

for consumption of organisms should only be based on incidental ingestion of non-potable, recreational waters.

*Scientific view*—One submitter stated that EPA derived its vinyl chloride human health criterion for consumption of organisms only using a bioconcentration factor (BCF) of 1.17. The submitter believes that this BCF is overstated because:

(1) This value is based on the assumption of equilibrium conditions between water and an organisms tissue, which is not the case because the compound is highly metabolized;

(2) the high volatility of vinyl chloride would contribute to its depuration during processing or cooking;

(3) the portions of the fish most likely to contain the compound, (e.g., skin and fat) are not typically consumed by humans; and

(4) cooking would result in further off-gasing or destruction of the chemical.

Thus, we expect the potential for humans consuming aquatic organisms to be exposed to vinyl chloride to be negligible. Moreover, vinyl chloride does not biomagnify, and higher tropic level organisms consumed by humans would not contain elevated levels of vinyl chloride. EPA should derive its vinyl chloride criteria for consumption of organisms only based on exposure from incidental ingestion of non-potable recreational waters only.

*Response*—In updating its human health water quality criteria for vinyl chloride, EPA used the BCF derived from the 1980 Ambient Water Quality Criteria National Guidelines (45 FR 79347). The submitter is correct that, if a contaminant is readily metabolized in fish, the actual BCF might be less than estimated using the KLED<sub>ow</sub> method. EPA thanks the submitter for the information and will consider it when the Agency comprehensively updates the vinyl chloride criterion document to incorporate the BAF derivation procedures described in the 2000 Human Health Methodology.

#### C. Where Other Views Submitted?

We received a number of views on criteria that EPA was not revising, or the views expressed were not related to the science supporting the criteria derivations. EPA did not prepare responses addressing these views.

Dated: December 23, 2003.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

[FR Doc. 03-32211 Filed 12-30-03; 8:45 am]

BILLING CODE 5650-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7604-7]

RIN 2040-ACXX

### Preliminary Effluent Guidelines Program Plan for 2004/2005

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

**ACTION:** Notice of preliminary effluent guidelines plan; request for comments.

**SUMMARY:** Today's notice presents and invites comment on EPA's preliminary Effluent Guidelines Program Plan for 2004/2005. Under the Clean Water Act (CWA), EPA establishes technology-based national regulations, termed "effluent guidelines," to reduce pollutant discharges from industrial facilities to waters of the United States. Section 304(m) of the Clean Water Act (CWA) requires EPA to publish an Effluent Guidelines Program Plan every two years. Today's notice has three purposes. First, it presents the results of EPA's annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). Second, it solicits public comment on the preliminary Effluent Guidelines Program Plan. Third, it describes and solicits comment on the analytical framework that EPA has employed to date in performing the annual review for 2003 and in developing today's preliminary Effluent Guidelines Program Plan. EPA had articulated an early form of this evolving analytical framework in the draft Strategy for National Clean Water Industrial Regulations, which EPA hopes to finalize concurrently with the Effluent Guidelines Program Plan in 2004.

**DATES:** EPA must receive comments on the preliminary Effluent Guidelines Program Plan for 2004/2005 by February 17, 2004. EPA will conduct a public meeting on Wednesday, January 28, 2004, from 9 a.m. to 12 p.m. Eastern Standard Time. For information on the location of the public meeting, see **ADDRESSES** section.

**ADDRESSES:** You can submit comments electronically, by mail, or through hand-delivery/courier. Please mail comments to the Water Docket, Environmental Protection Agency, Mail Code: 4101 T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or submit them electronically to <http://www.epa.gov/edocket/>. For more information on submitting comments, see section I.C. EPA will hold an informational public meeting for interested stakeholders in the EPA East Building, Room 1153 (also known as the "Great Room" or the

"Map Room"), 1201 Constitution Avenue, NW., Washington, DC. For more information on the details and location of the public meeting, see section I.F.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carey A. Johnston at (202) 566-1014 or [johnston.carey@epa.gov](mailto:johnston.carey@epa.gov), or Mr. Tom Wall at (202) 566-1060 or [wall.tom@epa.gov](mailto:wall.tom@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### How Is This Document Organized?

The outline of the preliminary Effluent Guidelines Program Plan for 2004/2005 follows.

- I. General Information
- II. Legal Authority
- III. What Are Effluent Guidelines?
- IV. What Requirements Apply to This Effluent Guidelines Program Plan Effort?
- V. What Is the Purpose of Today's **Federal Register** Notice?
- VI. 2003 Annual Review of Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)
- VII. What Will Be the Focus of EPA's 2004 Annual Review?
- VIII. Identification of and Schedule for Possible Categories for Potential New Effluent Guidelines
- IX. Request for Comment and Information

#### I. General Information

##### A. Regulated Entities

Today's preliminary Effluent Guidelines Program Plan for 2004/2005 does not contain regulatory requirements, nor will the final plan do so. Rather, today's preliminary Effluent Guidelines Program Plan describes the current status of the effluent guidelines planning process, presents the results of the Agency's annual review of the effluent guidelines EPA has already promulgated for industrial categories, and identifies industrial categories that EPA expects to investigate further for the possible development or revision of effluent limitations guidelines.

##### B. How Can I Get Copies of This Document and Other Related Information?

##### 1. Docket

EPA has established an official public docket for this action under Docket ID No. OW-2003-0074. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that

is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Water Docket is (202) 566-2426.

The following are the major documents supporting the preliminary Effluent Guidelines Program Plan:

- Factor 1 Analysis: Human Health and Environmental Impacts—Status of Screening Level Review Phase (DCN 00545, section 2.1).
- Factor 2 Analysis: Technology Advances and Process Changes—Status of Screening Level Review Phase (DCN 00546, section 2.2).
- Factor 4 Analysis: Implementation and Efficiency Considerations—Status of Screening Level Review Phase (DCN 00547, section 2.3).
- Description and Results of EPA Methodology to Synthesize Screening Level Results for the CWA 304(m) Effluent Guidelines Program Plan for 2004/2005 (DCN 00548, section 3.0).

## 2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the “Federal Register” listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket identification number for this action: OW-2003-0074.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA’s electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the

document is available for viewing in EPA’s electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, information claimed as CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA’s electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA’s electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA’s electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA’s electronic public docket along with a brief description written by the docket staff.

### C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. We will not accept comments by facsimiles (faxes). To ensure proper receipt by EPA, identify the following docket identification number in the subject line on the first page of your comment: OW-2003-0074. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments. If you wish to submit information you claim as CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit information you claim as CBI or information protected by statute.

#### 1. Electronically

If you submit an electronic comment as prescribed in this section, EPA recommends that you include your

name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA’s policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

#### a. EPA Dockets

Your use of EPA’s electronic public docket to submit comments to EPA electronically is EPA’s preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select “search,” and then key in Docket ID No. OW-2003-0074. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

#### b. E-mail

Comments may be sent by electronic mail (e-mail) to [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov), Attention Docket ID No. OW-2003-0074. In contrast to EPA’s electronic public docket, EPA’s e-mail system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through EPA’s electronic public docket, EPA’s e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA’s e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

#### c. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted as in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

## 2. By Mail

Send the original and three copies of your comments and enclosures (including references) to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0074. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope.

## 3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW-2003-0074. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA Docket Center or through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, 304(m) Effluent Guidelines Planning, 1201 Constitution Ave, NW., Room 6231G, EPA West Building, Washington, DC 20004. You may claim information that you submit to EPA as CBI by marking that information as CBI. If you submit CBI on disk or CD ROM, indicate on the outside of the disk or CD ROM that it contains information claimed as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you use a disk or CD ROM, mark the outside of the disk or CD ROM clearly to indicate that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- Review section IX, "Request for Comment and Information," for areas on which EPA specifically requests comments and information.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the following docket identification number in the subject line on the first page of your response: OW-2003-0074. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

### *F. What Are the Public Meeting Details for the Preliminary Plan?*

A public meeting to review the preliminary Effluent Guidelines Program Plan for 2004/2005 will be held in Washington, DC (see **DATES** and **ADDRESSES** for the date and location of the public meeting). The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For security reasons, we request that you bring photo identification with you to the meeting. Also, it will expedite the process of signing in if you contact Ms. Patricia Harrigan at least three business days prior to the meeting with your name, phone number, and affiliation. Ms. Harrigan can be reached via e-mail at [harrigan.patricia@epa.gov](mailto:harrigan.patricia@epa.gov). Please use "304(m) Public Meeting Attendee" in the subject line. Ms. Harrigan can also be reached by telephone at (202) 566-1666.

EPA will not distribute meeting materials in advance of the public meeting; all materials will be distributed at the meeting. The purpose of the public meeting is to: (1) Review the preliminary Effluent Guidelines Program Plan for 2004/2005; (2) review the industry sectors identified for further investigation; and (3) identify information collection activities and

analyses EPA anticipates completing for the final Plan. EPA will not record the meeting for the record supporting this action. Individuals wishing to comment on the preliminary Effluent Guidelines Program Plan for 2004/2005 would need to submit written comments as described in section I.C. in order for EPA to consider their comments in finalizing the plan.

If you need special accommodations at this meeting, including wheelchair access or special audio-visual support needs, you should contact Ms. Harrigan at least five business days prior to the meeting so that we can make appropriate arrangements. For those unable to attend the meeting, a copy of the presentation and meeting materials will be posted on the EPA Dockets Web site at: <http://www.epa.gov/edocket/> and EPA's Effluent Guidelines Planning Web site at: <http://www.epa.gov/guide/plan.html>.

Please note that parking is very limited in downtown Washington, and we recommend you use public transit. The EPA Headquarters complex is located near the Federal Triangle Metro station. Upon exiting the Metro station, walk east to 12th Street. On 12th Street, walk south to Constitution Avenue. At the corner, turn right onto Constitution Avenue and proceed to the EPA East Building entrance.

## II. Legal Authority

Today's notice is published under the authority of section 304(m) of the CWA, 33 U.S.C. 1314(m).

## III. What Are Effluent Guidelines?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that, for most pollutants, reflect the level of pollutant control that is achievable by the best available technologies economically achievable for categories or subcategories of industrial point sources. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the limitations and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

*A. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA*

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (see 44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants (see Appendix A to part 403, reprinted after 40 CFR 423.17). All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

*B. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA*

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to the other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of

BCT limitations in July 9, 1986 (51 FR 24974).

*C. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA*

In general, Best Available Technology Economically Achievable (BAT) effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight EPA accords to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

*D. New Source Performance Standards (NSPS)—Section 306 of the CWA*

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

*E. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA*

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works

(POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

*F. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA*

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

**IV. What Requirements Apply to This Effluent Guidelines Program Plan Effort?**

Section 304(m) requires EPA to publish a plan every two years containing three elements. First, EPA must establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). See CWA section 304(m)(1)(A). Section 304(b) specifies factors that EPA must consider when deciding whether to establish or revise effluent guidelines for existing direct dischargers and requires EPA to revise such regulations as appropriate. Second, EPA must identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B). Finally, EPA must establish a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines. The statute requires final action on such rulemaking not later than three years after the industrial category is identified in the Effluent Guidelines Program Plan. See CWA section 304(m)(1)(C). EPA is required to publish its Effluent Guidelines Program Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

The Effluent Guidelines Program Plan for 2004/2005 is intended to implement these statutory requirements. As part of the Effluent Guidelines Program Plan under CWA section 304(m), EPA

reviews existing limitations and standards for direct dischargers. In the course of this review EPA also reviews indirect dischargers in an industrial point source category when the industrial point source category is composed of both direct and indirect dischargers. For industrial point source categories that are entirely or almost entirely composed of indirect dischargers, EPA reviews, revises, and establishes pretreatment standards under a separate planning process, which is described in section 304(g) of the CWA.

Certain elements of EPA's current work on effluent guidelines continue to be governed by a Consent Decree. On October 30, 1989, the Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a Consent Decree entered on January 31, 1992. The Consent Decree, which has been modified several times, established a schedule for proposal and final action for eleven point source categories identified by name and for

eight other point source categories identified only as new or revised rules. The Decree also established deadlines for EPA to complete studies of eight identified and three unidentified point source categories and required EPA to consider the results of those studies when identifying point source categories for possible new or revised effluent guidelines.

The last date for EPA action under the modified Decree is June 30, 2004. Table IV-1 identifies the new or revised effluent guidelines currently under development under the Decree and the schedules for final action.

TABLE IV-1.—EFFLUENT GUIDELINES GOVERNED BY CURRENT CONSENT DECREE

Category <sup>1</sup> (EPA web sites)	Federal Register proposal citation (date)	Final action date
Meat Products ( <a href="http://epa.gov/guide/mpp/">http://epa.gov/guide/mpp/</a> ) .....	67 FR 8581 (Feb. 25, 2002) ...	02/26/04
Construction and Development ( <a href="http://epa.gov/guide/construction/">http://epa.gov/guide/construction/</a> ) .....	67 FR 42644 (June 24, 2002)	03/31/04
Aquatic Animal Production ( <a href="http://epa.gov/guide/aquaculture/">http://epa.gov/guide/aquaculture/</a> ) .....	67 FR 57872 (Sept. 12, 2002)	06/30/04

<sup>1</sup> **Note:** EPA has proposed to add parts 450 and 451 to title 40 of the Code of Federal Regulations. EPA has proposed to change the title of 40 CFR 432 from "Meat Products" to "Meat and Poultry Products."

The preliminary Effluent Guidelines Program Plan for 2004/2005 ("304(m) Plan" or "Plan") is a key step in developing the final plan. It represents a considerable effort by the Agency to implement a planning process that considers the hazards or risks to human health and the environment from industrial point source categories. It reflects a lengthy outreach effort to involve stakeholders in the planning process. It also reflects EPA's initial screening-level estimates of hazard or risk, which EPA examined for the purpose of identifying industrial point source categories. EPA will use these estimates to decide if new or revised guidelines are appropriate. In preparing this preliminary plan, EPA also considered the structure of specific industries and the availability of economically achievable technology that will reduce the identified hazard or risk. EPA will complete these analyses prior to publishing the final Effluent Guidelines Program Plan for 2004/2005.

#### V. What Is the Purpose of Today's Federal Register Notice?

Today's **Federal Register** notice has three purposes. First, it presents the results of EPA's annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). Second, it solicits public comment on the preliminary effluent guidelines plan as required by section 304(m)(2) of the CWA. Third, it describes and solicits comment on the analytical framework that EPA has employed to date in

performing the annual review for 2003 and in developing today's preliminary Effluent Guidelines Program Plan. EPA articulated an early form of this evolving analytical framework in the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"), which EPA hopes to finalize concurrently with the Effluent Guidelines Program Plan in 2004.

#### VI. 2003 Annual Review of Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)

As noted in section IV, the CWA requires EPA to publish a plan every two years that establishes a schedule for the annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). In today's **Federal Register** notice, EPA proposes a schedule whereby EPA would perform its annual review under CWA section 304(m)(1)(A) in concert with its efforts to identify industrial categories for new or revised effluent guidelines. In other words, in odd-numbered years, EPA would coordinate its annual review with the preliminary Effluent Guidelines Program Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA would coordinate its annual review with its publication of the final plan.

EPA proposes this schedule for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review inform the content of the

proposed and final Effluent Guidelines Program Plans. Second, publishing the results of each annual review (including a description of the review process employed) at the same time EPA publishes proposed and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, we assume that Congress intended that each successive review would build upon the results of earlier reviews. Therefore, by publishing the results of the 2003 annual review here, EPA hopes to receive data and information that will inform its review for 2004 and the future. In addition, EPA hopes that publishing the 2003 annual review will prompt comments not only on the content of that review but also on the processes and factors we used in performing it. EPA may decide to change that process as a result of comments on today's notice.

As part of its 2003 annual review, EPA also reviewed the NSPS promulgated by EPA under CWA section 306 and pretreatment standards promulgated under CWA sections 307(b) and 307(c), although it was not required under CWA section 304(m)(1)(A) to do so.

*A. What Process and Rationale Did EPA Use To Review Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)?*

1. What Is an Existing Set of Effluent Guidelines for Purposes of EPA's Annual Review Under Section 304(m)(1)(A)?

EPA's annual review obligation under section 304(m)(1)(A) applies to "promulgated effluent guidelines." Because this subparagraph refers specifically to section 304(b), EPA interprets this to refer to Best Available Technology (BAT), Best Practicable Technology (BPT) and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines codified at 40 CFR parts 405–471 (representing a total of 55 categories and over 450 subcategories). As discussed in more detail in section VI.A.2, EPA used pollutant loading, technological, economic, and other factors required by the CWA to consider whether it is appropriate to revise the specific limitations codified in each set of effluent guidelines.

EPA also examined the processes and operations forming the basis of each subcategory for which EPA had already promulgated effluent guidelines in order to decide whether it might be appropriate to address (through new subcategories) other industrial activities that are similar in terms of type of operations performed, wastewaters generated, and available pollution prevention and treatment options. Issues associated with new subcategories very often are interwoven with the structure and requirements of the existing regulation. A previous example where EPA addressed industrial operations not currently regulated by existing effluent guidelines by establishing new subcategories under an existing category is the agricultural refilling establishments subcategory (subpart E) that EPA added to the Pesticide Chemicals point source category (40 CFR part 455) (November 6, 1996; 61 FR 57518).

EPA's annual review of existing effluent guidelines also focused on identifying pollutants that are not regulated by existing effluent guidelines but that comprise a significant portion of the hazard or risk estimate for the industrial point source categories. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing existing effluent guidelines under CWA section 304(m)(1)(A). EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through the additional control of

regulated pollutants in an existing set of effluent guidelines. In some cases, revising existing limitations for one set of pollutants will address hazards or risks associated with a newly identified pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised existing effluent guidelines for the Oil and Gas Extraction point source category (40 CFR part 435) to address new pollutants that resulted from a new pollution prevention technology (synthetic-based drilling fluids). See 66 FR 6850 (January 22, 2001). Similarly, EPA revised BAT limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp and Paper industrial point source category in 1998 to include for the first time effluent guidelines for dioxin. Third, the regulatory organization of subcategories in an existing guidelines also has a bearing on the identification of pollutants for regulation.

In short, EPA believes that the appropriateness of creating a new subcategory or addressing a newly identified pollutant is best considered in the context of revising an existing set of effluent guidelines as a whole. Accordingly, EPA is performing these analyses as part of the Agency's responsibilities under CWA section 304(m)(1)(A).

2. What Factors Did EPA Consider When Performing its 2003 Annual Review of Existing Guidelines?

The starting point of EPA's analysis is CWA section 301(b)(2)(A), which requires dischargers to achieve effluent limitations that reflect the "best available technology economically achievable," as identified by the Administrator under the authority of CWA section 304(b)(2). Section 304(b), in turn, requires EPA to consider many factors in identifying BAT. These are discussed in section III.C. Because CWA section 304(m)(1)(A) requires EPA to review promulgated guidelines in accordance with CWA section 304(b), EPA interprets the statute to authorize EPA to employ the same factors for its annual review that it would consider in selecting BAT in a rulemaking context. EPA believes that this is a reasonable approach because the outcome of EPA's annual review is a decision—expressed in the final Effluent Guidelines Program Plan—identifying those effluent guidelines for possible revision.

By using the statutory factors in section 304(b) and section 301(b)(2)(A) as the framework for its annual review of existing guidelines, EPA can begin its investigation with a variety of technological, economic, and environmental issues associated with industrial categories that ultimately will help determine the need for, or scope of, a revised effluent guideline. In the draft Strategy for National Clean Water Industrial Regulations, EPA identified four major factors—based on section 304(b)—that the Agency would examine, in the course of its annual review, to determine whether it would be necessary and appropriate to revise an existing set of effluent guidelines, or whether to develop a new set of effluent guidelines for a newly identified industrial category.

The first factor (referred to in this notice as "Factor 1") is consideration of the extent to which the pollutants remaining in an industrial category's discharge pose a hazard or risk to human health or the environment. The second factor (referred to in this notice as "Factor 2") is identification of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewaters and thereby substantially reduce the hazard or risk to human health or the environment associated with these pollutant discharges.

The third factor (referred to in this notice as "Factor 3") encompasses the cost, performance, and affordability of the technology, process change, or pollution prevention measures identified using the second factor. If the financial condition of the industry indicates significant difficulties in achieving the reductions, EPA would be reluctant to select the effluent guidelines for revision because there is a significant probability that EPA might ultimately determine that standards based on the new technology, process change, or pollution prevention measures were not "economically achievable," as required by the CWA. Agency resources would be more effectively spent developing more efficient, less costly approaches to reducing pollutant loadings that would better satisfy applicable statutory requirements.

The fourth factor (referred to in this notice as "Factor 4") incorporates implementation and efficiency considerations and recommendations from stakeholders. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or

opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, industry requested in comments on the Offshore and Coastal effluent guidelines rulemakings that EPA specifically set standards for a new pollution prevention technology (synthetic-based drilling fluids). EPA promulgated these revision on January 22, 2001 (66 FR 6850). This factor might also prompt EPA to decide in a particular Plan against scheduling an existing effluent guideline for revision where the pollutant source is already efficiently addressed by another regulatory program or by non-regulatory programs.

EPA also considered stakeholder recommendations for guideline development or revision even when they did not raise issues associated with implementation or efficiency considerations. In evaluating those recommendations, EPA considered the extent to which the pollutants in an industrial category's discharge pose a hazard or risk to human health or the environment (see Factor 1). EPA also considered whether the industrial sectors recommended by stakeholders are potentially subject to the Effluent Guidelines Program.

In the course of performing its annual review for 2003, EPA evaluated where possible publicly available Agency databases and reports that contain nationwide information on an industry basis, but became aware of data quality and limitations in evaluating this information. EPA learned that it lacked sufficient data and information to consider the four factors for the industrial categories for which EPA has promulgated effluent guidelines under CWA section 304(b) in the exact manner and sequence described in the draft Strategy. For example, EPA found that it was much more difficult than anticipated to gather the data needed to perform a meaningful screening-level analysis of the availability of treatment or process technologies that might reduce hazard or risk beyond the performance of technologies in place at facilities in 55 industrial categories. Similarly, EPA could not identify a suitable screening-level tool for evaluating the economic affordability of treatment or process technologies because the universe of facilities is too broad and complex. Furthermore, EPA could not find a reasonable way to prioritize industries for the Effluent Guidelines Program Plan based on a broad economic profile. Consequently, for its 2003 review, EPA focused its efforts on collecting and analyzing screening-level data to identify

industrial categories whose pollutant discharges potentially pose the greatest hazards or risks to human health and the environment because of their toxicity. EPA also considered efficiency and implementation issues. As described in section VII, EPA will conduct detailed studies, as part of its 2004 annual review, to evaluate economic and technology issues for industrial categories with discharges that EPA believes offer the most significant opportunities for reducing risks or hazards. EPA will also continue to collect and analyze data on other industries whose discharges potentially pose high risks or hazards. See sections VII.B and C.

In order to focus its inquiry during the 2003 annual review, EPA excluded categories for which EPA had promulgated effluent guidelines within the past seven years. EPA chose seven years because of the time it takes for effluent guidelines to be incorporated as enforceable effluent limitations into NPDES permits when they are renewed, which could be up to five years after the effluent guidelines are promulgated. This time period also allows for the pollutant reductions associated with recently-promulgated guidelines to be reflected in discharge monitoring data and Toxics Release Inventory (TRI) reports, so that the Agency can assess the potential for remaining risks or hazards. (In cases where EPA is aware of the growth of a new segment within a category for which EPA had recently revised effluent guidelines, or where new concerns are identified for pollutants discharged by facilities within the industrial category, EPA may decide not to exclude the category from review, but EPA identified no such instance during the 2003 review.) EPA also excluded categories with guideline revisions currently underway.

EPA also excluded industry categories addressed by other Clean Water Act provisions. For example, some stakeholders urged EPA to identify municipal storm water discharges for effluent limitation guidelines; however, these discharges are addressed under CWA section 402(p). Similarly, technology-based standards for publicly-owned treatment works (POTWs) are addressed under sections 301(b)(1)(B) and 304(d).

Commenters also identified discharges from ocean going vessels (cruise ships, ballast and bilge water) as a possible candidate for an effluent guidelines rulemaking. However, discharges of ballast water from vessels are not subject to CWA permitting requirements. See 68 FR 53165 (September 9, 2003). Under EPA's

regulations at 40 CFR 122.3(a), discharges from properly functioning marine engines (*i.e.*, bilge water), laundry, shower, and galley sink wastes, and other discharges incidental to the normal operation of a vessel do not require NPDES permit authorization unless the vessel is operating in a capacity other than as a means of transportation. Finally, discharges of sewage from vessels, are regulated under CWA section 312. None of these discharges requires NPDES permits under section 402 and, therefore, none are subject to BAT limitations or NSPS. Although EPA is currently considering a citizen petition seeking detailed consideration of cruise ship discharges and, if necessary, rulemaking to regulate such discharges, EPA has not yet decided whether (and if so, which) cruise ship discharges should be regulated under NPDES permits. In addition, recently-enacted, free standing legislation—not the CWA—imposes discharges limitations on black water (*i.e.*, sewage) and gray water (*i.e.*, laundry, shower, and galley sink wastes) for cruise ships operating in certain Alaskan waters.

EPA also excluded from consideration in its 2003 review: (1) Industries composed entirely or almost exclusively of indirect dischargers (*e.g.*, dental facilities), because the facilities are not subject to effluent guidelines under CWA section 304(b)(2); and (2) industries where the estimated hazard or risk was unclear and more data were needed to determine its magnitude. For the latter group, EPA intends to collect additional information for the next biennial Plan. EPA also did not identify industries where the vast majority of the estimated hazard or risk was limited to only one or a few facilities, because EPA believes that in such cases permit writing support to the States might better address the environmental problem. In judging whether support to permit writers would more effectively address a hazard or risk than national rulemaking, EPA will consider the number of facilities, their geographic location and other relevant factors.) EPA would assist in identifying control technologies and the effluent limitations based on best professional judgment (BPJ) on a facility-specific basis. EPA will evaluate this decision criterion based on the information available at the time of each annual review. By using this multi-layered screening approach, the Agency concentrated its resources on those categories that posed the greatest hazard or risk (based on best available data), while deferring consideration of industrial point source



categories that the Agency believes are not good candidates for effluent guidelines establishment or revision during this planning cycle.

As part of this year's review, EPA considered excluding from additional review industrial categories that have demonstrated that they are making significant progress through voluntary efforts to reduce hazard or risk to human health and the environment associated with their discharges. EPA agrees with stakeholders who have stated that voluntary efforts should be encouraged and rewarded, especially where voluntary reductions have been widely adopted within an industry and have led to significant reductions in pollutant discharges. EPA could not complete a systematic review of voluntary pollutant loading reductions during this annual review. However, a successful voluntary program would produce significant reductions in pollutant discharges, which in turn would be reflected in discharge monitoring and TRI data that EPA used to assess the potential hazard or risk associated with pollutant discharges.

For a number of the industries that appeared to offer the greatest potential for reducing hazard or risk to human health or the environment, EPA attempted to gather and analyze additional data prior to commencing detailed and costly economic and technology studies. EPA examined: (1) The pollutants driving the hazard or risk estimates; (2) the geographic distribution of facilities in the industry; (3) any discharge trends within the industry; and (4) possible links between industrial point source discharges and impaired waterbodies identified by EPA, States, and Tribal governments under CWA section 303(d). EPA also performed limited quality assurance checks on the data used to develop hazard or risk estimates (e.g., verifying data reported to TRI and the Permit Compliance System) to determine if any of the hazard or risk estimates relied on incorrect or suspect data. To the extent possible, EPA also considered the efficiency of existing treatment and any applicable and demonstrated technology, process change, or pollution prevention alternatives that could effectively reduce the pollutants remaining in the industry category's wastewaters.

Performance of this screening level analysis constitutes EPA's annual review for 2003.

### 3. What Was the Outcome of the Annual Review for 2003?

As a result of its 2003 annual review, EPA identified two industrial categories

for detailed investigation in its 2004 annual review: Organic Chemicals, Plastics, and Synthetic Fibers (part 414); and Petroleum Refining (part 419). During detailed investigation of these categories, EPA hopes to perform a more in-depth analysis of technology innovation and process changes in these industrial categories, as well as an analysis of technology cost and affordability. EPA will also consider whether new subcategories are needed for either of these categories. The purpose of the detailed investigation is to determine whether, in the final Effluent Guidelines Program Plan for 2004/2005, EPA should identify one or both of these industrial categories for possible revision of their existing effluent guidelines. Based on the information available to EPA at this time, EPA is not proposing to make such an identification. However, EPA will examine the results of its 2004 annual review, which it intends to conclude prior to publishing the final Effluent Guidelines Program Plan for 2004/2005, and will make a final decision on this matter as part of its final Plan. EPA requests comment and supporting data on whether it should identify either or both of these industrial categories for possible effluent guidelines rulemakings in the final Effluent Guidelines Program Plan for 2004/2005.

At that time or shortly thereafter, EPA would make available for public comment the data and information underlying any decision to identify for possible revision the guidelines for one or both of these industrial categories. EPA would then consider the public comments as part of its 2005 annual review. EPA emphasizes that a decision in the Effluent Guidelines Program Plan for 2004/2005 to identify one or both guidelines for possible revision does not in any way constitute a final decision to revise the guideline or guidelines. EPA would make any such effluent guidelines revisions—supported by an administrative record following an opportunity for public comment—only in connection with a formal rulemaking process pursuant to a schedule announced in that or a future Effluent Guidelines Program Plan.

If EPA decides to identify one or both of the guidelines for these industrial categories for possible revision in its final Effluent Guidelines Program Plan for 2004/2005, EPA would expect to announce in that plan that EPA would start the rulemaking process in the Summer of 2004. The rulemaking schedule itself would depend on a number of factors including the complexity of the industry and the availability of the data needed to

support the development of a proposal. In addition, if EPA were to select both of these industrial categories for effluent guidelines rulemakings, EPA would likely stagger the start dates of the rulemakings in order to ensure that Agency resources are used most effectively. In proposing the next Effluent Guidelines Program Plan, EPA would review these schedules and its progress to date. At that time, EPA could also determine, based on more in-depth data gathering and analyses, particularly with respect to Factors 2 and 3, that revisions to the effluent guidelines for one or both industrial categories were not warranted (i.e., that the existing guidelines remain appropriate in light of applicable statutory factors). See section VII.A for additional information on the status of EPA's investigation of these industries.

EPA also identified potentially high risks or hazards associated with discharges from two other industrial categories: Inorganic Chemicals (part 415) and Nonferrous Metals Manufacturing (part 421). However, the Agency identified data gaps or issues that made these industries a lower priority than organic chemicals and petroleum refining. EPA does not have enough information at this time to determine whether there is a hazard or risk warranting a detailed review of these industries for potential guideline revision and does not anticipate identifying these effluent guidelines for revision in the final 2004/2005 Effluent Guidelines Program Plan. See section VII.B for additional information on the status of EPA's investigation of these industrial point source categories.

EPA identified seven other industrial point source categories with relatively high estimates of potential hazard or risk, but also identified significant data gaps or issues affecting the Agency's estimates of these hazards or risks. EPA will continue to collect and analyze information on these seven industrial categories but will assign a higher priority to investigating the organic chemicals, petroleum refining, inorganic chemicals and nonferrous metals manufacturing industrial categories. EPA does not anticipate identifying any of these seven industries for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005. See section VII.C.

EPA's Regional Offices and stakeholders identified nine other industrial point source categories as potential candidates for effluent guideline revision based on potential opportunities to improve efficient implementation of the national water quality program or because their



discharges may contribute to water quality problems. EPA evaluated these industrial point source categories and, based on available data, did not identify hazard or risks that appear to warrant effluent guideline revision. EPA does not anticipate identifying any of these nine industries for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005. See section VII.C.

The outcome of the 2003 annual review is presented in Table VI-1. The table identifies some of the information considered by EPA during this annual review, including whether the industry was mentioned at least once during stakeholder and EPA Regional outreach efforts, and where the industry ranks in terms of hazard in units of toxic-weighted pounds equivalent (TWPE)

using TRI and PCS data. It also indicates whether EPA is identifying the particular industrial category for further investigation during the 2004 annual review (leading to a possible decision in the final Effluent Guidelines Program Plan for 2004/2005 to identify that category for rulemaking). A "No" in this column means that EPA does not plan to conduct a detailed study for this industry prior to publication of the final Effluent Guidelines Program Plan for 2004/2005. It also means that EPA does not plan to select this industry for effluent guidelines revisions for the final Effluent Guidelines Program Plan for 2004/2005. Finally, EPA used a set of rationales for making industry specific decisions for the preliminary Effluent Guidelines Program Plan for 2004/2005. Table VI-1 uses the

following codes to describe the rationales for the Agency's industry specific decisions:

(1) Effluent guidelines for this industry were recently revised or rulemaking is underway.

(2) EPA will consider whether to provide region-, State-, or facility-specific permit support for this industry.

(3) Not identified as a hazard or risk priority.

(4) Incomplete data available for analysis: Need to collect more information for the next biennial plan.

(5) EPA will consider whether to develop guidance in order to clarify existing permitting requirements.

(6) All or nearly all sources engaged in this industrial activity are indirect dischargers.

TABLE VI-1.—INDUSTRIES COVERED BY EXISTING EFFLUENT GUIDELINES (PROMULGATED UNDER SECTION 304(B))

No.	Industry category (listed alphabetically)	40 CFR part <sup>1</sup>	Suggested in stakeholder outreach? (Yes/No)	TRI rank <sup>2</sup>	PCS rank <sup>2</sup>	Conduct detailed investigation of industry for 2004/2005 plan? (Yes/No)	Rationale
1 .....	Aluminum Forming .....	467	No .....	25	18	No .....	(3)
2 .....	Aquatic Animal Production Industry.	451	Yes .....	N/A	45	No .....	(1)
3 .....	Asbestos Manufacturing	427	No .....	51	N/A	No .....	(3)
4 .....	Battery Manufacturing ..	461	Yes .....	36	48	No .....	(3)
5 .....	Canned and Preserved Fruits and Vegetable Processing.	407	Yes .....	29	38	No .....	(4)
6 .....	Canned and Preserved Seafood Processing.	408	Yes .....	49	26	No .....	(4)
7 .....	Carbon Black Manufacturing.	458	No .....	N/A	N/A	No .....	(3)
8 .....	Cement Manufacturing	411	No .....	33	29	No .....	(3)
9 .....	Centralized Waste Treatment.	437	No .....	N/A	N/A	No .....	(1)
10 .....	Coal Mining .....	434	Yes .....	26	39	No .....	(1) and (4).
11 .....	Coil Coating .....	465	Yes .....	32	N/A	No .....	(4)
12 .....	Concentrated Animal Feeding Operations (CAFO).	412	No .....	N/A	N/A	No .....	(1)
13 .....	Construction and Development.	450	Yes .....	N/A	N/A	No .....	(1)
14 .....	Copper Forming .....	468	No .....	28	34	No .....	(3)
15 .....	Dairy Products Processing.	405	Yes .....	37	47	No .....	(4)
16 .....	Electrical and Electronic Components.	469	Yes .....	34	23	No .....	(4)
17 .....	Electroplating .....	413	Yes .....	23	27	No .....	(1)
18 .....	Explosives Manufacturing.	457	No .....	41	35	No .....	(3)
19 .....	Ferroalloy Manufacturing.	424	No .....	27	31	No .....	(3)
20 .....	Fertilizer Manufacturing	418	Yes .....	20	17	No .....	(4)
21 .....	Glass Manufacturing ....	426	No .....	38	48	No .....	(3)
22 .....	Grain Mills .....	406	No .....	35	42	No .....	(3)
23 .....	Gum and Wood Chemicals.	454	No .....	46	21	No .....	(3)
24 .....	Hospitals .....	460	Yes .....	40	46	No .....	(6)
25 .....	Ink Formulating .....	447	No .....	45	N/A	No .....	(3)
26 .....	Inorganic Chemicals Manufacturing.	415	Yes .....	12	7	No .....	See section VII.B.1.

TABLE VI-1.—INDUSTRIES COVERED BY EXISTING EFFLUENT GUIDELINES (PROMULGATED UNDER SECTION 304(B))—Continued

No.	Industry category (listed alphabetically)	40 CFR part <sup>1</sup>	Suggested in stakeholder outreach? (Yes/No)	TRI rank <sup>2</sup>	PCS rank <sup>2</sup>	Conduct detailed investigation of industry for 2004/2005 plan? (Yes/No)	Rationale
27 .....	Iron and Steel Manufacturing.	420	No .....	6	5	No .....	(1)
28 .....	Landfills .....	445	No .....	9	12	No .....	(1)
29 .....	Leather Tanning and Finishing.	425	No .....	24	36	No .....	(3)
30 .....	Meat Products .....	432	Yes .....	30	25	No .....	(1)
31 .....	Metal Finishing .....	433	Yes .....	11	8	No .....	(1)
32 .....	Metal Molding and Casting.	464	Yes .....	22	33	No .....	(4) and (5).
33 .....	Metal Products and Machinery.	438	Yes .....	47	15	No .....	(1)
34 .....	Mineral Mining and Processing.	436	Yes .....	52	22	No .....	(4)
35 .....	Nonferrous Metals Forming and Metal Powders.	471	No .....	16	30	No .....	(3)
36 .....	Nonferrous Metals Manufacturing.	421	No .....	8	9	No .....	See section VII.B.2.
37 .....	Oil and Gas Extraction	435	No .....	50	43	No .....	(1) and (4).
38 .....	Ore Mining and Dressing.	440	Yes .....	21	10	No .....	(4)
39 .....	Organic Chemicals, Plastics and Synthetic Fibers.	414	Yes .....	1	4	Yes .....	See section VII.A.1.
40 .....	Paint Formulating .....	446	No .....	N/A	N/A	No .....	(3)
41 .....	Paving and Roofing Materials (Tars and Asphalt).	443	No .....	48	41	No .....	(3)
42 .....	Pesticide Chemicals ....	455	No .....	31	16	No .....	(3)
43 .....	Petroleum Refining .....	419	Yes .....	4	14	Yes .....	See section VII.A.2.
44 .....	Pharmaceutical Manufacturing.	439	No .....	17	24	No .....	(1)
45 .....	Phosphate Manufacturing.	422	No .....	44	6	No .....	(4)
46 .....	Photographic .....	459	No .....	N/A	48	No .....	(3)
47 .....	Plastic Molding and Forming.	463	No .....	15	37	No .....	(3)
48 .....	Porcelain Enameling ....	466	No .....	18	20	No .....	(3)
49 .....	Pulp and Paper Subparts B & E (Phase I).	430	Yes .....	3	3	No .....	(1)
50 .....	Pulp and Paper Subparts C and F through L (Phase II).	430	Yes .....	7	19	No .....	(4)
51 .....	Pulp and Paper Subparts A & D (Phase III).	430	Yes .....	30	25	No .....	(2)
52 .....	Rubber Manufacturing ..	428	No .....	14	32	No .....	(3)
53 .....	Soaps and Detergents Manufacturing.	417	No .....	42	44	No .....	(3)
54 .....	Steam Electric Power Generation.	423	Yes .....	5	1	No .....	(4)
55 .....	Sugar Processing .....	409	No .....	43	28	No .....	(3)
56 .....	Textile Mills .....	410	Yes .....	19	11	No .....	(4)
57 .....	Timber Products Processing.	429	Yes .....	2	40	No .....	(4)
58 .....	Transportation Equipment Cleaning.	442	Yes .....	N/A	N/A	No .....	(1) and (6).
59 .....	Waste Combustors .....	444	No .....	9	12	No .....	(1)

<sup>1</sup> **Note:** EPA has proposed to add parts 450 and 451 to title 40 of the Code of Federal Regulations. EPA has proposed to change the title of 40 CFR 432 from "Meat Products" to "Meat and Poultry Products."

<sup>2</sup> **Note:** These rankings are based on the toxic-weighted pounds equivalent (TWPE) associated with their toxic or non-conventional pollutant discharges reported to TRI or PCS. An NA in this column means that data and information were not available for this category.

*B. How Did EPA Estimate Potential Hazards or Risks to Human Health or the Environment As Part of Its 2003 Annual Review?*

The screening-level review of potential hazards or risks to human health or the environment (EPA's "Factor 1" review) focused on using readily available information to assess the potential hazard or risk associated with pollutants discharged from industrial point sources. EPA reviewed such data sources as Agency databases, models, existing scientific literature, the Gulf Hypoxia Action Plan, and analyses currently underway on chemical contaminants in the environment. This included data on pollutant point source discharges, water quality, environmental impacts (e.g., sediment and fish contamination), and pathogen impacts. The two major data sources/analyses that formed the basis of ranking industries for the current Factor 1 analysis are the Toxics Release Inventory (TRI) and Permit Compliance System (PCS). The Factor 1 analysis also describes the available data linking water quality impairments with point sources discharges. EPA focused this impaired waters analysis on those point source dischargers discharging the most pounds of toxic and non-conventional pollutants (as estimated by the initial screening TRI and PCS analyses). Section 2.1 of the docket contains the complete analysis including descriptions of additional data sources that may be useful in future planning cycles.

EPA primarily relied on PCS and TRI for estimating pollutant discharges. EPA believes that the TRI database is a reasonable starting point for identifying possible hazard or risk concerns as it is a national database on reported toxic discharges. EPA's Permit Compliance System (PCS) contains information required by the NPDES Permit Program for major dischargers across the country.<sup>1</sup> EPA does not require States to

include data for other dischargers (e.g., minor and indirect dischargers) in PCS, so little information is available about industries dominated by minor and indirect dischargers. However, EPA is primarily concerned with facilities that may discharge high volumes of polluted wastewaters because these are more likely to pose the greatest hazard or risk to human health or the environment. PCS is the primary repository of data used to determine reductions in pollutant loads to the waters of the United States. Because of its national scope, PCS is also a reasonable starting point for identifying hazard or risk concerns, especially when combined with other sources of information. Finally, the Agency also analyzed the spatial correlation between the discharge outfalls of regulated facilities that report to PCS and impaired water bodies listed under section 303(d) of the Clean Water Act.

We used the TRI and PCS databases as the focus in this round of analysis because of their nationwide coverage, relative accessibility, ability to link the source with the pollutant discharge, and the important types of toxic releases that they cover. However, as detailed in the complete Factor 1 report, the Agency is exploring other avenues of information that may be added in future planning cycles. These include, for example, regional resources such as the Gulf Hypoxia Action Plan (nutrients), various sources related to pathogens, information that becomes available as the Agency implements its Endocrine Disruptor Screening Program, and information being developed in the U.S. Geological Survey's National Water-Quality Assessment Program.

*C. How Did EPA Evaluate Stakeholder Input As Part of Its 2003 Annual Review?*

EPA's planning process for the Effluent Guidelines Program has historically considered information

provided by stakeholders regarding the need for new or revised effluent guidelines or regarding issues associated with effluent guidelines implementation and efficiency. For the 2003 annual review, EPA obtained information from informal discussions with stakeholder groups with an interest in the Effluent Guidelines Program and with EPA and state staff charged with implementing effluent guidelines in NPDES permits, as well as from public comments submitted to EPA on the draft strategy.

Stakeholders' suggestions played a prominent role in the screening analyses conducted for the preliminary Effluent Guidelines Program Plan for 2004/2005. Examples of such sectors include food processing/preparation industries (nutrients and/or oil and grease); and drinking water supply and treatment (total suspended solids); and coalbed methane (total dissolved solids, sodium adsorption ratio).

Results of the formal comment process are presented in this notice and in the following document: Factor 4 Analysis: Implementation and Efficiency Considerations—Status of Screening Level Review Phase (DCN 00547, section 2.3). Results of the informal process are described in today's notice and in the public record, section 2.3. EPA will follow up with stakeholders, as necessary, for more information on their recommendations as the planning process continues. EPA hopes that public review of this and future proposed and final Effluent Guidelines Program Plans will elicit additional information and suggestions. Tables VI-2 and VI-3 describe which industry sectors were identified during the Agency's outreach activities. Table VI-2 uses the same codes as Table VI-1 to describe the rationales for the Agency's industry specific decisions. Table VI-3 uses the same codes as Table VIII-1 to describe the rationales for the Agency's industry specific decisions.

TABLE VI-2.—INDUSTRIAL POINT SOURCE CATEGORIES CURRENTLY REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA <sup>1</sup>	
Canned and Preserved Fruits and Vegetable Processing.	.....	.....	✓	.....	.....	(3)
Canned and Preserved Seafood Processing.	.....	.....	✓	✓	✓	(4)
Coal Mining .....	.....	✓	✓	.....	✓	(1) and (4).

<sup>1</sup> A major discharger is any NPDES facility or activity classified as such by the Regional Administrator, or, in the case of approved State

Programs, the Regional Administrator in conjunction with the State Director. Major industrial facilities are determined based on

specific ratings criteria developed by EPA and approved State Programs.

TABLE VI-2.—INDUSTRIAL POINT SOURCE CATEGORIES CURRENTLY REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH—Continued

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA <sup>1</sup>	
Coil Coating .....	.....	.....	.....	✓	.....	(3)
Dairy Products Processing .....	.....	.....	✓	.....	.....	(4)
Electrical and Electronic Components. ....	.....	.....	.....	✓	.....	(4)
Electroplating .....	✓	.....	.....	.....	.....	(1)
Fertilizer Manufacturing .....	.....	.....	✓	✓	.....	(4)
Hospitals .....	✓	✓	.....	✓	.....	(6)
Inorganic Chemical Manufacturing. ....	.....	.....	.....	✓	.....	See section VII.B.1.
Meat Products .....	.....	.....	✓	✓	✓	(1)
Metal Finishing .....	✓	.....	✓	✓	✓	(1)
Metal Molding and Casting .....	✓	.....	✓	✓	✓	(4) and (5).
Metal Products and Machinery .....	.....	.....	.....	✓	.....	(1)
Mineral Mining and Processing .....	.....	.....	✓	.....	.....	(4)
Oil and Gas Extraction (including coal bed methane as new potential subcategory). ....	.....	✓	✓	✓	.....	(1) and (4).
Ore Mining and Dressing (hard rock mining). ....	.....	✓	✓	✓	.....	(4)
Organic Chemicals, Plastics, & Synthetic Fibers (including chemical formulating, packaging, and repackaging (including adhesives and sealants) operations as a new potential subcategory). ....	✓	.....	.....	.....	.....	See section VII.A.1.
Petroleum Refining (including petroleum bulk stations and terminals as a new potential subcategory). ....	.....	.....	✓	✓	✓	See section VII.A.2.
Pulp and Paper, Subparts B & E (Phase I). ....	.....	.....	✓	✓	.....	(1)
Pulp and Paper, Subparts C and F through L (Phase II). ....	.....	.....	✓	✓	.....	(4)
Pulp and Paper, Subparts A & D (Phase III). ....	.....	.....	✓	✓	.....	(2)
Steam Electric .....	.....	.....	✓	✓	.....	(4)
Textile Mills .....	.....	.....	✓	✓	.....	(4)
Timber Products Processing ....	.....	.....	.....	✓	.....	(4)
Transportation Equipment Cleaning (including industrial container & drum cleaning as a new potential subcategory). ....	✓	.....	.....	.....	.....	(1) and (6).

<sup>1</sup> **Note:** Association of Metropolitan Sewerage Agencies (AMSA), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA).

<sup>2</sup> **Note:** This column uses the same codes as Table VI-1 to describe the rationales for the Agency's industry-specific decisions.

TABLE VI-3.—INDUSTRY SECTORS CURRENTLY NOT REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale <sup>2</sup>
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA <sup>1</sup>	
Airport Industrial Discharges .....	.....	.....	✓	.....	.....	(3)
Aquatic Animal Production .....	.....	.....	✓	✓	.....	(1)
Storm Water Discharges from Construction and Development. ....	.....	.....	.....	.....	✓	(1)
Dental Facilities .....	✓	✓	.....	✓	.....	(4)
Drinking Water Supply & Treatment .....	.....	.....	✓	.....	.....	(2)
Food Service Establishments (SIC 581) .....	✓	.....	.....	.....	.....	(4)
Discharges from Groundwater Remediation Independent and Stand-Alone Laboratories .....	✓	.....	.....	✓	.....	(5)
Ocean Going Vessels (cruise ships, ballast and bilge water). ....	.....	✓	✓	.....	.....	(4)
	.....	.....	.....	.....	.....	(6)

TABLE VI-3.—INDUSTRY SECTORS CURRENTLY NOT REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH—Continued

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale <sup>2</sup>
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA <sup>1</sup>	
Printing and Publishing .....	√					(4)
Prisons .....				√		(4)
Municipal Storm Water Runoff .....			√	√	√	(5)
Wastewater Treatment and Sewerage Systems.			√			(5)

<sup>1</sup> **Note:** Association of Metropolitan Sewerage Agencies (AMSA), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA).

<sup>2</sup> **Note:** This column uses the same codes as Table VIII-1 to describe the rationales for the Agency's industry-specific decisions.

## VII. What Will Be the Focus of EPA's 2004 Annual Review?

### A. Industrial Point Source Categories EPA Has Identified for Detailed Investigation

As noted in section VI, EPA has identified two industrial categories for detailed investigation in the 2004 annual review: Organic Chemicals, Plastics, and Synthetic Fibers (including Chemical Formulating, Packaging, and Repackaging and Adhesives and Sealants operations) (part 414); and Petroleum Refining (including Petroleum Bulk Stations & Terminals) (part 419). The purpose of the 2004 detailed investigation is to determine whether, in the final Effluent Guidelines Program Plan for 2004/2005, EPA should identify Organic Chemicals, Plastics, and Synthetic Fibers or Petroleum Refining (or both) as the subject of possible rulemaking to revise their existing effluent guidelines. During the 2004 annual review, which will conclude with EPA's publication of the final Effluent Guidelines Program Plan for 2004/2005, EPA intends to collect additional information from NPDES permits, permitting authorities, and specific industry facilities, as well as review data and comments submitted in response to today's notice.

#### 1. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF)

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. Of 1,581 facilities classified as OCPSF manufacturing facilities, PCS location data are sufficient to index 578 facilities to their receiving waterbodies. Of these facilities, 205 (35%) are discharging pollutants (e.g., priority organics, nutrients, metals) identified as causing water quality impairments to their receiving streams. EPA has information

that suggests there may be demonstrated pollution prevention opportunities and advanced technologies for better treating toxic pollutants and nutrients, and reducing wastewater flow. As part of its review of this industry, EPA will consider whether any subcategories should be added. For example, EPA has identified chemical formulating, packaging, and repackaging (including adhesives and sealants) operations, which is not currently regulated by technology-based effluent guidelines as a possible new subcategory.

Some stakeholders have encouraged EPA to consider revising these effluent guidelines. During outreach efforts, some stakeholders asserted that the structure and scope of part 414 presents a number of permitting and enforcement challenges: (1) Difficulties encountered in correctly calculating and establishing mass-based limits; (2) problems in obtaining the data necessary to determine compliance with mass-based limits; (3) deficiencies in permits and control mechanisms that have hindered enforcement actions against non-compliant facilities; and (4) challenges encountered in determining the correct Standard Industrial Classification (SIC) codes to apply to facilities, which in turn makes it difficult for permit writers to identify the applicable effluent guidelines requirements. Therefore, these stakeholders recommend reevaluating these guidelines to consider more general coverage that is not tied to SIC codes. They also recommend switching from mass-based limits to concentration-based limits because of difficulties in implementing and enforcing mass-based limits.

In comments on the draft Strategy a commenter identified chemical formulating, packaging, and repackaging (including adhesives and sealants) operations as an unregulated subcategory for which effluent guidelines should potentially be developed. EPA intends to review

chemical formulating, packaging, and repackaging (including adhesives and sealants) operations for possible inclusion in the OCPSF point source category because of the potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options.

#### 2. Petroleum Refining

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. A large number of petroleum refineries report discharges of toxic pollutants (e.g., priority organics, metals). EPA has information suggesting that there may pollution prevention alternatives opportunities for this industry (e.g., via product substitution), and that treatment technologies (e.g., membrane separation, novel adsorption) may exist to better prevent stormwater contamination and to control effluent discharges from this industrial category.

During outreach, some stakeholders encouraged EPA to consider revising these effluent guidelines. Their suggestions included expanding the list of regulated pollutants to include: (1) Priority pollutants; (2) metals, especially selenium; (3) nutrients (ammonia); (4) biochemical oxygen demand (BOD); and (5) chemical oxygen demand (COD). Stakeholders suggested a review of Best Practicable Technology (BPT), Best Available Technology (BAT), and Best Conventional Pollutant Control Technology (BCT) for accuracy and relevance because the current effluent guidelines were promulgated in 1982.

Some EPA Regional Offices and stakeholders also asserted that the effluent guidelines for this category are outdated relative to the current state of the industry, and should be a priority for revision. These stakeholders argue that not only have the technologies

changed significantly since the guidelines were first issued in 1982, but many refineries have two to four times the throughput than was used when the effluents guidelines were first issued and can probably achieve greater pollutant reductions than they are presently required to achieve. For industries with production based limitations and standards, such as this one, a significant change in production may suggest a need to review the effluent guidelines.

As part of its review of this industry, EPA will consider whether any new subcategories should be added. For example, EPA has identified petroleum bulk stations and terminals, which are not currently regulated by technology-based effluent guidelines, as a possible new subcategory. Some stakeholders identified concerns for discharges from petroleum bulk stations and terminals facilities. EPA intends to consider petroleum bulk stations and terminals (not currently regulated by effluent guidelines) as it reviews the Petroleum Refining point source category (part 419) because of potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options.

#### *B. Industrial Point Source Categories EPA Has Identified as the Highest Priority for Further Investigation*

EPA intends to address data gaps and uncertainties affecting EPA's estimates of the potential risks and hazards posed by two industrial categories: Inorganic Chemicals (part 414) and Nonferrous Metals Manufacturing (part 421). However, EPA does not anticipate completing its review of these industrial categories in this planning cycle. EPA expects to complete its review of Group II industries for the Effluent Guidelines Program Plan for 2006/2007.

Consequently, EPA does not anticipate selecting either of these industrial categories for revision of their effluent guidelines in the final Effluent Guidelines Program Plan for 2004/2005.

##### **1. Inorganic Chemicals**

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. EPA identified this industry as a lower priority than the Organic Chemicals, Plastics and Synthetic Fibers and Petroleum Refining industries based on the following:

- Only a few facilities account for the reported toxic releases. For the Inorganic Chemicals Manufacturing Point Source Category, 12 facilities in the 2000 TRI database account for

approximately 90 percent of the reported releases of toxic-weighted pound equivalents (TWPE) to waters of the United States.

- The reported toxic releases are dominated by dioxin. Dioxin and dioxin-like compounds represent approximately 70 percent of the TWPE reported releases to surface waters and three facilities discharge approximately 80 percent of those TWPE. The majority of reported dioxin discharges are from chlor-alkali facilities (SIC 2812).

- Use of industry-specific dioxin toxic weighting factors. Using the best available information, EPA is using different toxic weighting factors for the different dioxin congeners. Further information and data may also affect EPA's estimate of the toxicity associated with these dioxin discharges.

- Low-level mercury discharges reported in PCS account for a substantial part of the TWPE for this industry. Excluding one facility, the average mercury discharge is at a very low concentration, raising issues about the treatability of these discharges.

During outreach efforts, some stakeholders suggested that the Inorganic Chemical effluent guidelines (part 415) should be reevaluated to determine whether the "no discharge" requirement is reasonable. Stakeholders stated that there have been substantial changes to this industrial point source category since the effluent guidelines were promulgated in 1982. In particular, stakeholders suggested revising the effluent guidelines with respect to chlor-alkali and nitrous oxide manufacturing. The majority of reported dioxin discharges are from chlor-alkali facilities (SIC 2812). Stakeholders also suggested revising the potassium manufacturing subcategory to address interpretation issues for new sources as to what constitutes process wastewater.

##### **2. Nonferrous Metals Manufacturing**

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. The existing effluent guidelines use SIC codes to determine applicability but in some cases a single SIC code covers facilities not only in this industrial point source category, but also in other categories. Consequently, EPA has begun to conduct further review of the discharges reported in TRI and PCS for this category to ensure that EPA is not double-counting pollutants among two or more categories. This review has already lowered the estimated toxic and non-conventional pollutant discharges attributed to this category and may do

so further. EPA also notes that nonferrous metals manufacturing facilities tend to have efficient metals removal from existing treatment-in-place (most metals removals are approximately 99% efficient based on 2000 TRI data).

#### *C. Other Industry Categories*

EPA identified seven other industrial point source categories with relatively high estimates of potential hazard or risk based on the screening tools used to evaluate hazard or risk and the information gathered from EPA Regional Offices and stakeholders: fertilizer manufacturing; ore mining and dressing; phosphate manufacturing; pulp and paper (phase II); steam electric power generating; textile mills; and timber products processing. EPA also identified numerous data gaps and issues that may affect the Agency's estimate of the risk or hazard posed by discharges from these industrial point source categories. EPA will continue investigating pollutant discharges from these industrial point source categories, but will assign a higher priority to the industrial categories described in sections VII A. and B. At the present time, the Agency does not have enough information to determine whether the hazard or risk that appears to be posed by these categories warrants revision of the applicable effluent guidelines. Therefore, EPA does not anticipate identifying any of these categories for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005.

EPA Regional Offices and outreach efforts identified nine other industrial point source categories as potential candidates for effluent guideline revision: canned and preserved fruits and vegetable processing; canned and preserved seafood processing; coal mining; coil coating; dairy products processing; electrical and electronic components; metal molding and casting; mineral mining and processing; and oil and gas extraction (including coalbed methane extraction). These industries were identified because of potential opportunities to improve efficient implementation of the national water quality program or because their discharges may contribute to water quality problems. EPA evaluated these categories and, based on available data, did not identify hazard or risks that appear to warrant effluent guideline revision. Therefore, EPA does not anticipate identifying any of these categories for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005.

### VIII. Identification of and Schedule for Possible Categories for Potential New Effluent Guidelines

In its Effluent Guidelines Program Plan, EPA must identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B). For the categories EPA identifies under this provision, EPA must establish a schedule for the promulgation of effluent guidelines not later than three years after such identification. See CWA section 304(m)(1)(C). Today's **Federal Register** notice presents EPA's preliminary decisions under section 304(m)(1)(B).

#### *A. Review Process and Decision Criteria for Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines*

The universe of potential industrial categories subject to section 304(m)(1)(B) is limited. First, and most important, this analysis applies only to industrial categories for which EPA has not promulgated effluent guidelines, not to unregulated subcategories or pollutants within a currently regulated industrial category. Thus, the first decision criterion asks whether the industrial operation or activity in question is properly characterized as an industry "category." The list of "categories of sources" set forth at section 306(b)(1)(A) (e.g., pulp and paper mills, organic chemicals manufacturing, steam electric powerplants) suggests that Congress intended that this term should be broadly construed. EPA considers the need to address new subcategories and new pollutants as part of its annual review of existing effluent guidelines. See section VI. EPA believes that the decision whether to revise a guideline to address additional related industrial activities or pollutants should be made in the context of evaluating the promulgated effluent guideline as a whole. For example, as part of its annual review under CWA section 304(m)(1)(A), EPA is reviewing the following industrial operations as potential new subcategories of existing effluent guidelines: (1) Petroleum Bulk Stations and Terminals (SIC 5171) will be reviewed as a potential new subcategory under Petroleum Refining (part 419); and (2) Chemical Formulating, Packaging, and Repackaging (including Adhesives and

Sealants) operations will be reviewed as a potential new subcategory under Organic Chemicals, Plastics, and Synthetic Fibers (part 414).

Second, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 or categories like wastewater treatment plants regulated under section 301(b)(1)(B). EPA also believes this criterion should be used to exclude categories where the vast majority of toxic and non-conventional pollutant discharges are accounted for by one or a few facilities. EPA believes that more effective environmental protection can be accomplished sooner for such categories, and with less use of limited Agency resources, by providing site-specific guidance to permit authorities on appropriate limitations and standards based on best professional judgment. This decision criterion acknowledges that other tools created by the Clean Water Act better pollutant discharges from some categories of facilities.

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that the record shows are making non-trivial discharges of toxic or non-conventional pollutants to waters of the United States. EPA does not believe that it is necessary, nor was it Congress's intent, to develop national effluent guidelines regulations for categories of sources that are likely to pose an insignificant risk to human health or the environment. See S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. This decision criterion leads EPA to focus on those remaining industrial categories where new effluent guidelines have the potential to address an identifiable hazard or risk to human health or the environment. In other words, using this decision criterion, EPA will identify those industrial categories of polluters for which effluent guidelines may be appropriate, based on information available during the development of a particular Effluent Guidelines Program Plan. Thus, EPA might judge in 2004, based on information available at that time, that the toxic and non-conventional pollutant discharges from sources within an industrial category are trivial, and then, based on changes

in the industry or new information, reach a different conclusion in 2006 or later. Priority-setting is intrinsic to any planning exercise, and this decision criterion is an important priority-setting tool. Because section 304(m)(1)(C) requires that EPA complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) plan, it is important that EPA have the discretion to identify only those industrial categories where the risks or hazards are indeed non-trivial. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. In assessing hazard or risk for purposes of CWA section 304(m)(1)(B), EPA used the same methodology discussed in section VI for reviewing industrial categories with existing effluent guidelines.

#### *B. Outcome of EPA's Analysis Under CWA Section 304(m)(1)(B)*

Applying these decision criteria, EPA identified no new candidates for effluent guidelines rulemaking for this preliminary Plan. Consequently, EPA is not proposing to schedule an effluent guidelines rulemaking for any industrial category not already regulated by existing effluent guidelines. EPA's application of these decision criteria to industrial activities without effluent guidelines under sections 304(b) or 306 is presented in Table VIII-1 and in the record (DCN 00548, section 3.0). The "Rationale" column in Table VIII-1 uses a numeric coding system to explain why EPA did not identify the industrial activity in this preliminary Plan as a candidate for an effluent guidelines rulemaking:

(1) An effluent guidelines rulemaking for this industry is underway or was recently concluded.

(2) The vast majority of the estimated hazards are limited to only one or a few facilities.

(3) Inadequate data to determine if there are non-trivial discharges; additional data collection on-going.

(4) All or nearly all sources engaged in this industrial activity are indirect dischargers and are not subject to CWA section 304(b) or section 306.

(5) Other CWA controls apply (e.g. Uniform National Discharge Standards for armed forces vessels, municipal storm water regulations).

(6) Industrial activity is not subject to CWA permitting requirements.



TABLE VIII-1.—INDUSTRIAL ACTIVITIES FOR WHICH EPA HAS NOT PROMULGATED EFFLUENT GUIDELINES

Industrial activity	Suggested in stakeholder outreach? (Yes/No)	TRI rank	PCS rank	Continue investigation for possible identification for final Effluent Guidelines Program Plan for 2004/2005? (Yes/No)	Rationale
Airport Industrial Discharges .....	Yes .....	Not Avail .....	2 .....	No .....	(3)
Aquatic Animal Production .....	Yes .....	Not Avail .....	Not Avail .....	No .....	(1)
Storm Water Discharges from Construction and Development.	Yes .....	Not Avail .....	Not Avail .....	No .....	(1)
Dental Facilities .....	Yes .....	Not App .....	Not App .....	No .....	(4)
Drinking Water Supply & Treatment.	Yes .....	1 .....	1 .....	No .....	(2)
Food Service Establishments (SIC 581).	Yes .....	Not App .....	Not App .....	No .....	(4)
Discharges from Groundwater Remediation.	Yes .....	Not App .....	Not App .....	No .....	(5)
Independent & Stand-Alone Laboratories.	Yes .....	Not App .....	Not App .....	No .....	(4)
Industrial Laundries .....	No .....	Not App .....	Not App .....	No .....	(4)
Ocean Going Vessels (cruise ships, ballast and bilge water).	Yes .....	Not App .....	Not App .....	No .....	(6)
Printing & Publishing .....	Yes .....	Not App .....	Not App .....	No .....	(4)
Prisons .....	Yes .....	Not App .....	Not App .....	No .....	(4)
Municipal Storm Water Runoff ....	Yes .....	Not App .....	Not App .....	No .....	(5)
Wastewater Treatment and Sewerage Systems.	Yes .....	Not App .....	Not App .....	No .....	(5)

**Note:** "Not Avail." means that the information was not available using data from TRI or PCS. "Not App." means that this 304(m) ranking was not applicable for this industry, in as much as this industry is not subject to 304(m) effluent guidelines planning.

## IX. Request for Comment and Information

EPA invites and encourages public participation in the development of the Effluent Guidelines Program Plan for 2004/2005. The Agency asks that comments address deficiencies in the record of this preliminary Plan and that commenters provide supporting data for suggested revisions or corrections where possible.

EPA particularly requests comments and information on these issues:

A. EPA requests information on the industries recommended for detailed investigation: Organic Chemicals, Plastics, and Synthetic Fibers (40 CFR part 414) and Petroleum Refining (40 CFR part 419). Specifically, EPA hopes to gather the following information:

*OCPSF (SIC codes 2821, 2823, 2824, 2865, 2869)*

- What is the source (raw material, process, product) of the TRI-reported releases of toxic chemicals, particularly dioxin and dioxin-like compounds, PACs, aniline, and sodium nitrite?
- What control technologies or techniques can be used to reduce the wastewater contamination with these pollutants?
- What toxic chemicals are released from OCPSF facilities, but not reported to TRI or PCS?
- Manufacturers of azo dyes and certain facilities in the rubber industry reported wastewater releases of aniline

and sodium nitrite. What is the source (raw material, process, product) of these releases? What control technologies or techniques can be used to reduce wastewater contamination with these pollutants?

- Manufacturers of ethylene dichloride and vinyl chloride monomer reported wastewater releases of dioxin and dioxin-like compounds. What is the source (raw material, process, product) of these releases? What control technologies or techniques can be used to reduce wastewater contamination with these pollutants?

*Chemical Formulating, Packaging, and Repackaging (SIC codes 2841, 2842, 2844, 2851, 2891, 2893, 2899)*

- What are the sources of wastewaters discharged from these facilities?
- What pollutants (toxic, conventional, and nonconventional) are contained in these wastewaters and at what quantity?
- What control technologies or techniques can be used to reduce the wastewater contamination with these pollutants?
- What is the basis for the discharge limits in NPDES permits issued to facilities in these SIC codes?

*Petroleum Refining (SIC code 2911)*

- In 2000, why did 19 refineries report surface water and POTW releases of PACs to TRI, while 164 refineries did not report releases?

• What control technologies or techniques can be used to reduce the PACs in refinery wastewaters?

- What is the source of dioxin and dioxin-like compounds in refinery wastewaters?
- What process modifications have been implemented at refineries to reduce the generation of dioxins?
- What is the source of vanadium and other toxic metals in refinery wastewaters?
- What process modifications have been implemented at refineries to reduce the vanadium in refinery wastewaters? Of other toxic metals?
- What toxic chemicals are released from refineries, but not reported to TRI or PCS?

*Petroleum Bulk Stations and Terminals (SIC code 5171)*

- What is the discharge status (number of facilities with direct, indirect, and zero discharge) of facilities in this SIC code?
- Why or how do certain facilities discharge no wastewater, while other facilities discharge substantial volumes? (off-site disposal, lack of rainfall, 100% recycle/reuse, etc.)
- What is the discharge of toxic pollutants (pollutant concentrations and mass)?
- Is ammonia a typical contaminant in wastewater from facilities in SIC code 5171? What is the source of ammonia at these facilities?

- What are wastewater sources and discharge volumes?
- Are wastewater discharges continuous or intermittent (depending on facility operations, rainfall, or other event)?

- What is the current level of treatment in place?
- One source of contaminated wastewater at PBST facilities is water that accumulates at the bottom of product tanks, known as tank bottom water. How are PBSTs currently managing this wastewater (hauled off-site for contract disposal, mixed with accumulated stormwater and treated on-site, or other means)? What determines how a PBST will dispose of its tank bottom waters? How do PBST facilities manage and treat contact stormwater?

- What is the extent of pollution prevention/recovery practices in place?
- How have EPA's stormwater regulations impacted PBST discharges?

B. EPA requests information on the industries for which the Agency states that there is incomplete data available for analysis (*i.e.*, industrial point source categories with existing effluent guidelines identified with "(4)" in the column titled "Rationale" in Tables VI-1 and industrial point source categories with no existing effluent guidelines identified with "(3)" in the column titled "Rationale" in Tables VIII-1). EPA will need to collect more information for the next biennial plan. Specifically, EPA hopes to gather the following information:

- What toxic pollutants are discharged from these industries in non-trivial amounts on an industry and per-facility basis?

- What raw material(s) or process(es) are the sources of these pollutants?
- What technologies are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

C. EPA solicits comments on whether EPA used the correct evaluation factors, criteria and data sources to develop this proposed plan. Please see the record for a more detailed discussion of EPA's analysis supporting this proposal (DCN 00548, section 3.0). Also see the record for more information on how EPA's analysis differed from the analytical framework described in the draft Strategy for National Clean Water Industrial Regulations (DCN 00553, section 3.0). EPA invites comment on the appropriateness of and to suggest improvements to its approach, its identification of relevant data sources and its uses of these data.

D. EPA solicits comments on whether, and if so how, should the Agency provide EPA Regions and States with

permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard or risk is associated with one or a few facilities).

E. EPA solicits comment on how to improve its impairment analysis to better characterize and quantify relationships between industrial point sources and impaired waters.

F. EPA solicits comment on the sources of data EPA might use to document industry efforts to voluntarily reduce pollutant discharges. EPA invites commenters to provide any information they have documenting voluntary pollution reductions by any of the industry categories regulated (or potentially regulated) by effluent limitation guidelines.

G. EPA solicits comment on the methodology for grouping industries for review and prioritization and the factors and measures EPA should consider for determining if discharges are trivial.

H. Process additives in use in the steam electric power generation point source category have changed over time. Starting in the early 1990s, some power plants began converting from the use of chlorinated compounds to brominated compounds. However, many of these plants report only total residual oxidant (TRO) as part of their NPDES permit requirements. What additional data sources are available to quantify the amount and type of brominated compounds discharged from this industry?

I. EPA solicits comment on implementation issues related to existing effluent guidelines.

Dated: December 23, 2003.

**G. Tracy Mehan III,**

*Assistant Administrator for Water.*

[FR Doc. 03-32214 Filed 12-30-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7605-8]

### Standards for the Use or Disposal of Sewage Sludge; Final Agency Response to the National Research Council Report on Biosolids Applied to Land and the Results of EPA's Review of Existing Sewage Sludge Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is publishing the results of its review of regulations under the Clean Water Act (CWA)

governing the use and disposal of sewage sludge. The Clean Water Act requires that EPA review the sewage sludge regulations for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements. As part of this review, EPA commissioned the National Research Council (NRC) of the National Academy of Sciences to independently review the technical basis of the chemical and microbial regulations applicable to sewage sludge that is applied to land. In July 2002, the NRC published a report entitled "Biosolids Applied to Land: Advancing Standards and Practices" in response to the EPA's request.

In April 2003 EPA announced and requested public comments on a preliminary strategy explaining how EPA planned to respond to the NRC report recommendations. Today, the Agency is announcing its final response, also known as the final action plan, to the NRC report. EPA is also presenting the results of its review of existing sewage sludge regulations to identify additional toxic pollutants in sewage sludge for potential future regulations. Based on a screening assessment of chemical pollutants for which EPA had adequate data (*e.g.*, human health benchmark values, and information on fate and transport in the environment), as well as concentration data in sewage sludge for those pollutants, EPA has identified 15 pollutants for possible regulation. This list constitutes the final results of EPA's current review of existing sewage sludge regulations as required by the CWA. These pollutants will undergo a more refined risk assessment and risk characterization which may lead to a notice of proposed rulemaking under the Clean Water Act. In this notice, the term "biosolids" is used interchangeably with "sewage sludge," which is defined in the regulations and used in the statute.

**ADDRESSES:** The public record for this action has been established under Docket ID No. OW-2003-0006. Materials are available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Rick Stevens, U.S. Environmental Protection