

The CPIP presents an array of conceptual long-term port improvement scenarios, some of which would involve future federal activities were they to be advanced to the status of a real project. Any future port-improvement projects involving federal actions, as defined under NEPA, would be required to undergo the applicable environmental review process. Given the considerable time period before the conceptual improvements identified in the CPIP Plan would become actual proposed projects with sponsors, a detailed environmental review and analysis, as conducted in an EIS, is not warranted at this time. As a result, the Federal co-lead agencies are canceling the EIS process. In the short-term, a programmatic analysis in the form of an Environmental Assessment will be prepared to identify what type of environmental review could be expected of any improvement projects that may be proposed. This programmatic Environmental Assessment will be available for public review in Fall 2005.

**FOR FURTHER INFORMATION CONTACT:** Grace Musumeci, U.S. Environmental Protection Agency, (212) 637-3738; Bryce Wisemiller, U.S. Army Corps of Engineers, (917) 790-8307; Richard E. Backlund, Federal Highway Administration, (212) 668-2205.

Dated: August 4, 2005.

**Kathleen C. Callahan,**

*Acting Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

[OW-2004-0032; FRL-7959-8]

RIN 2040-AE76

### Notice of Availability of Preliminary 2006 Effluent Guidelines Program Plan

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

**ACTION:** Notice of preliminary 2006 Effluent Guidelines Program Plan; request for comments.

**SUMMARY:** Under the Clean Water Act (CWA), EPA establishes national technology-based regulations known as effluent guidelines and pretreatment standards to reduce pollutant discharges from categories of industry discharging directly to waters of the United States or discharging indirectly through Publicly Owned Treatment Works (POTWs). The CWA sections 301(d), 304(b), 304(g), and 307(b) require EPA to annually

review these effluent guidelines and pretreatment standards. Today's notice first presents EPA's 2005 review of its existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of categories of indirect dischargers without pretreatment standards to identify potential new categories for pretreatment standards. CWA section 304(m) requires EPA to biennially publish an effluent guidelines program plan and provide for public notice and comment on such plan. Therefore, this notice also presents the preliminary 2006 effluent guidelines program plan. Included in the preliminary 2006 plan is a solicitation for comments and data on industry categories that may be discharging non-trivial amounts of toxic or non-conventional pollutants and are not currently subject to any effluent guidelines. Finally, this notice provides a second opportunity for public notice and comment on the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"), see 67 FR 71165 (November 29, 2002).

**DATES:** If you wish to comment on any portion of this notice, EPA must receive your comments by October 28, 2005. EPA will conduct a public meeting on 20 September 2005, from 9 a.m. to 12 p.m. Eastern Standard Time. For information on the location of the public meeting, see **ADDRESSES** section.

**ADDRESSES:** Identify your comments, data and information relating to the Agency's draft Strategy; by Docket ID No. OW-2002-0020. Identify all other comments, data and information relating to this notice by Docket ID No. OW-2004-0032. Submit your comments, data and information by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments, data, and information. Follow the on-line instructions for submitting comments.

C. E-mail: [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov).

D. Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2004-0032. For comments, data, and information on the draft Strategy, use Docket ID No. OW-2002-0020.

E. Hand Delivery: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID

No. OW-2004-0032. Use Docket ID No. OW-2002-0020 for comments, data, and information on the draft Strategy. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments, data, and information to Docket ID No. OW-2004-0032. For comments, data, and information on the draft Strategy, use Docket ID No. OW-2002-0020. EPA's policy is that all comments, data, and information received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through EDOCKET, regulations.gov, or e-mail information that you consider to be CBI or otherwise protected. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on obtaining access to comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal 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.

**Public Meeting:** 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.C.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carey A. Johnston at (202) 566-1014 or [johnston.carey@epa.gov](mailto:johnston.carey@epa.gov), or Ms. Jan Matuszko at (202) 566-1035 or [matuszko.jan@epa.gov](mailto:matuszko.jan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### How Is This Document Organized?

The outline of today's notice follows:

- I. General Information
- II. Legal Authority
- III. What is the Purpose of Today's **Federal Register** Notice?
- IV. Background
- V. EPA's 2005 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
- VI. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
- VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards to Identify Potential New Categories for Pretreatment Standards
- VIII. The Preliminary 2006 Effluent Guidelines Program Plan Under Section 304(m)
- IX. Request for Comment and Information

#### I. General Information

##### A. Regulated Entities

Today's notice does not contain regulatory requirements. Rather, today's notice describes: (1) The Agency's 2005 annual review of existing effluent limitations guidelines and pretreatment standards under the Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b); (2) EPA's review of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b); and (3) the preliminary 2006 effluent guidelines

program plan under CWA section 304(m) ("Plan"). EPA anticipates completing the final 2006 Plan by August 2006. As required by CWA section 304(m), the final Plan will: (1) Present a schedule for EPA's annual review of existing effluent guidelines under CWA section 304(b) and a schedule for any effluent guidelines revisions; and (2) identify industries for which EPA has not promulgated effluent guidelines but may decide to do so through rulemaking and a schedule for these rulemakings.

#### B. How Can I Get Copies of Related Information?

##### 1. Docket

EPA has established an official public docket for the Agency's 2005 and 2006 annual reviews of existing effluent limitations guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g), and 307(b), and the 2006 Plan under CWA section 304(m) under Docket ID No. OW-2004-0032. EPA has established an official public docket for the Agency's draft Strategy under Docket ID No. OW-2002-0020. 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, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute is not included in the materials available to the public. 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.

##### 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 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. 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. Once in the system, select "search," then key in the appropriate docket identification number.

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

A public meeting to review the preliminary 2006 Plan will be held in Washington, DC (see the **DATES** and **ADDRESSES** sections 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 entering the building if you contact Ms. Cassandra Holmes at least three business days prior to the meeting with your name, phone number, and any affiliation. Ms. Holmes can be reached via e-mail at [holmes.cassandra@epa.gov](mailto:holmes.cassandra@epa.gov). Please use "304(m) Public Meeting Attendee" in the e-mail subject line. Ms. Holmes can also be reached by telephone at (202) 566-1000.

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) Present the Agency's 2005 annual review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b), and 304(g); (2) present the Agency's evaluation of categories of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA section 307(b); (3) present the preliminary 2006 Plan under CWA section 304(m); (4) review the industry sectors identified for further investigation; and (5) identify information collection activities and analyses EPA anticipates completing for the Agency's 2006 review of effluent guidelines and pretreatment standards and the final Plan. EPA will not provide a transcript of the meeting but will record the meeting minutes for the docket supporting this action. Individuals wishing to comment on the Agency's review and the preliminary Plan would need to submit written comments as described in section I.C. in order for EPA to consider their comments in the next annual review and final Plan.

If you need special accommodations at this meeting, including wheelchair access or special audio-visual support needs, you should contact Ms. Holmes at least seven 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 website at: <http://www.epa.gov/edocket/> and EPA's Effluent Guidelines Planning website 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 entrance at the EPA East Building, 1201 Constitution Avenue, NW., Washington, DC.

## II. Legal Authority

Today's notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), 306, and 307(b), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, and 1317.

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

Today's notice presents EPA's 2005 review of its existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards. CWA section 304(m) requires EPA to biennially publish an effluent guidelines program plan and provide for public notice and comment on such plan. Therefore, this notice also presents the preliminary 2006 effluent guidelines program plan. Included in the preliminary 2006 plan is a solicitation for comments and data on industry categories that may be discharging non-trivial amounts of toxic or non-conventional pollutants and are not currently subject to effluent guidelines. Finally, this notice provides a second opportunity for public notice and comment on the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"), see 67 FR 71165 (November 29, 2002).

## IV. Background

### A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using specific technologies. 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 effluent limitations guidelines 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 publicly owned treatment works (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).

#### 1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

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 (July 30, 1979). 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 423. 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.

#### 2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

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 considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

#### 3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) & (F). 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. See CWA section 304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded 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.

#### 4. New Source Performance Standards (NSPS)—CWA Section 306

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.

#### 5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

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.

#### 6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

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 facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

#### *B. What Are EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?*

##### 1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations "if appropriate." Section

304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guideline selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of 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); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, with final action on such rulemaking required not later than three years after the industrial category is identified in a final Plan. See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. See *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under section 301(d) and 304(b) simultaneously.

##### 2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers "from time to time, as control technology, processes, operating methods, or other alternatives change."

See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them "if appropriate." Although section 307(b) only requires EPA to review existing pretreatment standards "from time to time," section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) review requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.*, EPA will publish the 2006 annual pretreatment standards review in the notice containing the Agency's 2006 annual review of existing effluent guidelines and the final 2006 Plan). EPA intends that these coincident reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, EPA hopes to most efficiently serve the public with these coincident reviews whereby this single notice and future notices serve as the "one-stop shop" source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

#### **V. EPA's 2005 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)**

##### *A. What Process Did EPA Use to Review Existing Effluent Guidelines and Pretreatment Standards Under CWA Section 301(d), 304(b), 304(g), and 307(b)?*

##### 1. Background

In its 2005 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards,

representing a total of 56 point source categories and over 450 subcategories. EPA thereby met its obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d) and 304(b) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

EPA's annual review of existing effluent guidelines and pretreatment standards represents a considerable effort by the Agency to consider the hazards to human health or the environment from industrial point source category discharges. The 2005 annual reviews, which themselves build on reviews from previous years, also reflect a lengthy outreach effort to involve stakeholders in the review process. In performing its 2005 annual review, EPA considered all information and data submitted to EPA as part of its outreach activities. EPA reviewed all industrial sectors and will conduct more focused detailed reviews for a select number of industrial sectors. EPA will complete these detailed reviews prior to publication of the final 2006 Plan.

As discussed in more detail below, EPA uses pollutant loadings information and technological, economic, and other information in evaluating whether it would be appropriate to revise its promulgated effluent guidelines and pretreatment standards. EPA also examines the processes and operations of each category subject to promulgated effluent guidelines to decide whether it might be appropriate to address (through additional subcategories) other industrial activities that are similar in terms of type of operations performed, pollutants and wastewaters generated, and available pollution prevention and treatment options. Because issues associated with such additional subcategories very often are interwoven with the structure and requirements of the existing regulation, EPA believes that incorporating its review of these potential subcategories into its annual review of the larger categories with which they likely belong is the most efficient way to fulfill its statutory obligations under sections 301(d), 304(b), 304(g), and 307(b). This is especially important in view of the large number of existing categories and potential additional subcategories that EPA must review annually.

One example where EPA established effluent guidelines for an additional subcategory 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). See 61 FR 57518

(November 6, 1996). The BPT limitations in Part 455 did not cover refilling establishments and their industrial operations (e.g., refilling of minibulks) because these industrial operations did not begin until well after the limitations were first promulgated. EPA considered refilling establishments to be a subcategory of the Pesticide Chemicals point source category because of similar types of industrial operations performed, wastewaters generated, and available pollution prevention and treatment options.

EPA's annual reviews also focus on identifying pollutants that are not regulated by an existing effluent guideline or pretreatment standard for a point source category but that comprise a significant portion of the estimated toxic discharges (as measured by toxic-weighted pound equivalents (TWPE)) for that category. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing and revising existing effluent guidelines and pretreatment standards. EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through existing regulations or through the additional control of already regulated pollutants in an existing set of effluent guidelines or pretreatment standards. In some cases, revising existing limitations for one set of pollutants will address hazards associated with a newly identified pollutant, thus obviating the need for EPA to promulgate specific limitations for that pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines and pretreatment standards in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp, Paper, and Paperboard point source category (40 CFR part 430) to add BAT limitations for dioxin, which was not measurable when EPA first promulgated these effluent guidelines and pretreatment standards. See 63 FR 18504 (April 15, 1998).

In general, treatment technologies address multiple pollutants and it is important to consider their effects holistically in order to develop limitations that are both environmentally protective and economically achievable. In short, EPA believes that the appropriateness of creating an additional subcategory or addressing a newly identified pollutant is best considered in the context of

revising an existing set of effluent guidelines. Accordingly, EPA performed these analyses as part of its annual review of existing effluent guidelines and pretreatment standards.

2. What factors does EPA consider in its annual review of effluent guidelines and pretreatment standards under sections 301(d), 304(b), 304(g), and 307(b)?

Section 304(b) and 304(g) direct EPA to revise existing effluent guidelines "if appropriate." In the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"), see 67 FR 71165 (November 29, 2002), EPA identified four major factors that the Agency would aim to examine, in the course of its annual review, to determine whether it would be appropriate to revise an existing set of effluent guidelines or pretreatment standards for direct and indirect dischargers.

The first factor EPA considers is the amount and toxicity of the pollutants in an industrial category's discharge and the extent to which these pollutants pose a hazard to human health or the environment. This enables the Agency to set priorities for rulemaking in order to achieve the greatest environmental and health benefits. EPA's assessment of hazard also enables the Agency to indirectly assess the effectiveness of the pollution control technologies and processes currently in use by an industrial category, based on the amount and toxicity of its dischargers. This also helps the Agency assess the extent to which additional regulation may contribute reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as specified in section 301(b)(2)(A). The second factor identifies and evaluates the cost and performance of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewater and, consequently, substantially reduce the hazard to human health or the environment associated with these pollutant discharges. Cost is a factor specifically identified in section 304(b) for consideration in establishing BPT, BAT, and BCT. The third factor evaluates the affordability or economic achievability of the technology, process change, or pollution prevention measures identified using the second factor. If the financial condition of the industry indicates that it would experience significant difficulties in implementing the new technology, process change, or pollution prevention

measures, EPA might conclude that 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 addresses 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, in the 1990s, industry requested in comments on the Offshore and Coastal Oil and Gas Extraction (40 CFR part 435) effluent guidelines rulemakings that EPA revise these effluent guidelines because they inhibited the use of a new pollution prevention technology (synthetic-based drilling fluids). EPA agreed that revisions to these effluent guidelines were appropriate for promoting synthetic-based drilling fluids as a pollution prevention technology and promulgated revisions to the Oil and Gas Extraction point source category. See 66 FR 6850 (Jan. 22, 2001). This factor might also prompt EPA, during an annual review, to decide against identifying an existing set of effluent guidelines or pretreatment standards for revision where the pollutant source is already efficiently and effectively controlled by other regulatory or non-regulatory programs.

EPA intends to finalize the draft Strategy in connection with the final 2006 Plan. EPA first solicited public comments in the November 29, 2002, **Federal Register** notice (67 FR 71165) announcing the availability of the draft Strategy. EPA received 22 public comments on the draft Strategy and these are included in Docket ID No. OW-2002-0020. EPA again solicits public comment on the draft Strategy. Commenters should follow the instructions for submitting comments on the draft Strategy listed in **DATES** and **ADDRESSES** sections in this notice. In particular, commenters should send their comments, data, and information on the draft Strategy to the Agency using Docket ID No. OW-2002-0020.

3. How did EPA's 2004 annual review influence its 2005 annual review of point source categories with existing effluent guidelines and pretreatment standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA

believes that each annual review can and should influence succeeding annual reviews, *e.g.*, by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for more detailed scrutiny in subsequent years. During its 2004 annual review, which concluded in September 2004, EPA completed detailed studies for two industrial categories: Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) (Part 414); and Petroleum Refining (Part 419). In addition, EPA identified nine other priority industrial categories as candidates for detailed study in future reviews based on the toxic discharges reported to TRI and PCS. EPA summarized its findings in the "Technical Support Document for the 2004 Effluent Guidelines Program Plan," EPA-821-R-04-014, August 2004. EPA's 2004 annual review, including stakeholder comments received as of that date, is discussed in the comment response document in the record supporting that action. See Docket OW-2003-0074, Document No. OW-2003-0074-1345.

EPA used the findings, data and comments from the 2004 annual review to inform its 2005 annual review. For example, in its 2005 review, EPA gathered more data for industrial categories identified for future study in the 2004 annual review, and began a detailed study of two of these categories (*i.e.*, Steam Electric Power Generation and Pulp, Paper and Paperboard Manufacturing). Although the OCPSF and Petroleum Refining categories again ranked high in terms of TWPE discharged, EPA did not conduct a new detailed study of these categories, as EPA's 2004 detailed study of these categories had revealed that effluent guidelines revisions were not warranted at that time. In 2005, EPA confirmed that its findings in the 2004 annual review, which used TRI and PCS data from year 2000, were still applicable based on the 2002 TRI and PCS data used in the 2005 annual review.

During the 2003 and 2004 reviews, EPA developed methodologies for screening level analysis of discharge data in TRI and PCS as well as for detailed review of prioritized categories. The 2005 review built on the previous reviews by continuing to use the screening level methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges.

4. What actions did EPA take in performing its 2005 annual reviews of existing effluent guidelines and pretreatment standards?

#### a. Screening-Level Review

The first component of EPA's 2005 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2004 annual reviews. In its 2004 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (*i.e.*, highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from the Toxics Release Inventory (TRI) and the Permit Compliance System (PCS). EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI and PCS, EPA multiplies the pounds of discharged pollutants by pollutant-specific TWFs. This calculation results in an estimate of the discharged toxic-weighted pound equivalents (TWPE) which EPA then uses to assess the hazard posed by these toxic and non-conventional pollutant discharges to human health or the environment. EPA repeated this process for the 2005 annual reviews using the most recent data (2002). EPA also considered implementation and efficiency issues raised by EPA Regions and stakeholders. The full description of EPA's methodology for the 2005 screening-level review is presented in the Docket accompanying this notice (see OW-2004-0032-0017).

EPA is continuously investigating and solicits comment on how to improve its analyses. EPA made a few such improvements to the screening-level review methodology from the 2004 to the 2005 annual review. EPA updated the TWFs and its estimate of average POTW pollutant removal efficiencies for a number of pollutants. Prior to publication of the final 2006 Plan, EPA will start the process for conducting a peer review of its development and use of TWFs. EPA also included pollutant loadings from potential new subcategories in their respective parent

industrial category totals (e.g., the pollutant loadings from petroleum bulk stations and terminals (SIC 5171) were included in the pollutant loadings for the Petroleum Refining point source category (40 CFR part 419)).

EPA also combined the estimated discharges of toxic and non-conventional pollutants calculated from the TRI and PCS databases to estimate the total TWPE for each category. In the 2003 and 2004 annual reviews, EPA separately evaluated the TWPE estimates from the TRI and PCS databases. EPA finds that combining the TWPE estimates from the TRI and PCS databases into a single TWPE number offers a clearer perspective of the industries with the most toxic pollution. Different pollutants may dominate the TRI and PCS TWPE estimates for an industrial category due to the differences in pollutant reporting requirements between the TRI and PCS databases. The single TWPE number for each category highlights those industries with the most toxic discharge data in both TRI and PCS. Although this approach could have theoretically led to double-counting, EPA's review of the data indicates that because the two databases focus on different pollutants, double-counting was minimal and did not affect the ranking of the top ranked industrial categories (see OW-2004-0032-0016 and 0017). EPA specifically solicits comment on these revisions to its screening-level review methodology.

EPA also developed and used a quality assurance project plan (QAPP) to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (see OW-2004-0032-0050). EPA used the following document to develop the QAPP for this annual review: "EPA Requirements for QA Project Plans (QA/R-5), EPA-240-B01-003." Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (i.e., verifying data reported to TRI and the PCS) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, corrected TRI and PCS data for facilities EPA identified in its screening-level review as the significant dischargers of toxic and non-conventional pollution.

Based on this methodology, EPA was able to prioritize its review of industries that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those

categories with the lowest estimates of toxic weighted pollutant discharges a lower priority for revision (i.e., industrial categories marked "3" in the "Findings" column in Table V-1).

In order to further focus its inquiry during the 2005 annual review, EPA did not prioritize for additional review categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (i.e., industrial categories marked "1" in the "Findings" column in Table V-1). For example, EPA excluded from additional review facilities that are associated with the Vinyl Chloride and Chlor-Alkali Manufacturing rulemaking currently underway, subtracting the pollutant discharges from these facilities in its 2005 hazard assessment of the OCPSF and Inorganic Chemicals point source categories to which they belong. Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which new or revised effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new segment within a category for which EPA has recently revised effluent guidelines or pretreatment standards, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply more scrutiny to the category in a subsequent review. EPA identified no such instance during the 2005 annual review.

EPA identified thirteen industrial sectors in its 2005 annual review where the estimated toxic-weighted pollutant discharges appeared unclear and more

data were needed to determine their magnitude (i.e., industrial categories marked "(4)" or "(5)" in the "Findings" column in Table V-1). For these industries, EPA intends to collect additional information for the next annual review.

As part of its 2005 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges, EPA did not prioritize the category for additional review (i.e., categories marked "(2)" in the "Findings" column in Table V-1). EPA believes that revision of individual permits may be more effective at addressing the toxic-weighted pollutant discharges than a national effluent guidelines rulemaking because requirements can be better tailored to these few facilities, and because individual permitting actions may take considerably less time than a national rulemaking. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (see OW-2004-0032-0017). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments urging the Agency, as part of its annual review, to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did



account for the effects of successful voluntary programs through taking into consideration any significant reductions in pollutant discharges reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

EPA directly assessed the availability of technology for some—but not all—industrial categories (*see* OW-2004-0032-0016 and 0017). As was the case in the 2004 annual review, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 56 existing industrial categories. However, EPA believes that its analysis of hazard can also serve as a proxy for assessing the effectiveness of existing technologies in terms of the amount and significance of the pollutants discharged.

Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the affordability of treatment or process technologies because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on a broad economic profile. In the past, EPA has gathered information regarding technologies and economic considerations through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act, 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data—even for only a few subcategories—can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis prior to identifying an industrial category for possible regulation. Consequently, EPA is working to develop more streamlined screening-level tools for assessing technological and economic achievability as part of future annual reviews under section 301(d), 304(b), and 307(b). EPA solicits comment on how to best identify and use screening-level tools for assessing technological and economic achievability on an industry-specific basis as part of future annual reviews.

In summary, EPA focused its 2005 screening-level review on industrial categories whose pollutant discharges potentially pose the greatest hazards to human health or the environment because of their toxicity. EPA also considered efficiency and implementation issues raised by stakeholders. By using this multi-layered screening approach, the Agency concentrated its resources on those point source categories with the highest estimates of toxic-weighted pollutant discharges (based on best available data), while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revision at this time.

#### b. Detailed Review of Certain Industries

For a number of the industries that appeared to offer the greatest potential for reducing hazard to human health or the environment, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues during its 2005 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants driving the toxic-weighted pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) 1997 and 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) EPA effluent guidelines technical development documents; (7) relevant EPA preliminary data summaries or study reports; (8) technical literature on pollutant sources and control technologies; (9) information provided by industry including industry conducted survey and sampling data; and (10) stakeholder comments (*see* OW-2004-0032-0016, 0017, and 0020).

During its 2005 annual review, EPA started detailed studies for the Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423) point source categories because they represent the two industrial point source categories with the largest combined TWPE based on EPA's ranking approach. EPA plans to complete these detailed studies in its 2006 annual review, prior to publication

of the final 2006 Plan. An expected outcome of these detailed studies will be the determination of whether it would be appropriate to identify these industrial categories for possible effluent guidelines revision in the 2006 final Plan. The current status of these two detailed studies is presented in section V.B.

#### c. Preliminary Review of Effluent Guidelines for Certain Industrial Categories

In addition to identifying two categories for detailed studies (*see* section V.B.2) during the 2005 screening level review, EPA identified 11 additional categories with potentially high TWPE discharge estimates (*i.e.*, industrial point source categories with existing effluent guidelines identified with “(5)” in the column entitled “Findings” in Table V-1). EPA will continue to collect and analyze hazard and technology-based information on these eleven industrial categories but will assign a higher priority to investigating the Pulp, Paper, and Paperboard and Steam Electric Power Generation industrial categories. The docket accompanying this notice presents a summary of EPA's findings on these eleven industrial categories (*see* OW-2004-0032-0016).

#### d. Public Comments on the 2004 Annual Review

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket for its 2005 annual review with the publication of the final 2004 Plan to provide the public with an opportunity to provide additional information to assist the Agency in its annual review. EPA's Regional Offices and stakeholders identified other industrial point source categories as potential candidates for revision of effluent limitations guidelines and pretreatment standards based on potential opportunities to improve implementation of these regulations or because of their pollutant discharges (*see* OW-2004-0032-0020). *See* section V.B.3. EPA hopes that public review of the 2005 annual review and the preliminary Plan in this notice, as well as public review of future annual reviews and Plans, will elicit additional information and suggestions for improving the Effluent Guidelines Program.



*B. What Were EPA's Findings From Its Annual Review for 2005?*

1. Screening-Level Review

The findings of the 2005 annual review are presented in Table V-1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines

rulemaking or a rulemaking is currently underway.

(2) National effluent guidelines or pretreatment standards are not the best tools for establishing technology-based effluent limitations for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based

effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard priority based on data available at this time.

(4) Incomplete data available for full analysis. EPA intends to complete a detailed study of this industry for the final 2006 Plan. See section V.B.2.

(5) Incomplete data available for full analysis. EPA intends to complete a preliminary category review of this industry for the final 2006 Plan. See section V.A.4.c.

TABLE V-1.—FINDINGS FROM THE 2005 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR Part	Findings †
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(1)
9	Coal Mining	434	(1) and (3)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(5)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals	460	(3)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals	415	(1) and (5)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(1)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(5)
36	Oil and Gas Extraction	435	(1) and (2)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers	414	(1) and (5)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(5)
42	Petroleum Refining	419	(5)
43	Pharmaceutical Manufacturing	439	(1)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(5)
47	Porcelain Enameling	466	(5)
48	Pulp, Paper, and Paperboard	430	(2) and (4)
49	Rubber Manufacturing	428	(5)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generation	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(5)
54	Timber Products Processing	429	(3)

TABLE V-1.—FINDINGS FROM THE 2005 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)—Continued

No.	Industry category (listed alphabetically)	40 CFR Part	Findings †
55 .....	Transportation Equipment Cleaning .....	442	(1)
56 .....	Waste Combustors .....	444	(1)

† **Note:** The descriptions of the “Findings” codes are presented immediately prior to this table.

## 2. Detailed Studies

As a result of its 2005 screening-level review, EPA is conducting detailed studies of two industrial point source categories with existing effluent guidelines and pretreatment standards: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423). During detailed study of these categories, EPA will first verify that the pollutant discharges reported to TRI and PCS for 2002 accurately reflect the current discharges of the industry. EPA will also perform an in-depth analysis of the reported pollutant discharges, technology innovation and process changes in these industrial categories, as well as an analysis of technology cost and affordability. Additionally, EPA will consider whether there are industrial sectors not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. The purpose of the detailed study is to determine whether, in the final 2006 Plan, EPA should identify one or both of these industrial categories for possible revision of their existing effluent guidelines and pretreatment standards.

Based on the information available to EPA at this time, EPA is not proposing such identification. However, EPA will determine whether it is appropriate to identify these categories for possible revision of their effluent guidelines and pretreatment standards based on the results of its 2006 annual review and the two detailed studies, which it intends to conclude prior to publishing the final 2006 Plan. EPA requests comment and supporting data on whether it should identify either or both of these industrial categories for possible rulemakings in the final 2006 Plan.

### a. Pulp, Paper, and Paperboard (Part 430)

EPA began a detailed study of the Pulp, Paper, and Paperboard point source category in the 2005 annual review because it ranked highest in terms of toxic and non-conventional pollutant discharges among the

industrial point source categories investigated in the screening-level analyses. The most recent changes to effluent guidelines for this point source category, known as part of the “Cluster Rules,” were new limits for facilities in the Bleached Papergrade Kraft and Soda (Subpart B) and Papergrade Sulfite (Subpart E) subcategories (April 15, 1998; 63 FR 18504). EPA promulgated new limits for dioxin, furan, chloroform, chlorinated phenolic compounds, and adsorbable organic halides (AOX). In the 2005 annual review, EPA reviewed effluent discharge data for all 78 bleached papergrade kraft and sulfite mills—the “Phase I” mills. EPA also reviewed effluent discharges for pulping mills, secondary (recycled) fiber mills, and paper and paperboard mills in eight subcategories (Subparts C and F through L)—the “Phase II” mills. EPA reviewed data from PCS for 171 Phase II mills and data for 169 Phase II mills that reported to TRI.

EPA did not review effluent discharge data for the four dissolving kraft and dissolving sulfite mills (Subparts A and D)—“Phase III” mills. As discussed in the 2004 annual review, EPA believes that because of the small number of facilities, effluent guidelines rulemaking is not appropriate at this time for these subcategories. Instead of an effluent guidelines rulemaking EPA will provide site-specific permit support to state permit writers as they develop NPDES permits for the four facilities in these two subcategories. These NPDES permits will include effluent limitations that reflect a determination of BAT based on BPJ, or, if necessary, more stringent limitations to ensure compliance with state water quality standards. Therefore, EPA did not include these four Phase III mills in the detailed study for this industry.

Phase I and Phase II mills reported discharges of “dioxin and dioxin-like compounds” to TRI in 2002 which resulted in an effluent discharge estimate of 2.81 million TWPE (66.4 grams of various dioxin congeners). Phase I mills in PCS in 2002 also showed discharges of the most toxic forms of dioxin (*i.e.*, 2,3,7,8-TCDD and 2,3,7,8-TCDF) which resulted in an effluent discharge estimate of 1.37

million TWPE (0.9 grams of 2,3,7,8-TCDD and 2,3,7,8-TCDF). EPA notes that one mill accounted for more than 99 percent of the PCS dioxin discharges for this industrial category in 2002. This mill changed its operations after 2002 and has not reported dioxin releases since 2002 (*see* OW-2004-0032-0021). EPA also notes that with or without the PCS TWPE from this one mill, this category ranks higher than any other category in terms of the estimated combined TRI and PCS TWPE discharged to U.S. waters. In its detailed study of this industrial category EPA will further verify pollutant discharge data and assess the impact of these mill changes and the corresponding 2003 and 2004 pollutant discharges reported by the mill to TRI and PCS. In the past, EPA has sometimes found that apparently high dioxin discharges reported to TRI may result from facilities using annual discharge volumes multiplied by one half the dioxin analytic method detection limit for their TRI dioxin release estimates when dioxin sampling data were “non-detect.” In general, EPA would expect to have a stronger record basis, with positive detections of toxic pollutants, before it identified an industry for a rulemaking. Other toxic pollutant discharges for Phase I and II mills that resulted in additional TWPE discharge estimates include: polycyclic aromatic compounds; metals (*e.g.*, manganese, lead, zinc, mercury); and nitrate.

Key issues the Agency will address in the detailed study include whether Phase I and II mills are currently generating and discharging dioxin; and whether PCS contains dioxin discharge data for the Phase II mills. EPA will also investigate the source and magnitude of the other toxic pollutants and non-conventional pollutants reported as discharged by these mills, and whether there are any new technologies or process changes for wastewater volume or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. See section IX.A. Based on this detailed study, EPA will determine whether or not to identify this industrial category for possible revisions to its effluents guidelines.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from a trade association for this industrial category, the American Forest & Paper Association (AF&PA), and from the National Council for Air and Stream Improvement (NCASI), an independent, non-profit research institute that focuses on environmental topics of interest to the forest products industry. EPA held a meeting with AF&PA and NCASI and member companies and the meeting minutes are included in the docket (*see* OW-2004-0032-0048). AF&PA members provided EPA with 48 NPDES permits for Phase I mills (representing 62% of the Phase I mills in the industry). AF&PA also provided written documentation and data on the details of TRI release estimates and PCS errors (*see* OW-2004-0032-0022). Prior to completing its 2005 annual review, EPA did not have time to fully evaluate the large amount of data submitted by AF&PA, NCASI, and their member companies in the context of the 2003 and 2004 pollutant discharges reported to TRI and PCS. EPA intends to complete this evaluation in its 2006 annual review. EPA will also continue to work with AF&PA, NCASI, and other stakeholders to better understand the current pollutant discharges by this category.

**b. Steam Electric Power Generation (Part 423)**

EPA began a detailed study of the Steam Electric Power Generation point source category in the 2005 annual review because it ranked second highest in terms of toxic and non-conventional toxic weighted pollutant discharges among the industrial point source categories investigated in the screening-level analyses. Effluent guidelines for direct dischargers were first promulgated for this category in 1974 (39 FR 36186). In 1977, EPA promulgated pretreatment standards for indirect dischargers (42 FR 15690). In 1982, EPA made significant revisions to these effluent guidelines and pretreatment standards (47 FR 52290). The current effluent guidelines are applicable to discharges from steam electric generating units that are primarily engaged in generating electricity for distribution and sale and that use fossil-type or nuclear fuels. EPA's screening-level analysis during the 2005 annual review was based primarily on information reported to TRI, PCS, and the Energy Information Administration (EIA) for the year 2002. EPA also obtained and reviewed additional information to supplement

that data. These data include industry-compiled data on the likely source and magnitude of the reported toxic dischargers (*see* OW-2004-0032-0023). Pollutants significantly influencing this category's hazard ranking include arsenic, boron, metals (including mercury), and chlorine.

In this detailed study, EPA plans to better quantify pollutant discharges in wastewater discharged by steam electric facilities. *See* section IX.A. EPA will also investigate whether there are any new technologies or process changes for wastewater volume or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. Additionally, EPA will investigate whether the recently revised analytic method for mercury better quantifies the sources and amounts of mercury in discharged wastewater from facilities in this category (*see* October 29, 2002; 67 FR 65876 and OW-2004-0032-0024).

Additionally, during its review of this industrial category, EPA received comments that it should consider amending the applicability of these effluent guidelines to include combined-cycle facilities, refuse-derived fuel facilities, and industrial non-utilities. Combined-cycle technology utilizes waste heat created by the powering of one generator to drive a second generator, which significantly increases the amount of electricity generated by the same amount of fuel. Refuse-derived fuel facilities generate electricity from the combustion of unprocessed or minimally processed refuse. Industrial non-utilities have steam electric plants co-located with other manufacturing or commercial facilities. These power plants are most prevalent at chemical, paper, and petroleum refining facilities and are not currently regulated by Part 423. EPA is investigating the similarities and differences between combined-cycle, refuse-derived fuel facilities, and industrial non-utilities and facilities in the Steam Electric Power Generation point source category in terms of plant operation, water use, and potential pollutants in the wastewaters. EPA specifically solicits comment and data on whether EPA should consider combined-cycle facilities and refuse-derived fuel facilities as potential new subcategories in the Steam Electric Power Generation point source category.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from a trade association for this industrial category, the Utility Water Action Group (UWAG). EPA held several meetings

with UWAG and its member companies and the meeting minutes are included in the docket (*see* OW-2004-0032-0025). UWAG provided EPA with industry-collected data related to the source and magnitude of pollutant discharges from facilities in this category (*see* OW-2004-0032-0026). In the 2006 annual review, EPA will continue to work with UWAG and other stakeholders to better understand the current pollutant discharges in this category.

**3. Other Category Reviews Prompted by Stakeholder Outreach**

Following the publication of the 2004 Plan, EPA's Regional Offices and stakeholders identified 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 of the categories' pollutant discharges (*see* OW-2004-0032-0020 for a listing of these comments).

**a. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Effluent Guidelines**

Congress has directed the Office of Management and Budget (OMB) to prepare an annual report to Congress on the costs and benefits of Federal regulations. *See* 68 FR 64375 (February 20, 2004). In the 2004 draft report to Congress, OMB also solicited public comment for "nominations of promising regulatory reforms relevant to the manufacturing sector, particularly those relevant to the welfare of small and medium-sized enterprises." In particular, OMB requested suggestions on "specific reforms to rules, guidance documents or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and increasing flexibility." *See* "Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities," [http://www.whitehouse.gov/omb/inforeg/draft\\_2004\\_cbreport.pdf](http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf).

In response to this solicitation two commenters suggested revisions to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) effluent guidelines (40 CFR part 414). The commenters suggest that OCPSF facilities are discouraged by existing OCPSF effluent guidelines from installing water re-use and reduction technologies and pollution prevention practices and are penalized by more stringent limits because NPDES permit

writers recalculate lower mass-based permit limits based on the reduced wastewater flow rates when re-issuing NPDES permits. The commenters suggest that OCPSF facilities should be able to retain mass limits of the original stringency, established prior to wastewater flow reduction, when process wastewater flows are reduced for purposes of water conservation. The commenters also stated that if process wastewater flows are decreased for other reasons, the mass-based limits should continue to be adjusted pursuant to the current rule.

As part of the Agency's commitments in the President's Manufacturing Initiative, EPA began an evaluation of options for promoting water conservation through the use of mass-based limits as part of its 2005 annual review of existing effluent guidelines. See the OMB report to Congress titled, "Regulatory Reform of the U.S. Manufacturing Sector," Page 30, March 9, 2005. See <http://www.whitehouse.gov/omb/inforeg/regpol-reports-congress.html>. EPA strongly supports water conservation and encourages all sectors, including municipal, industrial, and agricultural, to achieve efficient water use. EPA does not intend for its regulations to present a barrier to efficient water use in any industrial sector.

EPA proposed, and is currently considering finalizing, greater flexibility for control authorities to convert concentration-based pretreatment standards to flow-normalized mass-based permit limits for indirect dischargers where necessary to facilitate adoption of water conservation technologies, provided there is no increase in the discharge of pollutants to the environment. See 64 FR 39563 (July 22, 1999). EPA requests comment on whether it should consider a rulemaking or other ways that would extend greater flexibility to permitting authorities to retain mass-based limits based on current wastewater flows for direct discharges where necessary to facilitate the prospective adoption of water conservation technologies. EPA is particularly interested in specific, detailed examples of situations where the adoption of water conservation technologies and practices have or have not made the achievement of new flow-normalized mass-based permit limits based on the reduced wastewater flow more difficult. See section IX.G.

#### b. Stakeholder Identified Industries

With the publication of the final 2004 Plan, EPA solicited public comment to inform its 2005 annual review of existing effluent guidelines and

pretreatment standards. In addition to the comments identified in the previous section, EPA received five comments on how to conduct its annual review and which industries and pollutants should be the focus of this review (see OW-2004-0032-0020). These comments are located in the docket. EPA considered relevant information from these comments in its 2005 annual review.

In particular, industry stakeholders commented that EPA should revise the analytical methods in the Oil and Gas Extraction point source category (40 CFR Part 435, Subpart A) to eliminate the current differences between the synthetic-based drilling fluids (SBF) analytical methods used in the EPA Region 4 and 6 general permits regulating offshore oil and gas facilities in the Eastern and Western Gulf of Mexico (see OW-2004-0032-0051). Industry stakeholders also supplied additional data and suggested that EPA change the sediment toxicity analytical methods to account for analytical method variability (see OW-2004-0032-0007). See section IX.H.

#### VI. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of a preliminary and biennial Plan under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency to prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2005 review. The information gathered during the 2005 annual review, including the identification of data gaps in the analysis of certain existing industry categories, in turn, provides a starting point for EPA's 2006 annual review. See Table V-1 above. In 2006, EPA intends to conduct a screening-level analysis of all 56 industry categories and compare the results against those from previous years. EPA will also conduct more detailed analyses of those industries that rank high in terms of toxic and non-conventional discharges among all point source categories. EPA specifically invites comment and data on the 56 point source categories.

#### VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

As noted in 40 CFR 403.2, the three principal objectives of the National Pretreatment Program are to: (1) Prevent the wide-scale introduction of pollutants into publicly owned treatment works (POTWs) that will interfere with POTW operations, including use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through the treatment works or will otherwise be incompatible with the treatment works; and (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. See Introduction to the National Pretreatment Program, EPA-833-B-98-002, February 1999.

All indirect dischargers are subject to general pretreatment standards (40 CFR part 403), including a prohibition on discharges causing "pass through" or "interference." See 40 CFR 403.5. POTWs that are required to implement approved programs, and those that have experienced interference or pass through, are required to develop local limits to implement the general pretreatment standards. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed "categorical pretreatment standards," for categories of industry discharging to Publicly Owned Treatment Works (POTWs) pollutants that may pass through, interfere with or are otherwise incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment.

EPA has promulgated such pretreatment standards for 35 industrial categories. In this review, EPA evaluated various indirect discharging industries without categorical pretreatment standards to determine whether their discharges were causing pass through or interference, in order to determine whether categorical pretreatment standards may be necessary for these industrial categories. Stakeholder comments and pollutant discharge information have helped EPA to identify industrial sectors for this review. In particular, EPA has looked

more closely at sectors that are comprised entirely or nearly entirely of indirect dischargers, and is grouping them into the following seven industrial categories: Food Service Establishments; Industrial Laundries; Photoprocessing; Printing and Publishing; Independent and Stand Alone Laboratories; Industrial Container and Drum Cleaning; and Health Services Industry. EPA is including within the Health Services Industry the following activities: Independent and Stand Alone Medical and Dental Laboratories, Offices and Clinics of Doctors of Medicine, Offices and Clinics of Dentists, Nursing and Personal Care Facilities, Veterinary Care Services, and Hospitals and Clinics. EPA solicits comment on that grouping (see OW-2004-0032-0038). For all seven of these industrial sectors EPA evaluated (1) the "Pass Through Potential" of toxic pollutants and non-conventional pollutants through POTW operations; and (2) the "Interference Potential" of industrial indirect discharges with POTW operations. EPA also received, reviewed, and summarized suggestions from commenters on options for improving various categorical pretreatment standards (see OW-2004-0032-0020).

*A. EPA's Evaluation of "Pass Through Potential" of Toxic and Non-Conventional Pollutants Through POTW Operations*

For these seven industrial sectors, EPA evaluated the "pass through potential" of toxic pollutants and non-conventional pollutants through POTW operations. Historically, for most effluent guidelines rulemakings, EPA determines the "pass through potential" by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by wastewater treatment options that EPA is evaluating as the bases for categorical pretreatment standards (January 28, 1981; 46 FR 9408). For these seven industry sectors, however, EPA was unable to gather the data needed for a comprehensive analysis of the availability and performance (e.g., percentage of the pollutants removed) of treatment or process technologies that might reduce toxic pollutant discharges beyond that of technologies already in place at these facilities. Instead, EPA evaluated the "pass through potential" as measured by the total annual TWPE discharged by the industrial sector and the average TWPE discharge among facilities that discharge to POTWs.

EPA based this two part evaluation in part on EPA's prior decision not to promulgate national categorical pretreatment standards for an industrial category (i.e., Industrial Laundries). See August 18, 1999 (64 FR 45071). EPA noted in this 1999 final action that, "While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW." See August 18, 1999 (64 FR 45077). EPA solicits comment on this two part evaluation for determining the "pass through potential" for industrial categories comprised entirely or nearly entirely of indirect dischargers.

EPA's 2005 review of these seven industrial sectors used pollutant discharge information from TRI, PCS, and other publicly available data to estimate the total annual TWPE discharged per facility. EPA's use of PCS data was limited as nearly all of the PCS discharge monitoring data is from direct dischargers. Consequently, EPA transferred pollutant discharges from direct dischargers to indirect dischargers in some of the seven industrial sectors when other data were not available. Based on these estimated toxic pollutant discharges, EPA's review suggests that there is a low pass through potential for four of the seven industrial sectors and that categorical pretreatment standards for these four industrial sectors are not warranted at this time. These four industrial sectors are: Food Service Establishments; Industrial Laundries; Photoprocessing; and Printing and Publishing. EPA is currently evaluating the pass through potential for the Industrial Container and Drum Cleaning industry using data from its recent study of this industrial sector, "Preliminary Data Summary: Industrial Container and Drum Cleaning Industry," EPA-821-R-02-011, June 2002. EPA also did not have enough information to determine whether there was pass through potential for the remaining two industrial sectors: Independent and Stand Alone Laboratories and Health Services Industries. EPA will continue to evaluate the pass through potential for these three industrial sectors and conducted detailed studies if warranted for the 2007/2008 planning cycle. A summary of EPA's analyses supporting this review are located in the docket (see OW-2004-0032-0017). EPA solicits comment on whether these or other industrial activities discharge pollutants

that might pass through POTWs and into surface waters.

*B. EPA's Evaluation of "Interference Potential" of Industrial Indirect Discharges*

For each of these seven industrial sectors EPA evaluated the "interference potential" of indirect industrial discharges. The term "interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(i). To determine the "interference potential," EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (e.g., type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system (e.g., oil and grease discharges causing blockages in the POTW collection system), the POTW treatment system (e.g., high ammonia mass discharges inhibiting the POTW treatment system) or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (e.g., batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

EPA relied on readily available information from the literature and stakeholders to evaluate the severity, duration, and frequency of interference incidents caused by industrial indirect discharges. As part of its evaluation, EPA reviewed data from its recent report to Congress on one type of interference incidents, blockages in the POTW collection system leading to combine sewer overflows (CSOs) and sanitary sewer overflows (SSOs). See Impacts and Controls of CSOs and SSOs, EPA 833-R-04-001, August 2004. With respect to Food Service Establishments, EPA noted that "grease from restaurants, homes, and industrial sources is the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and

blocks flow.” Other major sources of blockages are grit, rock, and other debris (27%), roots (22%), and roots and grease (4%).

EPA’s review of current information indicates that there is no interference potential from the seven industrial sectors that would warrant the development of categorical pretreatment standards. Information collected from control authorities and stakeholders indicate that a growing number of control authorities are using their existing authority (under general pretreatment standards in Part 403) to set more stringent permit limits or to enforce existing permit limits and local ordinances to reduce interferences with POTW operations (e.g., blockages from fats, oils, and greases).

EPA did receive comments from stakeholders during its review that even with current authority provided in the general pretreatment regulations, some POTWs have difficulty controlling interference from some categories of indirect industrial dischargers (see OW-2004-0032-0020). EPA notes, however, that to a large extent, interference problems tend to be a local, rather than a national, problem. Pollutants which interfere with the operation of one POTW may not adversely affect the operation of another. These differences are attributable to several factors including the varying sensitivities of different POTWs and the constituent composition of wastewater collected and treated by the POTW (January 28, 1981; 46 FR 9406).

EPA notes that local pretreatment programs already have the necessary tools to control interference problems with existing authority provided by the general pretreatment standards (40 CFR Part 403). Under the provisions of § 403.5(c)(1) & (2), in defined circumstances, a POTW must establish specific local limits to prevent interference. “[A] POTW must develop specific limits for Industrial Users to guard against interference with the operation of the municipal treatment works.” 46 FR 9406 (January 28, 1981). Consequently, pretreatment programs should correct interference incidents with enforcement and oversight activities. The interference incidents identified by commenters do not necessarily indicate the need for additional categorical pretreatment standards, but they may indicate the need for additional oversight and enforcement. EPA solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

## VIII. The Preliminary 2006 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA is publishing this preliminary Plan for public comment prior to publication of the final Plan. EPA expects to finalize this Plan by August 2006. EPA will carefully consider all public comments and information. Commenters should see the **DATES** and **ADDRESSES** sections of this notice for instructions on how to submit comments to EPA on this preliminary Plan. EPA will respond to all these public comments and include these responses in the docket supporting the final Plan.

### A. EPA’s Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

#### 1. Schedule for 2005 and 2006 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. Today’s preliminary Plan announces EPA’s schedule for performing its section 304(b) reviews. The schedule is as follows: To coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA’s 2005 annual review is the review cycle ending upon the publication of this preliminary 2006 Plan and the 2006 annual review is the review cycle ending upon publication of the final 2006 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, e.g., by calling to EPA’s attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public

interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2005 annual review along with the preliminary 2006 Plan, EPA hopes to gather and receive data and information that will inform its review for 2006 and final 2006 Plan.

#### 2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Vinyl Chloride and Chlor-Alkali Manufacturing, Iron and Steel Manufacturing, and Concentrated Animal Feeding Operations. For a summary of the status of the current effluent guidelines rulemakings and a list of completed effluent guidelines rulemakings conducted by EPA since 1992, see the Docket accompanying this notice (see OW-2004-0032-0042). EPA solicits comment on these proposed schedules.

As previously identified in Table V-1, EPA does not have sufficient information to identify any additional effluent guidelines for potential revision at this time. Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus especially on industries where changes to the existing effluent guidelines are most likely to be needed. Consequently, EPA has identified thirteen industrial categories whose pollutant discharges warrant further study at this time. (i.e., highest estimates of toxic-weighted pollutant discharges).

In particular, as a result of its 2005 annual review, EPA identified two of these thirteen industrial point source categories with existing effluent guidelines for detailed study in its 2006 annual review: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423). During detailed study of these categories, EPA will verify the pollutant discharges identified in the 2005 annual reviews and perform an in-depth analysis of pollutant discharges,

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 or revisions to the applicability of these effluent guidelines are needed for either of these categories. The purpose of the detailed studies is to determine whether, in the final 2006 Plan, 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 such an identification. However, EPA will determine whether it is appropriate to identify these categories for revision based on public comments and the results of its 2006 annual review, which it intends to conclude prior to publishing the final 2006 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 2006 Plan.

EPA emphasizes that identification of one or both sets of effluent guidelines for possible revision in the final 2006 Plan would not 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 the final 2006 Plan.

#### *B. Identification of Point Source Categories Under CWA Section 304(m)(1)(B)*

The final Plan must also identify categories of sources discharging non-trivial amounts of 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). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B) not later than three years after such identification. See CWA section 304(m)(1)(C). Applying the criteria in section VIII.B.1, EPA is not at this time proposing to identify any potential new categories for effluent guidelines rulemaking. Consequently, EPA is not proposing in this preliminary Plan to schedule an effluent guidelines rulemaking for any potential new industrial category. EPA is, however, reviewing the pollutant discharges from facilities in one industrial sector,

Tobacco Products (SIC 21), to determine whether to identify this sector as a potential new category in the final 2006 Plan. See section VIII.B.2. EPA is also currently conducting rulemakings to establish effluent guidelines for two potential new categories identified in the final 2004 Plan: Airport Deicing Operations and Drinking Water Supply and Treatment.

#### *1. Process for Identifying Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines*

EPA primarily used data from TRI and PCS to identify industrial categories not currently subject to effluent guidelines. As discussed in the docket, facilities with data in TRI and PCS are identified by a four-digit SIC code. EPA performs a crosswalk between the TRI and PCS data, identified with a the four digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is correctly regulated, or if it belongs as a potential new subcategory of a currently regulated category (see OW-2004-0032-0017). EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below.

First, 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. The distinction between a category (reflecting an industry as a whole) and a subcategory (reflecting differences among segments of the industry) has long been recognized by the U.S. Supreme Court. See, e.g., *Chemical Mfrs. Ass'n v. NRDC*, 470 U.S. 116, 130, 132 n.24 (1985). Thus, EPA's first decision criterion asks whether an industrial operation or activity in question is properly characterized—in a broad sense—as an industry “category” or more narrowly as a segment of some broader industrial category (i.e., a subcategory). If EPA determines that an industrial operation is properly characterized as a new subcategory of an existing category, rather than a new category, then EPA reviews that new subcategory in the context of conducting its annual review of existing effluent guidelines under sections 301(d) and 304(b).

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, 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 in the biennial Plan any industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 or categories for which other CWA controls take precedence over effluent guidelines, e.g., POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that may be discharging non-trivial amounts of toxic or non-conventional pollutants to waters of the United States. EPA did not consider, under this analysis, industrial activities where conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, the analysis under 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. EPA does not believe that it is necessary, nor was it Congressional intent, to develop national effluent guidelines for categories of sources that are likely to pose an insignificant hazard to human health or the environment due to their trivial discharges. See Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31. This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard to human health or the environment associated with toxic or non-conventional pollutants.

Priority-setting is intrinsic to any planning exercise, and EPA believes that Congress intended for EPA to focus on categories discharging “non-trivial” amounts of toxic or non-conventional pollutants as a way of setting priorities to achieve the greatest environmental results. 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 prioritize its identification of new industrial categories so that it can use available resources effectively, and identify in each successive Plan those industrial categories where an effluent guideline is an appropriate tool to address non-trivial discharges of toxic or non-conventional pollutants. This



interpretation is supported by the fact that section 304(m) imposes an on-going planning requirement, with new final Plans due every two years and draft Plans published for public comment in between. The CWA specifically contemplated that effluent guidelines would not be the only solution to all water quality problems.

EPA interprets section 304(m), including its requirement that EPA identify in a plan any industrial categories for which it might promulgate effluent guidelines, as a mechanism designed to promote regular and transparent priority-setting on the part of the Agency. A plan, ultimately, is a statement of choices and priorities. See *Norton v. Southern Utah Wilderness Alliance, et al.*, 124 S. Ct. 2373, 2383 (2004). Identifying an industrial activity for possible effluent guideline rulemaking reflects EPA's view, at the time the plan is issued, that a national categorical regulation may be an appropriate tool to accomplish the desired environmental results. Similarly, announcing a schedule reflects EPA's assignment of priorities, taking into account all of the other statutory mandates and policy initiatives designed to implement the CWA's goals and the funds appropriated by Congress to execute them. By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. By crafting section 304(m) as a planning

mechanism, Congress has given EPA that discretion.

## 2. Discharges From Tobacco Products Facilities

Public comments on the preliminary 2004 Plan suggested that EPA consider developing effluent guidelines for the tobacco products industrial sector due to the potential of facilities in this industrial sector to discharge nontrivial amounts of nonconventional and toxic pollutants. In particular, commenters expressed concern over the quantity of toxics and carcinogens that may be discharged in wastewater associated with the manufacture of cigarettes. At the time of publication of the final 2004 Plan, EPA was unable to make a determination, based on readily available information, as to whether toxic and nonconventional discharges associated with tobacco products facilities are trivial or nontrivial. In order to better respond to these comments and determine whether to identify the tobacco products industrial sector as a potential new point source category, EPA is conducting a detailed study of the pollutant discharges for this industrial sector.

This industrial sector is divided into the following four industry groups: (1) SIC code 2111 (Cigarettes)—establishments primarily engaged in manufacturing cigarettes from tobacco or other materials; (2) SIC code 2121 (Cigars)—establishments primarily engaged in manufacturing cigars; (3) SIC code 2131 (Chewing and Smoking Tobacco and Snuff)—establishments primarily engaged in manufacturing chewing and smoking tobacco and snuff; and (4) SIC code 2141 (Tobacco Stemming and Redrying)—establishments primarily engaged in the stemming and redrying of tobacco or in manufacturing reconstituted tobacco. Based on information in the 2002 Economic Census, EPA estimates there are 114 tobacco products facilities in the United States, nine of which are direct dischargers and currently have NPDES permits. EPA's review of TRI and PCS data indicates that there is very little information about the facilities in this sector. Consequently, EPA is conducting a detailed review of this industrial sector. EPA plans to complete this detailed review prior to publication of the final 2006 Plan in order to determine whether to identify this industry sector as a potential new industrial point source category. Key issues EPA will address in its detailed study include the source and magnitude of the toxic and non-conventional pollutants discharged directly to waters of the U.S. and whether indirect

discharges of these pollutants present any pass through or interference issues for POTW operations.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from the companies who represent 90% of the U.S. market. EPA held several meetings with these tobacco products companies since publication of the 2004 Plan and the meeting minutes are included in the docket (see OW-2004-0032-0043 and 0044). These companies have provided extensive information on processes, pollutant discharges and existing permits. Based on information collected to date, EPA believes that primary processing at cigarette manufacturers and their related reconstituted tobacco operations is the main source of discharged wastewater pollution in this industrial sector. EPA conducted site visits at six tobacco product facilities, four cigarette manufacturing facilities and two dedicated reconstituted tobacco facilities. In addition to collecting information on processes and wastewater generation, EPA also collected grab samples of wastewater during these site visits. EPA collected these wastewater samples to: (1) Further characterize wastewater generated and/or discharged at these facilities; and (2) evaluate treatment effectiveness, as applicable. EPA expects to place non-CBI information and data regarding these site visits and sampling episodes in the public record (EPA Docket No. OW-2004-0032) by December 2005. As these data will be available after the close of the public comment period (see **DATES** section), EPA will accept public comment on these data for 30 days after these data become available in the docket. Members of the public who would like notice of when this data is available should contact EPA (see **FOR FURTHER INFORMATION CONTACT** section). EPA also plans to work with State NPDES permit writers and pretreatment control authorities to obtain existing permits and to identify any issues or concerns with wastewaters from this industrial sector.

## C. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether a "regulatory action" is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines the term "regulatory action" to include any substantive action by an agency (normally published in the **Federal**

**Register**) that is expected to lead to the promulgation of a final rule or regulation. While EPA does not normally publish plans and priority-setting documents such as this preliminary 2006 Plan in the **Federal Register**, EPA is required by statute to do so here. The Order also defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this is not a "significant regulatory action" within the meaning of the Executive Order. Consequently, EPA did not submit this notice to OMB for its review under Executive Order 12866.

## IX. Request for Comment and Information

EPA invites and encourages public participation in the development of the effluent guidelines annual reviews and the biennial Plans. The Agency asks that comments address deficiencies in the docket of this preliminary Plan and that commenters provide supporting data for suggested revisions or corrections where possible.

### A. Detailed Studies

EPA requests information on the industries for which it is conducting detailed studies: Pulp, Paper, and Paperboard (Part 430); Steam Electric Power Generation (Part 423); and Tobacco Products (SIC 21). As discussed above, the Agency has identified two of these categories through its annual hazard screening review process (Pulp, Paper, and Paperboard and Steam Electric Power Generation) and the third through public comment (Tobacco Products). EPA hopes to gather the following information.

#### Pulp, Paper, and Paperboard (Part 430)

In order to evaluate the implementation of the Cluster Rules, EPA reviewed pipe and outfall

descriptions contained in PCS for bleached papergrade kraft and papergrade sulfite mills (Phase I mills). EPA identified these pipes and outfalls as bleach plant effluent, final effluent, or other type of monitoring location. EPA requests that operators of these Phase I mills verify EPA's identification of their PCS monitoring locations. See OW-2004-0032-0046, Appendix A.

EPA reviewed the information provided by AF&PA and its member companies regarding the measurement techniques used to calculate TRI-reported toxic discharges at 19 individual Phase I mills. EPA requests additional details of methods used to estimate releases of toxic pollutant discharges reported to TRI, in particular those methods used by Phase II mills (mills without bleached papergrade kraft or papergrade sulfite operations).

Some permits require in-process monitoring (bleach plant effluent monitoring) but the permitting authority (state) does not include in-process monitoring results in PCS. EPA requests that operators of bleached papergrade kraft or papergrade sulfite mills provide results of their permit-required (or other) bleach plant effluent monitoring, where these monitoring results are missing from PCS.

EPA requests information about non-bleaching sources of toxic wastewater pollutants, such as pollutants derived from combustion-related activities, spent pulping liquor from unbleached kraft mills, and papermachine additives and coatings.

EPA requests examples (case studies) of mill process changes implemented in response to the cluster rules, including the wastewater pollution reduction benefits of installing BAT and using BMPs for the control of spent pulping liquor losses.

#### Steam Electric Power Generation (Part 423)

EPA is investigating various types of wastewater discharges by steam electric utility and non-utility facilities including: Cooling water, ash-handling wastes, coal pile drainage, water treatment wastes, boiler blowdown, wet air pollution control device wastes, maintenance cleaning wastes, and miscellaneous waste streams. EPA solicits information on these and any other wastewaters that may be discharged by steam electric utility and non-utility facilities. In particular, EPA solicits information on the pollution prevention, management, and treatment for these wastewaters (e.g., how many facilities discharge coal pile runoff to ash ponds for further treatment) and the typical wastewater volumes and

pollutant concentrations for wastewater discharges (e.g., what are typical wastewater volumes and pollutant concentrations of arsenic, beryllium, lead, mercury, and selenium in ash-handling wastewaters).

EPA solicits information on any new technologies or process changes for flow or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. In particular, EPA solicits comment on whether facilities are implementing pollution prevention, best management practices, or other operational changes (e.g., flow reduction technology) to reduce wastewater pollutant discharges. For each practice or technology EPA solicits information on which of these are more readily adopted by new facilities rather than existing facilities. EPA also solicits comment as to whether any other regulatory programs or voluntary programs have had or may have any effect on the mass of pollutants discharged by existing steam electric facilities to surface waters and POTWs.

EPA notes that process additives in use in the steam electric power generation 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. EPA solicits information on the amount and type of brominated compounds discharged from this industry.

EPA also solicits comment regarding electric power generation facilities that use prime movers other than steam turbines (e.g., gas turbines). Specifically, EPA solicits comments on: (1) The wastewater volumes and pollutant concentrations of these discharges; (2) the similarities and differences of the discharge characteristics as compared to steam electric facilities regulated by Part 423; (3) current pollution prevention and treatment options for these discharges and estimates of which pollution prevention and treatment options are most widely used in this industry sector; and (4) whether EPA should amend the applicability of the existing steam electric power generation effluent guidelines to regulate these discharges.

Similarly, EPA is also soliciting information related to these four questions in order to better evaluate the discharges from: (1) The non-utility electric power generation sector and non-conventional renewable and other fuel sources sector (e.g., facilities using wood, wood wastes, non-wood wastes,

refuse, geothermal and solar as the energy sources to fuel steam turbines); and (2) facilities using combined-cycle, combustion turbine, and integrated gasification combined-cycle technology.

#### Tobacco Products (SIC 21)

EPA solicits information and data on the number and identity of tobacco products processing facilities that discharge to surface waters and POTWs. EPA solicits information and data on the volume and characteristics of tobacco products processing discharges to surface waters and POTWs. EPA solicits information and data on the fate and effects of nicotine discharges to waters of the U.S. EPA solicits information and data on the treatment effectiveness of POTWs in removing nicotine from tobacco products processing wastewaters.

Based on information collected to date, EPA believes non-cigarette related tobacco products processing (such as the manufacture of cigars, smokeless tobacco products, and tobacco stemming and redrying) generate and discharge little or no wastewater (in terms of volumes and toxic and/or non-conventional pollutant mass) to waters of the U.S. EPA solicits data to support or refute this assertion.

#### *B. EPA Requests Information on the Industries Recommended for a Preliminary Category Review*

EPA requests information on the industries for which there are incomplete data available for analysis (*i.e.*, industrial point source categories with existing effluent guidelines identified with “(5)” in the column entitled “Findings” in Table V-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 or management practices are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

#### *C. Data Sources and Methodologies*

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this preliminary Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket

for a more detailed discussion of EPA's analysis supporting the reviews in this notice (*see* OW-2004-0032-0017).

#### *D. BPJ Permit-Based Support*

EPA solicits comments on whether, and if so how, the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard is associated with one or a few facilities).

#### *E. Identification of New Industrial Categories*

EPA solicits comment on the methodology for grouping industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization, and the factors and measures EPA should consider for determining whether to identify such industries for a rulemaking. EPA solicits comment on other data sources and approaches EPA can use to identify industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization.

#### *F. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards*

As a factor in its decision-making, 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. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards. EPA also solicits comment on these proposed schedules for current effluent guidelines rulemakings (*see* OW-2004-0032-0042).

#### *G. EPA Solicits Comment on Implementation Issues Related to the Use of Flow Normalized Mass-Based Permit Limits and Their Potential Impact on the Adoption of Water Conservation Technologies*

EPA solicits comment on the suggested revisions to the OCPSF effluent guidelines raised by commenters. See section V.B.3.a. In particular, EPA requests comment on the likely advantages and disadvantages of the commenters' suggestion (*i.e.*, allowing NPDES permittees to keep flow-normalized mass-based permit limits established at the beginning of the prior permit term before possible water re-use and reduction technologies and pollution prevention practices may have been implemented). EPA requests data

to evaluate the costs, benefits, and impacts of water conservation practices advocated by commenters. EPA also solicits comment on whether the commenters' suggestion could have a broader application to other industrial categories with flow-normalized mass-based NPDES permit limits.

In particular, EPA requests paired influent and effluent regulated pollutant concentration and flow data where available, before and after implementation of the increased water conservation technologies and practices, to determine wastewater treatment performance (*i.e.*, percent pollutant removals) and the discharged effluent pollutant concentrations for OCPSF (and other) facilities that they believe may or may not have adversely impacted their ability to achieve existing effluent guidelines. EPA also solicits other data on these water re-use and reduction technologies and pollution prevention practices which may include:

- The main reasons why these technologies and practices were adopted, and whether these technologies and practices are transferable to other facilities.
- Detailed process flow diagrams including wastewater flows from each industrial unit operation; typical pollutant concentration wastewater data from each industrial unit operation; descriptions of the water conservation technologies and practices employed at each of these industrial unit operations; and data and descriptions on whether these water conservation technologies and practices reduce the amount of wastewater volume or the mass of wastewater pollutants resulting from an industrial unit operation or both.
- Detailed descriptions of the wastewater treatment and the annual costs of operating wastewater treatment to maintain compliance with the effluent guidelines. Detailed descriptions of the capital and annual costs associated with implementing water conservation technologies and practices and any cost savings resulting from water conservation technologies and practices.

Additionally, EPA solicits estimates of the amount of increased water conservation and the number of facilities that would adopt more advanced water conservation technologies and practices as a sole result of: (1) Implementing the commenters' suggestion; or (2) other factors (*e.g.*, limitations on water source availability, potential costs savings). EPA would be particularly interested in specific, detailed examples of situations where the adoption of water

conservation technologies and practices have or have not made the achievement of new flow-normalized mass-based permit limits based on the reduced wastewater flow more difficult for both direct and indirect dischargers. EPA solicits comment on how and when NPDES permit writers are calculating flow-normalized mass-based permit limits when facilities reduce their wastewater flow. EPA solicits comment on whether the commenters' suggestion is more or less relevant to certain industries, treatment technologies, or pollutants. If EPA were to address the commenters' suggestion, should any rule or guidance changes be limited to one or a few industries (e.g., OCPSPF) or more broadly applicable. EPA solicits comment on whether there are differences between direct and indirect dischargers that might suggest that different approaches are warranted.

Comments and data provided to EPA will be evaluated in the context of the CWA factors required for consideration of effluent guidelines. Were EPA to make any effluent guidelines revisions, they would need to be supported by an administrative record following an opportunity for public comment based on available data.

*H. EPA Solicits Comment on Implementation Issues Related to the Analytical Methods for Synthetic-Based Drilling Fluids (SBF) in the Oil and Gas Extraction Point Source Category (40 CFR Part 435)*

EPA solicits comment on the suggested revisions to the Oil and Gas Extraction effluent guidelines (40 CFR Part 435) raised by commenters. See section V.B.3.b. In particular, EPA solicits comment on whether EPA should propose a rulemaking to replace the synthetic-based drilling fluids (SBF) analytic methods in the Oil and Gas Extraction effluent guidelines with the SBF analytical methods from the EPA Region 6 general permit for the "Outer Continental Shelf of the Gulf of Mexico," NPDES Permit No: GMG290000 (see OW-2004-0032-0047). EPA also solicits comment on the number, geographic distribution, and types of wells (e.g., oil or gas extraction, exploration or development, deepwater or shallow water, likely bottom depth of well) with down-hole temperatures above the practical limitations of ester-based drilling fluids (i.e., above 350 °F). EPA also solicits comment on whether drilling fluid additives (e.g., emulsifiers) can address the effects of high temperatures on ester-based drilling fluids. Finally, EPA solicits comments on whether the issues raised by commenters are more appropriately

addressed through improved standardization of the SBF analytical methods in order to reduce variability rather than the commenter's suggested revisions to the effluent guidelines.

*I. EPA Solicits Comment on the Draft Strategy*

In connection with the final 2006 Plan, EPA intends to finalize the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"). See 67 FR 71165 (November 29, 2002). EPA again solicits public comment on the draft Strategy. This will allow time for EPA to better refine the Strategy as it performs future effluent guidelines reviews. In particular, EPA requests comments on its proposed use of the four factors described in the draft Strategy (see section V.A.2) and invites the public to identify other or different factors for EPA's consideration.

The Agency is also interested to receive comments on whether each of these four factors should be ranked, and if so, whether different weights should be applied to each. EPA also requests suggestions as to the information the Agency should use to prioritize industrial categories that pass both the primary and secondary screening reviews described in the draft Strategy.

*J. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards*

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (e.g., wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries EPA evaluated: Food Service Establishments; Industrial Laundries; Photoprocessing; Printing and Publishing; Independent and Stand Alone Laboratories; Industrial Container and Drum Cleaning; and Health Services Industry. EPA solicits comment on the grouping of six industrial sectors into the Health Services Industry grouping (see OW-2004-0032-0038). EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

Dated: August 19, 2005.

**Michael Shapiro,**

*Acting Assistant Administrator for Water.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-7961-8]**

**Proposed CERCLA Administrative Agreement; Circuitron Corporation Superfund Site, East Farmingdale, Suffolk County, NY**

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Agency's May 24, 1995, "Guidance on Agreements with Prospective Purchasers of Contaminated Property," notice is hereby given of a proposed prospective purchaser agreement ("PPA") with the United States Environmental Protection Agency; Suffolk County, New York; the State of New York; and an as-of-yet unnamed "Auction Purchaser" regarding a 0.9-acre parcel of real property (the "Property") included within the Circuitron Corporation Superfund Site, located at 82 Milbar Boulevard in East Farmingdale, Suffolk County, New York (the "Site"). Under the PPA, Suffolk County would market the Property at auction, with a portion of the proceeds to be paid to EPA in reimbursement of response costs it incurred at the Site. Also under the PPA, the United States and the State would covenant not to sue or take administrative action against Suffolk County and its departments and agencies, and the Auction Purchaser, under Sections 106 or 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"). EPA also agrees to release the CERCLA Section 107(l) lien against the Property, and waive any lien or right to perfect any lien it may have on the Property now and in the future under Section 107(r) of CERCLA. By publication of this Notice, a thirty (30) day period has been established in which the Agency will accept written comments relating to the PPA agreement. The Agency will consider all comments received and may modify or withdraw its consent to the PPA if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the