

opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, industry requested in comments on the Offshore and Coastal effluent guidelines rulemakings that EPA specifically set standards for a new pollution prevention technology (synthetic-based drilling fluids). EPA promulgated these revision on January 22, 2001 (66 FR 6850). This factor might also prompt EPA to decide in a particular Plan against scheduling an existing effluent guideline for revision where the pollutant source is already efficiently addressed by another regulatory program or by non-regulatory programs.

EPA also considered stakeholder recommendations for guideline development or revision even when they did not raise issues associated with implementation or efficiency considerations. In evaluating those recommendations, EPA considered the extent to which the pollutants in an industrial category's discharge pose a hazard or risk to human health or the environment (see Factor 1). EPA also considered whether the industrial sectors recommended by stakeholders are potentially subject to the Effluent Guidelines Program.

In the course of performing its annual review for 2003, EPA evaluated where possible publicly available Agency databases and reports that contain nationwide information on an industry basis, but became aware of data quality and limitations in evaluating this information. EPA learned that it lacked sufficient data and information to consider the four factors for the industrial categories for which EPA has promulgated effluent guidelines under CWA section 304(b) in the exact manner and sequence described in the draft Strategy. For example, EPA found that it was much more difficult than anticipated to gather the data needed to perform a meaningful screening-level analysis of the availability of treatment or process technologies that might reduce hazard or risk beyond the performance of technologies in place at facilities in 55 industrial categories. Similarly, EPA could not identify a suitable screening-level tool for evaluating the economic affordability of treatment or process technologies because the universe of facilities is too broad and complex. Furthermore, EPA could not find a reasonable way to prioritize industries for the Effluent Guidelines Program Plan based on a broad economic profile. Consequently, for its 2003 review, EPA focused its efforts on collecting and analyzing screening-level data to identify

industrial categories whose pollutant discharges potentially pose the greatest hazards or risks to human health and the environment because of their toxicity. EPA also considered efficiency and implementation issues. As described in section VII, EPA will conduct detailed studies, as part of its 2004 annual review, to evaluate economic and technology issues for industrial categories with discharges that EPA believes offer the most significant opportunities for reducing risks or hazards. EPA will also continue to collect and analyze data on other industries whose discharges potentially pose high risks or hazards. See sections VII.B and C.

In order to focus its inquiry during the 2003 annual review, EPA excluded categories for which EPA had promulgated effluent guidelines within the past seven years. EPA chose seven years because of the time it takes for effluent guidelines to be incorporated as enforceable effluent limitations into NPDES permits when they are renewed, which could be up to five years after the effluent guidelines are promulgated. This time period also allows for the pollutant reductions associated with recently-promulgated guidelines to be reflected in discharge monitoring data and Toxics Release Inventory (TRI) reports, so that the Agency can assess the potential for remaining risks or hazards. (In cases where EPA is aware of the growth of a new segment within a category for which EPA had recently revised effluent guidelines, or where new concerns are identified for pollutants discharged by facilities within the industrial category, EPA may decide not to exclude the category from review, but EPA identified no such instance during the 2003 review.) EPA also excluded categories with guideline revisions currently underway.

EPA also excluded industry categories addressed by other Clean Water Act provisions. For example, some stakeholders urged EPA to identify municipal storm water discharges for effluent limitation guidelines; however, these discharges are addressed under CWA section 402(p). Similarly, technology-based standards for publicly-owned treatment works (POTWs) are addressed under sections 301(b)(1)(B) and 304(d).

Commenters also identified discharges from ocean going vessels (cruise ships, ballast and bilge water) as a possible candidate for an effluent guidelines rulemaking. However, discharges of ballast water from vessels are not subject to CWA permitting requirements. See 68 FR 53165 (September 9, 2003). Under EPA's

regulations at 40 CFR 122.3(a), discharges from properly functioning marine engines (*i.e.*, bilge water), laundry, shower, and galley sink wastes, and other discharges incidental to the normal operation of a vessel do not require NPDES permit authorization unless the vessel is operating in a capacity other than as a means of transportation. Finally, discharges of sewage from vessels, are regulated under CWA section 312. None of these discharges requires NPDES permits under section 402 and, therefore, none are subject to BAT limitations or NSPS. Although EPA is currently considering a citizen petition seeking detailed consideration of cruise ship discharges and, if necessary, rulemaking to regulate such discharges, EPA has not yet decided whether (and if so, which) cruise ship discharges should be regulated under NPDES permits. In addition, recently-enacted, free standing legislation—not the CWA—imposes discharges limitations on black water (*i.e.*, sewage) and gray water (*i.e.*, laundry, shower, and galley sink wastes) for cruise ships operating in certain Alaskan waters.

EPA also excluded from consideration in its 2003 review: (1) Industries composed entirely or almost exclusively of indirect dischargers (*e.g.*, dental facilities), because the facilities are not subject to effluent guidelines under CWA section 304(b)(2); and (2) industries where the estimated hazard or risk was unclear and more data were needed to determine its magnitude. For the latter group, EPA intends to collect additional information for the next biennial Plan. EPA also did not identify industries where the vast majority of the estimated hazard or risk was limited to only one or a few facilities, because EPA believes that in such cases permit writing support to the States might better address the environmental problem. In judging whether support to permit writers would more effectively address a hazard or risk than national rulemaking, EPA will consider the number of facilities, their geographic location and other relevant factors.) EPA would assist in identifying control technologies and the effluent limitations based on best professional judgment (BPJ) on a facility-specific basis. EPA will evaluate this decision criterion based on the information available at the time of each annual review. By using this multi-layered screening approach, the Agency concentrated its resources on those categories that posed the greatest hazard or risk (based on best available data), while deferring consideration of industrial point source