

Anodizing, Railroad Line Maintenance, and Shipbuilding Dry Docks). EPA received over 1500 comment letters on the 2001 proposal. EPA's responses to the comments can be found in section 20.3 of the rulemaking.

#### *B. June 2002 Notice of Data Availability*

On June 5, 2002, EPA published a Notice of Data Availability (NODA) at 67 FR 38752. In the NODA, EPA discussed major issues raised in comments on the 2001 proposal; suggested revisions to the technical and economic methodologies used to estimate compliance costs, pollutant loadings, and economic and environmental impacts; presented the results of these suggested methodology changes and incorporation of new (or revised) data; and summarized the Agency's thinking on how these results could affect the Agency's final decisions.

The NODA also included a discussion of possible alternative options for certain subcategories based on comments, including an Environmental Management System (EMS) alternative in lieu of part 438 limitations and standards, and a discussion of "upgrading" facilities currently regulated under the Electroplating regulations (40 CFR part 413) to meet the Metal Finishing regulations (40 CFR part 433) (*see* 67 FR 38797). Finally, the NODA included preliminary revised effluent limitations and pretreatment standards for all eight proposed subcategories. EPA received over 300 comment letters on the NODA. EPA's responses to the comments can be found in section 20.3 of the docket for the rule.

#### **IV. Summary of Significant Decisions**

As the previous discussion of the development of this regulation explains, EPA proposed regulating discharges associated with a number of different operations in the MP&M industry. Thus, EPA proposed regulations that would have established new limitations and standards for approximately 10,000 facilities in 18 industrial sectors that EPA subcategorized in eight subcategories. Following its consideration of comments submitted to EPA as well as intensive scrutiny of the data used to develop the proposal, EPA has determined that it should only finalize regulations for the Oily Wastes subcategory. These regulations would affect approximately 2,400 facilities. The following material explains EPA's decisions underlying today's regulation. It discusses significant issues considered by EPA or raised by commentors on the May 1995 and January 2001 proposed rules and June

2002 NODA, and how EPA has resolved these issues in today's final rule.

#### *A. Decisions Regarding the Content of the Regulation*

The following discussion describes how EPA has subcategorized this industry in developing limitations and standards, and EPA's decisions about whether to subject particular subcategories to limitations and standards. It also identifies the pollution control technology EPA used as the basis for establishing limitations and standards. Next, this section discusses the applicability of the rule to iron and steel operations and to "oily operations." The section also looks at the regulated pollutants and describes EPA decisions concerning the use of a "pollution prevention" alternative for complying with the final rule.

##### **1. Subcategorization Structure**

The CWA requires EPA, in developing effluent limitations guidelines and pretreatment standards that reflect the best available technology economically achievable to consider a number of different factors. Among others, these include the age of the equipment and facilities in the category, manufacturing processes employed, types of treatment technology to reduce effluent discharges, and the cost of effluent reductions (section 304(b)(2)(b) of the CWA, 33 U.S.C. 1314(b)(2)(B)). The statute also authorizes EPA to take into account other factors that the Administrator deems appropriate.

One way in which the Agency has taken some of these factors into account is by breaking down categories of industries into separate classes of similar characteristics. This recognizes the major differences among companies within an industry that may reflect, for example, different manufacturing processes or wastewater characteristics. One result of subdividing an industry by subcategories is to safeguard against overzealous regulatory standards, increase the confidence that the regulations are practicable, and diminish the need to address variations between facilities through a variance process (*Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1053 (D.C. Cir. 1978)).

As discussed in section III.A of today's final rule, in 2001 EPA proposed to divide the MP&M industry into eight regulatory subcategories based on the manufacturing, maintenance or rebuilding operations performed at a facility (called "unit operations" in this preamble): General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, Steel Forming & Finishing, Oily Wastes,

Railroad Line Maintenance, and Shipbuilding Dry Docks. Based on comments submitted on the proposed rule and NODA, EPA has refined today's final subcategorization structure for the analyses performed to support today's final rule. For the purposes of analyzing issues in developing the final rule, EPA retained the eight subcategory structure, but altered the placement of some operations within certain subcategories. For example, the subcategorization approach that EPA has used for analyses supporting today's final rule incorporates printed wiring board job shops in the Printed Wiring Board subcategory (as opposed to the Metal Finishing Job Shop subcategory, as proposed) and places printed wiring assembly facilities in the General Metals subcategory (*see* 67 FR 38756).

As discussed in the NODA, EPA also considered an additional subcategory for facilities that primarily perform zinc electroplating ("zinc platers"). Depending on whether or not these facilities operate as a captive or a job shop, EPA had proposed to include them as part of the General Metals or Metal Finishing Job Shop subcategories, respectively. The NODA explained that EPA was also considering: (1) Creating a separate subcategory for zinc platers; (2) segmenting zinc platers within the General Metals and Metal Finishing Job Shop subcategories for zinc platers; or (3) retaining the proposed subcategory structure and establishing numerical limitations and standards for zinc that would be achievable by zinc platers (*see* 67 FR 38756). Commentors on the NODA supported retaining the proposed subcategories as long as the record demonstrated that zinc platers could achieve the zinc numerical limitations and standards. They raised concerns that creating a separate subcategory or segment to address the limitations for one pollutant would be confusing and difficult to implement. EPA did not create a separate subcategory or segment for zinc platers in evaluating the data for the final rule. These zinc platers remain subject to parts 413 and/or 433.

Also, as discussed in the NODA, EPA considered establishing the Steel Forming and Finishing subcategory for wastewater discharges resulting from: (1) Steel forming and finishing operations (e.g., cold forming on steel wire, rod, bar, pipe, and tube); and (2) continuous electroplating of flat steel products (e.g., strip, sheet, and plate). EPA re-examined its database for facilities that perform continuous steel electroplating, and found that, contrary to its initial finding, continuous electroplaters do not perform operations similar to other facilities in this