

### VIII. Identification of and Schedule for Possible Categories for Potential New Effluent Guidelines

In its Effluent Guidelines Program Plan, EPA must identify categories of sources discharging 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). For the categories EPA identifies under this provision, EPA must establish a schedule for the promulgation of effluent guidelines not later than three years after such identification. See CWA section 304(m)(1)(C). Today's **Federal Register** notice presents EPA's preliminary decisions under section 304(m)(1)(B).

#### *A. Review Process and Decision Criteria for Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines*

The universe of potential industrial categories subject to section 304(m)(1)(B) is limited. First, and most important, this analysis applies only to industrial categories for which EPA has not promulgated effluent guidelines, not to unregulated subcategories or pollutants within a currently regulated industrial category. Thus, the first decision criterion asks whether the industrial operation or activity in question is properly characterized as an industry "category." The list of "categories of sources" set forth at section 306(b)(1)(A) (e.g., pulp and paper mills, organic chemicals manufacturing, steam electric powerplants) suggests that Congress intended that this term should be broadly construed. EPA considers the need to address new subcategories and new pollutants as part of its annual review of existing effluent guidelines. See section VI. EPA believes that the decision whether to revise a guideline to address additional related industrial activities or pollutants should be made in the context of evaluating the promulgated effluent guideline as a whole. For example, as part of its annual review under CWA section 304(m)(1)(A), EPA is reviewing the following industrial operations as potential new subcategories of existing effluent guidelines: (1) Petroleum Bulk Stations and Terminals (SIC 5171) will be reviewed as a potential new subcategory under Petroleum Refining (part 419); and (2) Chemical Formulating, Packaging, and Repackaging (including Adhesives and

Sealants) operations will be reviewed as a potential new subcategory under Organic Chemicals, Plastics, and Synthetic Fibers (part 414).

Second, the analysis under 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 industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 or categories like wastewater treatment plants regulated under section 301(b)(1)(B). EPA also believes this criterion should be used to exclude categories where the vast majority of toxic and non-conventional pollutant discharges are accounted for by one or a few facilities. EPA believes that more effective environmental protection can be accomplished sooner for such categories, and with less use of limited Agency resources, by providing site-specific guidance to permit authorities on appropriate limitations and standards based on best professional judgment. This decision criterion acknowledges that other tools created by the Clean Water Act better pollutant discharges from some categories of facilities.

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that the record shows are making non-trivial discharges of toxic or non-conventional pollutants to waters of the United States. EPA does not believe that it is necessary, nor was it Congress's intent, to develop national effluent guidelines regulations for categories of sources that are likely to pose an insignificant risk to human health or the environment. See S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. This decision criterion leads EPA to focus on those remaining industrial categories where new effluent guidelines have the potential to address an identifiable hazard or risk to human health or the environment. In other words, using this decision criterion, EPA will identify those industrial categories of polluters for which effluent guidelines may be appropriate, based on information available during the development of a particular Effluent Guidelines Program Plan. Thus, EPA might judge in 2004, based on information available at that time, that the toxic and non-conventional pollutant discharges from sources within an industrial category are trivial, and then, based on changes

in the industry or new information, reach a different conclusion in 2006 or later. Priority-setting is intrinsic to any planning exercise, and this decision criterion is an important priority-setting tool. Because section 304(m)(1)(C) requires that EPA complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) plan, it is important that EPA have the discretion to identify only those industrial categories where the risks or hazards are indeed non-trivial. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. In assessing hazard or risk for purposes of CWA section 304(m)(1)(B), EPA used the same methodology discussed in section VI for reviewing industrial categories with existing effluent guidelines.

#### *B. Outcome of EPA's Analysis Under CWA Section 304(m)(1)(B)*

Applying these decision criteria, EPA identified no new candidates for effluent guidelines rulemaking for this preliminary Plan. Consequently, EPA is not proposing to schedule an effluent guidelines rulemaking for any industrial category not already regulated by existing effluent guidelines. EPA's application of these decision criteria to industrial activities without effluent guidelines under sections 304(b) or 306 is presented in Table VIII-1 and in the record (DCN 00548, section 3.0). The "Rationale" column in Table VIII-1 uses a numeric coding system to explain why EPA did not identify the industrial activity in this preliminary Plan as a candidate for an effluent guidelines rulemaking:

(1) An effluent guidelines rulemaking for this industry is underway or was recently concluded.

(2) The vast majority of the estimated hazards are limited to only one or a few facilities.

(3) Inadequate data to determine if there are non-trivial discharges; additional data collection on-going.

(4) All or nearly all sources engaged in this industrial activity are indirect dischargers and are not subject to CWA section 304(b) or section 306.

(5) Other CWA controls apply (e.g. Uniform National Discharge Standards for armed forces vessels, municipal storm water regulations).

(6) Industrial activity is not subject to CWA permitting requirements.