

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5617-7]

RIN 2040-AC86

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of effluent guidelines plan.

SUMMARY: Today's notice announces the Agency's plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. Section 304(m) of the Clean Water Act requires EPA to publish a biennial Effluent Guidelines Plan.

EFFECTIVE DATE: November 6, 1996.

ADDRESSES: The public record for this notice is available for review in the EPA Water Docket, 401 M Street, SW., Washington, DC. For access to Docket

materials, call (202) 260-3027 between 9 a.m. and 3 p.m. for an appointment. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone 202-260-7150.

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I. Regulated Entities

Today's proposed plan does not contain regulatory requirements and does not provide specific definitions for each industrial category. Entities potentially affected by decisions regarding the final plan are listed below.

Category of entity	Examples of potentially affected entities
Industry	Pulp, Paper and Paperboard; Pesticide Formulating, Packaging and Repackaging; Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery; Landfills and Incinerators; Industrial Laundries; Transportation Equipment Cleaning; Iron and Steel Manufacturing; Chemical Formulators, Packers and Repackers; Feedlots; Inorganic Chemicals; Petroleum Refining; Photographic Processing; Steam Electric Power Generating; Storm Water dischargers; Textile Mills.

To determine whether your facility would be regulated, you should carefully examine the applicability criteria in the appropriate proposed rule (previously published or forthcoming). Citations for previously published proposed rules and schedules for forthcoming proposed rules are provided in Appendix A of today's notice.

II. Legal Authority

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

III. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's third biennial plan for developing new and revised effluent guidelines pursuant to sec. 304(m) of the Clean Water Act.

EPA published a proposed Effluent Guidelines Plan (the "Proposed Plan") on July 3, 1996 (61 FR 35042). The Agency accepted comment on the notice until August 9, 1996. Today's notice summarizes and addresses the major comments the Agency received.

B. Overview of Today's Notice

The Agency intends to develop effluent limitation guidelines and standards ("effluent guidelines") as follows:

- 1. Continue development of ten rules listed in the Proposed Plan. The categories are: Pulp, Paper and Paperboard; Pesticide Chemicals (Formulating, Packaging and Repackaging); Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery, Phase 1; Landfills and Incinerators; Industrial Laundries; Transportation Equipment Cleaning; and Metal Products and Machinery, Phase 2.
- 2. Begin development of revised effluent guidelines for the Iron and Steel Manufacturing category.
- 3. Initiate three preliminary studies to assist in determining whether new or revised rules should be developed for particular categories. Each preliminary study will generally take approximately two years to complete.
- 4. Complete preliminary studies on the Photographic Processing and Chemical Formulating and Packaging industries.

5. Plan for development of seven additional effluent guidelines, either new or revised. The point source categories to be covered by these guidelines will be identified in future biennial Effluent Guidelines Plans.

These actions are identical to those described in the Proposed Plan.

IV. 1996 Proposed Effluent Guidelines Plan

In the Proposed Plan, EPA described its intent to continue development of ongoing rulemakings, develop additional rules, and conduct preliminary studies. The Proposed Plan set forth EPA's rationale for the selection of particular industries as candidates for new or revised effluent guidelines. The Proposed Plan also described the relevant statutory framework, the components and process for development of an effluent guidelines regulation, and other background information. The principal elements of the Proposed Plan were designed to implement sec. 304(m) and a consent decree in *Natural Resources Defense Council et al v. Browner* (D.D.C. 89-2980, January 31, 1992, as modified) (the "Consent Decree"). See 61 FR 35042-35052.

V. 1996 Effluent Guidelines Plan
 EPA's 1996 Effluent Guidelines Plan is set forth below. Today's Plan is substantively identical to the Proposed Plan. As noted above, the basis for selection of the industries identified in

today's Plan is described in the Proposed Plan.
A. Regulations
 1. Ongoing Rulemakings
 The Agency is currently in the process of developing new or revised

effluent guidelines for ten categories. (These categories were listed in the Proposed Plan.) The categories and actual or projected dates for proposal and final action are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
	Consent decree or actual	Consent Decree
Pulp, Paper and Paperboard	12/17/93	(1)
Pesticide Formulating, Packaging, and Repackaging	4/14/94	9/96
Centralized Waste Treatment	1/27/95	² 3/97
Coastal Oil and Gas Extraction	2/17/95	10/96
Pharmaceutical Manufacturing	5/2/95	² 3/97
Metal Products and Machinery, Phase 1	5/30/95	² 3/97
Industrial Laundries	² 3/97	³ 12/98
Transportation Equipment Cleaning	² 3/97	³ 12/98
Landfills and Incinerators	³ 3/97	³ 3/99
Metal Products and Machinery, Phase 2	³ 4 12/97	³ 4 12/99

¹ The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.

² 3/97 is an interim deadline by which EPA and NRDC expect to conclude negotiations. EPA may not propose or promulgate these rules by 3/97.

³ EPA is discussing extensions to Consent Decree dates with NRDC.

⁴ EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule.

The Agency has not yet received funding for Fiscal Year 1997, and funding restrictions may affect rulemaking schedules. EPA is discussing extensions to most of the Consent Decree dates with NRDC, for both budgetary reasons and specific policy, technical and administrative issues in some regulations.

2. Future Regulations

a. *Iron and Steel Manufacturing.* As announced in the Proposed Plan, EPA intends to propose revised regulations for the Iron and Steel Manufacturing Category. The current consent decree deadlines are December 1998 for proposal and December 2000 for promulgation; however, EPA is discussing extensions to these deadlines with NRDC.

b. *Additional Rulemaking Projects.* The Decree currently requires that EPA develop seven additional rules. Based on the discussion of data sources in the Proposed Plan (61 FR 35047), the Agency may choose the next rulemaking projects from the following list of categories:

- Chemical Formulators, Packagers and Repackagers.
- Feedlots.
- Inorganic Chemicals.
- Petroleum Refining.
- Photographic Processing.
- Steam Electric Power Generating.
- Storm Water.
- Textile Mills.

Completed, ongoing or potential preliminary studies on these categories were discussed in the Proposed Plan (61 FR 35047–35051). The Agency may consider other categories for rulemaking as it receives additional data. The Consent Decree deadlines for the additional rules are part of the Agency's ongoing negotiations with NRDC.

B. Preliminary Studies

In the Proposed Plan EPA described preliminary studies either completed or underway, and announced that it intended to begin additional preliminary studies. The studies assist the Agency in selecting industries to be subject to future effluent guidelines rulemaking.

The Agency is completing work on two studies: Photographic Processing and Chemical Formulating, Packaging and Repackaging. EPA will begin additional studies, but has not yet selected the categories for study.

C. Summary of Changes From Proposed Plan

Today's Effluent Guidelines Plan is substantively identical to the Proposed Plan. However, some clarifications are provided below in response to several comments the Agency received on the proposal.

D. Updates on Rulemaking Activities

1. Pulp, Paper and Paperboard

On July 15, 1996, EPA published a notice of data availability (61 FR 36835)

that described the Agency's goals for environmental improvement in the pulp, paper, and paperboard industry. This notice also announced the availability of new data related to the proposed effluent limitation guidelines and standards and discussed the preliminary results of detailed analysis relative to a portion of this industry. Finally, this notice discussed an innovative new approach to foster continuing environmental improvement through the development and use of a voluntary incentives-based program for implementing advanced pollution prevention technologies that move the industry closer to meeting the Clean Water Act goal of zero discharge.

2. Centralized Waste Treatment

EPA published a Notice of Availability on September 16, 1996 (61 FR 48805). The notice describes new information the Agency has obtained since the proposed rule of January 27, 1995. The notice also explains, based on this information, the Agency's revised estimates of the size and regulatory impacts of the proposed rulemaking on the proposed oils treatment and recovery subcategory.

3. Leather Tanning and Finishing

EPA issued a direct final rule concerning minor revisions to the Leather Tanning and Finishing regulations (40 CFR Part 425) on July 8, 1996 (61 FR 35680). These revisions

will become effective on October 6, 1996.

4. Ore Mining and Dressing

EPA proposed modifications to the Copper, Lead, Zinc, Gold, Silver and Molybdenum subcategory of the Ore Mining regulations (40 CFR part 440, Subpart J) on February 12, 1996 (61 FR 5364). The proposed modifications involved an exemption from a requirement for a mine to use impoundments or "tailings ponds" where such requirements would be impractical due to severe topographic and climatic conditions. Such conditions appear to exist at the Alaska-Juneau (A-J) gold mine project near Juneau, Alaska. The public comment period for comments concerning technological alternatives for the A-J project site closed on August 12, 1996. EPA is reviewing the comments and evaluating alternatives as part of the Region 10 Supplemental Environmental Impact Statement (SEIS). The Agency will publish a notice announcing the additional data and is scheduling a series of public meetings for late October or early November 1996. These meetings will be announced in the Federal Register.

VI. Public Comments

EPA accepted public comment on the Proposed Plan until August 9, 1996. The Agency received comments that covered approximately 30 topics from 48 commenters, including industries, an environmental group, States, publicly owned treatment works, and Federal agencies. The summary in this section highlights the significant comments submitted. The administrative record for today's notice includes a complete text of the comments and the Agency's responses.

A. Scope of Specific Effluent Guidelines Rules

Several comments addressed the scope of coverage and other issues pertaining to specific effluent guidelines rules which EPA recently proposed or will propose in the next few years.

EPA will forward these comments to the dockets for the appropriate rules. The Agency has not made final decisions about the scope and applicability of these guidelines.

B. Metal Products and Machinery

In the Proposed Plan, EPA stated that it was considering merging Phases 1 and 2 of the Metal Products and Machinery (MP&M) rule (61 FR 35045). Eighteen commenters supported EPA's proposal to merge Phases 1 and 2 of the MP&M rulemaking into one final rule. EPA will

consider these recommendations as it continues to negotiate extensions of the Consent Decree deadlines for the MP&M rules with NRDC.

C. Pharmaceutical Manufacturing

In the Proposed Plan, EPA stated that it was considering the merits of jointly promulgating effluent guidelines along with planned National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations for the pharmaceutical industry (61 FR 35046). Eleven commenters supported simultaneous promulgation of air and water standards for the Pharmaceuticals industry. EPA will consider these recommendations as it continues to negotiate an extension of the Consent Decree deadline for the Pharmaceuticals effluent guidelines rule with NRDC.

D. Preliminary Studies

Several comments supported or opposed EPA's conducting preliminary studies of certain categories, and some of the commenters also recommended issues to be considered if the studies were conducted. The Agency has not selected categories for studies. As studies are selected, EPA will consider the issues raised by the commenters.

E. Industry Selection Criteria

In the Proposed Plan, EPA described its process for selection of new effluent guidelines (61 FR 35046). In discussing the Agency's use of various factors in comparing industrial categories, one commenter recommended that the Agency's use of "total pollutants discharged" information should be adapted in recognition of significant changes in influent loadings to publicly owned treatment works (POTWs) as the result of implementation of local pretreatment programs and changes in analytical techniques. EPA agrees that load estimates should reflect local pretreatment programs and current conditions. However, the Agency generally cannot obtain category-wide data on pretreatment of industrial loadings during the selection process. In addition to its quantitative estimates, EPA does make qualitative evaluations about the relative extent of POTW local limits for different industrial categories during the selection process.

Another commenter recommended that in the environmental factors, EPA should consider the availability of treatment technologies that may result in significant reductions of existing pollutants; discontinue use of "total pollutants discharged"; compare industry discharges on a facility basis, not total industry basis, and look at pollutant concentrations; use NPDES

permit application data for comparisons; and evaluate effects of other EPA regulations on effluent quality. EPA does consider the availability of treatment technologies as well as relative costs. In the Proposed Plan (61 FR 35046), the discussion on the "Utility" criterion stated that "EPA typically looks at a variety of factors", however only several of these factors were listed for brevity: Average priority pollutants discharged per facility, Average priority toxic pounds-equivalent discharged per facility, and Number of discharging facilities. The other factors the Agency considers under the "Utility" criterion are: Potential For Additional Control, Pollution Prevention Opportunity, Multi-Media Rule Opportunity, Extent of Industry Not Covered by Existing Effluent Guidelines, Variability of Industry Discharges, Inapplicability of Existing Regulations, and Potential Impact of Indirect Dischargers. For some of these factors, EPA may not have quantitative data, and the Agency relies on the engineering judgment of its professional staff.

EPA uses total pollutant discharge to evaluate an industry's overall impact on the nation's waters. Additionally, EPA does examine average discharge per facility. EPA considers pollutant loads rather than pollutant concentrations in order to evaluate potential impact to the environment (e.g. sediment loadings and bioaccumulation potential). EPA uses the NPDES Permit Compliance System (PCS), which includes self-monitoring data, to estimate loads. Resource limitations preclude the Agency from reviewing individual permit applications. EPA agrees that estimating impacts on wastewater discharges from non-water environmental regulations is important, and will attempt to calculate these impacts where data are available. Typically, after implementation of a final rule, there is a delay of perhaps several years before wastewater impacts can be estimated for a category.

A third commenter stated that among the environmental factors, a description of contact path and associated risk should be included, e.g. bioaccumulation in food chain to levels much greater than originally in the receiving water. EPA agrees that the exposure route is an important criterion but the Agency does not have the resources to evaluate each chemical discharged for all industries. However, EPA does consider the relative risk of pollutant discharge by using the criteria toxic pound equivalence. Toxic pound equivalence allows comparison of the relative toxicity of pollutants in terms of

human health and aquatic life protection. This criterion also accounts for the bioaccumulation potential of pollutants.

VII. Economic Impact Assessment

Today's notice proposes a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice does not establish any requirements; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or regulatory impact analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Dated: September 27, 1996.

Carol M. Browner,
Administrator.

Appendix A—Effluent Guidelines Rulemaking Projects and Preliminary Studies

EFFLUENT GUIDELINES CURRENT AND FUTURE RULEMAKING PROJECTS

Category	40 CFR part	Proposed	Final
Pulp, Paper and Paperboard	430	12/17/93 (58 FR 66078)	(¹)
Pesticide Formulating, Packaging and Repackaging	455	4/14/94 (59 FR 17850)	9/96
Centralized Waste Treatment	437	1/27/95 (60 FR 5464)	² 3/97
Coastal Oil and Gas Extraction	435	2/17/95 (60 FR 9428)	10/96
Pharmaceutical Manufacturing	439	5/2/95 (60 FR 21592)	² 3/97
Metal Products and Machinery, Phase 1	438	5/30/95 (60 FR 28209)	^{2,4} 3/97
Industrial Laundries	441	3/97 ²	³ 12/98
Transportation Equipment Cleaning	442	3/97 ²	³ 12/98
Landfills and Incinerators	437	3/97 ³	³ 3/99
Metal Products and Machinery, Phase 2	438	12/97 ^{3,4}	^{3,4} 12/99
Iron and Steel Manufacturing	420	12/98 ³	³ 12/00
1 category		12/98 ³	³ 12/00
2 categories		12/99 ³	³ 12/01
2 categories		12/00 ³	³ 12/02
2 categories		12/01 ³	³ 12/03

Notes

¹ The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.

² 3/97 is an interim deadline by which EPA and NRDC expect to conclude negotiations. EPA may not propose or promulgate these rules by 3/97.

³ EPA is discussing extensions to Consent Decree dates with NRDC.

⁴ EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule.

CURRENT AND FUTURE PRELIMINARY STUDIES

Category	Complete
Petroleum Refining	1993
Metal Finishing	1993
Textile Mills	1994
Inorganic Chemicals	1994
Steam Electric Power Generating	1995

CURRENT AND FUTURE PRELIMINARY STUDIES—Continued

Category	Complete
Iron and Steel Manufacturing ...	1995
Photographic Processing	1996
Chemical Formulators and Packagers	1996.

CURRENT AND FUTURE PRELIMINARY STUDIES—Continued

Category	Complete
Three studies	1997.

Note

¹ EPA is discussing extensions to Consent Decree dates with NRDC.