control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency (EPA) is required under section 111 of the Clean Air Act, as amended, to collect data. The information will be used by Agency enforcement personnel to (1) Identify existing sources subject to these standards; (2) ensure that Best Demonstrated Technology is being properly applied; and (3) ensure that the emission control devise is being properly operated and maintained on a continuous basis. In addition, records and reports are necessary to enable the EPA to identify those site remediation facilities that may not be in compliance with these standards. Based on reported information, the EPA can decide which facilities should be inspected and what records or processes should be inspected at the facilities. The records that site remediation facilities maintain would indicate to the EPA whether the personnel are operating and maintaining control equipment properly. The type of data required is principally emissions data (through parametric monitoring) and would not be confidential. If any information is submitted to the EPA for which a claim of confidentiality is made, the information would be safeguarded according to the Agency policies set forth in 40 CFR, chapter 1, part 2, subpart B.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 219 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Site remediation facilities.

Estimated Number of Respondents: 286.

Frequency of Response: On occasion and semiannually.

Estimated Total Annual Hour Burden: 125,027.

Estimated Total Annual Cost: $582,000 for operating and maintenance costs. There are no capital/startup costs associated with this ICR.

Change in Estimates: There is a decrease in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is not due to any program changes. Over the past three years, the respondents completed those activities required to achieve initial compliance. Such activities are more burdensome than the burden associated with the rule requirements for continuing compliance as addressed by this ICR. Hence, there is a decrease in burden.

Dated: December 13, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–21892 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL229–2; FRL–8259–4]

Notice of Prevention of Significant Deterioration Final Determination for City of Springfield

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on November 22, 2006, the Environmental Appeals Board (EAB) of the EPA dismissed with predjudice a petition for review of a federal Prevention of Significant Deterioration (PSD) permit issued to City of Springfield, Illinois, by the Illinois Environmental Protection Agency (IEPA).

DATES: The effective date for the EAB's decision is November 22, 2006. Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of *December 21, 2006.*

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Constantine Blathras at (312) 886–0671.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/.*

SUPPLEMENTARY INFORMATION:

Notification of EAB Final Decision

The IEPA, acting under authority of a PSD delegation agreement, issued a PSD permit to the City of Springfield on August 10, 2006, granting approval to construct a new 250 megawatt coal-fired electric generating unit at the City of Springfield's existing power plant in Sangamon County, Illinois. On September 12, 2006, the Sierra Club filed a petition for review of the conditions of the Prevention of Significant Deterioration Permit No. 167120AAO (Application No. 041 10050) which was issued to the City of Springfield, lllinois. On November 17, 2006, the Sierra Club voluntarily withdrew its petition for review in this matter and requested that the EAB enter an order dismissing its petition for review in this matter with prejudice. The Sierra Club requested dismissal because the parties had reached an agreement that obviated the need for further litigation. On November 22, 2006, the EAB granted the Sierra Club's motion and the petition for review was dismissed with prejudice.

Dated: December 12, 2006.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

[FR Doc. E6–21888 Filed 12–20–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0032; FRL–8259–1]

RIN 2040–AE76

Notice of Availability of Final 2006 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final 2006 Effluent Guidelines Program Plan.

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

This notice presents EPA's 2006 review of existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the final 2006 Effluent Guidelines Program Plan (''final 2006 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. The Agency published the preliminary 2006 Plan on August 29, 2005 (70 FR 51042). This notice also provides EPA's preliminary thoughts concerning its 2007 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. EPA intends to continue a detailed study of the steam electric power generating industry and start detailed studies for the following industrial sectors: the coal mining industry, the health services industry, and the coalbed methane industry, which is part of the oil and gas extraction industry. Finally, after two public comment periods, this notice discusses how EPA incorporates elements from the draft Strategy for National Clean Water Industrial Regulations (Strategy) into its effluent guidelines reviews and planning.

ADDRESSES: Submit your comments, data and information for the 2007 annual review, identified by Docket ID No. EPA–HQ–OW–2006–0771, by one of the following methods:

(1) *www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) E-mail: *OW-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2006–0771.

(3) Mail: Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2006–0771. Please include a total of 3 copies.

(4) Hand Delivery: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2006–0771. 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–2006–0771. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 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 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 index at *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 *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.

Key documents providing additional information about EPA's annual reviews and the final 2006 Effluent Guidelines Program Plan include the following:

- Interim Detailed Study Report for the Steam Electric Power Generating Point Source Category, EPA–821–R–06–015, DCN 3401;
- Final Report: Pulp, Paper, and Paperboard Detailed Study, EPA–821–R–06–016, DCN 3400;
- Final Engineering Report: Tobacco Products Processing Detailed Study, EPA–821–R–06–017, DCN 3395; and
- Technical Support Document for the 2006 Effluent Guidelines Program Plan, EPA–821–R–06–018, DCN 3402.

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

SUPPLEMENTARY INFORMATION:

How Is This Document Organized?

The outline of this notice follows.

I. General Information

A. Does This Action Apply to Me?

This notice simply 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 for the 2007 Review?

1. Submitting Confidential Business Information

Do not submit this information to EPA through *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 so marked 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, avoiding the use of profanity or personal threats.
- 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 2006 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g) and 307(b). 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 final 2006 Effluent Guidelines Program Plan (''final 2006 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. The Agency published the preliminary 2006 Plan on August 29, 2005 (70 FR 51042). This notice also provides EPA's preliminary thoughts concerning its 2007 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. Finally, after two public comment periods, this notice discusses how EPA incorporates elements from the draft Strategy for National Clean Water Industrial Regulations (Strategy) into its effluent guidelines reviews and planning.

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using specific technologies. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to 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^5), 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)

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

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

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guideline selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (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.[1] See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. See *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under 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 review existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) review requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

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

EPA intends to repeat this publication schedule for future pretreatment standards reviews (e.g., EPA will publish the 2007 annual pretreatment standards review in the notice

[1] EPA recognizes that one court—the U.S District Court for the Central District of California—has found that EPA has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. See NRDC *et al.* v. EPA, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(c) is limited to providing a schedule for concluding the effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and is considering whether to appeal this decision.

containing the Agency's 2007 annual review of existing effluent guidelines and the preliminary 2008 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 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

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

1. Overview

In its 2006 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 56 point source categories and over 450 subcategories. 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. For categories prioritized based on the screening-level review, EPA conducted further review—a ''detailed study'' of two categories (i.e., Steam Electric Power Generation and Pulp, Paper, and Paperboard categories—and a less intensive ''prioritized category review'' of eleven categories—in order to determine whether it would be appropriate to identify these categories for effluent guidelines rulemaking. EPA also took a closer look at several stakeholder identified categories to determine whether they warranted additional review. Together, these reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d) and 304(b) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

Based on this review, and in light of the effluent guidelines rulemakings and detailed studies currently in progress based on prior annual reviews and other events, EPA is not identifying any existing categories for effluent guidelines rulemaking at this time. EPA does, however, intend to conduct more focused detailed reviews in the 2007 and 2008 annual reviews of the effluent guidelines for the following categories: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction category (Part 435) (only to assess whether to revise the limits to include Coal Bed Methane extraction as a new subcategory), and Hospitals (Part 460).[2] As part of its detailed study of the Coal Bed Methane extraction industry, EPA plans to seek approval for an Information Collection Request (ICR) to gather data from the industry. See Sections V.B.2 and VII.D.

2. How did EPA's 2005 annual review influence its 2006 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. During its 2005 annual review, which concluded in September 2005, EPA started detailed studies of the existing effluent guidelines and pretreatment standards for two industrial categories: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generating (Part 423). In addition, EPA identified eleven other priority industrial categories as candidates for further study in the 2006 reviews based on the toxic discharges reported to the Toxics Release Inventory (TRI) and Permit Compliance System (PCS). EPA published the findings from its 2005 annual review with its preliminary 2006 Plan (August 29, 2005; 70 FR 51042), making the data collected available for public comment. Docket No. EPA–HQ–OW–2004–0032. EPA used the findings, data and comments on the 2005 annual review to inform its 2006 annual review. The 2006 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. In its 2006 reviews, EPA completed its detailed study of the Pulp and Paper industry. EPA intends to continue its detailed study of the Steam Electric industry in its 2007 annual review.

3. What actions did EPA take in performing its 2006 annual reviews of existing effluent guidelines and pretreatment standards?

a. Screening-Level Review

The first component of EPA's 2006 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2005 annual reviews. In its 2005 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (i.e., highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from TRI and PCS. EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI 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 to assess the hazard posed by these toxic and non-conventional pollutant discharges to human health or the environment. EPA repeated this process for the 2006 annual reviews using the most recent TRI data (2003). EPA also examined the potential usability of PCS data (2002) for evaluating nutrient discharges and discovered several complications in calculating the pollutant load attributed to nutrients. EPA intends to pursue means for improving the data review for nutrients discharges in future effluent guidelines reviews. The full description of EPA's methodology for the 2006 screening-level review is presented in the final Technical Support Document (TSD) for the 2006 Plan (*see DCN 3402) and in the Docket* (*see* EPA–HQ–OW–2004–0032) accompanying this notice.

[2] 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 Services 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.

EPA is continuously investigating and solicits comment on how to improve its analyses. EPA made a few such improvements to the screening-level review methodology from the 2005 to the 2006 annual review. As part of the 2006 screening level review, EPA corrected the PCSLoads2002 and TRIReleases2002 databases, by addressing issues raised in comments (e.g., updating TWFs and average POTW pollutant removal efficiencies for a number of pollutants) and collecting additional information from individual facilities that report to TRI or PCS. EPA also started a process for conducting a peer review of its development and use of TWFs (*see* DCN 03333).

EPA also continued to use the quality assurance project plan (QAPP) developed for the 2005 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* EPA–HQ–OW–2004–0032–0050). EPA used the following document to develop the QAPP for this annual review: ''EPA Requirements for QA Project Plans (QA/R–5), EPA–240–B01–003.'' Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (i.e., verifying 2003 discharge data reported to TRI and the 2002 discharges of nutrients reported to PCS) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, corrected TRI and PCS data for facilities 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 marked ''3'' in the ''Findings'' column in Table V–1).

In order to further focus its inquiry during the 2006 annual review, EPA did not prioritize for potential revision categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (i.e., industrial categories marked ''1'' in the ''Findings'' column in Table V–1). For example, EPA excluded facilities that are associated with the Chlorine and Chlorinated Hydrocarbon (CCH) Manufacturing effluent guidelines rulemaking (formerly known as the ''Vinyl Chloride and Chlor-Alkali Manufacturing'' effluent guidelines rulemaking) currently underway, subtracting the pollutant discharges from these facilities in its 2006 hazard assessment of the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Inorganic Chemicals point source categories to which CCH facilities belong.

Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which new or revised effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new 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 to the category in a subsequent review. EPA identified no such instance during the 2006 annual review.

EPA also did not prioritize for potential revision at this time categories for which EPA lacked sufficient data to determine whether revision would be appropriate. For industrial categories marked ''5'' in Table V–1, EPA lacks sufficient information on the magnitude of the toxic-weighted pollutant discharges associated with these categories. 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 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 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories. For industrial categories marked ''4'' in Table V–1, EPA has sufficient information on the toxic-weighted pollutant discharges associated with these categories to start a detailed study of these industrial categories in the 2007 annual review. 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 2007 annual review, EPA will conduct detailed studies of four such categories.

As part of its 2006 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), EPA did not prioritize the category for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national effluent guideline at addressing the hazard from the category because individual permit requirements can be better tailored to these few facilities and may take considerably less time to establish than a national effluent guideline. 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 3402). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in

order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments urging the Agency 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.

EPA also received comment urging the Agency to consider the availability and affordability of pollution-control technology in prioritizing effluent guidelines for revision. As was the case in the 2004 annual review, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 56 existing industrial categories. However, EPA believes that its analysis of hazard 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. See DCN 3400, DCN 3401, and Sections 6–18 of the TSD for the final 2006 Plan.

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 data collection activities in order to better inform the decision on whether effluent guidelines are warranted. Additionally, EPA is working to develop 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), and 307(b) (*see* DCN 2490). 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). EPA also took a closer look at industries identified by stakeholders as high-priority, as discussed below (*see* section V.A.3.d).

b. Detailed Study of Two Categories

In addition to conducting a screening-level review of all existing categories, EPA did a detailed study of two categories prioritized for further review: The Pulp, Paper and Paperboard point source category and the Steam Electric Generating point source category. For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues during its 2006 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants driving the toxic-weighted pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) 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 (11) stakeholder comments (*see* DCN 3403).

During its 2005 annual review, EPA started detailed studies for the Pulp, Paper, and Paperboard point source category (Part 430) and the Steam Electric Power Generating point source category (Part 423) because they represent the two industrial point source categories with the largest combined TWPE based on EPA's ranking approach. EPA continued these detailed studies during its 2006 annual review. EPA had planned to complete both of these detailed studies in its 2006 annual review, prior to publication of the final 2006 Plan. However, EPA was only able to complete the detailed study for the Pulp, Paper, and Paperboard category. See section V.B.2.a. EPA is continuing its detailed study of the Steam Electric Power Generating category during the 2007 and 2008 annual reviews. See section V.B.2.b.

c. Further Review of Prioritized Categories

In addition to identifying two categories for detailed studies during the 2005 review, EPA identified 11 additional categories with potentially high TWPE discharge estimates. For a listing of these categories and EPA's 2005 review of them, see Preliminary 2005 Review of Prioritized Categories of Industrial Dischargers, EPA 821–B–05–004. EPA continued its review of these categories during 2006, using the same types of data sources used for the detailed studies but in less depth. EPA did not conduct a detailed study for these categories at this time because EPA needed additional information regarding these industries to determine whether a detailed study would be warranted. See the appropriate section in the TSD for the 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an 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.

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 2005 annual review with the publication of the final 2004 Plan to provide the public with an opportunity to provide additional information to assist the Agency in its 2005 annual review. EPA's Regional Offices and stakeholders identified other industrial point source categories as potential candidates for revision of effluent limitations guidelines and pretreatment standards based on potential opportunities to improve implementation of these regulations or because of their pollutant discharges (*see* EPA–HQ–OW–2004–0032–0020). Additionally, EPA solicited public comment on its preliminary 2006 Plan, as well as data and information to assist the Agency in its 2006 annual review. See August 29, 2005 (70 FR 51042). EPA received a total of 61 public comments on its 2005 annual review and the preliminary 2006 Plan. These public comments prompted EPA to review, in particular, the following categories: Organic Chemicals, Pesticides and Synthetic Fibers (Part 414), Coal Mining (Part 434); and Oil and Gas Extraction (Part 435) (only to assess whether to include the Coal Bed Methane extraction industry as a potential new category). See Section V.B.4.

B. What Were EPA's Findings From Its 2006 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

1. Screening-Level Review

In its 2006 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 for a summary of EPA's findings with respect to each existing category; see also the Final 2006 TSD. Out of categories subject only to the screening level review in 2006, 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 based on prior annual reviews and other events.

2. Detailed Studies

As a result of its 2005 screening-level review, EPA started detailed studies of two industrial point source categories with existing effluent guidelines and pretreatment standards: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generating (Part 423). During detailed study of these categories, EPA first investigated whether the pollutant discharges reported to TRI and PCS for 2002 accurately reflect the current discharges of the industry. EPA also performed an in-depth analysis of the reported pollutant discharges, and technology innovation and process changes in these industrial categories. Additionally, EPA considered 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. EPA used these detailed studies to determine whether EPA should identify in the final 2006 Plan one or both of these industrial categories for possible revision of their existing effluent guidelines and pretreatment standards.

Based on the information available to EPA at this time, EPA was able to complete its detailed study for the Pulp, Paper, and Paperboard category, finding that revision of the effluent guidelines for this category is not appropriate at this time for the reasons discussed below. However, EPA was unable to complete its detailed study for the Steam Electric Power Generating category. Consequently, EPA is continuing its study of the Steam Electric Power Generating category in its 2007 and 2008 annual reviews to determine whether to identify this category for effluent guidelines revision. EPA's reviews of these two categories are described below.

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

As a result of its 2005 screening-level review, EPA initiated a detailed study of the Pulp, Paper, and Paperboard point source category because it ranked highest in terms of toxic and non-conventional pollutant discharges among the industrial point source categories investigated in the screening-level analysis. Dioxins and dioxin-like compounds accounted for 91% of the combined TRI and PCS TWPE for this category in the 2005 screening-level analysis while polycyclic aromatic compounds (PACs), metals, and nitrates, not currently regulated by these effluent guidelines, accounted for an additional 7% of the category's total TWPE.[3] EPA issued a Preliminary Report: Pulp, Paper, and Paperboard Detailed Study (August 2005, EPA–821–B–05–007) along with the Preliminary 2006 Plan, describing its initial review of TRI and PCS data, information provided by industry and by States, and NPDES permits.

In the 2006 annual review, EPA obtained additional information and permits from States and industry including corrections for the TRI and PCS databases. All-in-all, EPA reviewed effluent discharge data for all 76 bleached papergrade kraft and sulfite mills, known collectively as the ''Phase I'' mills. EPA also reviewed effluent discharges for non-bleaching pulp mills, secondary (recycled) fiber mills, and paper and paperboard mills in eight subcategories (Subparts C and F through L), known collectively as the ''Phase II'' mills. EPA did not review in detail the three remaining dissolved kraft and dissolved sulfite mills (Subparts A and D), known as the ''Phase III'' mills. Because of the limited and declining number of facilities in Phase III, EPA believes that support to permit writers in establishing facility-specific effluent

[3] After additional analysis, including information provided in comments on EPA's preliminary Detailed Study (*see* DCN 02177), EPA determined that dioxins and dioxin-like compounds accounted for 81% of the combined TRI and PCS TWPE for this category.

limits based on their Best Professional Judgment (BPJ) is more appropriate than effluent guidelines rulemaking at this time. NPDES permits for Phase III mills will continue to include effluent limitations that reflect a determination of BAT based on BPJ or, if necessary, more stringent limitations to ensure compliance with applicable water quality standards.

The most recent changes to EPA's effluent limitations guidelines and pretreatment standards for this point source category, known as part of the ''Cluster Rules,'' were new limits for Phase I facilities in the Bleached Papergrade Kraft and Soda (Subpart B) and Papergrade Sulfite (Subpart E) subcategories (April 15, 1998; 63 FR 18504). EPA promulgated limits for dioxin, furan, chloroform, chlorinated phenolic compounds, and adsorbable organic halides (AOX). EPA provided reduced monitoring requirements for bleached papergrade kraft mills that employ totally chlorine free (TCF) bleaching and for certain segments of the Papergrade Sulfite subcategory. As part of the detailed study, EPA reviewed the implementation status of the Cluster Rules. Seven permits do not yet include Cluster Rule limits because the revised permits are either being contested or have not been reissued. Two permits allow for demonstration of compliance with the AOX limit at alternate monitoring locations (*see* DCN 3400).

EPA studied in detail how releases of dioxin and dioxin-like compounds are reported to PCS and TRI. Mills file Discharge Monitoring Reports (DMRs) with their permitting authority, usually the state, once a month or at other specified frequencies, as required by their permits. Each mill's NPDES permit specifies the pollutants to monitor and at what frequency. States enter mill-provided DMR data, both for bleach plant effluent monitoring and final effluent monitoring, into EPA's national PCS database. TRI requires that facilities report releases if they manufacture, process, or otherwise use more than 0.1 grams/year of dioxin and dioxin-like compounds. Mills report the mass discharged to surface waters (for facilities discharging directly to a receiving stream) or transferred to a POTW (for indirect dischargers). They are not, however, required to report releases less than 0.0001 gram/year (100 micrograms/year). Unlike NPDES permit compliance monitoring, TRI does not require facilities to measure waste stream pollutant concentrations. Instead, facilities may use emission factors, mass balances, or other engineering calculations to estimate releases. Facilities may estimate their releases using monitoring data collected prior to the year for which they are reporting discharges if they believe the data are representative of reporting year operations. Additionally, mills are only required to report to TRI the total mass of the 17 dioxin and dioxin-like compounds released to surface waters or POTWs but not the distribution of the 17 compounds, although they have different toxicities.

Only 15 mills report releases based on measured concentrations in their wastewater. EPA obtained mill-specific measured concentrations of the 17 dioxin and dioxin-like compounds from six out of the 15 mills that based their estimated 2002 discharges on measurements. For these six mills, all but 636 of the 226,444 TWPE for dioxin and dioxin-like compounds that they reported to TRI are based on measurements below the Method 1613B minimum level (ML). A method minimum level is the level or concentration at which the analytical system gives recognizable signals and an acceptable calibration point. The accuracy of concentrations measured below the Method 1613B ML is less certain than concentrations measured at or above the method ML. Traditionally in effluent guidelines rulemakings EPA establishes numerical effluent limits at or above the ML of the analytical method because individual measurements below the ML are not considered reliable enough for regulatory purposes.

NPDES permits require mills to monitor pollutants discharged and report the results to their state on a monthly basis or at other specified frequencies. The States, in turn, submit these data to PCS. Reporting of monitoring results measured at or below the method ML varies widely. These results may be reported as ''0,'' ''non-detect,'' ''less than ML,'' or a numeric value. The Cluster Rules require Phase I mills to monitor for the most toxic dioxin forms: 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and 2,3,7,8-tetrachlorodibenzofuran (TCDF) in their bleach plant effluent. Some permit writers also require monitoring of TCDD in mill final effluent. In 2002, only one mill reported detecting TCDD in its final effluent. Since 2002, this mill has changed its operations and has not reported dioxin releases (*see* EPA–HQ–OW–2004–0032–0021). TCDD was not detected in bleach plant effluent above the Method 1613B ML at any of the 51 mills for which EPA has data for the period 2002 to 2004. TCDF was detected above the Method 1613B ML in bleach plant effluent at four bleached papergrade kraft mills and one papergrade sulfite mill. For the bleached papergrade kraft and soda (Subpart B) mills, all reported effluent discharge concentrations of TCDF were below the Daily Maximum BAT effluent guideline of 31.9 picograms/liter. For the papergrade sulfite (Subpart E) mills, the Daily Maximum BAT effluent guideline is expressed as ''<ML'', which means ''less than the minimum level specified in part 430.01(i)'' (i.e., 10 picograms/liter for TCDF). The owner of the papergrade sulfite mill, which reported concentrations of TCDF above the Method 1613B ML in its bleach plant effluent during 2002 and 2003, made changes to the mill, as required by the State of Washington, and subsequently reported no TCDF concentrations above the Method 1613B ML in its bleach plant effluent in 2004. Considering only reported discharges of TCDF with concentrations above the Method 1613B ML, EPA found a total of 4,395 TWPE measured in bleach plant effluents in 2002.

NPDES permit monitoring data show that as of 2004, bleach plant effluent concentrations meet the guidelines established in EPA's 1998 rulemaking. These guidelines are very close to or at the analytical method ML. Furthermore, nearly all of data underlying the estimated releases of dioxin and dioxin-like compounds reported to TRI is based on pollutant concentrations below the Method 1623B MLs, so that TRI-reported discharges of dioxin and dioxin-like compounds for this category are highly uncertain. Therefore, EPA found that additional or revised national categorical limitations for dioxin and dioxin-like compounds are not warranted at this time.

Metals discharges reported to TRI and PCS ranked second after dioxin and dioxin-like compounds in contributing to this category's TWPE. EPA analyzed the concentrations of metals in mill final effluent reported to either TRI or PCS. EPA reviewed the metals that were most significant in terms of their contribution to the total category TWPE (i.e., manganese, aluminum, lead, zinc, mercury, copper, arsenic, cadmium, chromium). For the two national databases, the largest reported metals discharges, in terms of TWPE, are aluminum (92,205 TWPE reported in PCS) and manganese (303,729 TWPE reported in TRI). Facilities report only annual mass discharges (pounds/year) to TRI. PCS includes monitoring data for only those metals with permit requirements. EPA identified 32 mills with NPDES effluent limits or monitoring requirements for metals, which included one or more of the following metals: aluminum, arsenic,

cadmium, chromium, copper, lead, manganese, mercury, and zinc. Because of these data limitations, EPA also obtained effluent monitoring data submitted with NPDES permit renewal applications (e.g., NPDES Permit Renewal Application (Form 2C) data). These data included concentrations for many metals from a variety of types of mills that may not specifically be subject to effluent limits or DMR monitoring.

In reviewing metals data for this industry EPA noted that the sources of metals in mill wastewaters vary by mill and by location. For example, some metals sources include source water, raw materials such as wood chips or pulp, and chemicals added for production processes or wastewater treatment. Metals concentrations in the final effluent were low, with most being near or below their method minimum level. Aluminum and manganese concentrations in the final effluent, while above their method minimum level, were at concentrations generally not considered treatable with end-of-pipe treatment technologies suitable for large mill effluent flows. EPA reviewed the facilities subject to metals permit limits; none of these mills operate an end-of-pipe treatment system designed to remove metals from wastewater. These facilities typically employ pollution prevention practices to maintain compliance with their metals permit limits.

EPA also reviewed metals pollution prevention technologies for mill wastewater through a review of NPDES permits and a literature search. Mills are adopting a number of pollution prevention technologies for preventing metals from entering their wastewaters, such as changing chemical purchasing practices and usage rates (*see* DCN 3400). These pollution prevention technologies are site-specific and reflect the unique combinations of factors at each mill (e.g., source of metals, processing operations including chemical purchasing practices and usage rates) and are not readily adaptable industry-wide.

EPA found that it would not be appropriate to identify the Pulp, Paper, and Paperboard point source category (Part 430) for possible effluent guidelines revision to address metals for the following reasons: (1) Metals concentrations in the final effluent were low, with most being near or below their method minimum level; (2) end-of-pipe treatment technologies for metals removal have not been well demonstrated on mill wastewaters; and (3) pollution prevention technologies are site-specific and reflect the unique combinations of factors at each mill and are not readily adaptable industry-wide.

EPA also reviewed the pollutant loads associated with polycyclic aromatic compounds (PACs) for this industrial point source category. For the 2005 screening-level analysis, EPA calculated the percentage of each PAC present in mill wastewater based on information provided by the National Council for Air and Stream Improvement (NCASI). NCASI's TRI-reporting guidance includes a table listing the concentrations of PAC compounds found in wastewaters for several types of pulping (kraft, bisulfite, chemi-thermo-mechanical, thermo-mechanical) based on a 1990 study. EPA used this distribution to calculate an adjusted TWF for the Pulp, Paper, and Paperboard point source category PACs by summing the product of each chemical's TWF and its percentage relative to the total PACs in mill wastewaters. In the **Federal Register** notice presenting the findings of the 2005 annual review, EPA requested more recent information on PACs discharged from these mills. NCASI provided comments elaborating on a study of 23 direct discharging mills in Quebec between 1998 and 2003. According to NCASI, all data results were below the minimum method detection limit for individual PACs. EPA also reviewed data submitted with NPDES permit renewal applications and did not find reported concentrations of PACs above method detection limits. This updated information supports the conclusion that releases of PACs reported to TRI are uncertain and that reported releases are based on estimates calculated using NCASI's guidance. As with dioxin and dioxin-like compounds, wastewater analyses for PACs reviewed by EPA indicate that discharges are at or below the minimum method detection limit. EPA therefore found that revisions to the effluent limitation guidelines and standards to address PACs are not warranted at this time.

EPA also investigated nitrogen (nitrate, nitrite, ammonia, total nitrogen) and phosphorus (phosphates) discharges from the Pulp, Paper, and Paperboard category. See DCN 3400. EPA requested additional information from the industry to confirm the reported discharges of nutrients. Wastewater discharged from pulp and paper processes typically does not contain sufficient nitrogen and phosphorus to operate a stable biological treatment system capable of reducing the organic (BOD_5) load. For this reason, mills typically add nitrogen and phosphorus to their treatment systems. Minimizing the discharge of total nitrogen and total phosphorus from pulp and paper mill wastewater treatment systems requires optimized nutrient supplementation and effective removal of suspended solids. EPA has not determined if these strategies are feasible for all mills. EPA found that end-of-pipe treatment technologies for nutrients removal have not been well demonstrated on mill wastewaters. For these reasons, EPA does not believe it is appropriate to identify this point source category for effluent guidelines rulemaking to address nutrients at this time.

For the reasons discussed above, EPA is not identifying the Pulp, Paper, and Paperboard point source category (Part 430) as a candidate for effluent guidelines revisions at this time. As with all categories subject to existing effluent guidelines, EPA will continue to examine this industrial category in future annual reviews to determine if revision of existing effluent guidelines may be appropriate.

b. Steam Electric Power Generating (Part 423)

EPA began a detailed study of the Steam Electric Power Generating point source category in the 2005 review because it ranked second-highest in terms of toxic and non-conventional toxic weighted pollutant discharges among the industrial point source categories investigated in the screening level analyses. EPA's screening-level analysis during the 2005 annual review was based primarily on information reported to TRI, PCS, and the U.S. Department of Energy's Energy Information Administration (EIA) for the year 2002. For the screening-level review, EPA also obtained and reviewed additional information to supplement that data, including industry-compiled data on the likely source and magnitude of the reported toxic dischargers.

The effluent limitations guidelines and standards for the Steam Electric Power Generating point source category apply to a subset of all entities comprising the electric power industry. Specifically, facilities regulated by the effluent guidelines are ''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 a thermal cycle employing the steam water system as the thermodynamic medium.'' See 40 CFR 423.10. Steam electric power generating facilities are primarily classified within SIC codes 4911, 4931 and 4939.

Effluent guidelines for direct dischargers were first promulgated for

this category in 1974 (39 FR 36186). In 1977, EPA promulgated pretreatment standards for facilities that discharge indirectly to POTWs (42 FR 15690). EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (47 FR 52290).

EPA's detailed study of the Steam Electric Power Generating point source category has generally focused on investigating the sources of the large toxic weighted pollutant discharges and the potential for pollution control technologies and practices to reduce these discharges. EPA intends to use this information to determine whether effluent limitations for parameters currently regulated by the effluent guidelines need to be revised, or whether effluent limitations for other parameters should be added to the effluent guidelines.

One key objective of the detailed study is to better quantify the pollutant concentrations and mass released in wastewater discharges from steam electric facilities, and to identify the sources of the pollutants contributing significantly to the toxic weighted loadings. Wastestreams of interest include cooling water, ash-handling wastes, coal pile runoff, wet air pollution control device wastes, water treatment wastes, boiler blowdown, maintenance cleaning wastes, and other miscellaneous wastes. In particular, EPA seeks to determine typical wastewater volumes and pollutant concentrations for the individual process streams using readily available data. EPA also seeks to collect information on any new technologies or process changes for flow or pollutant reductions. EPA's efforts to obtain these data in the 2005 annual review included soliciting information in the **Federal Register** notice for the preliminary 2006 Plan (*see* 70 FR 51058), discussions with the key industry trade association (e.g., Utility Water Act Group), reviewing selected NPDES permits and fact sheets, and conducting in-depth analyses of PCS data.

Boron, aluminum and arsenic (three of the top five pollutants driving pollutant loadings) were not identified in previous effluent guidelines rulemakings as pollutants of concern. Further, previous effluent guidelines rulemakings specifically noted there was no correlation between total suspended solids, a pollutant parameter regulated by the effluent guidelines, and the effluent concentrations of these three pollutants. EPA notes that these three pollutants are mobile and there is some concern that they may be released from impoundment sludges/sediments to the liquid fraction and discharged directly to surface waters. EPA's Office of Research and Development (ORD) and the Office of Solid Waste (OSWER/OSW) are currently investigating the mobility of selenium, arsenic and mercury with respect to potential releases from landfills and liquid impoundments (*see* DCN 3401). Additionally, due to air emissions requirements under the Clean Air Interstate Rule and Clean Air Mercury Rule, increasing amounts of metals and nutrients are expected to be added to the process wastewaters. Based on the potential for cross-media transfer and uncertainties and data gaps regarding the pollutant discharges from this category, EPA is continuing its detailed study of this category to better understand the ultimate fate of these pollutant transfers to determine whether they are adequately controlled by existing water pollution control practices.

The current evaluation allowed EPA to identify targeted areas of concern for which EPA needs to collect additional data. The focus of further study will be narrower than the evaluation conducted for the 2006 annual review, and is expected to concentrate primarily on better characterizing pollutant sources and available pollution control technologies/practices for the pollutants responsible for the majority of the toxic weighted pollutant loadings from steam electric facilities. One aspect of this study will assess the significance of air-to-water cross media pollutant transfers (e.g., mercury and other metals, and nutrients) associated with air pollution controls. In conducting this additional study, EPA's Office of Water will coordinate its efforts with ongoing research and other activities being undertaken by other EPA offices, including ORD, OSWER/OSW, and the Office of Air Quality Planning and Standards (OAQPS) and Office of Atmospheric Programs (OAP) in the Office of Air and Radiation. The detailed study continuing in the 2007 and 2008 annual reviews will likely require new data generation such as wastewater sampling and/or an industry survey.

EPA also investigated certain activities not currently regulated by the steam electric effluent guidelines. Since 1982, there has been an increase in the amount of electricity supplied to the grid from facilities that use alternative fuel sources or which do not utilize the steam-water thermodynamic cycle to produce electricity. To address this, EPA evaluated processes and wastewater discharge characteristics for electric power generating facilities that use prime movers (engines) other than steam turbines (e.g., gas turbines); and steam electric power generating facilities using alternative fuel sources (i.e., non-fossil and non-nuclear fuels such as municipal waste, wood and agricultural wastes, landfill gas, etc.). EPA also reviewed available information for steam supply (i.e., non-electric generating) and certain other utility activities; and steam electric units co-located at manufacturing plants or other commercial facilities (also referred to as ''industrial non-utilities''). Based on the information in the record, EPA found that revising the applicability of Part 423 to include these facilities is not warranted at this time (*see* DCN 3401). In general, EPA could not accurately quantify the pollutant discharges from industrial operations that are not regulated by Part 423. For example, EPA had limited DMR data and process flow diagrams from these facilities to accurately quantify the pollutant discharges from industrial operations that are not regulated by Part 423. EPA intends to continue reviewing these operations in the 2007 and 2008 annual reviews to better characterize their wastewater pollutant discharges.

3. Results of Further Review of Prioritized Categories

During the 2005 annual review, EPA identified 11 categories with potentially high TWPE discharge estimates (i.e., industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 51050 of the preliminary 2006 Plan). During the 2006 annual review EPA continued to collect and analyze hazard and technology-based information on these eleven industrial categories. EPA is not identifying any of these categories for an effluent guidelines rulemaking in this final 2006 Plan. The docket accompanying this notice presents a summary of EPA's findings on these eleven industrial categories (*see* DCN 3402), which are also summarized below.

EPA found that the following seven of these eleven industrial categories did not constitute a priority for effluent guidelines revision based on the hazard associated with their discharges (based on data available at this time): Fertilizer Manufacturing, Inorganic Chemicals, Nonferrous Metals Manufacturing, Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF), Petroleum Refining, Porcelain Enameling, and Rubber Manufacturing. EPA will continue to annually review these categories to assess whether revision of effluent guidelines for these categories

may be appropriate in light of any new data and Agency priorities at the time. Additionally, as requested, EPA will provide assistance to permitting authorities in better tailoring permit requirements for these categories. For an additional two of the eleven categories (Pesticide Chemicals, Plastic Molding and Forming) and Phase III facilities in the Pulp, Paper, and Paperboard category, EPA determined that national effluent guidelines (including categorical pretreatment standards) are not the best tools for establishing technology-based effluent limitations because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in their respective industrial category. For facilities in these two categories and Phase III of the Pulp, Paper, and Paperboard category, EPA will provide assistance to permitting authorities, as requested, 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. EPA lacks sufficient information on the magnitude of the toxic-weighted pollutant discharges associated with the remaining two categories. EPA will seek additional information on the discharges from the Ore Mining and Dressing and Textile Mills 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 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 2006 Plan (DCN 3402) for EPA's data needs for these industrial categories.

4. Other Category Reviews Prompted by Stakeholder Outreach

Following the publication of the findings of the 2004 and 2005 annual reviews in the final 2004 Plan and the preliminary 2006 Plan, EPA's Regional Offices and stakeholders identified the following three industrial point source categories as potential candidates for effluent guideline revision based on potential opportunities to improve efficient implementation of the national water quality program or because of the categories' pollutant discharges (*see* DCN 3403).

a. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Effluent Guidelines (Part 414)

As described in the notice containing the preliminary 2006 Plan, EPA began an evaluation of options for promoting water conservation through the use of mass-based limits as part of its 2006 annual review of existing effluent guidelines. EPA strongly supports water conservation and encourages all sectors, including municipal, industrial, and agricultural, to achieve efficient water use. EPA does not intend for its regulations to present a barrier to efficient water use in any industrial sector.

In the preliminary 2006 Plan, EPA requested comment on whether it should consider a rulemaking or other ways to allow permitting authorities to retain mass-based limits for direct dischargers based on current wastewater flows when such flows are lowered due to water conservation, in order to facilitate the prospective adoption of water conservation technologies. EPA received comments from industry, POTWs, and a public interest group. Industry and POTWs support revising the regulations to allow the retention of current mass-based limits and expressed concern that lowering the mass-based permit limits to reflect the lower flows associated with water conservation will result in permit violations and thus discourage water conservation. The public interest group objected to retaining current mass-based limits when flows are lowered because of the potential for acute toxicity effects on aquatic life in receiving streams that could result from increased pollutant concentrations.

Only one facility provided the data requested by EPA in the preliminary 2006 Plan to evaluate the potential need for such a rulemaking. EPA was not able to draw any conclusion from this data as this facility concurrently upgraded its wastewater treatment with advanced treatment technology (ultrafiltration technology) and implemented water conservation practices to reduce wastewater flow rates to the ultrafiltration technology equipment (*see* DCNs 3667, 3701, 4103). Consequently, EPA was not able to separate out the effect of water conservation practices alone on the facility's pollutant discharges. However, the facility's discharge data after the upgrade in wastewater treatment and implementation of water conservation practices do show lower pollutant mass discharges, more efficient and consistent pollutant removals, and compliance with its NPDES permit limits (*see* DCN 3701). No other such data were provided to the Agency for its review.

EPA's record supports the finding that for a variety of industrial sectors, well-operated and designed treatment systems treat wastewater with varying influent pollutant concentrations to the same effluent concentrations across a wide range of flows (*see* DCN 3702). This is due to the fact that wastewater treatment technologies operating within their design specifications are often limited solely by physical/chemical properties of the pollutants in the wastewater, and not necessarily by influent concentrations. Increasing influent pollutant concentrations to a properly designed and operated wastewater treatment system generally leads to increased wastewater treatment efficiency. Additionally, EPA's record supports the fact that water conservation resulting from pollution prevention practices such as changing from wet to dry manufacturing operations can prevent the generation of wastewater pollution and its introduction to wastewater treatment equipment. Moreover, EPA's record documents that the main drivers of water conservation are the economic considerations that result from high operating costs (e.g., water bills, pumping costs, wastewater sludge generation and disposal costs); and water source restrictions (e.g., widespread regional droughts, increasing water demands of urban populations). See DCN 3702. These findings are similar to the discussion in the preamble to the 1987 OCPSF final rule where EPA stated that concentration-based effluent guidelines do not discourage water conservation. In the OCPSF final rule EPA noted that ''water conservation is often practiced for a variety of sound reasons of efficiency and economy, and that wastewater treatment costs themselves may be substantially reduced by reducing the flow which must be treated. The resulting cost savings may outweigh any increased cost that arguably results from being required to treat the more concentrated stream to meet an effluent concentration limitation.'' See November 5, 1987 (52 FR 42555).

After a careful review of public comments and available data, EPA does not agree with public commenters that the OCPSF effluent guidelines inhibit water conservation. Consequently, EPA does not believe that revisions to the mass-based limits guidance for the

OCPSF effluent guidelines are warranted at this time.

b. Other Stakeholder Identified Industries

With the publication of the final 2004 Plan and the preliminary 2006 Plan, EPA solicited public comment to inform its 2006 annual review of existing effluent guidelines and pretreatment standards. Stakeholders commented that EPA should revise the existing effluent limitations guidelines for the Coal Mining (Part 434) and Oil and Gas Extraction (Part 435) point source categories. Based on these comments, EPA conducted an initial screening level review of these two categories, and found that more information is needed in order to determine whether to identify these categories for effluent guidelines rulemaking, for the reasons discussed below.

i. Coal Mining Point Source Category (Part 434)

EPA received public comment from States, industry, and a public interest group that urged EPA to consider revisiting the manganese limitations in the Coal Mining effluent guidelines (40 CFR Part 434). The State and industry commenters requested that EPA study whether additional flexibility is warranted for these manganese limitations. The public interest group commented that EPA should start a rulemaking and promulgate more stringent limitations for manganese, other metals, and other dissolved inorganic pollutants (e.g., chlorides, sulfates, TDS).

State and industry commentors cited the following factors in support of their comments: (1) New, more stringent coal mining reclamation bonding requirements on post-closure discharges; (2) low relative toxicity of manganese to aquatic communities as compared to other toxic metals in the coal mining discharges; and (3) treatment with chemical addition may complicate permit compliance, especially after a mine is closed. The public interest group referenced a study by EPA Region 5 on potential adverse impacts of the discharge of sulfates on aquatic life (*see* DCN 2487).

At this time, EPA does not have sufficient information to evaluate the merits of the factors cited by commenters. However, because of the potential for encouraging proper wastewater treatment, EPA will conduct a detailed study of the coal mining effluent guidelines in the 2007 and 2008 annual reviews. EPA will focus on issues related to manganese limits and pollutants not currently regulated by these regulations. EPA will re-evaluate these effluent guidelines taking into account, among other things, treatment technologies, toxicity of discharges, cost impacts to the industry, and bonding requirements. EPA has placed in the docket and solicits comment on a draft scope of work for this detailed study (*see* DCN 2488).

ii. Oil and Gas Extraction Point Source Category (Part 435)

EPA received comments from public interest groups urging EPA to promulgate effluent guidelines for the coalbed methane (CBM) extraction industry. Because the product extracted by the CBM industry—coal bed natural gas—is virtually identical to the conventional natural gas extracted by facilities subject to the effluent guidelines for Oil and Gas Extraction (40 CFR 435),[4] EPA found that the CBM extraction industry was reasonably considered a potential new subcategory of the Oil and Gas Extraction category. EPA therefore reviewed the Oil and Gas Extraction category to determine whether it may be appropriate to revise its applicability to include limits for CBM extraction.

In conducting this review, EPA found that it will need to gather more specific information as part of a detailed review of the coalbed methane industry in order to determine whether it would be appropriate to conduct a rulemaking to potentially revise the effluent guidelines for the Oil and Gas Extraction category to include limits for CBM. In particular, EPA needs more detailed information on the characteristics of produced water, as well as the technology options available to address such discharges. To aid in a better industrial profile of the CBM sector, EPA intends 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.*, in the 2007 annual review. EPA will use this ICR to collect technical and economic information from a wide range of CBM operations (e.g., geographical differences in the characteristics of CBM produced waters, current regulatory controls, availability and affordability of treatment technology options). In designing this industry survey EPA expects to work closely with CBM industry representatives and other affected stakeholders. EPA solicits comment on the potential scope of this ICR. EPA may also supplement the survey data collection with CBM site visits and produced water sampling.

5. Summary of 2006 Annual Review Findings

In its 2006 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 in light of effluent guidelines rulemakings and detailed studies currently in progress based on previous annual reviews, EPA is not identifying any existing categories for effluent guidelines rulemaking. EPA is, however, identifying four existing categories (Steam Electric Power Generating, Coal Mining, Oil and Gas Extraction, and Hospitals) for detailed studies in its 2007 and 2008 annual reviews.

A summary of the findings of the 2006 annual review are presented in Table V–1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking or a rulemaking is currently underway.

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

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

(4) EPA intends to start or continue a detailed study of this industry in its 2007 and 2008 annual reviews to determine whether to identify the category for effluent guidelines rulemaking.

(5) Incomplete data 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

[4] Reflecting this similarity of product, both CBM extraction operations and conventional Oil and Gas extraction operations share the same SIC code. CBM operations simply constitute another process for extracting natural gas, and are therefore reasonably considered part of the Oil and Gas Extraction category. See DCN 3402, section 6.

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 2006 Plan (DCN 3402) for EPA's data needs for this industrial category. EPA will conduct a prioritized category review in the next annual review in order to fill these data gaps.

TABLE V–1.—FINDINGS FROM THE 2006 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR part	Findings *
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(1)
9	Coal Mining	434	(1) and (4)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(3)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals [5]	460	(4)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals	415	(1) and (3)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(1)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(3)
36	Oil and Gas Extraction	435	(1) and (4)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers	414	(1) and (3)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(2)
42	Petroleum Refining	419	(3)
43	Pharmaceutical Manufacturing	439	(1)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(2)
47	Porcelain Enameling	466	(3)
48	Pulp, Paper, and Paperboard	430	(2) and (3)
49	Rubber Manufacturing	428	(3)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generating	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(5)
54	Timber Products Processing	429	(3)
55	Transportation Equipment Cleaning	442	(1)
56	Waste Combustors	444	(1)

* (**Note:** The descriptions of the ''Findings'' codes are presented immediately prior to this table.

[5] 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 Services 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.

VI. EPA's 2007 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual 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 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 2006 review. The information gathered during the 2006 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 2007 annual review. See Table V–1 above. In 2007, EPA intends to again conduct a screening-level analysis of all 56 categories and compare the results against those from previous years. EPA will also conduct more detailed analyses of those industries that rank high in terms of toxic and non-conventional discharges among all point source categories. Additionally, EPA intends to continue the detailed study of the Steam Electric Power Generating (Part 423) category and start detailed studies for the following categories: Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include Coal Bed Methane extraction as a new subcategory), and Hospitals (Part 460). EPA specifically invites comment and data on all 56 point source categories.

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

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. EPA evaluated various indirect discharging industries without categorical pretreatment standards to determine whether their discharges were causing pass through or interference, in order to determine whether categorical pretreatment standards may be necessary for these industrial categories.

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

Documents discussing EPA's review of categories of indirect dischargers without categorical pretreatment standards are located in the docket (*see* DCN 2173, 3402, and Section 19 of the Final 2006 TSD). EPA solicits comment and data on categories not subject to categorical pretreatment standards for its 2007 review.

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

For these eight industrial sectors, EPA evaluated the ''pass through potential'' of toxic pollutants and non-conventional pollutants through POTW operations. Historically, for most effluent guidelines rulemakings, EPA determines the ''pass through potential'' by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by wastewater treatment options that EPA is evaluating as the bases for categorical pretreatment standards (January 28, 1981; 46 FR 9408).

For six industry sectors, however, EPA was unable to gather the data needed for a comprehensive analysis of the availability and performance (e.g., percentage of the pollutants removed) of treatment or process technologies that might reduce toxic pollutant discharges beyond that of technologies already in place at these facilities. Instead, EPA evaluated the ''pass through potential'' as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs.

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 solicited comment on this evaluation for determining the ''pass through potential'' for industrial categories comprised entirely or nearly entirely of indirect dischargers (*see* 70 FR 51054; August 29, 2005). In response to this solicitation, EPA only received two comments on this methodology and both comments were supportive of EPA's approach (*see* EPA–HQ–OW–2004–0032–1042, 1051).

EPA's 2005 and 2006 reviews of these eight industrial sectors used pollutant discharge information from TRI, PCS, and other publicly available data to

estimate the total annual TWPE discharged per facility. EPA also relied on wastewater sampling and site visits to better characterize the pollutant discharges from the ICDC and Tobacco Products categories. EPA's use of PCS data was limited as nearly all of the PCS discharge monitoring data is from direct dischargers. Consequently, EPA transferred pollutant discharges from direct dischargers to indirect dischargers in some of the seven industrial sectors when other data were not available. Based on these estimated toxic pollutant discharges, EPA's review suggests that there is a low pass through potential for seven of the eight industrial sectors and that categorical pretreatment standards for these seven industrial sectors are therefore not warranted at this time. These seven industrial sectors are: Food Service Establishments; Industrial Container and Drum Cleaning industry; Independent and Stand Alone Laboratories; Industrial Laundries; Photoprocessing; Printing and Publishing; and Tobacco Products. More information on EPA's detailed study of the Tobacco Products category is provided in section VIII.C below.

EPA did not have enough information to determine whether there was pass through potential for the remaining industrial sector: Health Services Industries. EPA will continue to evaluate the pass through potential for this industrial sector. In particular, EPA plans to conduct a detailed study of the Health Services Industry in the 2007 and 2008 annual reviews. More information on this industry is provided in section VIII.D below.

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

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

EPA relied on readily available information from the literature and stakeholders to evaluate the severity, duration, and frequency of interference incidents caused by industrial indirect discharges. As part of its evaluation, EPA reviewed data from its report to Congress on one type of interference incidents, blockages in the POTW collection system leading to combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). See Impacts and Controls of CSOs and SSOs, EPA 833–R–04–001, August 2004. With respect to Food Service Establishments, EPA noted that ''grease from restaurants, homes, and industrial sources is the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and blocks flow.'' Other major sources of blockages are grit, rock, and other debris (27%), roots (22%), and roots and grease (4%).

Fats, oil, and grease (FOG) wastes are generated at food service establishments as byproducts from food preparation activities. FOG captured on-site is generally classified into two broad categories: Yellow grease and grease trap waste (*see* DCN 2606). Yellow grease is derived from used cooking oil and waste greases that are separated and collected at the point of use by the food service establishment. Food service establishments can adopt a variety of best management practices or install interceptor/collector devices to control and capture the FOG material before discharge to the POTW collection system (*see* DCN 3040, 3046). For example, instead of discharging yellow grease to POTWs, food service establishments usually accumulate this material for pick-up by consolidation service companies for re-sale or re-use in the manufacture of tallow, animal feed supplements, fuels, or other products (*see* Technical Development Document for the Final Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (40 CFR 432), EPA–821–R–04–011, July 2004).

Additionally, food service establishments can install interceptor/collector devices (e.g., grease traps in sinks and dish washer drain lines) in order to accumulate grease on-site and prevent it from entering the POTW collection system. Proper design, installation, and maintenance procedures are critical for these devices to control and capture the FOG (*see* DCN 3043, 3265). For example, interceptor/collector devices must be designed and sized appropriately to allow for emulsified FOG to cool and separate in a non-turbulent environment (*see* DCN 3265). Additionally, it is particularly important for food service establishments to be diligent in having their interceptor/collector devices serviced at regular intervals (*see* DCN 2606, 2610, 2616, 3039). The required maintenance frequency for interceptor/collector devices depends greatly on the amount of FOG a facility generates as well as any best management practices (BMPs) that the establishment implements to reduce the FOG discharged into its sanitary sewer system. In many cases, an establishment that implements BMPs will realize financial benefit through a reduction in their required grease interceptor and trap maintenance frequency (*see* DCN 3045). The annual production of collected grease trap waste and uncollected grease entering sewage treatment plants can be significant and ranges from 800 to 17,000 pounds/year per restaurant (*see* DCN 2606).

Information collected from control authorities and stakeholders indicate that a growing number of control authorities are using their existing authority (e.g., general pretreatment standards in Part 403 or local authority) to establish and enforce more FOG regulatory controls (e.g., numeric pretreatment limits, best management practices including the use of interceptor/collector devices) for food service establishments to reduce interferences with POTW operations (e.g., blockages from fats, oils, and greases discharges, POTW treatment interference from *Nocardia* filamentous foaming, damage to collection system from hydrogen sulfide generation) (*see* DCN 3044, 3039). For example, since

identifying a 73% non-compliance rate with its grease trap ordinance among restaurants, New York City has instituted a $1,000-per-day fine for FOG violations (*see* DCN 2616). Likewise, more and more municipal wastewater authorities are addressing FOG discharges by imposing mandatory measures of assorted kinds, including inspections, periodic grease pumping, stiff penalties, and even criminal citations for violators, along with 'strong waste' monthly surcharges added to restaurant sewer bills. Surcharges are reportedly ranging from $100 to as high as $700 and more; the fees being deemed necessary to cover the cost of inspections and upgraded infrastructure (*see* DCN 2616). Pretreatment programs are developing and using inspection checklists for both food service establishments and municipal pretreatment inspectors to control FOG discharges (*see* DCN 3040). Additionally, EPA identified typical numeric local limits controlling oil and grease in the range of 50 mg/L to 450 mg/L with 100 mg/L as the most common reported numeric pretreatment limit (*see* DCN 3131). Finally, EPA expects that blockages from FOG discharges will decrease as POTWs incorporate Capacity, Management, Operations, and Maintenance (CMOM) program activities into their daily practices. Collection system owners or operators who adopt CMOM program activities are likely to reduce the occurrence of sewer overflows and improve their operations and maintain compliance with their NPDES permit (*see* DCN 2847, 3416). In summary, EPA finds that controlling FOG discharges from this industrial category is an essential element in controlling CSOs and SSOs and ensuring the proper operations for many POTWs. However, national categorical standards are not needed for this industrial category at this time based on EPA's finding that control authorities can use their existing regulatory tools and authority for controlling the interference problems caused by this industrial category. EPA believes the interference incidents identified in CSO/SSO report to Congress may indicate the need for additional oversight and enforcement of existing regulations and controls, but do not indicate a need for new categorical pretreatment standards for this industry at this time.

EPA received comments from stakeholders indicating that even with current authority provided in the general pretreatment regulations; some POTWs have difficulty controlling interference from specific categories of indirect industrial dischargers (*see* EPA–HQ–OW–2004–0032–0020, 1090). EPA notes, however, that the interference potential varies from POTW to POTW because interference problems depend not only on the nature of the discharge but also on local conditions (*e.g.*, the type of treatment process used by the POTW, local water quality, the POTW's chosen method for handling sludge) (*see* DCN 3252). Consequently, pollutants that interfere with the operation of one POTW may not adversely affect the operation of another. These differences are attributable to several factors including the varying sensitivities of different POTWs and the constituent composition of wastewater collected and treated by the POTW (46 FR 9406; January 28, 1981).

EPA believes that the national pretreatment program already provides the necessary regulatory tools and authority to local pretreatment programs for controlling interference problems. Under the provisions of part 403.5(c)(1) and (2), in defined circumstances, a POTW must establish specific local limits for industrial users to guard against interference with the operation of the municipal treatment works. *See* 46 FR 9406 (January 28, 1981). Consequently, pretreatment oversight programs should include activities designed to identify and control sources of potential interference and, in the event of actual interference, enforcement against the violator. EPA solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the existing pretreatment program.

Based on its review of current information, EPA has not identified interference potential from the eight industrial sectors that would warrant the development of national, categorical pretreatment standards.

C. Tobacco Products

One commenter on the preliminary 2004 Plan suggested that EPA consider developing effluent guidelines for the Tobacco Products industry due to the potential for facilities in this industrial sector to discharge nontrivial amounts of nonconventional and toxic pollutants. In particular, this commenter expressed concern over the quantity of toxics and carcinogens that may be discharged in wastewater associated with the manufacture of cigarettes. At the time of publication of the final 2004 Plan, EPA was unable to determine, based on readily available information, whether to identify the Tobacco Products industry as a potential new category in the Plan. In particular, EPA lacked information about whether Tobacco Products facilities discharge toxic and nonconventional pollutants in nontrivial amounts, whether the industry is composed entirely or almost entirely of indirect dischargers, and whether indirect dischargers in the industry caused pass-through or interference with POTWs. In order to better respond to these comments and determine whether to identify the tobacco products industrial sector as a potential new point source category, EPA conducted a detailed study of the pollutant discharges for this industrial sector. Based on this study, EPA is not identifying the Tobacco Products industry as a potential new category in this Plan, for the reasons discussed below.

1. Industry Profile

This industrial sector is divided into the following four industry groups: (1) SIC code 2111 (Cigarettes)—establishments primarily engaged in manufacturing cigarettes from tobacco or other materials; (2) SIC code 2121 (Cigars)—establishments primarily engaged in manufacturing cigars; (3) SIC code 2131 (Smokeless and Loose Chewing Tobacco)—establishments primarily engaged in manufacturing chewing and smoking tobacco and snuff; and (4) SIC code 2141 (Reconstituted Tobacco and Tobacco Stemming and Re-drying)—establishments primarily engaged in the stemming and re-drying of tobacco or in manufacturing reconstituted tobacco. Based on information in the 2002 Economic Census and reported in 2004 to the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), EPA estimates there are 149 tobacco products facilities in the United States. The number of tobacco products processing facilities has been in decline as facilities consolidate. Of these facilities, EPA has identified 3 with active NPDES permits that discharge process wastewater directly to waters of the U.S. and at least 15 that discharge indirectly to POTWs. The remaining dischargers are either indirect dischargers or zero dischargers. As few tobacco products processing facilities discharge directly to waters of the U.S. (3 of the 149 facilities in this category), EPA determined that this category is almost entirely composed of indirect dischargers and therefore not subject to identification under section 304(m)(1)(B). EPA therefore proceeded to review this category in its review of indirect dischargers without categorical pretreatment standards to determine whether such standards were warranted under CWA sections 304(g) and 307(b).

2. Data Collection

In conducting its detailed study, EPA conducted outreach to the most significant dischargers in this category. These companies have provided extensive information on processes, pollutant discharges and existing permits. Based on information collected to date, EPA believes that primary processing at cigarette manufacturers and their related reconstituted tobacco operations is the main source of discharged wastewater pollution in this industrial sector. EPA conducted site visits at six cigarette manufacturing facilities with two of these facilities having dedicated reconstituted tobacco production lines.

In addition to collecting information on processes and wastewater generation, EPA also collected grab samples of wastewater during these site visits. EPA collected these wastewater samples to: (1) Further characterize wastewater generated and/or discharged at these facilities; and (2) evaluate treatment effectiveness, as applicable. For the sites visited, EPA also contacted states and POTWs to obtain existing permits and identify concerns. Finally, EPA reviewed and evaluated comments from the preliminary 2006 Plan regarding the tobacco products processing industry.

3. Review of Indirect Discharges From Tobacco Products Industry

EPA identified at least 15 tobacco products processing facilities that discharge to POTWs. None of the indirect dischargers treat their wastewater prior to discharge to the local POTW. EPA's review of effluent data from indirect discharging tobacco products processing facilities demonstrates that such discharges are generally characterized by low concentrations of toxic and non-conventional pollutants—primarily metals. One exception is nicotine, with discharge concentrations ranging from 7,500 ug/L to 31,000 ug/L. Nicotine and metal discharges account for approximately 93% of the total annual TWPE associated with indirect tobacco products processing discharges. Source water appears to be the biggest contributor to metal discharges at indirect facilities.

4. EPA's Evaluation of ''Pass Through Potential'' of Toxic and Non-conventional Pollutants Through POTW Operations From the Tobacco Products Industry

EPA used the two part evaluation described above to identify whether there is a significant ''pass-through potential'' of toxic pollutants and non-conventional pollutants through POTW operations. Specifically, EPA compared toxic pollutant loadings currently discharged by Tobacco Products facilities to POTWs and surface waters (baseline loadings) to toxic pollutant loadings that would be discharged to POTWs and surface waters upon compliance with pretreatment standards based on biological treatment with nutrient removal (potential post-regulatory loadings). Based on information obtained in this study, POTWs achieve nicotine removals in excess of 96%. EPA found the annual incremental toxic pollutant removals per facility would be small, approximately 28.6 TWPE/facility. This is comparable to the incremental removals for Industrial Laundries (32 TWPE/facility), which EPA determined in a proposed rulemaking did not warrant the development of pretreatment standards for that industry. See August 18, 1999 (64 FR 45071). Accordingly, EPA has determined that there is not evidence of significant ''pass-through potential'' for indirect dischargers in this industry.

5. EPA's Evaluation of ''Interference Potential'' of Industrial Indirect Discharges From the Tobacco Products Industry

EPA evaluated possible negative effects of discharges from tobacco products processing facilities to POTWs. As explained above, nicotine and metals account for approximately 93% of the total annual TWPE associated with indirect discharges from this category. EPA compared the concentrations of metals found in indirect tobacco products processing discharges to those typically found in POTW influent. This comparison demonstrated that metals concentrations discharged by tobacco products processing facilities are lower than those found in typical POTW influent. These findings indicate that discharges from tobacco products processing should not inhibit or disrupt operations of the receiving POTWs. To verify this finding, EPA contacted POTWs receiving significant tobacco products processing discharges. All POTWs contacted indicated they had experienced no problem handling and treating such discharges (*see* DCN 3395).

6. EPA's Evaluation of Direct Discharges From the Tobacco Products Industry

As discussed above, EPA found that this industry was composed almost entirely of industry dischargers and therefore reviewed it in assessing whether to establish categorical pretreatment standards under CWA sections 304(g) and 307(b). In the context of this review, EPA also examined discharges from the three directly discharging facilities in this industry.

Biological treatment with or without nutrient removal is the most commonly employed wastewater treatment technology by the direct discharging facilities. Treatability data collected from tobacco products processing facilities demonstrate on-site wastewater treatment systems are highly efficient with BOD_5 and nicotine removals in excess of 99%. Resulting discharges are characterized by low concentrations of toxic and non-conventional pollutants—primarily metals. These metal discharges largely result from source water contributions. Additionally, permitting authorities report few problems with these tobacco products processing discharges. Because EPA has identified only three tobacco products processing facilities discharging process wastewater directly to waters of the U.S. and because existing treatment systems are highly effective, EPA believes that national effluent guidelines for direct dischargers are unwarranted at this time. Such discharges can be appropriately addressed by site-specific effluent limitations established by NPDES permit writers on a BPJ basis.

7. Summary of EPA's Review of the Tobacco Products Industry

Because EPA found that this industry is composed almost entirely of indirect dischargers, EPA did not identify it as a new category under section 304(m)(1)(B) and instead considered whether to adopt pretreatment standards for this industry under CWA sections 304(g) and 307(b). EPA has concluded that national pretreatment standards are not warranted for this industry at this time because the incremental toxic pollutant removal would be small and discharges from this industry do not cause significant pass through or interference at POTWs.

D. Health Services Industry

The Health Services industry includes establishments engaged in various aspects of human health (*e.g.* hospitals, dentists, medical/dental laboratories) and animal health (*e.g.* veterinarians). These establishments fall under SIC Major Group 80 Health Services and Industry Group 074 Veterinary Services. According to the 2002 Census, there are over 500,000 facilities in the health services industries. In 1976, EPA promulgated effluent guidelines for direct discharging hospitals with greater than 1,000 occupied beds. 40 CFR part 460. The remaining facilities in the

Health Services industry are not subject to categorical limitations and standards.

In evaluating the health services industries to date, EPA has found little readily available information. Both PCS and TRI contain sparse information on health care service establishments. In 1989, EPA published a Preliminary Data Summary (PDS) for the Hospitals Point Source Category (*see* DCN 2231). Also, EPA's Office of Enforcement and Compliance Assistance (OECA) published a Healthcare Sector Notebook in 2005 (*see* DCN 2183). In addition, industry and POTWs have conducted studies to estimate discharges from some portions of this industry—such as dentists (*see* DCN 2237).

Based on preliminary information, EPA has found that nearly all health services establishments discharge indirectly to POTWs. The major source of concern for discharges from health care service establishments include mercury, silver, endocrine disrupting chemicals (EDCs), pharmaceuticals, and biohazards. While EPA has some information on mercury and silver discharges, EPA has little to no information on wastewater discharges of emerging pollutant concerns such as EDCs and pharmaceuticals.

EPA will conduct a more focused detailed review in the 2007 and 2008 annual reviews for the Health Services Industry. In this detailed study, EPA plans to better quantify pollutants—including EDCs—in wastewater discharged by health service facilities. EPA will also investigate whether there are technologies, process changes or pollution prevention alternatives that would significantly reduce discharges to POTWs. Finally, EPA will attempt to evaluate the pass-through and interference potential of such discharges.

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

In accordance with CWA section 304(m)(2), EPA published the preliminary 2006 Plan for public comment prior to this publication of the final 2006 Plan. See August 29, 2005 (70 FR 51042). The Agency received 61 comments from a variety of commenters including industry and industry trade associations, municipalities and sewerage agencies, environmental groups, other advocacy groups, two tribal governments, two private citizens, two Federal agencies, and seven State government agencies. Many of these public comments are discussed in this notice. The Docket accompanying this notice includes a complete set of all of the comments submitted, as well as the Agency's responses (*see* DCN 3403). EPA carefully considered all public comments and information submitted to EPA in developing the final 2006 Plan.

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

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

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. This final 2006 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 2006 annual review is the review cycle ending upon the publication of this final 2006 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, e.g., by 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 2006 annual review along with the final 2006 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2007 and 2008 and the 2008 Plan.

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

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Pesticides 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) and Concentrated Animal Feeding Operations (rulemaking on BCT technology options for controlling fecal coliform). For a summary of the status of the current effluent guidelines rulemakings, their schedules, and a list of completed effluent guidelines rulemakings conducted by EPA since 1992, see the Docket accompanying this notice (*see* DCN 3765). EPA emphasizes that identification of the rulemaking schedules for these effluent guidelines does not constitute a final decision to revise the guidelines. EPA may conclude at the end of the formal rulemaking process—supported by an administrative record following an opportunity for public comment—that effluent guidelines revisions are not appropriate for these categories. 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.[6] See CWA section 304(m)(1)(C). For the reasons discussed below, EPA is not at this time identifying any potential new categories for effluent guidelines rulemaking and therefore is not scheduling effluent guidelines rulemaking for any such categories in this Plan. EPA is, however, currently conducting rulemakings to determine whether to establish effluent guidelines for two potential new categories identified in the final 2004 Plan: Airport Deicing Operations and Drinking Water Treatment.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI and PCS. As discussed in the docket, facilities with data in TRI and PCS are identified by a four-digit SIC code (*see* DCN 3402). EPA performs a crosswalk between the TRI and PCS data, identified with a four digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is currently regulated by existing effluent guidelines (*see* DCN 3402). 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.

First, section 304(m)(1)(B) specifically applies only to ''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. As discussed below, 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 identifies in its biennial Plan only 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.

The use of the term ''categories'' in other provisions of the CWA indicates that a ''category'' encompasses a broad array of industrial operations related by similarity of product or service provided. For example, CWA section 306(b)(1)(A) provides a list of ''categories of sources'' (for purposes of new source performance standards) that includes ''pulp and paper mills,'' ''petroleum refining,'' ''iron and steel manufacturing,'' and ''leather tanning and finishing.'' These examples suggest that a ''category'' is intended to encompass a diversity of facilities engaged in production of a similar product or provision of a similar service. See also CWA section 402(e) and (f) (indicating that ''categories'' are composed of smaller subsets such as ''class, type, and size''). In the effluent guidelines program, EPA uses these factors, among others, to define ''subcategories'' of a larger industrial category.

The legislative history of later amendments to CWA section 304 indicates that Congress was aware that there was a distinction between ''categories'' and ''subcategories'' in effluent guidelines. See Leg. Hist: Senate Committee on Environment and Public Works, A Legislative History of the Clean Water Act of 1977, prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress (Comm. Print 1978) at 455 (indicating that BAT calls for the examination of ''each industry category or subcategory''). See also *Chemical Manufacturers' Association* v. *EPA*, 470 U.S. 116, 130 (1985) (interpreting this legislative history as ''admonish[ing] [EPA] to take into account the diversity within each industry by establishing appropriate subcategories.''). Therefore, in light of Congress's awareness of the distinction between categories and subcategories, EPA reasonably assumes that Congress's use in 1987 of the term ''categories'' in section 304(m)(1)(B) was intentional. If Congress had intended for EPA to identify potential new subcategories in the Plan, it would have said so. Congress's direction for EPA to identify new ''categories of sources'' cannot be read to constrain EPA's discretion over its internal planning processes by requiring identification of potential new ''subcategories'' in the Plan. See *Norton* v. *Southern Utah Wilderness Alliance et al.,* 124 S Ct. 2373, 2383 (2004) (finding that a statutory mandate must be sufficiently specific in order to constrain agency discretion over its internal planning processes).

Moreover, the distinction between a category and a subcategory has long been recognized by the Supreme Court. In *Chemical Manufacturers' Association* v. *EPA*, the Court recognized that categories are ''necessarily rough-hewn'' (*id.* at 120) and that EPA establishes subcategories to reflect ''differences among segments of the industry'' based on the factors that EPA must consider in establishing effluent limitations. Id. at 133, n. 24. See also *Texas Oil and Gas Assn.* v. *EPA*, 161 F.3d 923, 939 (5th Cir. 1998) (''The EPA is authorized—indeed, is required—to account for substantial variation within an existing category * * * of point sources.''). Indeed, the effluent guideline considered by the Supreme Court in the *Du Pont* case was divided into 22 subcategories, each with its own set of technology-based limitations, reflecting variations in processes and pollutants. Id. at 22 and nn. 9 and 10. See also *id.* at 132 (noting that legislative history ''can be fairly read to allow the use of subcategories based on factors such as size, age, and unit processes.'').

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 56 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 addresses 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

[6] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. See *NRDC et al.* v. *EPA*, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(c) is limited to providing a schedule for concluding the effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and is considering whether to appeal this decision.

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.'' [7] 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.

Thus, EPA's first decision criterion asks whether a new industrial operation or activity in question is properly characterized as an industry ''category'' based on similarity of product produced or service provided, or whether it simply represents a variation (*e.g.* new process) among facilities generating the same product and is therefore properly characterized as a potential new subcategory. If it is properly considered a stand-alone category in its own right, EPA addresses it pursuant to sections 304(m)(1)(B) and (C). If EPA determines that it is a potential new ''subcategory,'' EPA reviews the activity in its section 304(b) annual review of the existing categories in which it would belong, in order to determine whether it would be appropriate to revise the effluent guidelines for that category to include limits for the new subcategory.

As a practical matter, this approach makes sense. There are constantly new processes being developed within an industry category—new ways of making paper or steel, new ways of cleaning transportation equipment, new ways of extracting oil and gas, for example. These new processes are closely interwoven with the processes already covered by the existing effluent guideline for the category—they often generate similar pollutants, are often performed by the same facilities, and their discharges can often be controlled by the same treatment technology. Therefore, it is more efficient for EPA to consider industry categories holistically by looking at these new processes when reviewing and revising the effluent guideline for the existing category. The opposite approach could lead to a situation when EPA would do a separate effluent guideline every time a new individual process emerges without considering how these new technologies could affect BAT for related activities. In revising effluent guidelines, EPA often creates new subcategories to reflect new processes. For example, the effluent guidelines for the pesticides chemicals category (40 CFR part 455) did not originally cover refilling establishments because this process was developed after the limitations were first promulgated. When EPA revised the effluent guidelines for the Pesticides Chemicals category, EPA included refilling establishments as a new subcategory subject to the effluent limits for this category. The issue is not whether a guideline should be developed for a particular activity, but whether the analysis should occur in isolation or as part of a broader review.

To ensure appropriate regulation of such new subcategories prior to EPA's promulgation of new effluent guidelines for the industrial category to which they belong, under EPA's regulations at 40 CFR part 125.3(c), a permit writer is required to establish technology-based effluent limitations for these processes on a case by case, ''Best Professional Judgment'' (BPJ) basis, considering the same factors that EPA considers in promulgating categorical effluent limitations guidelines. These new processes are covered by these BPJ-based effluent guidelines until the effluent guidelines for the industrial category is revised to include limits for these new subcategories.

EPA's approach to addressing new industries is analogous to EPA's approach to addressing newly identified pollutants. When EPA identifies new pollutants associated with the discharge from existing categories, EPA considers limits for those new pollutants in the context of reviewing and revising the existing effluent guidelines for that category. For example, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp, Paper, and Paperboard point source category (40 CFR 430) to add BAT limitations for dioxin, which was not measurable when EPA first promulgated these effluent guidelines and pretreatment standards and was not addressed by the pollutant control technologies considered at that time. See 63 FR 18504 (April 15, 1998).

In short, for the reasons discussed above, EPA believes that the appropriateness of addressing a new process or pollutant discharge is best considered in the context of revising an existing set of effluent guidelines. Accordingly, EPA analyzed similar industrial activities not regulated by existing regulations as part of its annual review of existing effluent guidelines and pretreatment standards.

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307. For example, based on its finding that the Tobacco Products industry consists almost exclusively of indirect dischargers, EPA did not identify this industry in the Plan but instead considered whether to adopt pretreatment standards for this industry in the context of its section 304(g) / 307(b) review of indirect dischargers. Similarly, EPA would not identify in the Plan categories for which effluent guidelines do not apply, e.g., POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, 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. For example, EPA did not identify in this Plan the construction industry because its discharges consist almost entirely of conventional pollutants. See DCN 04112. Therefore, section 304(m)(1)(B) does not apply to this point source category. EPA mistakenly identified this industry under section 304(m)(1)(B) in the 2002 Plan, not realizing at that time that its discharge consisted almost entirely of conventional pollutants. EPA corrected this mistake by removing this industry

[7] 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.

from its 2004 Plan.[8] 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. EPA does not believe that it is necessary, nor was it Congressional intent, to develop national effluent guidelines for categories of sources that discharge trivial amounts of toxic or non-conventional pollutants and therefore pose an insignificant hazard to human health or the environment. See Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31 (*see* DCN 03911). This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard to human health or the environment associated with toxic or non-conventional pollutants.

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 guideline may be an appropriate tool. 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.

This interpretation is supported by the Supreme Court's decision in *Norton* v. *Southern Utah Wilderness Alliance et al.* (124 S. Ct. 2373, 2383 (2004)), which recognized the importance of agency discretion over its internal planning processes. Specifically, the Court in *Norton* held that a statute requiring an agency to ''manage wilderness study areas * * * in a manner so as not to impair the suitability of such areas'' was too broad to constrain the agency's discretion over its internal land use planning processes. See also *Fund for Animals et al.* v. *U.S. Bureau of Land Management*, No. 04–5359, 2006 U.S. App. LEXIS 21206 (D.C. Cir., August 18, 2006); *Center for Biological Diversity* v. *Veneman*, 394 F.3d 1108 (9th Cir. 2005) (both cases following *Norton* line of reasoning to find that statutory mandate was not sufficiently specific to constrain agency discretion over its internal planning processes). In this case, the statutory mandate at issue—establish technology-based effluent limits that take into account a range of factors including ''such other factors as the Administrator deems appropriate''—also lacks the specificity to constrain the Agency's discretion over its effluent guidelines planning process. See CWA section 304(b)(2)(B). This broad statutory mandate gives EPA the discretion to identify in its section 304(m) Plan only those industrial categories for which it determines that effluent guidelines would be ''appropriate'' and to rely on other CWA tools—such as site-specific technology based limitations developed by permit writers on a BPJ basis—when it determines that such tools would be a more effective and efficient way of increasing the stringency of pollution control through NPDES permits.

Congress specifically accorded EPA with the discretion to choose the appropriate tool for pressing the development of new technologies, authorizing EPA to develop technology-based effluent limitations using a site-specific BPJ approach under CWA section 402(a)(1), rather than pursuant to an effluent guideline. See CWA section 301(b)(3)(B). Significantly, section 301(b)(3)(B) was enacted contemporaneously with section 304(m) and its planning process, suggesting that Congress contemplated the use of both tools, with the choice of tools in any given 304(m) plan left to the Administrator's discretion. The Clean Water Act requirement that EPA develop an effluent guideline plan—when coupled with the broad statutory mandate to consider ''appropriate'' factors in establishing technology-based effluent limitations and the direction to establish such limitations either through effluent guidelines or site-specific BAT decision-making—cannot be read to constrain the Agency's discretion over what it includes in its plan.

Moreover, because section 304(m)(1)(C) requires EPA to complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) Plan,[9] EPA believes that Congress intended to give EPA the discretion under section 304(m)(1)(B) to prioritize its identification of potential new industrial categories so that it can use available resources effectively. Otherwise, EPA might find itself conducting rushed, resource-intensive effluent guidelines rulemakings where none is actually needed for the protection of human health and the environment, or where such protection could be more effectively achieved through other CWA mechanisms. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner, consistent with Agency priorities and the funds appropriated by Congress to execute them. By crafting section 304(m) as a planning mechanism, Congress has given EPA that discretion.

Like the land use plan at issue in *Norton*, EPA's plan is ultimately ''a statement of choices and priorities.'' *See Norton* v. *Southern Utah Wilderness Alliance, et al.,* 124 S. Ct. 2373, 2383 (2004). By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. EPA has given careful consideration and summarized its findings with respect to all industries suggested by commenters as candidates for inclusion in the Plan. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution.

[8] EPA recognizes that a district court recently held that EPA lacked the discretion to remove the construction industry from the Plan (see *NRDC et al.* v. *EPA*, No. CV–04–8307 (GHK) (C.D. Ca., June 27, 2006))—but notes that the court did not order EPA to put this industry back on the Plan. Moreover, EPA continues to believe that section 304(m)(1)(B) does not apply to this point source category—and that it must have the authority to correct this mistaken identification.

[9] EPA recognizes that a recent district court held that section 304(m)(1)(c) requires EPA to promulgate effluent guidelines within three years for new categories identified in the Plan—not simply to conclude rulemaking in three years. See *NRDC et al.* v. *EPA*, No. 04–8307, 2006 WL 1834260 (C.D. Ca, June 27, 2006). EPA disagrees with this interpretation and is considering whether to appeal this decision. If upheld on appeal, this decision would limit EPA's discretion regarding whether or not to promulgate effluent guidelines for new categories identified in the Plan. However, it would not affect EPA's discretion under section 304(m)(1)(B) to identify new industries in the Plan in the first place.

IX. Status of ''Strategy for National Clean Water Industrial Regulations'' and EPA's Effluent Guidelines Reviews

A. Review of the Draft Strategy

EPA first solicited public comment on the draft Strategy for National Clean Water Industrial Regulations (''Strategy'') on November 29, 2002 (67 FR 71165) and again on August 29, 2005 (70 FR 51042). EPA has used the draft Strategy and comments on the draft Strategy to shape the methodology for its annual reviews of existing effluent guidelines and pretreatment standards and effluent guidelines planning. In doing so, EPA has found that its effluent guidelines reviews and planning are an on-going and iterative process, and that its methodology for conducting these reviews and planning must continually be updated to reflect available data and tools and respond to public comments. Consequently, rather than publishing a ''final'' Strategy as a separate static document, EPA has chosen instead to use the **Federal Register** notices accompanying the preliminary and final 304(m) plans to describe and solicit comment on its evolving process and criteria for conducting annual reviews and planning, building upon the major elements of the draft Strategy. EPA encourages the public to continue to provide comments on how EPA can improve its effluent guidelines reviews and planning processes.

B. Changes to Annual Review Methodology Since First Publication of the Draft Strategy

EPA first solicited public comments in the November 29, 2002, **Federal Register** notice (67 FR 71165) announcing the availability of the draft Strategy. In response, EPA received 22 public comments on the draft Strategy. EPA requested comment a second time in the same notice as the preliminary 2006 Plan (August 29, 2005; 70 FR 51042). In particular, EPA used this second comment period to request comments on its proposed use of the four factors for identifying existing effluent guidelines for revision described in the draft Strategy and invited the public to identify additional factors for EPA's consideration. The Agency was also interested in receiving comments on whether each of these four factors should be ranked, and if so, whether different weights should be applied to each. EPA received two additional public comments. These 24 public comments are included in Docket ID No. EPA-HQ-OW–2002–0020.

After reviewing public comments on the draft Strategy and on the annual reviews described in the **Federal Register** notices accompanying the section 304(m) plans, EPA has essentially retained the four factor approach for its annual reviews of existing effluent guidelines and pretreatment standards. However, EPA has modified some of the four factors and how they are applied in the annual reviews, as described below.

In the initial screening analysis of existing effluent guidelines and pretreatment standards, EPA gives the most weight to the first factor—amount and toxicity of the pollutants in an industrial category's discharge—in deciding which effluent guidelines to review in more detail. This enables the Agency to set priorities for rulemaking in order to achieve the greatest environmental and health benefits. EPA's assessment of hazard also enables the Agency to indirectly assess the effectiveness of pollution control technologies and processes currently in use by an industrial category, based on the amount and toxicity of its discharges. This also helps the Agency to assess the extent to which additional regulation may contribute reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as specified in section 301(b)(2)(A).

The value of using a comparative risk approach to prioritize environmental actions has been noted by others including EPA's Science Advisory Board. See U.S. EPA (1993), A Guidebook to Comparing Risks and Setting Environmental Priorities, EPA 230–B–93–003. EPA's use of the first factor is similar to the use of a comparative risk analysis, which is ''intended principally as a policy-development and broad resource-allocation tool.'' See DCN 3576. To the extent possible with the available data, EPA has tried to incorporate risk as a factor in its reviews by using the approach to ranking point source categories outlined in the draft Strategy. However, there are limitations in the data and tools. In particular, EPA presently lacks on a national scale the detailed exposure assessment data and tools necessary to complete a risk assessment (e.g., analyze for each industrial facility the fate and transport of discharged pollutants in an actual waterbody, exposure pathways of pollutants to populations in a watershed, and uptake of the discharged pollutants) (*see* DCN 3037). Consequently, EPA ranks point source categories according to their discharges of toxic and non-conventional pollutants to evaluate the relative hazard of these discharges as one measure of potential for impacts to human health and the environment.

EPA has also given added weight to the fourth factor, implementation and efficiency considerations, in deciding which effluent guidelines to review in more detail. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, in the 1990s, industry requested in comments on the Offshore and Coastal Oil and Gas Extraction (40 CFR part 435) effluent guidelines rulemakings that EPA revise these effluent guidelines because they inhibited the use of a new pollution prevention technology (synthetic-based drilling fluids). EPA agreed that revisions to these effluent guidelines were appropriate for promoting synthetic-based drilling fluids as a pollution prevention technology and promulgated revisions to the Oil and Gas Extraction point source category. See 66 FR 6850 (Jan. 22, 2001). This factor might also prompt EPA, during an annual review, to decide against identifying an existing set of effluent guidelines or pretreatment standards for revision where the pollutant source is already efficiently and effectively controlled by other regulatory or non-regulatory programs.

As previously noted, current data limitations make it difficult to directly evaluate in the initial screening analysis the second factor—the availability of technology to reduce the pollutants remaining in the industrial category's wastewater. Similarly, EPA has not been able to find a tool to enable it to consider the third factor—economic achievability of candidate treatment technologies—in its initial screening analysis. EPA anticipates that over time more information related to the second and third factors will become available and may permit the Agency to incorporate these two factors into the initial screening analysis. For now, EPA assesses the second and third factors in conducting its detailed reviews of those industries that rank highest with respect to hazard. In its detailed reviews, EPA typically examines: (1) Wastewater characteristics and pollutant sources; (2) pollutants driving the total amount of toxic and non-conventional pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

After consideration of public comment and further analyses based on all four factors, EPA prioritizes the categories for effluent guidelines rulemakings and publishes the rulemaking schedules in the final biennial plan issued in August of every even-numbered year. By using this multi-layered screening approach, the Agency concentrates its resources on those point source categories with the highest estimated hazard associated with toxic and non-conventional pollution (based on best available data), while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revisions at that time.

Dated: December 15, 2006.

Benjamin H. Grumbles,

Assistant Administrator for Water.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–8259–3]

Proposed Reissuance of the NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed NPDES General Permit Reissuance.

SUMMARY: The Regional Administrator of Region 6 today proposes to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act. The permit, previously reissued on October 7, 2004, and published in the **Federal Register** at 69 FR 60150, authorizes discharges from exploration, development, production, and transmission facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas off Louisiana and Texas. Discharges of produced water to Federal waters from facilities located in the territorial seas are also authorized when all conditions of the permit are met. The following changes to the expiring permit are proposed to be made as a part of the permit reissuance. Requirements to comply with new cooling water intake structure regulations are included. Sub-lethal effects are required to be measured for whole effluent toxicity testing. New test methods are allowed for monitoring cadmium and mercury in stock barite. Clarifications have been added to the permit requirements for: Types of activities covered; pit cleaning and other wash water; end of well monitoring; sediment toxicity test averaging; the drilling fluids discharge rate limitation; discharges associated with dual gradient drilling; toxicity testing for miscellaneous discharges; and calculation of the produced water critical dilution for toxicity testing. Other minor changes in wording are also proposed to clarify EPA's intent regarding the permit's requirements.

DATES: Comments must be received by February 20, 2007.

ADDRESSES: Comments should be sent to: Ms. Diane Smith, Water Quality Protection Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Comments may also be submitted via e-mail to the following address: *smith.diane@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency (6WQ–CA), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

A copy of the proposed permit, and the fact sheet more fully explaining the proposal may be obtained from Ms. Smith. The Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit, fact sheet, and this **Federal Register** Notice may be obtained on the Internet at: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

SUPPLEMENTARY INFORMATION:

Regulated entities. EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, *e.g.,* offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Other Legal Requirements

Oil Spill Requirements. Section 311 of the CWA, (the Act), prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

Endangered Species Act. As explained at 69 FR 39478 (June 30, 2004), EPA previously found that re-issuance of the General Permit for the Outer Continental Shelf of the Western Gulf of Mexico would not adversely affect any listed threatened or endangered species or designated critical habitat. EPA requested written concurrence on that determination from the National Marine Fisheries Service (NMFS). In a letter dated July 12, 2004, NMFS provided such concurrence on the proposed NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico. No changes are proposed which would decrease the level of protection the permit affords threatened or endangered species. The main changes include new intake structure requirements and more stringent whole effluent toxicity limits based on sub-lethal effects. Since those changes increase the level of protection EPA again finds that issuance of the permit will not adversely affect any listed threatened or endangered species or their critical habitat. Concurrence with this determination will be obtained from NMFS before the final permit is issued.

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria