located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 29, 2001.

ADDRESSES: Written comments should be addressed to: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168.

FOR FURTHER INFORMATION CONTACT: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and the Glenvar Branch of the Roanoke County Public Library, 3917 Daugherty Road, Salem, VA 24153, (540) 387–6163, Monday through Thursday, 9 a.m. to 9 p.m. and Friday through Saturday, 9 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 23, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 01–18819 Filed 7–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[FRL–7019–2]

Notice of Data Availability; Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On April 11, 2000 (65 FR 19440), EPA published proposed amendments to effluent limitations guidelines and standards for the coal mining point source category (40 CFR part 434). EPA proposed to add two new subparts to the existing regulations, the Coal Remining Subcategory (Subpart G) and the Western Alkaline Coal Mining Subcategory (Subpart H).

In the proposal, EPA specifically solicited comment on 18 issues, in addition to a general comment solicitation on all aspects of the proposed regulation. EPA received comments from various stakeholders, including state, tribal and federal regulatory authorities, environmental groups, and industry groups.

In response to the general comment solicitation, EPA received comments and data on aspects of the proposal for which EPA did not specifically solicit comment. Due to comments received, EPA is considering changes to certain aspects of the proposed Coal Remining Subcategory. Today, EPA is making these data and comments available for public review and comment.

DATES: Submit your comments by August 29, 2001.

ADDRESSES: Submit comments to Mr. John Tinger at the following address: U.S. EPA, Engineering and Analysis Division (4303), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments sent via courier or Federal Express should be sent to: John Tinger, U.S. EPA, Engineering and Analysis Division (4303), Room 615 West Tower, 401 M St., SW., Washington, DC 20460. You are encouraged to submit comments electronically to Tinger.John@epa.gov.

The data and information being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB–57, 401 M St., SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 4:00 p.m. for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. John Tinger at (202) 260–4992 or at the following e-mail address: Tinger.John@epa.gov.

SUPPLEMENTARY INFORMATION:

Contents of This Document

I. Purpose of This Notice

On April 11, 2000, EPA published proposed amendments to effluent limitations guidelines and standards for the coal mining point source category (65 FR 19440). EPA proposed to add provisions for two new subcategories, the Coal Remining Subcategory and the Western Alkaline Coal Mining Subcategory. In today's notice, EPA is providing a discussion of options relating to specific issues raised by commenters on the remining subcategory that were not presented in the proposal. EPA is presenting these comments and the options that EPA is considering for the final rulemaking. EPA solicits comments on these options and on the related comments and data collected since proposal. Specifically, EPA is soliciting comment on the effective date of the Remining Subcategory and on alternative effluent limits for solids.

II. Background

Coal mining in the eastern United States has been an important industry for several centuries. The lack of adequate environmental controls, until recently, has produced hundreds of thousands of acres of abandoned mine land (AML). Prior to passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, reclamation of coal mining sites was not a federal requirement, and drainage from AML has become a significant water quality problem in Appalachia.

Based on information supplied by the Interstate Mining Compact Commission (IMCC) and the Office of Surface Mining (OSM) Abandoned Mine Land Inventory System, EPA estimates there currently are over 1.1 million acres of abandoned coal mine lands in the United States. These have produced over 9,709 miles of streams polluted by acid mine drainage. In addition, there are over 18,000 miles of abandoned highwalls, 16,326 acres of dangerous piles and embankments, and 874 dangerous impoundments. Of the land disturbed by coal mining between 1930 and 1971,

only 30 percent has been reclaimed to acceptable levels. Several states have indicated that acid mine drainage from abandoned coal mine land is their most serious water pollution problem. Streams that are impacted by acid mine drainage characteristically have low pH levels (less than 6.0 standard units) and contain high concentrations of sulfate, acidity, dissolved iron and other metals.

As part of 1987 amendments to the Clean Water Act, Congress added section 301(p), often called the Rahall Amendment, to provide incentives for remining AML. Section 301(p) provides an exemption for remining operations from the Best Available Technology Economically Achievable (BAT) effluent limits for iron, manganese, and pH for pre-existing discharges from AML. Instead, a permit writer may set site-specific, numeric BAT limits for pre-existing discharges based on Best Professional Judgement (BPJ). The permit applicant must demonstrate that the remining operation will result in the potential for improved water quality from the remining operation. The permit effluent limits may not allow pollutant discharges to exceed pre-existing ''baseline'' levels of iron, manganese, and pH. The Rahall Amendment did not provide for alternative effluent limits for Total Suspended Solids (TSS) or Settleable Solids (SS). Despite the statutory authority provided by the Rahall Amendment, coal mining companies and most states remain hesitant to pursue remining without formal EPA approval and guidelines.

On April 11, 2000, EPA proposed to establish requirements for determining baseline pollutant loadings in pre-existing discharges and for implementing pollution abatement plans consistent with the requirements of the Rahall Amendment. In the proposal, EPA stated its belief that encouraging remining operations through the proposed subcategory has the potential for improving hazardous conditions and improving acid mine drainage from AML. EPA solicited comment on this conclusion and on potential options that may be environmentally preferable to the proposed remining subcategory. In response, EPA received comments on several issues where EPA did not specifically solicit comment. Commenters believe incorporation of these issues could increase the potential benefits of the remining subcategory.

III. Date of Applicability for Remining Operations

The Rahall Amendment defines remining as a coal mining operation which begins after the date of the enactment of the Rahall Amendment (February 4, 1987) at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Thus, the Rahall Amendment attempted to encourage remining by allowing operators an alternative to treating degraded pre-existing discharges to the levels set in EPA's current effluent limitations guidelines for coal mining. EPA's proposed definition of remining as ''a coal mining operation at a site on which coal mining was conducted prior to August 3, 1977,'' is consistent with the definition provided under the Rahall Amendment.

In response to the proposal, EPA received comments requesting that EPA extend the applicability of the proposed Remining Subcategory to include AML abandoned after August 3, 1977. Commenters noted that bonds have been forfeited on some coal mining sites since the effective date of SMCRA, and suggested that remining at these locations could result in environmental benefits.

For the reasons discussed in Sections IV.B, VI.A, and IX.A of the proposal, EPA concluded that remining has many potential benefits at little cost. During remining operations, acid-forming materials are removed with the extraction of the coal, pollution abatement Best Management Practices (BMPs) are implemented under applicable regulatory requirements, and the AML is reclaimed. During remining, many of the problems associated with AML, such as dangerous highwalls, vertical openings, and abandoned coal refuse piles can be corrected at no cost to OSM's Abandoned Mine Land Program. Furthermore, implementation of appropriate BMPs during remining operations can be effective at improving the water quality of pre-existing discharges.

EPA recognizes that one of the most successful means of improving abandoned mine land is for coal mining companies to remine abandoned areas and extract the coal reserves that remain. EPA also recognizes that if abandoned mine lands are ignored during coal mining of adjacent areas, a time-critical opportunity for reclaiming AML may be lost. Once coal mining operations have ceased on the adjacent areas, there is little incentive for operators to return.

Since the close of the public comment period, EPA has collected additional data on abandoned mine lands and bond forfeitures since 1977 (DCN 3036 in the regulatory record). Based on data obtained from OSM's abandoned mine lands database, it is estimated that there are 260 bond forfeiture sites that are currently producing acid mine drainage. To date, these sites have not been reclaimed. There are various reasons for lack of cleanup, such as that the bonds posted in the early stages of SMCRA may not have been sufficient to cover clean up costs. Additionally, as described in the proposal, the AML fund establishes priorities for AML cleanup based on direct risks to human health, and acid mine drainage may not receive priority for use of public funds if it does not pose a direct threat to humans. However, if these sites have remaining coal reserves, remining may be a feasible option to reclaim the land at little or no cost to the abandoned mine lands fund. For the reasons described in the proposal, remining may offer an incentive for reclaiming hazardous conditions at these sites.

EPA is therefore considering extending the applicability of the subcategory to include the remining of bond forfeiture sites. By extending the remining subcategory, EPA believes that increased remediation of abandoned mine lands may be facilitated.

EPA is also considering the potential implication of such a change to bond forfeiture occurrence. EPA is trying to determine if, by allowing alternative limits for remining after bond forfeiture, EPA may be encouraging bond forfeitures in the future. To avoid providing an incentive for increased bond forfeiture, EPA is also considering limiting the applicability of the subcategory to mine sites abandoned prior to the promulgation date of the final rule. In this manner, the regulations may allow remining to correct for past failures, but not encourage future bond forfeitures.

EPA is soliciting comment on extending the applicability of the remining subcategory to include mine sites abandoned after enactment of SMCRA, and the effect that this could have on creating an incentive for a mine operator to abandon a coal mining operation. EPA is also soliciting comment on the need to limit the date of applicability of the remining subcategory to the effective date of a final rule for the Coal Remining Subcategory.

IV. Alternative Limits for Solids in Pre-existing Discharges

Under the proposed regulations, a remining permit would contain specific numeric and non-numeric requirements. The numeric requirements would be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline

pollutant discharges. The numeric effluent limitations set at baseline levels would ensure that in no event will the pollutant discharges exceed the discharges prior to remining, consistent with section 301(p)(2). The stringency of the non-numeric permit provisions would be established using best professional judgement to evaluate the adequacy of the selected BMPs contained in a pollution abatement plan. The pollution abatement plan would demonstrate that the remining operation will result in the potential for improved water quality, as also contemplated by section 301(p)(2).

EPA proposed that the remining subcategory would establish alternative limits for pH, iron, and manganese, but not for solids. This proposal was consistent with section 301(p)(2). Existing effluent limits for solids are addressed in Subpart C—Acid or Ferruginous Mine Drainage, which establish limits for TSS (maximum for any 1 day of 70.0 mg/l and a maximum average daily value of 35.0 mg/l) and in Subpart E, Post-Mining Areas, which establish limits for reclamation areas (0.5 ml/L SS) and for underground mine drainage (maximum TSS for any 1 day of 70.0 mg/l and a maximum TSS average daily value of 35.0 mg/l).

EPA received comments stating that acid mine drainage was not the primary concern for all cases of AML, and that alternative limits for pH, iron, and manganese, but not for solids, would not be sufficient to provide an incentive for remining many AML sites. Therefore, commenters requested that EPA also apply alternative limits for the level of solids in pre-existing discharges. During the public comment period, some states submitted information to EPA that documents significant problems with sediment discharges from AML. For instance, Virginia's 1998 303(d) list identifies 15 streams in the coalfields impaired by resource extraction, but only two of those streams are identified as impaired by acid mine drainage and only one by active coal mining. The Ohio Department of Natural Resources cites that there are AML sites currently discharging over 250 tons per acre of sediment per year, and that over 500 miles of streams have been documented to have excess sediment problems due to runoff from unreclaimed mine lands. The majority of the impaired streams have been impacted by discharges from abandoned underground mines or drainage from unreclaimed surface mines containing high levels of dissolved, settleable, and suspended solids. Commenters noted that it is sediment loading that is polluting these streams, and that the provisions under the Rahall Amendment and the proposed subcategory are not sufficient to address this problem.

The reasons for excessive solids loads in runoff from abandoned mine lands include lack of vegetative cover due to acidic or toxic soils; lack of vegetative cover due to steep slopes; and high runoff volume and velocity due to steep slopes. While EPA has focused on the benefits of reducing the toxic loadings of pre-existing discharges through implementation of Best Management Practices (BMPs), many of the activities associated with AML reclamation also have the potential to significantly reduce sediment loadings. BMPs typically implemented during the course of remining that will permanently stabilize sediment loading include the removal of spoil piles; regrading land to original contour; adding topsoil; and establishing vegetation. A study conducted by the U.S. Geological Survey, ''Sedimentation and Water Quality in the West Branch Shade River Basin, Ohio, 1983–85'' (Childress and Jones, 1988, DCN 3038.1) assessed the effects of BMPs on AML impacted by sediment. The study found that sediment loads decreased 98 percent (from 8.6 tons per acre to 0.15 tons per acre) after the AML was reclaimed. Reclamation activities included regrading, addition of topsoil, incorporation of fertilizer and/or lime, seeding and mulching, and sedimentation ponds.

In the proposal, EPA stated its belief that the current level of sediment control is necessary during surface disturbance operations to avoid sedimentation and erosion that can clog streams, increase the risk of flooding, impair land stability, and destroy aquatic habitats. While EPA continues to believe that sediment control is necessary for surface disturbances, EPA also acknowledges that remining operators may not be able to meet existing solids limits because of pre-existing conditions at AML. These high sediment conditions exist prior to any surface disturbance by the remining operator, and EPA is therefore considering alternative limits for sediment control.

Based on the baseline conditions of sediment present at some AML, EPA believes that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. EPA notes, for example, that a pre-existing discharge with a sediment load of greater than one ton per acre may be out of compliance with current effluent limitations on the day the remining permit is issued, even prior to any disturbance of the permit area. Sediment loads cited by commenters of 8.6 to 250 tons per acre per year would likely be significantly out of compliance with current standards. In accordance with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, EPA is considering allowing alternative limits for TSS and SS in pre-existing discharges. Based on the comments and information received, EPA is soliciting comment on whether alternative limits for solids are necessary to fully realize the potential benefits of remining.

EPA envisions that the numeric requirements for sediment would be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline pollutant discharges. The standardized procedures for solids loading could be the same procedures developed for the other parameters, and could be established as mass-based loadings in pounds per day. The numeric effluent limitations set at baseline levels would ensure that in no event will the pollutant discharges exceed the discharges prior to remining. The proposed statistical procedures were discussed in Section VII of the proposal and in the Coal Remining Statistical Support Document (EPA 821–R–00–001). EPA solicits comment on how baseline standards for solids could be implemented.

While EPA is considering alternative limits for solids based on background levels, EPA is also considering whether the alternative limits for solids should be allowed in perpetuity similar to baseline levels of pH, iron, and manganese. As EPA discussed in the proposal, one of the primary reasons for the alternative limitations for pH, iron, and manganese is due to the complex hydrologic and geochemical relationships that cause acid mine drainage in abandoned mines. The full extent of the acid mine drainage problem may not be completely known at the time of remining, and mine operators are unwilling to accept the potential risk and liability associated with past mistakes if held to existing standards. Therefore, EPA stated its belief that it is infeasible to determine the level of improvement that a BMP will exhibit on an AML wastewater discharge, and that a numeric limit more stringent than baseline could not be established for pH, iron, and manganese.

However, EPA believes that the control of sediment is much less

complex than the control of pH, iron, and manganese in acid mine drainage. In contrast to the complex relationships of BMPs and their relationship on pH, iron, and manganese in pre-existing discharges, the BMPs for sediment control are typically fully understood and can be accomplished with relatively simple procedures that are already required by SMCRA such as regrading, replacing topsoil, and establishing vegetation. This was demonstrated in the data provided by the U.S. Geological Survey study, which showed a 98 percent decrease in sediment loadings after implementation of sediment controls.

Therefore, EPA is also considering establishing an alternative limit for solids until BMPs can be implemented. This option would apply standards for solids such that solids cannot be increased over baseline during remining activities, but that the mine operators would have to meet current standards for Post-Mining Areas prior to obtaining bond release. The current standards for sediment control at post-mining areas is either 0.5 ml/L SS for reclamation areas; or a maximum TSS for any 1 day of 70.0 mg/l and a maximum TSS average daily value of 35.0 mg/l for underground mine drainage. EPA believes that this approach may allow remining operators to remine AML contaminated with sediment, but that it may also continue to encourage reclamation and sediment control. EPA solicits comment on establishing a compliance schedule such that during remining, sediment loads must not exceed baseline loads, but that the solids level must meet existing standards for Post-Mining Areas prior to bond release.

As with numeric limitations for pH, iron, and manganese, and as stated in the proposed rule, these alternate limits will not be applicable to discharges from active mining operations. Therefore, the existing limits for TSS during surface disturbances from active mining (i.e. for the ''extraction, removal, or recovery of coal from its natural deposits'') would continue to be required to meet the existing solids limits.

V. Summary of Comment Solicitation

EPA is soliciting comment on (1) extending the applicability of the remining subcategory to include mine sites abandoned after enactment of SMCRA, (2) the effect that this could have on creating an incentive for a mine operator to abandon a coal mining operation, and (3) the need to limit the date of applicability of the remining subcategory to the effective date of a final rule for the Coal Remining Subcategory.

EPA is also soliciting comment on (4) providing an alternative limit for solids, (5) on the implementation of an alternative limit for solids by using the same statistical procedures used for other alternative limits and, (6) on establishing a compliance schedule such that during remining, sediment loads must not exceed baseline loads, but that the solids level must meet existing standards for Post-Mining Areas prior to bond release.

Dated: July 20, 2001.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01–18887 Filed 7–27–01; 8:45 am]

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