Idaho, including the designation of cold water

biota for Shields Gulch. On March 14, 2000 the U.S. District Court for the District of Idaho vacated and remanded that portion of the EPA rule designating Shields Gulch for cold water biota uses to the EPA for further consideration. To conform with the U.S. District Court order, EPA is withdrawing the cold water biota designated use for Shields Gulch.

DATES: This rule is effective March 13, 2002.

ADDRESSES: The administrative record for the Federal use designations for surface waters of Idaho is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington 98101 during normal business hours of 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Van Brunt at EPA Headquarters, Office of Water (4305), 1200

Pennsylvania Ave NW., Washington, DC 20460 (tel: 202-260-2630, fax 202-260-9830) or e-mail vanbrunt.robert@epa.gov or Lisa Macchio at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington 98101 (tel: 206-553-1834, fax 206-553-0165) or e-mail macchio.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to Shields Gulch, its tributaries, and waters they flow into could be affected by this rulemaking since water quality standards are used in determining NPDES permit limits. Currently, we are not aware of any entities discharging pollutants to Shields Gulch, however, potentially affected categories and entities could include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to Shields Gulch, its tributaries, and waters they flow into.
Federal, State, Tribal or local governments	Publicly-owned treatment works discharging pollutants to Shields Gulch, its tributaries, and waters they flow into.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult Lisa Macchio, listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

On July 31, 1997, pursuant to section 303(c) of the Clean Water Act (CWA), EPA promulgated cold water biota as a designated beneficial use for several water body segments, including Shields Gulch (PB 148S)—below mining impact. In designating beneficial uses, EPA relied on the rebuttable presumption implicit in the CWA and EPA's regulations at 40 CFR part 131, that in the absence of data to the contrary, "fishable" uses are attainable. EPA concluded that the presumption that fishable uses were attainable had not been rebutted for the water body segments in question.

On March 19, 1999, the Idaho Mining Association challenged EPA's promulgation in the U.S. District Court of Idaho. On March 14, 2000, the Court,

while upholding the legality of the rebuttable presumption approach under the CWA, found that EPA was arbitrary and capricious in determining that the presumption of a fishable use had not been rebutted for Shields Gulch. Therefore, the Court ordered that portion of the EPA rule designating Shields Gulch for cold water biota uses vacated and remanded to the EPA for further consideration. To conform with the Court's order, EPA is withdrawing the cold water biota designated use for Shields Gulch. The State has revised its water quality standards since EPA's July 31, 1997, promulgation and now applies the cold water biota use to Shields Gulch as a matter of State law. Therefore, withdrawing the Federal use designation will not result in a change in the level of environmental protection for Shields Gulch.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this is a strictly legal

issue of the impact of the District Court decision on the July 31, 1997, Federal designated use for Shields Gulch. Thus, notice and public procedure are impracticable. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

EPA has also determined that good cause exists under section 553(d) of the Administrative Procedure Act to waive the requirement for a 30-day period before the rule becomes effective because this rule relieves a restriction. Therefore, the rule will be effective March 13, 2002.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a

significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000).

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that their actions are unlikely to jeopardize the continued existence of listed species or adversely affect designated critical habitat of such species. EPA has determined that this action has no effect on listed species or critical habitat because there are no listed species in Shields Gulch.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public

interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 13, 2002. 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 7, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble title 40, chapter I, of the Code of Federal Regulations is 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.*

§ 131.33 [Amended]

2. Section 131.33 is amended by revising paragraph (b) to read as follows:

§ 131.33 Idaho

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(b) *Use designations for surface waters.* In addition to the State adopted use designations, the following water body segments in Idaho are designated for cold water biota: Canyon Creek (PB 121)—below mining impact; South Fork Coeur d'Alene River (PB 140S)—Daisy Gulch to mouth; Blackfoot River (USB 360)—Equalizing Dam to mouth, except for any portion in Indian country; Soda Creek (BB 310)—source to mouth.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[OPP-30118; FRL-6774-3]

RIN 2070-AB78

Pesticide Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The revision reflects a 4.94%, 3.81%, and 4.77% increase in locality pay for civilian Federal General Schedule employees working in the Washington, DC and Baltimore, MD metropolitan area in 2000, 2001, and 2002, respectively. Fees have not been adjusted since 1999 in anticipation of the tolerance fee revision rule proposed by EPA, which has not occurred.

DATES: This rule is effective April 12, 2002.

FOR FURTHER INFORMATION CONTACT: For general information concerning this rule contact: Ed Setren, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305-5927; fax: (703) 305-5060; e-mail address: setren.edward@epa.gov.

For technical information concerning tolerance petitions and individual fees contact: Sonya Brooks, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 308-6423; fax: (703) 305-5060; e-mail address: brooks.sonya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Rule Apply to Me?

This rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture chemicals used in formulating pesticides, importers of food, grower groups, or any person who seeks a tolerance. The vast majority of potentially affected categories and entities may include, but are not limited to: