

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[R06-OAR-2005-NM-0003; FRL-7928-4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration; Correction**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction.

SUMMARY: The EPA published in the **Federal Register** on January 10, 2005, a document concerning approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, which certified that there are no existing commercial and industrial solid waste incineration units in Bernalillo County. This document corrects an error which may prove to be misleading in the regulation.

DATES: This correction is effective on June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Boyce, (214) 665-7259 or by e-mail at boyce.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” or “our” are used we mean EPA.

This document corrects an error which may prove to be misleading in title 40 CFR, part 62, chapter I, subpart GG. In 70 FR 1668-1670 (January 10, 2005), we added a new § 62.7881 with the same designated center heading as § 62.7890. By renaming § 62.7890 to “Identification of sources—negative declarations”; redesignating the existing paragraph to paragraph (a); and adding a new paragraph (b), will correct the added undesignated center heading to subpart GG and remove the added § 62.7881 with the same designated center heading as § 62.7890.

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 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. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, 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) (Pub. L. 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 also does not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (59 FR 22951, November 9, 2000), nor will it 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 governments, as specified by 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 technical correction action does not involve technical standards; thus [[Page 31890]] 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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 had made such a good cause finding, including the reasons therefore, and established an effective date of May 14, 2004. 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 correction to 40 CFR 62.7890 for Bernalillo County is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2005.

Richard E. Greene,
Regional Administrator, Region 6.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. Section 62.7890, “Identification of sources—negative declaration,” under the centered heading “Emissions from Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units,” is revised (including the section heading) to read as follows:

§ 62.7890 Identification of sources—negative declarations.

(a) Letter from the New Mexico Environment Department dated November 13, 2001 certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subpart DDDD under its jurisdiction in the State of New Mexico (excluding tribal lands and Bernalillo County).

(b) Letter from the City of Albuquerque Environmental Health Department dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its

jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[RCRA-2001-0021; FRL-7928-8]

RIN 2090-AA14

Project XL Site-Specific Rulemaking for the Ortho-McNeil Pharmaceutical, Inc. Facility in Spring House, PA Involving On-Site Treatment of Mixed Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today finalizing this rule to implement a pilot project under the Project XL program, providing site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the Ortho-McNeil Pharmaceutical, Inc. facility in Spring House, Pennsylvania (OMP Spring House). The principal objective of this XL project is to obtain information helpful to determining whether regulatory oversight by the Nuclear Regulatory Commission (NRC), or NRC Agreement States, under authority of the Atomic Energy Act (AEA) is sufficient to ensure protection of human health and the environment regarding the management of certain small volumes of mixed wastes (*i.e.*, RCRA hazardous wastes that also contain radioactive materials) that are both generated and treated in an NRC-licensed pharmaceutical research and development laboratory. If, as a result of this XL project, the Agency determines that certain small volumes of low-level mixed wastes (LLMW) generated and managed under NRC oversight need not also be subject to RCRA hazardous waste regulations to ensure protection of human health and the environment, EPA may consider adopting the approach on a national basis.

DATES: *Effective Date:* This final rule is effective on June 27, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2001-0021. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available,

i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Howland, U.S. Environmental Protection Agency, Region III (3OR00), 1650 Arch Street, Philadelphia, PA, 19103-2029. Mr. Howland can be reached at (215) 814-2645 (or howland.charles@epa.gov).

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

The information presented in this preamble is organized as follows:

- I. Authority
- II. Overview of Project XL
- III. Overview of the OMP Spring House XL Pilot Project
 - A. To Which Facilities Does the Final Rule Apply?
 - B. What Problems Does the OMP Spring House XL Project Attempt To Address?
 1. Current Regulatory Status of Mixed Wastes
 2. Site-Specific Considerations at the OMP Spring House Facility
 - C. What Solution Is Being Tested by the OMP Spring House XL Project?
 - D. What Regulatory Changes Are Being Made to Implement this Project?
 - E. Why is EPA Promulgating This Approach To Removing RCRA Regulatory Controls Over a Mixed Waste?
 - F. How Have Various Stakeholders Been Involved in this Project?
 - G. Response to Major Comments Received on the Proposed Rule
 - H. How Will This Project Result in Cost Savings and Paperwork Reduction?
 - I. What Are the Terms of the OMP Spring House XL Project and How Will They Be Enforced?
 - J. How Long Will This Project Last and When Will It Be Completed?
- IV. RCRA & Hazardous and Solid Waste Amendments of 1984
 - A. Applicability of Rules in Authorized States
 - B. Effect on Pennsylvania Authorization
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act

- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act of 1995
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Executive Order 12988: Civil Justice Reform
- L. Congressional Review Act

I. Authority

EPA is publishing this regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3007, 3010, 3013, 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. 6912, 6921, 6922, 6923, 6926, 6927, 6930, 6934, and 6974).

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, Pennsylvania Department of Environmental Protection (PADEP), and the OMP Spring House facility with regard to a project developed under Project XL, an EPA initiative that allows regulated entities to achieve better environmental results with additional regulatory flexibility. This final regulation, along with the FPA (contained in the docket for this rule under Docket ID No. RCRA-2001-0021), will facilitate implementation of the project. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the Agency'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 request 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. For more information about the XL Program in general, and XL project criteria and project development processes in detail, readers should refer to <http://www.epa.gov/projectxl/>. Additional background information on the proposed OMP Spring House Project XL site-specific rulemaking published is available at <http://www.epa.gov/projectxl/ortho/index.htm> and published in the **Federal**