

*A. What Process and Rationale Did EPA Use To Review Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)?*

1. What Is an Existing Set of Effluent Guidelines for Purposes of EPA's Annual Review Under Section 304(m)(1)(A)?

EPA's annual review obligation under section 304(m)(1)(A) applies to "promulgated effluent guidelines." Because this subparagraph refers specifically to section 304(b), EPA interprets this to refer to Best Available Technology (BAT), Best Practicable Technology (BPT) and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines codified at 40 CFR parts 405–471 (representing a total of 55 categories and over 450 subcategories). As discussed in more detail in section VI.A.2, EPA used pollutant loading, technological, economic, and other factors required by the CWA to consider whether it is appropriate to revise the specific limitations codified in each set of effluent guidelines.

EPA also examined the processes and operations forming the basis of each subcategory for which EPA had already promulgated effluent guidelines in order to decide whether it might be appropriate to address (through new subcategories) other industrial activities that are similar in terms of type of operations performed, wastewaters generated, and available pollution prevention and treatment options. Issues associated with new subcategories very often are interwoven with the structure and requirements of the existing regulation. A previous example where EPA addressed industrial operations not currently regulated by existing effluent guidelines by establishing new subcategories under an existing category is the agricultural refilling establishments subcategory (subpart E) that EPA added to the Pesticide Chemicals point source category (40 CFR part 455) (November 6, 1996; 61 FR 57518).

EPA's annual review of existing effluent guidelines also focused on identifying pollutants that are not regulated by existing effluent guidelines but that comprise a significant portion of the hazard or risk estimate for the industrial point source categories. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing existing effluent guidelines under CWA section 304(m)(1)(A). EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through the additional control of

regulated pollutants in an existing set of effluent guidelines. In some cases, revising existing limitations for one set of pollutants will address hazards or risks associated with a newly identified pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised existing effluent guidelines for the Oil and Gas Extraction point source category (40 CFR part 435) to address new pollutants that resulted from a new pollution prevention technology (synthetic-based drilling fluids). See 66 FR 6850 (January 22, 2001). Similarly, EPA revised BAT limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp and Paper industrial point source category in 1998 to include for the first time effluent guidelines for dioxin. Third, the regulatory organization of subcategories in an existing guidelines also has a bearing on the identification of pollutants for regulation.

In short, EPA believes that the appropriateness of creating a new subcategory or addressing a newly identified pollutant is best considered in the context of revising an existing set of effluent guidelines as a whole. Accordingly, EPA is performing these analyses as part of the Agency's responsibilities under CWA section 304(m)(1)(A).

2. What Factors Did EPA Consider When Performing its 2003 Annual Review of Existing Guidelines?

The starting point of EPA's analysis is CWA section 301(b)(2)(A), which requires dischargers to achieve effluent limitations that reflect the "best available technology economically achievable," as identified by the Administrator under the authority of CWA section 304(b)(2). Section 304(b), in turn, requires EPA to consider many factors in identifying BAT. These are discussed in section III.C. Because CWA section 304(m)(1)(A) requires EPA to review promulgated guidelines in accordance with CWA section 304(b), EPA interprets the statute to authorize EPA to employ the same factors for its annual review that it would consider in selecting BAT in a rulemaking context. EPA believes that this is a reasonable approach because the outcome of EPA's annual review is a decision—expressed in the final Effluent Guidelines Program Plan—identifying those effluent guidelines for possible revision.

By using the statutory factors in section 304(b) and section 301(b)(2)(A) as the framework for its annual review of existing guidelines, EPA can begin its investigation with a variety of technological, economic, and environmental issues associated with industrial categories that ultimately will help determine the need for, or scope of, a revised effluent guideline. In the draft Strategy for National Clean Water Industrial Regulations, EPA identified four major factors—based on section 304(b)—that the Agency would examine, in the course of its annual review, to determine whether it would be necessary and appropriate to revise an existing set of effluent guidelines, or whether to develop a new set of effluent guidelines for a newly identified industrial category.

The first factor (referred to in this notice as "Factor 1") is consideration of the extent to which the pollutants remaining in an industrial category's discharge pose a hazard or risk to human health or the environment. The second factor (referred to in this notice as "Factor 2") is identification of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewaters and thereby substantially reduce the hazard or risk to human health or the environment associated with these pollutant discharges.

The third factor (referred to in this notice as "Factor 3") encompasses the cost, performance, and affordability of the technology, process change, or pollution prevention measures identified using the second factor. If the financial condition of the industry indicates significant difficulties in achieving the reductions, EPA would be reluctant to select the effluent guidelines for revision because there is a significant probability that EPA might ultimately determine that standards based on the new technology, process change, or pollution prevention measures were not "economically achievable," as required by the CWA. Agency resources would be more effectively spent developing more efficient, less costly approaches to reducing pollutant loadings that would better satisfy applicable statutory requirements.

The fourth factor (referred to in this notice as "Factor 4") incorporates implementation and efficiency considerations and recommendations from stakeholders. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or