

official date for submission of those claims will be published in the **Federal Register** about one year from now. Payment of the final FY 2011 claims will be made no later than the end of April 2012.

If the total of approved claim amounts exceeds the available funding, the approved claim amounts will be reimbursed on a prorated basis. All reimbursements are subject to the availability of funds from congressional appropriations.

**ADDRESSES:** Claims should be forwarded by certified or registered mail, return receipt requested, to Mr. David Alan Hicks, Title X Program Manager, U.S. Department of Energy/EMCBC, @ Denver Federal Center, P.O. Box 25547, Denver, Colorado 80225-0547. Two copies of the claim should be included with each submission.

**FOR FURTHER INFORMATION CONTACT:** Contact David Mathes at (301) 903-7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

**SUPPLEMENTARY INFORMATION:** DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001-1004 of Pub. L. 102-486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (e.g., statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment

Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

**Authority:** Section 1001-1004 of Public Law 102-486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC on this 15th day of December 2009.

**David E. Mathes,**

*Office of Disposal Operations, Office of Technical and Regulatory Support.*

[FR Doc. E9-30624 Filed 12-24-09; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration

#### Extension of Public Comment Period for the Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex.

**AGENCY:** National Nuclear Security Administration, U.S. Department of Energy.

**ACTION:** Extension of Public Comment Period for the Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex.

**SUMMARY:** On October 30, 2009, NNSA published a Notice of Availability and Public Hearings (74 FR 56189) for the *Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex* (Draft Y-12 SWEIS, DOE/EIS-0387). That notice invited public comment on the Draft Y-12 SWEIS through January 4, 2010, and provided the schedule for 2 public hearings to receive comments on the Draft Y-12 SWEIS. NNSA has extended the public comment period through January 29, 2010.

**DATES:** The public comment period for the Draft Y-12 SWEIS is extended from January 4, 2010 to January 29, 2010. Comments received after that date will be considered to the extent practicable as the NNSA prepares the Final Y-12 SWEIS.

**FOR FURTHER INFORMATION CONTACT:** Written comments on the Draft Y-12 SWEIS, as well as requests for additional information and requests for copies of the Draft Y-12 SWEIS, should be directed to Ms. Pam Gorman, Y-12 SWEIS Document Manager, Y-12 Site Office, 800 Oak Ridge Turnpike, Suite A-500, Oak Ridge, TN 37830, or by *telephone:* 865-576-9903. Comments

may also be submitted by facsimile to 865-483-2014, or by electronic mail to [y12sweis.comments@tetrattech.com](mailto:y12sweis.comments@tetrattech.com). Please mark correspondence "Draft Y-12 SWEIS Comments." Additional information on the Y-12 SWEIS may be found at <http://www.y12sweis.com>.

For general information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202-586-4600, or leave a message at 1-800-472-2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at <http://www.gc.energy.gov/NEPA>.

**SUPPLEMENTARY INFORMATION:** On October 30, 2009, NNSA issued a Notice of Availability and Public Hearings (74 FR 56189) for the *Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex* (Draft Y-12 SWEIS, DOE/EIS-0387). As originally announced in the NOA, DOE has conducted public hearings on the Draft Y-12 SWEIS in Oak Ridge, Tennessee on November 17-18, 2009. The original public comment period was to continue until January 4, 2010.

However, in response to public comments, DOE is extending the public scoping period until January 29, 2010. Comments received after that date will be considered to the extent practicable as the NNSA prepares the Final Y-12 SWEIS.

Issued in Washington, DC, on December 18, 2009.

**Randal S. Scott,**

*Deputy Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration.*

[FR Doc. E9-30628 Filed 12-24-09; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2008-0517; FRL-9095-5]

RIN 2040-AF06

### Notice of Availability of Preliminary 2010 Effluent Guidelines Program Plan

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

**ACTION:** Notice.

**SUMMARY:** The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), 304(m), and 307(b) require EPA to annually review its effluent guidelines and

pretreatment standards. This notice presents EPA's 2009 review of existing effluent guidelines and pretreatment standards. This notice also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). Finally, this notice presents the Preliminary 2010 Effluent Guidelines Program Plan ("preliminary 2010 Plan"), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. EPA is soliciting comment on its preliminary 2010 Plan and on its 2009 annual review of existing effluent guidelines and pretreatment standards and industrial categories not currently regulated by effluent guidelines and pretreatment standards.

**DATES:** If you wish to comment on any portion of this notice, EPA must receive your comments by February 26, 2010.

**ADDRESSES:** Submit your comments, data and information for the 2009 annual review of existing effluent guidelines and pretreatment standards and the preliminary 2010 Plan, identified by Docket ID No. EPA-HQ-OW-2008-0517, by one of the following methods:

(1) *http://www.regulations.gov*. Follow the online instructions for submitting comments.

(2) *E-mail: OW-Docket@epa.gov*, Attention Docket ID No. EPA-HQ-OW-2008-0517.

(3) *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OW-2008-0517. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA-HQ-OW-2008-0517. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OW-2008-0517. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *regulations.gov* or e-mail. The Federal *regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. 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 you send an e-mail comment directly to EPA without going through *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 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.

**Docket:** All documents in the docket are listed in the index at *http://www.regulations.gov*. 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 at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

The following key document provides additional information about EPA's annual reviews and the Preliminary 2010 Effluent Guidelines Program Plan:

- Technical Support Document for the Preliminary 2010 Effluent Guidelines Program Plan, EPA-821-R-09-006, DCN 06703, October 2009.
- Technical Support Document for the Annual Review of Existing Effluent Guidelines and Identification of Potential New Point Source Categories, EPA-821-R-09-007, DCN 06557, October 2009.
- Steam Electric Power Generating Point Source Category: Final Detailed Study Report, EPA-821-R-09-008, DCN 06390, October 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carey A. Johnston at (202) 566-1014 or *johnston.carey@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**How is This Document Organized?**

The outline of this notice follows.

- I. General Information
- II. Legal Authority
- III. What Is the Purpose of This **Federal Register** Notice?
- IV. Background
- V. EPA's 2009 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)
- VI. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), 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 2010 Effluent Guidelines Program Plan Under Section 304(m)
- IX. Request for Comment and Information

**I. General Information**

*A. Does This Action Apply to Me?*

This notice provides a statement of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements.

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

1. Submitting Confidential Business Information

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible.

- Make sure to submit your comments by the comment period deadline identified.

## II. Legal Authority

This 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 This Federal Register Notice?

This notice presents EPA's 2009 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g), 304(m), and 307(b). This notice also provides EPA's preliminary thoughts concerning its 2010 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the preliminary 2010 Effluent Guidelines Program Plan ("preliminary 2010 Plan"), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment.

## IV. Background

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

The CWA directs EPA to promulgate effluent limitations guidelines and standards ("effluent guidelines") that

reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using technologies that represent the appropriate level of control. *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 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 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. *See* Appendix A to part 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)(B)

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) and (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 Is 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) and 304(m) require EPA to review 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 guidelines selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to "non-trivial discharges."). 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, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan. See CWA section 304(m)(1)(C). EPA also has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. See *NRDC et al. v. EPA*, 437 F.Supp.2d 1137 (C.D. Ca., 2006). 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 practicable control technology (all pollutants), 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)(1), 304(b)(2) and 304(b)(4), respectively. For over three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 57 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 sections 304(b) and 304(m), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 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 revise existing pretreatment standards "from time to time," section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) 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 2010 annual pretreatment standards review in the notice containing the Agency's 2010 annual review of existing effluent guidelines and the final 2010 Plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

#### **V. EPA's 2009 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), 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), 304(m), and 307(b)?*

###### 1. Overview

In its 2009 annual review, EPA reviewed all industrial categories

subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 57 point source categories and over 450 subcategories. This review consisted of a screening level review of all existing industrial categories based on the hazard associated with discharges from each category and other factors identified by EPA as appropriate for prioritizing effluent guidelines and pretreatment standards for possible revision. EPA used this review to confirm the identification of the three industrial categories prioritized for further review in the final 2008 Effluent Guidelines Program Plan (September 15, 2008; 73 FR 53218) and to list the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). Specifically, EPA continued work on three detailed studies as part of the 2009 annual review: Steam Electric Power Generating (Part 423), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460).<sup>1</sup>

Together, these reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d), 304(b), 304(m) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category.

## 2. How Did EPA's 2008 Annual Review Influence its 2009 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 additional scrutiny in subsequent years. For example, in the current annual review EPA continued its detailed studies of the following three categories: Steam Electric Power Generating (Part 423); Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory); and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). In addition, EPA is expending additional resources to conduct its preliminary category review of the Ore Mining and Dressing (Part 440) category in its 2009 annual review based on the toxic discharges reported to the Toxics Release Inventory (TRI), Permit Compliance System (PCS), and the Integrated Compliance Information System National Pollutant Discharge Elimination System (ICIS-NPDES).

EPA conducts a preliminary category review when it lacks sufficient data to determine whether revision would be appropriate and for which EPA is performing a further assessment of pollutant discharges before starting a detailed study. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA published the findings from its 2008 annual review with its final 2008 Plan, making the data collected available for public comment. Docket No. EPA-HQ-OW-2006-0771. EPA used the findings, data and comments on the 2008 annual review to inform its 2009 annual review. The 2009 review also built on the previous reviews by continuing to use the screening methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges.

## 3. What Actions Did EPA Take in Performing Its 2009 Annual Reviews of Existing Effluent Guidelines and Pretreatment Standards?

### a. Screening-level Review

The first component of EPA's 2009 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point EPA collected and analyzed 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). 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 TRI, PCS, and ICIS-NPDES. 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 or 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, which EPA then uses as its estimate of the hazard posed by these pollutant discharges. EPA used the most recent 2007 data from the TRI, PCS, and ICIS-NPDES databases. The full description of EPA's methodology for the 2009 screening-level review is presented in the Technical Support Document (TSD) for the preliminary 2010 Plan (*see* DCN 06703) and the Technical Support Document for the Annual Review of Existing Effluent Guidelines and Identification of Potential New Point Source Categories (*see* DCN 06557).

EPA also developed a quality assurance project plan (QAPP) for its use of TRI, PCS, and ICIS-NPDES data in the 2009 annual review 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* DCN 06558). 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 2007 discharge data reported to TRI, PCS, and ICIS-NPDES) 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, correct TRI, PCS, and ICIS-NPDES data for facilities that EPA had identified in its screening-level review as the significant dischargers of nutrients and of toxic and non-conventional pollution.

Based on this methodology, EPA prioritized for potential revision industrial categories 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

<sup>1</sup>Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.B, EPA is including hospitals in its review of the Health Care Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

marked “(3)” in the “Findings” column in Table V–1 in section V.B.4 of this notice).

In order to further focus its inquiry during the 2009 annual review, EPA assigned a lower priority for potential revision to 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 in section V.B.4 of this notice). For example, EPA excluded facilities that are associated with the Chlorine and Chlorinated Hydrocarbon (CCH) Manufacturing effluent guidelines rulemaking from its 2009 hazard assessment of the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Inorganic Chemicals point source categories because the CCH rulemaking is underway.

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 57 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 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 industrial activity 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. EPA identified no such instance during the 2009 annual review.

EPA also applied a lower priority to categories without sufficient data to determine whether revision would be appropriate. For any industrial

categories marked “(5)” in the “Findings” column in Table V–1 in section V.B.4 of this notice, EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges. EPA will seek additional information on the discharges from these categories in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment (“preliminary category review”) provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. See the appropriate section in the TSD for the preliminary 2010 Plan (*see* DCN 06703) for EPA’s data needs for these industrial categories.

For industrial categories marked “(4)” in the “Findings” column in Table V–1 in section V.B.4 of this notice, EPA had sufficient information on the toxic-weighted pollutant discharges to continue or complete a detailed study of these industrial categories. EPA intends to use the detailed study to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. In the 2009 annual review, EPA continued or completed detailed studies of three such categories.

As part of its 2009 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 (*i.e.*, categories marked “(2)” in the “Findings” column in Table V–1 in section V.B.4 of this notice), EPA applied a lower priority for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national rulemaking. Individual permit requirements can be better tailored to these few facilities and may take considerably less time and resources to establish than revising the national effluent guidelines. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 06703). 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 in previous biennial planning cycles urging the Agency 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 indirectly account for the effects of successful voluntary programs because any significant reductions in pollutant discharges should be 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.

As was the case in previous annual reviews, 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 57 existing industrial categories. However, EPA believes that its analysis of hazard is useful for assessing the effectiveness of existing technologies because it focuses on the amount and significance of pollutants that are still discharged following existing treatment. Therefore, by assessing the hazard associated with discharges from all existing categories in its screening-level review, EPA was indirectly able to assess the possibility that further significant reductions could be achieved through new pollution control technologies for these categories. In addition, EPA directly assessed the availability of technologies for certain industries that were prioritized for a more in-depth review as a result of the screening level analysis.

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 readily available economic data. In the past, EPA has gathered information regarding technologies and economic achievability 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 (PRA), 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 can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA believes it is appropriate to set priorities based on hazard and other screening-level factors identified above, and to directly consider the availability and affordability of technology only in conducting the more in-depth reviews of prioritized categories. For these prioritized categories, EPA may conduct surveys or other PRA-governed data collection activities in order to better inform the decision on whether effluent guidelines are warranted. Additionally, EPA is evaluating tools for directly assessing technological and economic achievability as part of the screening-level review in future annual reviews under section 301(d), 304(b), 304(m), and 307(b) (*see* DCN 07073). 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, through its screening level review, EPA focused on those point source categories that appeared to offer the greatest potential for reducing hazard to human health or the environment, 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. This enabled EPA to concentrate its resources on conducting more in-depth reviews of certain industries prioritized as a result of the screening level analysis, as discussed below (*see* section V.A.3.b and c).

#### b. Further Review of Prioritized Categories

In the publication of the final 2008 Plan EPA identified one category, Ore Mining and Dressing (Part 440), for further investigation (“preliminary category review”), and a status report is included in this notice. EPA identified this category with “(5)” in the column entitled “Findings” in Table V–1, Page 53231 of the final 2008 Plan. EPA is not identifying any other categories for preliminary category reviews at this time.

In conducting a preliminary category review, EPA uses the same types of data sources used for the detailed studies but in less depth. For example, an assessment of the pollutant discharges provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. EPA is not conducting a detailed study for the Ore Mining and Dressing category at this time because EPA needs additional information regarding this industry to determine whether a detailed study is warranted. EPA plans to complete its analysis of this additional information for the final 2010 Plan.

#### c. Detailed Study of Three Categories

In this review cycle, EPA continued detailed studies of three categories: Steam Electric Power Generating (Part 423), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues. In general, EPA examines one or more of the following elements as part of a detailed study: (1) Wastewater characteristics and pollutant sources; (2) the pollutants discharged from these sources and the toxic weights associated with these 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 is relying on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI, PCS, and ICIS–NPDES 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) monitoring data included in facility applications for NPDES permit renewals (Form 2C data); (7) EPA effluent guidelines technical development documents; (8) relevant EPA preliminary data summaries or study reports; (9) technical literature on pollutant sources and control technologies; (10) information provided by industry including industry conducted survey and sampling data; and/or (11) stakeholder comments (*see* DCN 06703). Additionally, in order to evaluate available and affordable treatment technology options for the coalbed methane extraction industry sector, EPA is conducting an industry survey.

#### d. Public Comments

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 2009 annual review at the time of publication of the final 2008 Plan to provide the public with an opportunity to submit additional information to assist the Agency in its 2009 annual review. EPA received four public comments and placed these comments in the supporting docket (*see* EPA–HQ–OW–2008–0517–0045 through 0048, <http://www.regulations.gov>). One commenter requested that EPA expand its detailed study of coalbed methane extraction to include all oil and gas exploration, stimulation, and extraction techniques that result in contamination of surface and groundwater, including hydraulic fracturing in all formations. The other three commenters requested that EPA initiate an effluent guidelines rulemaking for the Steam Electric Power Generating category. In particular, they requested that EPA limit the discharges of metals from this category and eliminate the use of wet handling for coal combustion wastes.

#### B. What Were EPA’s Findings From Its 2009 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

##### 1. Screening-level Review

In its 2009 screening level review, EPA considered hazard—and the other factors described in section A.3.a. above—in prioritizing effluent guidelines for potential revision. *See* Table V–1 in section V.B.4 of this notice

for a summary of EPA's findings with respect to each existing category; *see also* the TSD for the preliminary 2010 Plan. Out of the categories subject only to the screening level review in 2009, EPA is not identifying any for effluent guidelines rulemaking at this time, based on the factors described in section A.3.a above and in light of the effluent guidelines rulemakings and detailed studies in progress.

EPA carefully examined the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). The TSD for the preliminary 2010 Plan presents a summary of EPA's review of these seven industrial categories (*see* DCN 06703).

## 2. Detailed Studies

### a. Overview

In its 2009 annual review, EPA continued detailed studies of three industrial point source categories: Steam Electric Power Generating (Part 423), and Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). EPA is investigating whether the pollutant discharges reported to TRI, PCS, and ICIS-NPDES for 2007 accurately reflect the current discharges. EPA is also analyzing the reported pollutant discharges, technology innovation, and process changes in these industrial categories. Additionally, EPA is considering whether there are industrial activities 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. For Coalbed Methane Extraction and Health Care Industry EPA plans to use the detailed studies to determine whether EPA should identify in the final 2010 Plan (or a future Plan) either of these two industrial categories for possible revision of their existing effluent guidelines and pretreatment standards. EPA's reviews of two of three categories are described below and its review of hospitals is described in section VII.B (Health Care Industry detailed study).

### b. Steam Electric Power Generating (Part 423)

EPA has completed a multi-year study of the Steam Electric Power Generating industry and, based on the results, has determined that revising the current

effluent guidelines is warranted. EPA's decision to revise the current effluent guidelines is largely driven by the high level of toxic-weighted pollutant discharges from power plants and the expectation that these discharges will increase significantly in the next few years as new air pollution controls are installed. Over the course of the study EPA has identified technologies that are available to significantly reduce these pollutant discharges.

The Steam Electric Power Generating effluent guidelines (40 CFR 423) apply to a subset of the electric power industry, namely those facilities "primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with water system as the thermodynamic medium." *See* 40 CFR 423.10. EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (*see* 47 FR 52290; November 19, 1982).

Since 2005, EPA has been carrying out an intensive review of wastewater discharges from power plants. As part of this effort, EPA has sampled wastewater from surface impoundments and advanced wastewater treatment systems, conducted on-site reviews of the operations at more than two dozen power plants, and issued a detailed questionnaire that obtained information on thirty power plants using authority granted under section 308 of the Clean Water Act. EPA's data collection primarily focused on four target areas: (1) Determining the pollutant characteristics of power plant wastewater; (2) identifying treatment technologies for the wastewater generated by air pollution control equipment; (3) characterizing the practices used by the industry to manage or eliminate discharges of fly ash and bottom ash wastewater; and (4) identifying methods for managing power plant wastewater that allow recycling and reuse, rather than discharge to surface waters. Much of the information collected thus far, including laboratory data from sampling, were made available to the public in an interim study report, "Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report," (*see* EPA-HQ-OW-2006-0771-1699) and the final study report, "Steam Electric Power Generating Point Source Category: Final Detailed Study Report," (*see* DCN 03690).

EPA's review of the wastewater characteristics indicates that most of the toxic pollutant loadings for this category are associated with metals and certain

other elements present in wastewater discharges, and that the waste streams contributing the majority of these pollutants are associated with ash handling and wet flue gas desulfurization (FGD) systems. Other potential sources of these pollutants include coal pile runoff, metal cleaning wastes, coal washing, leachate from landfills and wastewater impoundments, and certain low-volume wastes.

Between July 2007 and October 2008, EPA conducted six sampling episodes to characterize untreated wastewaters generated by coal-fired power plants, including FGD wastewater, and fly ash and bottom ash transport water. EPA also collected samples to assess the effluent quality from different types of treatment systems currently in place at these operations. Samples were analyzed for metals and other pollutants, such as total suspended solids and nitrogen. Sampling reports for the first five episodes are included in the docket for the 2008 Plan, and the report for the final sampling episode is included in the docket for the 2010 Plan (*see* DCN 06197). These reports discuss the specific sample points and analytes, the sample collection methods used, the field quality control samples collected, and the analytical results for the wastewater samples.

EPA expects that the use of wet FGD systems will increase substantially over the next decade as State and Federal regulations are implemented to reduce air emissions. Metals and other pollutants are transferred from the flue gas to the wastewater produced by wet FGD systems. Based on results from the sampling and other data, EPA determined that there are unregulated toxic and conventional pollutants present in ash pond and FGD wastewater which can be reduced significantly with treatment technologies.

An increasing amount of evidence indicates that the characteristics of coal combustion wastewater have the potential to impact human health and the environment. Discharges of coal combustion wastewater have been associated with fish kills, reductions in the growth and survival of aquatic organisms, behavioral and physiological effects in wildlife and aquatic organisms, potential impacts to human health (*e.g.*, drinking water contamination), and changes to the local habitat. Many of the pollutants commonly found in coal combustion wastewater (*e.g.*, selenium, mercury, and arsenic) are known to cause environmental harm and potentially represent a human health risk. Although



coal-fired power plants often dilute coal combustion wastewater with other large volume wastewater (e.g., cooling water) to reduce the pollutant concentrations prior to discharge, the effluent can contain large mass loads (i.e., total pounds) of pollutants. Some of the pollutants in these discharges, although present at low concentrations, can bioaccumulate and present an increased ecological threat due to their tendency to persist in the environment, resulting in slow ecological recovery times following exposure. In addition, leachate from impoundments and landfills containing coal combustion wastes can contain high concentrations of pollutants and has been identified as a source of ground water and surface water impacts.

Additional information about data collected and findings of the detailed study of the Steam Electric Power Generating industry is presented in the final study report, "Steam Electric Power Generating Point Source Category: Final Detailed Study Report," (see DCN 06390). The report includes data on the characteristics of wastewater from coal fired power plants, identifies the wastewater treatment technologies reviewed, presents an overview of the industry profile and predicted future trends in the use of air pollution controls, and describes environmental impacts that have been linked to coal combustion wastewater.

The Agency expects that data collection efforts for the effluent guidelines rulemaking will include wastewater sampling and issuing a survey that will obtain detailed technical and financial information. In particular, EPA recently published a **Federal Register** notice announcing its intent to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for their review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* See 74 FR 55837 (October 29, 2009).

c. Oil and Gas Extraction (Part 435) (Only To Assess Whether To Include Coalbed Methane Extraction as a New Subcategory).

Coalbed methane (CBM) extraction activities accounted for about 7% of the total U.S. natural gas production (gross withdrawals) in 2007 and are expanding in multiple basins across the U.S. Currently, the Department of Energy's Energy Information Administration (EIA) expects CBM production to remain an important source of domestic natural gas over the next few decades.

CBM extraction requires removal of large amounts of water from

underground coal seams before CBM can be released. CBM wells have a distinctive production history characterized by an early stage when large amounts of water are produced to reduce reservoir pressure which in turn encourages release of gas. This is followed by a stable stage when quantities of produced gas increase as the quantities of produced water decrease; and a late stage when the amount of gas produced declines and water production remains low (see EPA-HQ-OW-2004-0032-1904).

The quantity and quality of water that is produced in association with CBM development varies from basin to basin, within a particular basin, from coal seam to coal seam, and over the lifetime of a CBM well. Pollutants often found in these wastewaters include chloride, sodium, sulfate, bicarbonate, fluoride, iron, barium, magnesium, ammonia, and arsenic. Total dissolved solids (TDS) and electrical conductivity (EC) are bulk parameters that States typically use for quantifying and controlling the amount of pollutants in CBM produced waters.

EPA identified the coalbed methane (CBM) sector as a candidate for a detailed study in the final 2006 Effluent Guidelines Program Plan (71 FR 76656; December 21, 2006). As part of that announcement EPA made it clear that it would conduct data collection through an information collection request (ICR) to support this detailed study. In accordance with the Paperwork Reduction Act (PRA), EPA obtained approval from the Office of Management and Budget (OMB) for its "Coalbed Methane Extraction Sector Survey" on February 18, 2009. This approval followed two public comment periods on the survey (January 25, 2008; 73 FR 4556 and July 15, 2008; 73 FR 40757) and more than two years of outreach by EPA with interested stakeholders.

The approved mandatory survey, conducted under the authority of Section 308 of the Clean Water Act (33 U.S.C. Section 1318), includes a screener and a detailed questionnaire. EPA sent the screener questionnaire in February 2009 to all CBM methane operators that have three or more CBM wells. EPA used data from 291 screener questionnaires and state data on operators with one or two CBM wells to identify that in 2008 there were 56,049 CBM wells that operators managed in 692 different CBM projects. This CBM production, 2.0 trillion cubic feet, represents approximately 7.7 percent of the total U.S. natural gas production in 2008. The 692 CBM projects are located in 16 different CBM basins across the Nation but are mainly concentrated in the States of Wyoming, New Mexico,

Oklahoma, and Alabama. EPA used these data to draw a representative sample of CBM projects. EPA began distribution of the detailed questionnaire to the representative sample of CBM projects in late October 2009. The detailed questionnaire will collect financial and technical data on approximately 250 CBM methane projects across the country.

EPA will use the screener and detailed questionnaires to collect technical and economic information from a wide range of CBM operations. EPA plans to collect information on geographical and geologic differences in the characteristics of CBM produced waters, environmental data, current regulatory controls, and availability and affordability of treatment technology options.

EPA also visited eight different CBM produced water treatment technologies in Wyoming. Included in these technologies are ion exchange, reverse osmosis, thermal distillation, and lined pit disposal and evaporation. These site visits supplemented EPA site visits to Pennsylvania, West Virginia, Virginia, Alabama, New Mexico, Colorado, Wyoming, and Montana in 2007 (see EPA-HQ-OW-2006-0771-0977).

EPA is also conducting a literature review of environmental impacts and beneficial uses of produced water. The literature review is being conducted in three phases focusing on: (1) Scientific journal articles, (2) documents retrieved from Web sites of State and Federal agencies, universities, and non-governmental organizations, and (3) environmentally sustainable beneficial uses of produced water. Results of the first phase are included in the docket (see DCN 06934). Additionally, EPA will be reviewing current requirements for surface water discharge of produced water. Currently, regulatory controls for CBM produced waters vary from State to State and permit to permit (see EPA-HQ-OW-2004-0032-2782, 2540). The assessment of State permitting requirements for surface water discharge of produced water will examine factors such as the number of current permits, the proportion of discharges covered under individual versus general permits, the types of pollutants controlled, and the numeric concentration limits required. This assessment will give EPA a better understanding of variations and consistencies among States in controlling CBM produced water discharges.

Finally, EPA is soliciting public comment on whether it should expand its detailed study of coalbed methane extraction to include all oil and gas

exploration, stimulation, and extraction techniques that result in contamination of surface and groundwater, including hydraulic fracturing in all formations.

3. Results of Preliminary Category Reviews

During the 2008 annual review, EPA identified the Ore Mining and Dressing (Part 440) category for a preliminary category review for two reasons: (1) The industry has a high TWPE discharge estimate of process wastewater (*i.e.*, EPA identified this category with “(5)” in the column entitled “Findings” in Table V–1, Page 53231 of the final 2008 Plan); and (2) comments received on previous Plans assert that better controls are needed for stormwater discharges to surface water at ore mining sites. Stormwater discharges from Ore Mining and Dressing facilities that are not commingled with process wastewater are not regulated by effluent guidelines but are regulated under individual or general stormwater NPDES permits. This preliminary category review is ongoing.

EPA performed several analyses during the 2009 annual review. These analyses included: (1) Coordinating with the primary western ore mining States to collect information for mines classified as NPDES minor facilities (*i.e.*, collecting information States do not typically submit to EPA’s ICIS or PCS databases); (2) reviewing journals and technical literature to identify the latest advances in wastewater treatment technologies; and (3) reviewing Total Maximum Daily Load (TMDL) plans to determine whether active ore mine discharges are discharging into impaired waterbodies. Section IX of this notice

and the TSD for the preliminary 2010 Plan (*see* DCN 06703) lists the data and information that EPA would like to collect on the pollutant discharges and potential treatment technology options for the Ore Mining and Dressing category in order to complete this preliminary category review.

4. Summary of 2009 Annual Review Findings

In its 2009 annual review, EPA reviewed all categories subject to existing effluent guidelines and pretreatment standards in order to identify appropriate candidates for revision. Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category. Additionally, EPA is continuing to conduct detailed studies for two existing categories: Oil and Gas Extraction (only with respect to coalbed methane) and Hospitals (part of the Health Care Industry detailed study).

A summary of the findings of the 2009 annual review is presented below 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) Revising the national effluent guidelines or pretreatment standards is not the best tool 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 (*e.g.*, not among industries that cumulatively comprise 95% of reported hazard in TWPE units).

(4) EPA intends to continue a detailed study of this industry in its 2010 annual review to determine whether to identify the category for effluent guidelines rulemaking.

(5) EPA is continuing or initiating a preliminary category review because incomplete data are available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the preliminary 2010 Plan (*see* DCN 06703) for EPA’s data needs for industries in this category.

TABLE V–1—FINDINGS FROM THE 2009 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), 304(M), 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	(3)
9	Coal Mining	434	(3)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Construction and Development	450	(1)
14	Copper Forming	468	(3)
15	Dairy Products Processing	405	(3)
16	Electrical and Electronic Components	469	(3)
17	Electroplating	413	(1)
18	Explosives Manufacturing	457	(3)
19	Ferrous Alloy Manufacturing	424	(3)
20	Fertilizer Manufacturing	418	(3)

TABLE V-1—FINDINGS FROM THE 2009 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), 304(M), AND 307(B)—Continued

No.	Industry Category (Listed Alphabetically)	40 CFR part	Findings †
21	Glass Manufacturing	426	(3)
22	Grain Mills	406	(3)
23	Gum and Wood Chemicals	454	(3)
24	Hospitals <sup>2</sup>	460	(4)
25	Ink Formulating	447	(3)
26	Inorganic Chemicals ‡	415	(1) and (3)
27	Iron and Steel Manufacturing	420	(1)
28	Landfills	445	(3)
29	Leather Tanning and Finishing	425	(3)
30	Meat and Poultry Products	432	(1)
31	Metal Finishing	433	(1)
32	Metal Molding and Casting	464	(3)
33	Metal Products and Machinery	438	(1)
34	Mineral Mining and Processing	436	(3)
35	Nonferrous Metals Forming and Metal Powders	471	(3)
36	Nonferrous Metals Manufacturing	421	(3)
37	Oil and Gas Extraction	435	(4)
38	Ore Mining and Dressing	440	(5)
39	Organic Chemicals, Plastics, and Synthetic Fibers ‡	414	(1) and (3)
40	Paint Formulating	446	(3)
41	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
42	Pesticide Chemicals	455	(3)
43	Petroleum Refining	419	(3)
44	Pharmaceutical Manufacturing	439	(3)
45	Phosphate Manufacturing	422	(3)
46	Photographic	459	(3)
47	Plastic Molding and Forming	463	(3)
48	Porcelain Enameling	466	(3)
49	Pulp, Paper, and Paperboard	430	(3)
50	Rubber Manufacturing	428	(3)
51	Soaps and Detergents Manufacturing	417	(3)
52	Steam Electric Power Generating ††	423	(1)
53	Sugar Processing	409	(3)
54	Textile Mills	410	(3)
55	Timber Products Processing	429	(3)
56	Transportation Equipment Cleaning	442	(3)
57	Waste Combustors	444	(3)

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

† Note: Two codes ("(1)" and "(3)") are used for this category as both codes are applicable to this category and do not overlap. The first code ("(1)") refers to the ongoing effluent guidelines rulemaking for the Chlorinated Hydrocarbon (CHC) manufacturing sector, which includes facilities currently regulated by the OCSPF and Inorganics effluent guidelines. The second code ("(3)") indicates that the remainder of the facilities in these two categories do not represent a hazard priority at this time.

†† Note: EPA is using the preliminary 2010 Plan to conclude its detailed study of this category and to announce its decision to identify the category for an effluent guidelines rulemaking.

#### VI. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual reviews of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of preliminary Plans and biennial Plans

<sup>2</sup>Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.D, EPA is including hospitals in its review of the Health Care Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2009 review. The information gathered during the 2009 annual review, including the identification of data gaps in the analysis of certain categories with existing regulations, in turn, provides a starting point for EPA's 2010 annual review. See Table V-1 in section V.B.4 of this notice. In 2010, EPA intends to again conduct a screening-level analysis of all 57 categories and compare the results against those from previous years.

EPA will also conduct further review of the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the

reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). Additionally, EPA intends to continue detailed studies of the following two categories with existing effluent guidelines and pretreatment standards: Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory) and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). EPA is continuing its preliminary category review for the Ore Mining and Dressing category in the 2010 annual review. EPA invites comment and data on the two detailed studies, the one preliminary category review, and all remaining point source categories.

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

### A. EPA's Evaluation of Pass Through and Interference of Toxic and Non-Conventional Pollutants Discharged to POTWs

All indirect dischargers are subject to general pretreatment standards (40 CFR 403), including a prohibition on discharges causing "pass through" or "interference." See 40 CFR 403.5. All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced "pass through" or "interference" and such a violation is likely to recur. 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 pollutants to POTWs that may pass through, interfere with or otherwise be 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.

One of the tools traditionally used by EPA in evaluating whether pollutants "pass through" a POTW is a comparison of the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. Pretreatment standards for existing sources are technology based and are analogous to BAT effluent limitations guidelines. In most cases, EPA has concluded that a pollutant passes through the POTW when the median percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the median percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant. This approach to the definition of "pass through" satisfies two objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of POTWs be recognized and taken into

account in regulating the discharge of pollutants from indirect dischargers.

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 potential for "interference," 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, 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).

If EPA determines a category of indirect dischargers causes pass through or interference, EPA would then consider the BAT and BPT factors (including "such other factors as the Administrator deems appropriate") specified in section 304(b) to determine whether to establish pretreatment standards for these activities. Examples of "such other factors" include a consideration of the magnitude of the hazard posed by the pollutants discharged as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs. Additionally, EPA would consider whether other regulatory tools (e.g., use of local limits under Part 403) or voluntary measures would better control the pollutant discharges from this category of indirect dischargers. For example, EPA relied on a similar evaluation of "pass through potential" in its prior decision not to promulgate national categorical pretreatment standards for the Industrial Laundries industry. See 64 FR 45071 (August 18, 1999). 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 64 FR 45077 (August 18, 1999).

EPA reviewed TRI 2007 discharge data in order to identify industry categories without categorical pretreatment standards that are discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations (see DCN 06703). This review did not identify any such industrial categories. EPA also evaluated stakeholder comments and pollutant discharge information in the previous annual reviews to inform this review. In particular, EPA received stakeholder comments on the issues of dental amalgam and unused pharmaceuticals management for the Health Care Industry in response to the 2007 annual review. As discussed in the final 2008 Plan EPA is again not identifying dental facilities for an effluent guidelines rulemaking in this notice at this time (September 15, 2008; 73 FR 53233). However, EPA is continuing its study of unused pharmaceutical management for the Health Care Industry.

EPA also solicits comment and data on all industrial sectors not currently subject to categorical pretreatment standards for its 2010 review. Finally, EPA solicits comment on data sources and on methods for collecting and aggregating pollutant discharge data collected by pretreatment programs to further inform its future review of industry categories without categorical pretreatment standards.

### B. Unused Pharmaceuticals

To date, scientists have identified numerous pharmaceutical compounds at discernable concentrations in our nation's rivers, lakes, and streams (see EPA-HQ-OW-2006-0771-1694). To address this issue at the source, EPA is studying how the drugs are entering our waterways and what factors contribute to the current situation. Towards this end, EPA initiated a study on pharmaceutical disposal practices at health care facilities including hospitals, hospices, long-term care facilities, health care clinics, doctor's offices, and veterinary facilities. Unused pharmaceuticals include dispensed prescriptions that patients do not use as well as materials that are beyond their expiration dates. Another potential source of unused pharmaceuticals is the residuals remaining in used and partially used dispensers, containers,

and devices. In particular, the medications contained in the dispensers, containers and devices may be sewerer (*e.g.*, intravenous (IV) bags emptied into sink).<sup>3</sup> For many years, a standard practice at many health care facilities was to dispose of unused pharmaceuticals by flushing them down the toilet or drain.

For the 2008 final Plan, EPA completed an interim technical report for the Health Care Industry (*see* EPA–HQ–OW–2006–0771–1694). The interim technical report focused on hospitals and long-term care facilities (LTCFs) because these facilities are likely responsible for the largest amounts of unused pharmaceuticals being disposed into sewage collection systems within this industry sector. In 2005, there were about 7,000 hospitals and 35,000 LTCFs in the United States (*see* EPA–HQ–OW–2006–0771–1694). EPA is continuing its detailed study to investigate the following questions:

- What are the current industry practices for disposing of unused pharmaceuticals?
- What types of pharmaceuticals are being disposed?
- What are the options for disposing of unused pharmaceuticals other than down the drain or toilet?
- What factors influence disposal decisions?
- Do disposal practices differ within industry sectors?
- What Best Management Practices (BMPs) could facilities implement to reduce the generation of unused pharmaceuticals?
- What are the costs of current disposal practices compared to the costs of implementing BMPs or alternative disposal methods?

Since the publication of the final 2008 plan, EPA also reviewed comments received on the first **Federal Register** notice for the health care industry ICR published on August 12, 2008 (73 FRN 46903). The ICR was originally developed to collect technical and economic information on unused pharmaceutical management and to identify technologies and BMPs that reduce or eliminate the discharge of unused pharmaceuticals to POTWs. EPA received 31 comments and conducted outreach meetings with industry to obtain further comments on the survey design and instrument.

Commenters included hospitals and clinics, health care trade associations, pharmacists associations, reverse distributors, pharmaceutical

manufacturers, individuals, and municipal wastewater treatment plants and their associations. Following publication of the first **Federal Register** notice for the ICR, EPA conducted three teleconferences in September 2008 with 259 stakeholders to provide an overview of the project, scope of the survey instrument, potential recipients, and schedule. These meetings solicited early feedback from participants to facilitate the development of a subsequent draft of the survey instrument and population and sample frames. These teleconferences also identified interested stakeholders for the site visits/additional outreach meetings. Overall, the comments received were supportive of the survey. Most commenters had a number of suggestions on how to improve the survey. Improvements suggested were to expand the scope of sectors receiving the survey, to shorten the survey, and to tailor the survey to each health care sector. There were a few health care organizations who felt a survey was not necessary for a variety of reasons including burden to the facilities, that they are already practicing BMPs, or that they would favor the more immediate issuance of EPA guidance.

In addition to exploring the use of an industry survey, EPA has continued to study the issue of how health care facilities are managing and disposing of unused pharmaceuticals and POTW treatment effectiveness in an effort to identify the root cause and potential solutions to address the issue of pharmaceuticals in our waterways. Since the publication of the final 2008 Plan, EPA conducted site visits to 3 additional hospitals in 3 States, four LTCFs in three States, a veterinary hospital, a long-term care pharmacy, a hospice, an oncology clinic, and a waste management vendor facility to obtain more detailed information on how pharmaceuticals are managed, tracked, and disposed as well as influences on behavior (*see* DCN 06496). During each site visit, EPA collected general site information and specific unused pharmaceutical management and disposal information. The objectives of these site visits included:

- Collect information on the amount of unused pharmaceuticals disposed when available;
- Observe pharmaceutical waste management practices;
- Identify common industry disposal practices, guidance, and regulatory requirements;
- Identify challenges with the generation and disposal of unused, unwanted, and expired pharmaceuticals;

- Identify BMPs and their costs; and
- Gather information about how hospitals, LTCFs, or other facilities operate.

Additionally, EPA contacted other types of health care facilities (*e.g.*, medical and dental offices, university and prison health clinics, and veterinary clinics) to learn about their unused pharmaceutical disposal practices. EPA also reviewed studies on POTW pharmaceutical treatment effectiveness and the potential pathways for unused pharmaceuticals to be released into the environment (*see* DCN 06571).

In summary, since the study began in 2007 EPA has worked with a wide range of stakeholders (*e.g.*, industry representatives; Federal, State, local and Tribal government representatives; waste management and disposal companies; and other interested parties) to obtain the best available information on the industry and its unused pharmaceutical management practices. In total, EPA met or spoke with over 700 different people during the outreach and data collection activities from 2007 through 2009 (*see* DCN 06496). Based on its outreach and data gathering, the Agency estimates that hospitals and long-term care facilities have the greatest amounts of unused pharmaceuticals as compared with other health care sectors (*e.g.*, dentist, retail pharmacies).

EPA's outreach has also identified that there is near universal interest from stakeholders to better manage unused pharmaceuticals at health care facilities. There is also general interest in more quickly advancing the use of best practices for managing unused pharmaceuticals at health care facilities. This considerable outreach and data collection has led EPA to re-consider the use of an industry survey for this sector. The survey would be an effective but potentially time-consuming tool for gathering facility-specific data on the management of unused pharmaceuticals. EPA estimates that it has gathered sufficient data from its site visits and outreach to begin the development of best practices for unused pharmaceutical management at health care facilities. During the next year EPA will continue to work with a variety of stakeholders in the development of these best practices and the means for their dissemination and adoption. EPA expects to complete the development of these best practices for the final 2010 Plan.

<sup>3</sup> As a point of clarification, the term "unused pharmaceuticals" does not include excreted pharmaceuticals.

### VIII. The Preliminary 2010 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA is publishing this preliminary 2010 Plan for public comment prior to this publication of the final 2010 Plan.

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

##### 1. Schedule for 2009 and 2010 Annual Reviews Under Section 304(b) and 304(m)

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. This preliminary 2010 Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: EPA will 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 2009 annual review ends with the publication of this preliminary 2010 Plan in this notice.

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 identifying candidates for ELG revision for which EPA can schedule rulemaking in the Plan, or 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 2009 annual review along with the preliminary 2010 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2010 and the final 2010 Plan.

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

EPA is currently conducting a rulemaking to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Inorganic Chemicals (to address discharges from Vinyl Chloride and Chlor-Alkali facilities identified for effluent guidelines rulemaking in the final 2004 Plan, now termed the "Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing" rulemaking). EPA previously indicated it would conduct an industry survey for this effluent guidelines rulemaking (April 18, 2006; 71 FR 19887). EPA is considering its next steps for this survey and the rulemaking as it reviews data from a voluntary industry monitoring program. EPA worked with industry to develop the extensive monitoring program to better understand the category's pollutant discharges. EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time.

#### B. Identification of Potential New 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); S. Rep. No. 99-50, Water Quality Act of 1987, Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to "non-trivial discharges"). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B), providing for final action on such rulemaking not later than three years after the identification of the category in a final Plan. *See* CWA section 304(m)(1)(C). EPA also has a duty to promulgate

effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al. v. EPA*, 437 F.Supp.2d 1137 (C.D. Ca., 2006).

EPA is currently conducting an effluent guidelines rulemaking for one new industrial category—Airport Deicing Operations—which was identified as a potential new category in the final 2004 Plan (September 2, 2004; 69 FR 53705). EPA published a notice of proposed rulemaking for this category on August 28, 2009 (74 FR 44676). Additionally, EPA recently completed an effluent guidelines rulemaking for the Construction and Development category (40 CFR 450) because it was directed to do so by a district court order. *NRDC et al. v. EPA*, No. 04-8307, order (C.D. Ca., December 6, 2006). EPA proposed effluent guidelines for this category on November 28, 2008 (73 FR 72561) and published final effluent guidelines on December 1, 2009 (74 FR 62995). EPA is not at this time proposing to identify any other potential new categories for effluent guidelines rulemaking and therefore is not scheduling effluent guidelines rulemaking for any such categories in this preliminary Plan.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI, PCS, and ICIS-NPDES. Facilities with data in TRI, PCS, and ICIS-NPDES are identified by a four-digit SIC code or six-digit North American Industry Classification System (NAICS) code (*see* DCN 06557). NAICS codes are a new economic classification system that replaces the SIC system, which has traditionally been used by the Federal Government for collecting and organizing industry-related statistics. The PCS and ICIS-NPDES data systems use SIC codes while the TRI system recently switched to NAICS codes.

EPA performs a crosswalk between the TRI, PCS, and ICIS-NPDES discharge data, identified with SIC or NAICS codes, and the 57 point source categories with effluent guidelines or pretreatment standards to determine if each SIC or NAICS code is currently regulated by existing effluent guidelines (*see* DCN 06703). EPA also relied on comments received on its previous 304(m) plans to identify potential new categories. 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. EPA notes that the Ninth Circuit has recently held that the precise number and kind of categories identified by EPA in its 304(m) planning process is discretionary with the Administrator.

*Our Children's Earth v. EPA*, 527 F.3d 842, 852 (9th Cir. 2008).

The first criterion for identifying industries under section 304(m)(1)(B) is whether they are "categories of sources" for which EPA has not promulgated effluent guidelines. Because this section does not define the term "categories," EPA interprets this term based on the use of the term in other sections of the Clean Water Act, legislative history, and Supreme Court case law, and in light of longstanding Agency practice. These sources indicate that the term "categories" refers to an industry as a whole based on similarity of product produced or service provided, and is not meant to refer to specific industrial activities or processes involved in generating the product or service. EPA therefore interprets section 304(m)(1)(B) in its biennial Plan as only applying to those new industries that it determines are properly considered stand-alone "categories" within the meaning of the Act—not those that are properly considered potential new subcategories of existing categories based on similarity of product or service.

EPA's interpretation of the term "categories" is consistent with longstanding Agency practice. Pursuant to CWA section 304(b), which requires EPA to establish effluent guidelines for "classes and categories of point sources," EPA has promulgated effluent guidelines for 57 industrial "categories." Each of these "categories" consists of a broad array of facilities that produce a similar product or perform a similar service—and is broken down into smaller subsets, termed "subcategories," that reflect variations in the processes, treatment technologies, costs and other factors associated with the production of that product that EPA is required to consider in establishing effluent guidelines under section 304(b). For example, the "Pulp, Paper and Paperboard point source category" (40 CFR part 430) encompasses a diverse range of industrial facilities involved in the manufacture of a like product (paper); the facilities range from mills that produce the raw material (pulp) to facilities that manufacture end-products such as newsprint or tissue paper. EPA's classification of this "industry by major production processes used many of the statutory factors set forth in CWA Section 304(b), including manufacturing processes and equipment (e.g., chemical, mechanical, and secondary fiber pulping; pulp bleaching; paper making); raw materials (e.g., wood, secondary fiber, non-wood fiber, purchased pulp); products manufactured (e.g., unbleached pulp, bleached pulp, finished paper

products); and, to a large extent, untreated and treated wastewater characteristics (e.g., BOD loadings, presence of toxic chlorinated compounds from pulp bleaching) and process water usage and discharge rates."<sup>4</sup> Each subcategory reflects differences in the pollutant discharges and treatment technologies associated with each process. Similarly, the "Iron and Steel Manufacturing point source category" (40 CFR part 420) consists of various subcategories that reflect the diverse range of processes involved in the manufacture of iron and steel, ranging from facilities that make the basic fuel used in the smelting of iron ore (subpart A—Cokemaking) to those that cast the molten steel into molds to form steel products (subpart F—Continuous Casting). An example of an industry category based on similarity of service provided is the Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), which is subcategorized based on the type of tank (e.g., rail cars, trucks, barges) or cargo transported by the tanks cleaned by these facilities, reflecting variations in wastewaters and treatment technologies associated with each.

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 comprised exclusively or almost exclusively of indirect discharging facilities regulated under section 307.

Third, CWA section 304(m)(1)(B) applies only to industrial categories of sources that discharge toxic or non-conventional pollutants to waters of the United States. EPA therefore did not identify in the Plan industrial activities for which 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, section 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. 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 discharge of toxic or non-conventional pollutants.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those potential new categories for which an effluent guidelines rulemaking may be an appropriate tool for controlling discharges. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges.

## IX. Request for Comment and Information

### A. EPA Requests Information on the Coalbed Methane Sector of the Oil and Gas Extraction Category (Part 435)

EPA is researching the following questions and topics as they relate to the quantity and toxicity of pollutants discharged and the environmental impacts of these discharges to support the Oil and Gas Extraction/Coalbed Methane detailed study.

■ What is the range of pollutant concentrations in CBM produced water?

■ What is the toxicity of these pollutants to human health and the environment?

■ What is the range of pollutant concentrations and what are the CBM produced water flow rates for the major CBM basins?

■ What CBM produced water pollutants are typically controlled through permit limits and what is the range of these permit limits?

■ What are the observed and potential impacts of CBM produced water discharges on aquatic environments and communities, riparian zones, and other wetlands?

■ How does the composition of CBM produced water change when discharged to normally dry draws or ephemeral streams? In particular, to what extent do CBM produced water discharges mobilize metals, soil nutrients, pesticides and other organic contaminants present in soil and carry these constituents to surface waters?

■ What are measures that can mitigate potential impacts to use of surface waters for irrigation? EPA is researching the following questions and topics as they relate to the potential technology options and beneficial use practices for this industrial sector.

<sup>4</sup>U.S. EPA, 1997. *Supplemental Technical Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard Category*, Page 5–3, EPA–821–R–97–011, October 1997.

■ What are the current industry treatment technologies for CBM produced water?

■ What are the potential beneficial use applications of CBM produced water and what are the corresponding criteria for such uses?

■ How effectively do these treatment technologies and beneficial use practices reduce the potential adverse impacts of CBM produced water discharges?

■ What is the range of incremental annualized compliance costs associated with these technologies and practices? How do these costs differ between existing and new sources?

■ What is the demonstrated use and economic affordability (e.g., production losses, firm failures, employment impacts resulting from production losses and firm failures, impacts on small businesses) of these technologies across the different CBM basins?

■ What are the types of non-water quality environmental impacts (including energy impacts) associated with the current industry treatment technologies and beneficial use practices for CBM produced water?

EPA is researching the following questions and topics as they relate to the expansion of CBM exploration and development and the affordability of potential technology options for this industrial sector.

■ What is the near-term and long-term growth rate for this industry sector? Which CBM basins are likely to experience the most growth within the next ten years?

■ What are the current industry drilling and infrastructure expansion plans for CBM exploration and development?

■ What is the predicted range of CBM reserves across the different basins that would be economically recoverable at different natural gas prices?

■ What are the potential impacts on developing CBM reserves and operator profitability and rates of return on investment of any increased costs associated with potential industry treatment technologies and beneficial use practices for CBM produced water discharges?

■ What is the difference between potential impacts on existing sources versus new sources?

■ What percentage of CBM operators are considered small entities?

EPA is researching the following questions and topics as they relate to current regulatory controls.

■ How do NPDES permit programs regulate CBM produced water discharges (e.g., individual permits, general permits)?

■ What is the BPJ basis for existing technology-based effluent limits for CBM produced water discharges?

■ To what extent and how do current regulatory controls ensure the beneficial use of CBM produced water?

■ What other statutes might affect the ability to discharge, treat, or beneficially use CBM produced water (e.g., SDWA, RCRA)?

#### *B. EPA Requests Comments and Information on the Following as It Relates to Unused Pharmaceutical Management for the Health Care Industry*

■ EPA solicits identification of any policies, procedures or guidelines that govern the disposal of unused pharmaceuticals from hospitals and hospices; offices of doctors and mental health practitioners; nursing, long-term care, rehabilitation, and personal care facilities; medical laboratories and diagnostic service facilities; and veterinary care facilities.

■ EPA solicits comment and data on: (1) The main factors that drive current disposal practices; and (2) any barriers preventing the reduction or elimination of unused pharmaceuticals to POTWs and/or surface waters. In particular, EPA solicits comment on the extent to which that the Controlled Substances Act (21 U.S.C. 801 *et. seq.*) complicates the design of an efficacious solution to drug disposal.

■ EPA solicits quantitative information or tracking sheets for the past year on the disposal of unused pharmaceuticals via the toilet, drain, or sewer.

■ EPA solicits data on how control authorities are currently controlling disposal of unused pharmaceuticals via wastewater.

■ EPA solicits information on any technologies or BMPs that are available to control, reduce, or eliminate the disposal of unused pharmaceuticals to POTWs.

■ EPA solicits qualitative and quantitative data on the effectiveness and annualized costs of the technologies or BMPs that health service facilities use to control or eliminate the discharge of unused pharmaceuticals from their wastewater. EPA is also interested in obtaining information on the current costs (including labor) associated with disposal of unused pharmaceuticals via the drain or toilet.

■ EPA solicits any studies or information on the potential for unused pharmaceuticals that are disposed of in non-hazardous-waste landfills to contaminate underground resources of drinking water.

#### *C. Preliminary Category Review for the 2010 Annual Review*

EPA requests information on the Ore Mining and Dressing category (*i.e.*, the industrial point source category with existing effluent guidelines identified with “(5)” in the column entitled “Findings” in Table V-1 in section V.B.4 of this notice). EPA will need to collect more information for the 2010 annual review. Specifically, EPA hopes to gather the following information:

■ What toxic pollutants are discharged from this industry category 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?

#### *D. 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* DCN 06703).

#### *E. 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). EPA solicits comment on categories for which the Agency should provide permit-based support.

#### *F. Identification of New Industrial Categories and Sectors*

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.



### G. 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.

### Notice of Availability of Preliminary 2010 Effluent Guidelines Program Plan

#### H. 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 without pretreatment standards. 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: December 17, 2009.

**Peter S. Silva,**

*Assistant Administrator for Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0877; FRL-8803-6]

### Registration Review; Ethylene Docket Opened for Review and Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has established a registration review docket for the pesticide ethylene (case 3071). With this document, EPA is opening the public comment period for this registration review. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that

is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for encapsulated *Bacillus thuringiensis* proteins. This pesticide does not currently have any actively registered pesticide products and is not, therefore, scheduled for review under the registration review program.

**DATES:** Comments must be received on or before February 26, 2010.

**ADDRESSES:** Submit your comments identified by docket identification (ID) number EPA-HQ-OPP-2009-0877, by one of the following methods:

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

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2009-0877. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, 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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

**Docket:** All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** For pesticide-specific information contact: Driss Benmhend, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9525; fax number: (703) 308-7026; e-mail address: [Benmhend.driss@epa.gov](mailto:Benmhend.driss@epa.gov).

**For general information contact:** Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5026; fax number: (703) 308-8090; e-mail address: [costello.kevin@epa.gov](mailto:costello.kevin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a