

meet on December 21, 1982, in Conference Room F, 10th Floor, AT&T Building, 1120 20th Street, N.W., Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group CMTT deals with the specifications to be satisfied by telecommunication systems for transmission of radio and television programs over long distances. The purpose of the meeting will be the establishment of a program of work in preparation for the international meeting of CMTT in August-September 1983.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: November 22, 1982.

Gordan L. Huffcutt,

Chairman, U.S. CCIR National Committee.

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TENNESSEE VALLEY AUTHORITY

Proposed Revisions to Procedures Implementing the National Environmental Policy Act (NEPA) and Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands)

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice.

SUMMARY: TVA is proposing to amend its procedures implementing NEPA to, among other things, incorporate special review requirements relating to floodplain management and protection of wetlands. TVA's separate Floodplain Management and Protection of Wetlands procedures would then be eliminated except for a modified form of the policy statement presently contained in the procedures.

DATE: To be considered, comments must be received on or before January 3, 1983.

ADDRESS: Comments should be sent to Mohamed T. El-Ashry, Director of Environmental Quality, Office of Natural Resources, Tennessee Valley Authority, TVA Mailroom, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: John R. Thurman, Tennessee Valley Authority, TVA Mailroom, Knoxville, Tennessee 37902; (615) 632-2004 or FTS 856-2004.

SUPPLEMENTARY INFORMATION: On August 2, 1979, TVA issued procedures implementing Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands) at 44 FR 45513-17 (1979). On August 15, 1980, TVA amended its procedures implementing NEPA at 45 FR 54511-15 (1980) in response to a request made by the Council on Environmental Quality (CEQ) to all Federal agencies to issue procedures supplementing CEQ's NEPA regulations (40 CFR, parts 1500 et seq. (1980)).

Subsequently, TVA received a memorandum from CEQ, dated August 6, 1981, encouraging TVA to evaluate its existing procedures with the objective of making changes which would improve the environmental review process; specifically, to make better decisions and reduce paperwork and delay. A copy of this memorandum, addressed to all Federal agencies, was published by CEQ at 46 FR 41131-32 (1981). In response TVA evaluated its environmental review process and identified certain changes which would improve the overall effectiveness and efficiency of TVA's environmental review process while fully complying with NEPA and TVA environmental policies.

The most significant proposed revision is the incorporation of TVA's floodplain and wetlands review process into the NEPA procedures. TVA's experience with floodplain and wetlands reviews indicated that such reviews are a specialized form of environmental reviews and can easily be accommodated in the general NEPA procedures thereby eliminating a substantially duplicative review process. This would not only decrease review costs in some instances but would also decrease delays in the decisionmaking process. TVA's policy on floodplain management and protection of wetlands (44 FR 45514-15 (1979)), however, would be retained separate from TVA's NEPA procedures and overall environmental policy. Minor modifications to this policy statement are proposed and the statement, with the proposed modifications incorporated, is included in this notice for comment.

Numerous other changes to TVA's NEPA procedures, primarily of a housekeeping nature, are also proposed and are incorporated in the version of TVA's NEPA procedures published here for comment. All of the proposed

revisions have been reviewed and informally concurred in by CEQ.

Frank R. Holland,

Assistant General Manager, Tennessee Valley Authority.

IX. Floodplain Management and Protection of Wetlands

Floodplain Management and Protection of Wetlands

The Board of Directors approved the following policy on August 13, 1982. It supersedes the policy adopted by the Board on July 12, 1979. It provides guidance for implementing the policies contained in Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands). The procedures to implement this policy are contained in TVA Instruction IX ENVIRONMENTAL REVIEW.

Policy

TVA provides leadership and takes actions to reduce the risk of flood loss; to minimize the impacts of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains.

TVA provides leadership and takes actions to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands. It works closely with States and local organizations to provide information and guidance to promote sound floodplain and wetland management practices at the non-Federal level. In its own activities, TVA applies this commitment to broad Agency program reviews, as well as direct or indirect support or approval of individual project or program actions, from their initial planning stages through postimplementation monitoring and evaluation.

To that end, TVA establishes procedures to avoid to the extent practical the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and with the destruction or modification of wetlands, and to avoid to the extent practical the direct or indirect support of floodplain development or wetland alteration. These procedures are implemented as part of the environmental review for a TVA action under the National Environmental Policy Act (NEPA) and TVA Instruction IX ENVIRONMENTAL REVIEW. Consistent with TVA's NEPA procedures, TVA provides early public review of plans or proposals for action in floodplains and wetlands as set forth in those procedures (see TVA

Instruction IX ENVIRONMENTAL REVIEW).

Flood hazards, floodplain management, and wetlands protection will be taken into account when formulating proposals for actions. The use of resources and the construction of TVA facilities and structures will be consistent with the flood hazard involved; the standards and criteria promulgated under the National Flood Insurance Program of the Federal Insurance Administration, unless the standards of the program are demonstrably inappropriate for the given type of structure or facility; the Unified National Program for Floodplain Management of the Water Resources Council; and Executive Order No. 11988. For activities for which even a 1 percent chance of flooding would be too great, a lesser degree of flood hazard should be considered, e.g., location outside the 0.2 percent chance floodplain or elevation or protection of the use to a level at or above this level of flooding. For those actions for which even a slight degree of flooding would be too great, consideration should be given to a much higher level of flood protection by elevating or protecting the site, or by location in a flood-free site. Use of land in the floodplain for other than open space, or use of land for new construction in wetlands will be avoided to the extent practicable. Where new structures or facilities are to be located in a floodplain, floodproofing and other flood protection measures will be utilized as necessary. Raising such structures above the base flood levels will, when practicable, be preferred to filling.

If TVA property used by the general public has suffered flood damage or is located in an identified flood hazard area, TVA will provide on such structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

Reservations

The General Manager approves guidelines for general application within TVA issued under the policy. The General Manager approves, or refers to the Board of Directors as appropriate, the determination to take an action resulting in siting in a floodplain or construction in a wetland if the Environmental Quality Staff, after consulting with the Office of the General Counsel, does not concur with the determination to do so by the initiating office or division.

Delegations

Offices and divisions initiating actions or proposals covered by the policy use all practical means to avoid actions impacting floodplains and wetlands and carefully evaluate alternative sites or actions. In order to accomplish this objective, offices and divisions initiating actions or proposals covered by this policy:

1. Seek flood hazard or wetland information at the earliest feasible stage of planning when alternative sites are being identified and evaluated.
2. Obtain assistance as necessary from other offices and divisions in accordance with their interests and expertise to evaluate the proposed action and to recommend and evaluate alternatives to siting in a floodplain or wetland.
3. Identify and evaluate impacts of alternative sites or alternative actions, obtaining assistance as necessary.
4. Determine, obtaining assistance as necessary through an environmental assessment or an environmental impact statement where appropriate, if an action which affects floodplain or wetland values is the only practicable one and seek the concurrence of the Environmental Quality Staff.
5. Refer to the General Manager such determinations if the Environmental Quality Staff does not concur.

The Office of Natural Resources determines whether a proposed action or any part of it will occur in the base floodplain or, where exposure to a lesser degree of flood hazard is desired, a great floodplain; assists in the evaluation of alternatives and measures to minimize adverse impacts on floodplains; and assists in the final determination of what action should be taken. It marks flood height information on TVA property used by the general public as provided in this policy.

It also determines whether a proposed action will affect or support new construction in a wetland, assists in the evaluation of alternatives and measures to minimize adverse impacts on wetlands, and assists in the final determination of what action should be taken.

The Office of Natural Resources, Environmental Quality Staff, reviews and evaluates, in consultation with the Office of the General Counsel, the determination of the initiating office or division that location in a floodplain or wetland is the only practicable alternative; and approves monitoring plans, if any, for such actions. It is generally responsible for overseeing implementation of the policy within TVA, relying on the technical expertise

of the Divisions of Air and Water Resources and Land and Forest Resources. It assists offices and divisions in determining whether more detailed guidelines are necessary.

The Office of Economic and Community Development assists offices in determining whether a proposed action is consistent with local floodplain regulations and in determining what action should be taken if the proposed action is inconsistent with those regulations.

The Office of the General Counsel advises on the legal aspects of the evaluation of impacts and determination of the final action to be taken. It assists in the preparation and review of guidelines to this code.

Procedures for Compliance With the National Environmental Policy Act

Title

- 1.0 Purpose
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Environmental Review Procedures

1.0 Purpose

These procedures provide guidance for compliance by the Tennessee Valley Authority (TVA) with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq. (1976) and other applicable guidelines, regulations, and Executive orders implementing NEPA. It is intended to incorporate concepts and implement policies in the regulations promulgated by the Council on Environmental Quality at 40 CFR, parts 1500-1508 (1981).

2.0 Policy

TVA, to the fullest extent possible, incorporates environmental considerations into its decisionmaking processes. In carrying out this policy, these procedures assure that actions are viewed in a manner to encourage productive and enjoyable harmony between man and the environment. Commencing at the earliest possible point and continuing through implementation, appropriate and careful consideration of the environmental aspects of proposed actions is built into the decisionmaking process in order that

adverse environmental effects may be avoided or minimized, consistent with the requirements of NEPA.

3.0 Abbreviations

- 3.1 CEQ—Council on Environmental Quality
- 3.2 EA—Environmental Assessment
- 3.3 EIS—Environmental Impact Statement—D, Draft; F, Final
- 3.4 NEPA—National Environmental Policy Act
- 3.5 TVA—Tennessee Valley Authority

4.0 Definitions

The following definitions shall apply throughout these procedures. All other applicable terms shall be given the same meaning as set forth in CEQ's currently effective regulations (see 40 CFR regulations, Part 1508) unless otherwise inconsistent with the context in which they appear.

4.1 "Floodplain" refers to the lowland and relatively flat areas adjoining flowing inland waters and reservoirs or to those areas inundated by the unusual or rapid accumulation or runoff of surface waters from any source. Floodplain generally refers to the base floodplain, i.e., that area subject to a 1 percent or greater chance of flooding in any given year. A flood having a 1 percent chance of occurring in any given year is usually referred to as a 100-year flood.

4.2 "Natural and beneficial floodplain and wetland values" refer to such attributes as the capability of floodplains and wetlands to provide natural moderation of floodwaters, water quality maintenance, fish and wildlife habitat, plant habitat, open space, natural beauty, scientific and educational study areas, and recreation.

4.3 "Practicable" refers to the capability of an action being done within existing constraints. The test of what is practicable depends on the situation involved and should include an evaluation of all pertinent factors, such as environmental impact, economic costs, technological achievability, and public benefit.

4.4 "Wetlands" are those areas inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, mud flats, and natural ponds. Wetlands do not include temporary human-made ponds, sloughs, etc., resulting from construction activities.

4.5 "Important farmland" includes prime farmland, unique farmland, and farmland of State-wide importance as defined in 7 CFR Part 657 (1981).

5.0 Procedures

5.1 Action Formulation and NEPA Determination

Each office within TVA is responsible for integrating environmental considerations into its planning and decisionmaking process at the earliest possible time to ensure that potential environmental effects are appropriately considered to avoid potential delays and to minimize potential conflicts. Environmental analyses are to be included in or circulated with and reviewed at the same time as other planning documents. This responsibility is to be carried out in accordance with the environmental review procedures contained herein.

The General Manager and Board of Directors are the major decision points within the Agency for TVA's principal programs that are likely to have a significant effect on the quality of the human environment. Alternatives considered by the General Manager and Board of Directors shall be encompassed by the range of alternatives discussed in relevant environmental documents, and the General Manager and Board of Directors shall consider the alternatives described in relevant EISs.

At the earliest possible time the office proposing to initiate an action will initially determine the level of environmental review required for a specific action. The level of review will be in one of the following categories:

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5.2 Categorical Exclusions

Categories of actions listed in this section are those which do not normally have, either individually or cumulatively, a significant impact on the quality of the human environment and require neither the preparation of an EA nor an EIS. The office proposing to initiate an action shall determine, in consultation with the Environmental Quality Staff as appropriate, whether or not the proposed action is categorically excluded. An action which would normally qualify as a categorical exclusion shall not be so classified if: (1) the proposed action could have a potentially significant impact on a

threatened or endangered species, wetland or floodplain, cultural or historical resource, important farmland, or other environmentally significant resource; or (2) substantial controversy over the significance of the environmental impacts associated with the proposed action has developed or is likely to develop. Categorical exclusion action are:

1. Routine operation, maintenance, and minor upgrading of existing TVA facilities.
2. Technical and planning assistance to State and local organizations.
3. Personnel actions.
4. Procurement activities.
5. Accounting, auditing, financial reports, and disbursement of funds.
6. Contracts or agreements for the sale, purchase, or interchange of electricity.
7. Activities related to the promotion and maintenance of employee health.
8. Activities of TBA's Equal Employment Opportunity staff.
9. Administrative actions consisting solely of paperwork.
10. Communication, transportation, computer service, and other office services.
11. Property protection, law enforcement, and other legal activities.
12. Emergency preparedness.
13. Preliminary planning, studies, or reviews consisting of only paperwork.
14. Exploration for uranium, including hydrologic investigations.
15. Preliminary onsite engineering and environmental studies for future power generating plants and other energy-related facilities.
16. Establishment of environmental quality monitoring programs and field monitoring stations.
17. Transmission line relocation, tap ins, or modifications or substation alterations due to conflicts such as new highway projects and projects requiring acquisition of minor amounts of additional substation property or transmission line right-of-way easements.
18. Construction and operation of communication facilities (i.e., powerline carrier, insulated overhead ground wire, VHF radio, and microwave).
19. Backslope agreements involving properties on which TVA holds an interest between operators and other adjacent mining companies.
20. Purchase, exchange, lease or sale, or lease purchase of stepdown facilities, transmission lines, and transmission line rights of way by distributors or customers directly served by TVA.
21. Minor research, development, and joint demonstration projects.

22. Construction of visitor reception centers.

23. Development of minor TVA public use areas and stream access points.

24. Minor non-TVA activities on TVA property authorized under contract or license, permit and covenant agreements, including utility crossings, encroachments, agricultural uses, rental of structures, and sale of miscellaneous structures and materials from TVA land.

25. Purchase, sale, abandonment or exchange of minor tracts of land, mineral rights, or landrights.

26. Approvals under Section 26a of the TVA Act of minor structures, boat docks, and shoreline facilities.

27. Any action which does not have a primary impact on the physical environment.

28. Actions which were the subject of an EA which concluded that the category of such actions should be treated as a categorical exclusion.

5.3 Environmental Assessments

5.3.1 Purpose and Scope

An EA will be prepared for any appropriate action not qualifying as a categorical exclusion to determine whether an EIS is necessary or a Finding of No Significant Impact should be reached. An EA is not necessary if it has been determined that an EIS will be prepared.

5.3.2 Public Participation in EA Preparation

The Environmental Quality Staff or the initiating office, in consultation with the Environmental Quality Staff, Citizen Action Office, and other interested offices, may request public involvement in the preparation of the EA or a revision or supplement thereof. The type of and format for public involvement would be selected as appropriate to best facilitate timely and meaningful public input to the EA process.

5.3.3 EA Preparation

The initiating office is responsible for the preparation of the EA. As soon as practical after the decision to prepare an EA is made, the initiation office in consultation with the Environmental Quality Staff shall determine the need for a coordination meeting to define (1) reasonable alternatives, (2) permit requirements, (3) coordination with other agencies, (4) environmental issues, and (5) a schedule for EA preparation.

The EA will include the identification and, as appropriate, discussion of questions and concerns raised during the public input period, if any. The EA will describe the proposed action and will include brief discussions of the

need for the proposed action, reasonable alternatives, the environmental impacts of the proposed action and alternatives, measures (if any) to minimize or mitigate such impacts, and a listing of the agencies and persons consulted. A list of required permits and environmental commitments will be circulated with the EA.

The EA will briefly provide sufficient data and analysis for determining whether to prepare an EIS or Finding of No Significant Impact. The EA will be reviewed by the Environmental Quality Staff and other interested offices. After completion of the review, the Environmental Quality Staff will, in consultation with the Office of the General Counsel, make one of the following determinations: (1) The action does not require the preparation of an EIS, (2) the action will require the preparation of an EIS, or (3) the EA is incomplete or the decision will be deferred until a later stage in the planning process. Measures (if any) to minimize or mitigate impacts committed to in the EA will be implemented as described in section 5.5 (Mitigation Commitment Identification, Auditing, and Reporting).

5.3.4 Finding of No Significant Impact

If it is concluded, based on an EA, that a proposed action does not require the preparation of an EIS, the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office, will prepare a Finding of No Significant Impact.

Appropriate notice of Findings of No Significant Impact shall be made available to the public by the Environmental Quality Staff.

In the following circumstances, the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office, will make a Finding of No Significant Impact available for public review and comment (including, if appropriate, State and regional A-95 clearinghouses or other designated State/local coordination points) for a period of time (normally 30 days) before a final determination is made as to whether or not to prepare an EIS and before the proposed action may begin:

1. The proposed action is, or is closely similar to, an action listed in section 5.4.1.

2. TVA has previously announced that the proposed action would be the subject of an EIS.

3. The nature of the proposed action is one without precedent.

5.3.5 Generic EAs

For any category of actions not described in section 5.2 (Categorical Exclusions), the initiating office may prepare a generic EA. The generic EA will be prepared, reviewed, and approved as would any other EA. Upon completion of review, the Environmental Quality Staff, in consultation with the Office of the General Counsel, will determine whether or not the category of actions may normally be treated as if listed in section 5.2 as a categorical exclusion.

5.3.6 Revisions and Supplements

If new information concerning action modifications, alternatives, or probable environmental effects becomes available, the initiating office, in consultation with the Environmental Quality Staff and the Office of the General Counsel, will consider preparing a revision or supplement to the EA based on the significance of the new information.

5.4 Environmental Impact Statements

5.4.1 Purpose and Scope

The following actions normally will require an environmental impact statement:

1. Large water resource development and water control projects.
2. Major power generating facilities.
3. Uranium mining and milling complexes.
4. Any major action, the environmental impact of which is expected to be highly controversial.
5. Any other major action which will have a significant effect on the quality of the human environment.

An EIS should include a description and an analysis of the proposed action; alternatives to the proposed action, including the no-action alternative; probable environmental impacts associated with the proposed action and measures (if any) to minimize impacts; and a list of the major preparers of the EIS. The scope and detail of the EIS should be reasonably related to the scope and the probable environmental impacts of the proposed action and alternative actions (see 40 CFR Parts 1502.10-1502.18).

5.4.2 Lead and Cooperating Agency Determinations

As soon as possible after the decision is made to prepare an EIS, the Environmental Quality Staff, in consultation with the initiating office and the Office of the General Counsel, shall consider requesting other Federal, State, or local agencies to participate in

the preparation of the EIS as lead, joint lead (see 40 CFR 1501.5), or cooperating agencies (see 40 CFR 1501.6). If TVA is requested to participate in the preparation of another Federal agency's EIS, the General Manager will determine if TVA will become a cooperating agency.

5.4.3 Scoping Process

As soon as possible after the decision to prepare an EIS is made, the initiating office will organize a scoping committee to tentatively identify action alternatives, probable environmental issues and environmental permits, and a schedule for EIS preparation. The scoping committee will consist of representatives of the Environmental Quality Staff, the initiating office, the Office of the General Counsel, Citizen Action Office, and other interested or affected offices.

The scoping process may include interagency scoping sessions to coordinate an action with and obtain inputs from other interested agencies, and public scoping sessions to obtain input from interested members of the general public. The scoping committee will determine the need, nature, and format for the various scoping sessions. Session type and format will be selected to facilitate timely and meaningful input into the EIS process.

As soon as practicable in the scoping process, the initiating office will prepare and the Environmental Quality Staff, in consultation with the Office of the General Counsel, will review and make available a Notice of Intent to Prepare an EIS. This notice will briefly describe the action, reasonable alternatives thereto, and potential environmental impacts associated with the action. In addition, those issues which have tentatively been determined to be insignificant and which will not be discussed in detail in the EIS may be identified. The scoping process will be described and, if a scoping meeting will be held, the notice should state where and when the meeting is to occur. The notice will identify the person in TVA who can supply additional information about the action and to whom comments should be sent. There will normally be a public input period of 30 days from the date of publication of the Notice of Intent in the *Federal Register* to allow other interested agencies and the public an opportunity to review the action alternatives and probable environmental issues identified by the scoping committee. On the basis of input received, the Environmental Quality Staff, in consultation with the scoping committee, may determine what, if any, additions or modifications in the scoping

process of schedule are required and establish the scope in the EIS.

At the close of the scoping process, the Environmental Quality Staff, in consultation with the scoping committee, will identify in writing the following EIS components:

1. Key action alternatives.
2. Significant environmental issues to be addressed in detail.
3. Probable nonsignificant environmental issues that should be mentioned but not addressed in detail.
4. Lead and cooperating agency assignments, if any.
5. Related environmental documents.
6. Other environmental review and consultation requirements.
7. Delegation of DEIS work assignments to interested offices.

5.4.4 DEIS Preparation

Based on information obtained and decisions made during the scoping process, the initiating office, in consultation with the Environmental Quality Staff and other interested offices, will prepare the preliminary DEIS using an appropriate format (see 40 CFR 1502.10). In addition, a list of required permits and an environmental commitment list will be prepared and circulated with the DEIS. The preliminary DEIS will be circulated by the initiating office to the Environmental Quality Staff, the Office of the General Counsel, and other interested offices for review and comment. All reviewing offices will, as soon as practical and normally within 30 days, supply comments on the preliminary DEIS to the initiating office, the Environmental Quality Staff, and the Office of the General Counsel. These comments will include lists of agencies, A-95 contacts or other State/local coordination points, and groups and individuals (both proponents and opponents, if any, of the proposed action) who should receive a copy of the DEIS. After the preliminary DEIS is revised, the initiating office will transmit it to other interested offices for their final approval. The Environmental Quality Staff will, in consultation with the Office of the General Counsel, review the document and transmit it and the commitment list to the General Manager for approval.

5.4.5 DEIS Transmittal and Review

Upon notification of approval from the General Manager, TVA will transmit the DEIS and appropriate notices to the Environmental Protection Agency (EPA) and other interested Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points). The Citizen Action Office will coordinate

overall DEIS distribution and will maintain a master list of those to whom the DEIS is sent. The length of the DEIS public comment period, normally no less than 45 days from publication of the notice of availability in the *Federal Register*, will be determined by the scoping committee. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

At any time in the DEIS process the initiating office, in consultation with Environmental Quality Staff, the Citizen Action Office, and other interested offices, may provide for additional public involvement to supplement EIS preparation. The type of and format for public involvement will be selected as appropriate to best facilitate timely and meaningful public input into the EIS process.

5.4.6 FEIS Preparation

At the close of the DEIS public review period, the Environmental Quality Staff will, in consultation with the initiating office and other interested offices, determine what is needed for the preparation of an FEIS. If the requisite changes in the DEIS are limited to making minor factual corrections and explaining why the comments received do not warrant further response, an errata sheet containing only DEIS comments, responses, and factual corrections in the DEIS may be prepared by the initiating office. If other more extensive modifications are required, the initiating office will, in consultation with the Environmental Quality Staff and other interested offices, prepare a preliminary FEIS utilizing an appropriate format (see 40 CFR 1502.10). The errata sheet or preliminary FEIS will be prepared and circulated by the initiating office to the Environmental Quality Staff, Office of the General Counsel, and other interested offices for review and comment. All reviewing offices will supply written comments concerning the errata sheet or preliminary FEIS to the initiating office with copies to the Environmental Quality Staff and Office of the General Counsel.

The initiating office, with the assistance of the Environmental Quality Staff, will review all comments received and modify, as appropriate, the errata sheet or the preliminary FEIS. After the errata sheet or preliminary FEIS is revised, the initiating office will transmit it to other interested offices for their

final approval. The Environmental Quality Staff will, in consultation with the Office of the General Counsel, review the document and transmit it to the General Manager for approval along with a list of environmental commitments made in the EIS. Measures (if any) to minimize or mitigate impacts committed to in the FEIS will be identified and implemented as described in section 5.5 (Mitigation Commitment Identification, Auditing, and Reporting).

5.4.7 FEIS Transmittal

Upon notification of approval from the General Manager, TVA will transmit the FEIS and appropriate notices to EPA and other Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points) to whom copies of the DEIS were sent. The FEIS will also be sent to every person and organization to whom copies of the DEIS were sent or from whom comments were received.

5.4.8 Commencement of Action

Except in emergency circumstances, an action for which an EIS has been approved will not commence until 30 days after notice of availability of the final statement has been published in the *Federal Register* or 90 days after a notice of availability of the DEIS has been published in the *Federal Register*, whichever is later.

5.4.9 Record of Decision

After release of the FEIS, a Record of Decision shall be prepared for the General Manager by the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office. The record will normally include the following: (1) What the decision was; (2) what alternatives were considered; (3) which alternative(s) was considered to be environmentally preferable; (4) the alternatives' associated environmental considerations (which may include a discussion of measures to be taken to mitigate or minimize adverse environmental impacts (see 40 CFR 1505.2); and (5) what monitoring, reporting, and administrative arrangements have been made (see 40 CFR 1505.2). Records of decision will be made available to the public.

5.4.10 Revisions and Supplements

If significant new information concerning action modifications, alternatives, or probable environmental effects becomes available, TVA will make such information available to the public. The initiating office shall consider preparing a revision or a supplement to the EIS. The

Environmental Quality Staff will, in consultation with the initiating office, Office of the General Counsel, Citizen Action Office, and other interested offices, determine the method of making such information available to the public.

5.4.11 EIS Adoption

TVA may adopt as its final EIS another EIS or any portion thereof whether or not TVA participated in its preparation. The Environmental Quality Staff and the Office of the General Counsel, in consultation with the initiating office, will determine if the EIS proposed for adoption adequately assesses the TVA action and is still generally available to the public.

If it is determined that the EIS proposed for adoption or the relevant portion thereof is adequate and still available, TVA will circulate its written finding of this determination and advise that copies of the EIS will be sent to any person or agency requesting it. If the EIS is not available, TVA will then circulate, along with its written finding, the adopted EIS (or relevant portion) or a summary thereof (see 40 CFR 1502.12).

If the EIS is generally available and TVA determines that significant supplementary information is needed, TVA will prepare and circulate a supplement to the EIS and advise that copies of the adopted EIS will be sent to any person or agency requesting it. If the EIS is not generally available, TVA will circulate its supplement along with either the adopted EIS or a summary thereof (see 40 CFR 1502.12). The above findings or documents shall be approved and circulated in accordance with section 5.4.5. or 5.4.7, as appropriate.

5.5 Mitigation Commitment Identification, Auditing and Reporting

All significant measures planned to minimize or mitigate expected environmental impacts shall be identified in the EA or EIS (or, as appropriate, in a memorandum documenting the Environmental Quality Staff's determination or concurrence that a proposed action is a categorical exclusion) and compiled in a commitment list. The commitment list will include, to the extent practicable, the estimated cost of each commitment. The commitment list is prepared for both the draft and final EA or EIS and should be developed in cooperation with the Environmental Quality Staff and all interested offices.

Each such commitment in the commitment list will be tentatively assigned by the initiating office of the appropriate responsible office and such assignments shall be transmitted to the Environmental Quality Staff and

affected offices at the time the draft EA or EIS is sent out for review. The initiating office should consult with the assigned offices to resolve assignment conflicts, identify supporting offices, and determine commitment schedules. Prior to finalization of the commitment list, the initiating office shall obtain Environmental Quality Staff concurrence that commitments can be monitored for compliance. At the time of finalizing the EA or EIS, the initiating office shall submit to the Environmental Quality Staff a finalized commitment list.

The initiating office shall report, periodically and upon request to the Environmental Quality Staff the status of a commitment. The Environmental Quality Staff will ensure that commitments are met and will, as it deems appropriate, audit commitment progress. Circumstances may arise which warrant modifying or deleting previously made commitments. When such circumstances occur, the office desiring the change shall submit to the Environmental Quality Staff and the initiating office a request which shall include the basis for changing or deleting the commitment and an evaluation of the environmental significance of the requested change. The decision to modify or delete the commitment will be made by the Environmental Quality Staff in consultation with the Office of the General Counsel and the initiating office.

5.6 Emergency Action

Because of unforeseen situations or emergencies, or through inadvertence, or for other reasons, some of the steps outlined in these procedures may be consolidated, modified, or omitted. The Environmental Quality Staff and the Office of the General Counsel shall be promptly notified and asked to approve any such consolidation, modification, or omission, and may do so if such change would conform to legal requirements and substantially comply with the intent of these procedures. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will consult with CEQ when appropriate before such changes are approved.

5.7 Floodplains and Wetlands

5.7.1 Purpose and Scope

Consistent with Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands), and TVA Code IX Floodplain Management and Protection of Wetlands, the review of a proposed action undertaken in

accordance with sections 5.2, 5.3, or 5.4 of these procedures that potentially may affect floodplains or wetlands shall include a floodplain or wetlands evaluation as required by this section. A wetland evaluation is not required for (1) the issuance of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal lands; (2) projects or programs under construction or in operation as of May 24, 1977; (3) projects for which all funds were appropriated through June 1977; or (4) projects for which a draft or final EIS was filed before October 1, 1977. Moreover, no reevaluation of floodplain or wetland impacts is required for projects, programs, and policies approved by TVA before July 23, 1979.

5.7.2 Evaluation Process

5.7.2.1 Area of Impact

If a proposed action will potentially occur in or affect wetlands or floodplains, the initiating office, as soon as practicable in the planning process, will request the Office of Natural Resources to determine whether the proposed action will occur in or affect a wetland or floodplain and the level of impact, if any, on the wetland or floodplain. If the Office of Natural Resources determines that the proposed action (1) is outside the floodplain or wetland, (2) has no identifiable impacts on a floodplain or wetland, and (3) does not directly or indirectly support floodplain development or wetland alteration, further floodplain or wetland evaluation shall be unnecessary.

5.7.2.2 Actions That Will Affect Floodplains or Wetlands

When a proposed action can otherwise be categorically excluded under section 5.2, no additional floodplain or wetland evaluation is required if (1) the initiating office determines that there is no practicable alternative that will avoid affecting floodplains or wetlands and that all practical measures to minimize impacts to floodplains or wetlands are incorporated, and (2) the Office of Natural Resources determines that impacts on the floodplain or wetland would be minor.

If the action requires an EA or an EIS, the ensuing evaluation shall consider (1) the effect of the proposed action on natural and beneficial floodplain and wetland values, and (2) alternatives that would eliminate or minimize such effects. The initiating office shall determine if there is no practicable alternative to siting in a floodplain or constructing in a wetland. If the

Environmental Quality Staff in consultation with the Office of the General Counsel concurs, this determination shall be final. If a determination of no practicable alternative is made, all practical measures to minimize impacts on the floodplain or wetland shall be implemented.

If at any time prior to commencement of the action it is determined that there is a practicable alternative that will avoid affecting floodplains or wetlands, the proposed action shall not proceed.

5.7.2.3 Public Notice

Public notice of actions affecting floodplains or wetlands is not required if the action is categorically excluded under section 5.2. If an EA or EIS is prepared and a determination of no practicable alternative is made in accordance with section 5.7.2.2, the initiating office shall notify the public of a proposed action's potential impact on the floodplain or wetland.

Public notice of actions affecting floodplains or wetlands may be combined with any notice published by TVA or another Federal agency if such a notice generally meets the minimum requirements set forth in this section. Issuance of a draft or final EA or EIS for public review and comment will satisfy this notice requirement.

Public notices shall at a minimum (1) briefly describe the proposed action and the potential impact on the floodplain or wetland; (2) briefly identify alternative actions considered and explain why a determination of no practicable alternative has been proposed; (3) briefly discuss measures that would be taken to minimize or mitigate floodplain or wetland impacts; (4) state when appropriate whether the action conforms to applicable State or local floodplain protection standards; (5) specify a reasonable period of time within which the public can comment on the proposal; and (6) identify the TVA official who can provide additional information on the proposed action and to whom comments should be sent.

Such notices shall be issued in a manner designed to bring the proposed action to the attention of those members of the public likely to be interested in or affected by the action's potential impact on the floodplain or wetland. The initiating office, in consultation with the Environmental Quality Staff and the Citizen Action Office, shall determine the manner in which the notice will be made available to the public. Typical ways of providing public notice include direct mailing, posting in appropriate places in the vicinity of the proposed action, publication in the Federal

Register, or publication in newspapers of general circulation in the area of the proposed action. If a floodplain public notice is required, a copy of such notice shall be included in information sent to State and regional clearinghouses for those actions subject to Office of Management and Budget Circular A-95 or other State/local coordination points.

TVA shall consider all relevant comments received in response to a notice and shall reevaluate the action as appropriate to take such comments into consideration. The Environmental Quality Staff, in consultation with the initiating office, shall determine if response is necessary and the initiating office, in coordination with other interested offices, shall prepare comment responses. The Environmental Quality Staff, in consultation with the Office of the General Counsel, shall approve all comment responses before release.

A proposed action may not be implemented before publication of any required public notice and appropriate consideration of any relevant comments received in a timely manner.

5.7.2.4 Disposition of Real Property

When TVA property in a floodplain or wetland is proposed for lease, easement, license, right of way, or disposal to non-Federal public or private parties and the action will not result in disturbance of the floodplain or wetland, floodplain or wetland evaluation is not required. The conveyance document, however, shall specify:

1. Applicable restricted uses under Federal, State, or local floodplain and wetland regulations.

2. Other appropriate restrictions to minimize destruction, loss, or degradation of floodplains and wetlands and to preserve and enhance their natural and beneficial values, except when prohibited by law or unenforceable by TVA or, otherwise, the property shall otherwise be withheld from conveyance or use.

If the disposition of TVA property rights in a floodplain or wetland potentially will result in disturbance to the floodplain or wetland, the proposed action shall be reviewed in accordance with sections 5.7.2.1-5.7.2.3.

5.8 Miscellaneous Procedures

5.8.1 Proposals for Legislation

Proposals for congressional legislation significantly affecting the quality of the human environment will require the preparation of an EIS (see 40 CFR 1506.8).

5.8.2. Private Applicants

In those cases when private applicants or other non-Federal entities propose to undertake an action that will require TVA's approval or involvement and fall within the scope of these procedures, the contacted office will as soon as possible notify the Environmental Quality Staff. Each office will maintain information to advise potential applicants of studies or other data that may be required in connection with applications and will take reasonable steps to publicize accessibility of such information. The office charged with initiating action, upon the applicant's request, will in consultation with the Environmental Quality Staff when practicable advise the applicant of the information or studies (including the preparation of environmental documents, if necessary) that will be required in order to fulfill its responsibilities hereunder. The applicant must provide TVA sufficient information to allow an accurate determination of the environmental impacts of the proposed action. TVA may require that this information be submitted in the form of a written environmental report. If TVA is required to make investigations or otherwise incur additional expenses, the applicant may be charged for TVA's service. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will also determine the need to consult early with appropriate Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points); Indian tribes; and other interested persons regarding TVA's involvement in or approval of the applicant's proposed action and, where appropriate, should commence such consultation at the earliest practicable time.

5.8.3. Non-TVA EISs

The Environmental Quality Staff, in consultation with other interested offices, will coordinate the review of EISs provided to TVA for review by other Federal agencies. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will prepare comments on such EISs and transmit any TVA

comments to the initiating agency (see 40 CFR 1503.2-1503.3).

5.8.4 Supplemental Instruction

The Environmental Quality Staff, in consultation with interested offices and with concurrence of the Office of the General Counsel, may issue supplemental or explanatory instructions to these procedures.

5.8.5 Modifications of These Procedures

The assignments to offices in these procedures can be modified by agreement of the offices involved or by instructions from the General Manager.

5.8.6 Tiering

An initiating office may consider tiering the environmental review of a proposed action. Tiering involves coverage of general matters in broader environmental documents and subsequent narrower analyses need only incorporate by reference the broader analyses (see 40 CFR 1508.28).

5.8.7 Combining Documents

Any environmental document may be combined with any other document to reduce duplication and paperwork.

5.8.8 Applicability to Ongoing Actions

These procedures shall not apply to those actions which have been approved under applicable procedures prior to the effective date of these procedures or for which an EA or a DEIS has already been prepared. No environmental documents need be redone by reason of the adoption of these revised procedures.

5.8.9 Consolidation of Reviews

Review of proposed actions under these procedures may be consolidated with other reviews where such consolidation would reduce duplication or increase efficiency.

5.8.10 Documents

The Environmental Quality Staff shall keep on file all final and approved environmental documents.

5.8.11 Substantial Compliance

Minor deviations from these procedures will be permitted, but in all respects substantial compliance must be achieved. Flexibility is the key to

implementing these procedures and reviewing proposed actions.

5.8.12 Reducing Paperwork and Delay

These procedures are to be interpreted and applied with the aim of reducing paperwork and the delay associated with both assessment and implementation of a proposed action. In this regard, data and analyses shall be commensurate with the importance of associated impacts. Less important material should be summarized, consolidated, or referenced.

5.8.13 Office Responsible for NEPA Compliance Efforts

The Director of the Environmental Quality Staff is designated as that person responsible for overall NEPA compliance.

5.8.14 Status Reports

Information or status reports on EISs and other related NEPA compliance activities and documents may be obtained by writing to the Director of Environmental Quality, Tennessee Valley Authority, Knoxville, Tennessee 37902.

5.8.15 Public Participation

TVA's policy is to encourage public participation in all of its decisionmaking. This policy is implemented through various mechanisms. TVA has open meetings of the Board of Directors. These Board meetings are widely publicized and include a question and answer session between the public and Board of Directors. TVA has established a Citizen Action Office whose responsibility is to maximize to the extent practicable the interchange of ideas between TVA and the public in the full range of TVA activities. In addition, TVA has set up a "Citizen Action Line" which allows members of the public to call in on toll-free lines to ask questions and make suggestions or comments to TVA. In line with TVA's broad policies, TVA intends to encourage and actively seek public participation in its NEPA review process. The type of and format for public participation will be selected as appropriate to best facilitate timely and meaningful public input into the review process.

[FR Doc. 82-33051 Filed 12-2-82; 8:45 am]

BILLING CODE 8120-01-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 233

Friday, December 3, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, December 7, 1982, 9:30 a.m. (eastern time).

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. Report on Commission Operations (Optional).
3. Proposed Contract for Computer Communications Services.
4. Freedom of Information Act Appeal No. 82-9-FOIA-178, concerning a request for comments submitted by federal agencies on federal sector discrimination complaint process.
5. Freedom of Information Act Appeal No. 82-10-FOIA-90-ME, concerning a request for information from an open Title VII investigative file.
6. Freedom of Information Act Appeal No. 82-08-FOIA-66-CH, concerning a request for documents contained in a closed Title VII case file.
7. Freedom of Information Act Appeal No. 82-10-FOIA-135-MK, concerning a request for investigator's memorandum contained in a case file.
8. Freedom of Information Act Appeal No. 82-7-FOIA-105-NY, concerning a request for documents from an age discrimination case file.
9. Freedom of Information Act Appeal No. 82-9-FOIA-201, concerning a request for Sears Personnel Manual.
10. Freedom of Information Act Appeal No. 82-10-FOIA-203, regarding a request for documents denied on a proposed DOL regulation.
11. Joint Department of Justice-EEOC Regulation, "Procedures for Complaints of Employment Discrimination Filed Against

Recipients of Federal Financial Assistance." (Title VI/Title VII Rule)

12. Annual Report on Coordination of Federal Agency Equal Employment Opportunity Programs, July 1, through June 30, 1982.

Note.—In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE

INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued November 30, 1982.

[S-1750-82 Filed 12-1-82; 10:45 am]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, November 29, 1982, the corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. William E. Martin, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of The National Bank and Trust Company of Norwich, Norwich, New York, and The National Bank of Oxford, Oxford, New York.

By the same majority vote, the Board further determined that Corporation business required, on less than seven days' notice to the public, the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of United Mutual Savings Bank, Tacoma, Washington, for consent to

transfer certain assets to Island Savings and Loan Association, Oak Harbor, Washington, a non-FDIC-insured institution, in consideration of the assumption of liabilities for the deposits made in the Port Angeles Branch of United Mutual Savings Bank.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552 b(c)(6), (c)(8) and (c)(9)(A)(ii)).

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Bank of Tallahassee, Tallahassee, Alabama, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Eclectic, Eclectic, Alabama, and to establish the sole office of Bank of Eclectic as a branch of the resultant bank.

Application of People's Savings Bank—Bridgeport, Bridgeport, Connecticut, an insured mutual savings bank, for consent to merge, under its charter and title, with National Savings Bank, New Haven, Connecticut, and to establish the five offices of National Savings Bank as branches of the resultant bank.

Application of Florida Coast Bank, Pompano Beach, Florida, an insured State nonmember bank, for consent to merge, under its charter and title, with Deer Creek Bank, Deerfield Beach, Florida, and to establish the two offices of Deer Creek Bank as branches of the resultant bank.

Application of South Norwalk Savings Bank, South Norwalk, Connecticut, for consent to purchase the assets of and assume the liability to pay deposits made in two branch offices of The Connecticut Bank and Trust Company, Hartford, Connecticut, and in three branch offices of The State National Bank of Connecticut, Bridgeport, Connecticut, and to establish those five offices as branches of South Norwalk Savings Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,502-L (Amended)—Banco Economias, San German, Puerto Rico

Case No. 45,507-L—Aquia Bank and Trust Company, Stafford, Virginia
 Memorandum re: Purchase of additional space in the Ecker Square Office Condominium, San Francisco, California.
 Memorandum re: Division of Liquidation regional office space in Atlanta.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 30, 1982.
 Federal Deposit Insurance Corporation.
 Hoyle L. Robinson,
Executive Secretary.

[S-1751-82 Filed 12-1-82; 11:22 am]
 BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 29, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. William E. Martin, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of United Central Bank & Trust Company of Algona, Algona, Iowa, for consent to purchase the assets of and assume the liability to pay deposits made in Bode State Bank, Bode, Iowa, and Exchange State Bank, Wesley, Iowa, and for consent to establish the sole offices of Bode State Bank and Exchange State Bank as branches of United Central Bank & Trust Company of Algona.

Notices of acquisition of control of three insured State nonmember banks (names and locations of banks and names of

acquiring parties authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).
 Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,508-L—Security Bank and Trust Company, Cairo, Illinois

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 30, 1982.
 Federal Deposit Insurance Corporation.
 Hoyle L. Robinson,
Executive Secretary.

[S-1752-82 Filed 12-1-82; 11:22 am]
 BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 52844, Tuesday, November 23, 1982.

PLACE: Board Room, Sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled Wednesday, December 1, 1982:

Supervisory Merger of—Guaranty Trust Savings and Loan Association, Memphis, Tennessee, INTO Home Federal Savings and Loan Association, of Memphis, Memphis, Tennessee

[No. 83, December 1, 1982]
 [S-1746-82 Filed 12-1-82; 10:32 am]
 BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 52844, Tuesday, November 23, 1982.

PLACE: Board Room, Sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled Wednesday, December 1, 1982, has been cancelled.

[No. 84, December 1, 1982]
 [S-1749-82 Filed 12-1-82; 10:33 am]
 BILLING CODE 6720-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-53]

TIME AND DATE: 2:30 p.m., Wednesday, December 15, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701-TA-176/178 (Stainless Steel Bar and Wire Rod from Spain)—briefing and vote.
6. Investigation 337-TA-112 (Certain Cube Puzzles)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1753-82 Filed 12-1-82; 2:31 pm]
 BILLING CODE 7020-02-M

Environmental Protection Agency

Friday
December 3, 1982

Part II

Environmental Protection Agency

Ore Mining and Dressing Point Source
Category Effluent Limitations Guidelines
and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[WH-FRL 2232-1]

Ore Mining and Dressing Point Source Category Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation limits the discharge of pollutants into navigable waters of the United States from existing and new sources in the ore mining and dressing industry. The Clean Water Act and a Consent Decree require EPA to issue this regulation.

The purpose of this regulation is to establish "best available technology" limitations (BAT) and "new source performance standards" (NSPS) for direct dischargers. Pretreatment standards for both existing and new sources are not being issued since no known indirect dischargers exist nor are any known to be planned. Effluent limitations for "best conventional technology" (BCT) are reserved pending application of the new BCT cost methodology.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation will be considered issued for purposes of judicial review at 1:00 P.M. Eastern time on December 17, 1982. It will become effective January 17, 1983 publication date, except § 440.104(b)(2)(ii) which contains information collection requirements which are under review at OMB.

Under Section 509(b)(1) of the Clean Water Act, any petition for judicial review of this regulation must be filed in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce its requirements.

ADDRESS. Technical information may be obtained from Mr. B. Matthew Jarrett, at the address listed below, or by calling (202) 382-7164. The economic information may be obtained from Mr. John Kukulka, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, or by calling (202) 382-5388.

On December 24, 1982, copies of the development document and the NSPS

economic analysis will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street SW., Washington, D.C. On February 7, 1983, the complete Record, including the Agency's responses to comments on the proposed regulation will be available for review at the Public Information Reference Unit. The EPA information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying. Copies of the development document and the economic analysis may also be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703) 487-6000. A notice will be published in the *Federal Register* announcing the availability of these documents from NTIS. (This should occur within 60 days of today's date.)

SUPPLEMENTARY INFORMATION:

Organization of this Notice

- I. Legal Authority
- II. Scope of This Rulemaking
 - A. Overview
 - B. Prior EPA Regulations
 - C. Description of This Regulation
- III. Summary of Legal Background
 - A. The Clean Water Act
 1. Best Practicable Control Technology Currently Available (BPT)
 2. Best Available Technology Economically Achievable (BAT)
 3. Best Conventional Pollutant Control Technology (BCT)
 4. New Source Performance Standards (NSPS)
 5. Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS)
- IV. Methodology and Data Gathering Efforts
- V. Summary of Promulgated Regulation and Changes From Proposal
 - A. Subcategorization
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 1. Froth Flotation Mills
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- VIII. Pollutants and Subcategories Not Regulated
 - A. Exclusion of Pollutants
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- IX. Best Management Practices
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- XII. Relationship to NPDES Permits
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- XIV. Small Business Administration (SBA) Financial Assistance
- XV. List of Subjects in 40 CFR 440
- XVI. Availability of Technical Assistance

XVII. OMB Review Appendices

- A. Abbreviations, Acronyms, and Units Used in This Notice
- B. Toxic Organic Compounds Not Detected During Sampling
- C. Toxic Organic Compounds Detected at at Least One Facility But Always 10 ug/1 or Less
- D. Toxics Detected at Levels Too Small To Be Effectively Reduced by Technologies Known to the Administrator
- E. Toxic Organic Compounds Detected From a Small Number of Sources and Uniquely Related to These Sources
- F. Pollutants Effectively Controlled by the Technology Upon Which Other Effluent Limitations and Guidelines Are Based
- G. Pollutants Excluded by Subcategory and Subpart
- H. Subcategories Excluded From Development of BAT or NSPS

I. Legal Authority

The regulations described in this notice are promulgated under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq., as amended by the Clean Water Act of 1977, P.L. 95-217) (the "Act"). These regulations are also promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc., v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

II. Scope of This Rulemaking

A. Overview. This regulation applies to facilities engaged in mining and processing of metal ores. The industry includes facilities which mine or process the ores of 23 separate metals and is segregated by the U.S. Bureau of the Census Standard Industrial Classification (SIC) into nine major codes: SIC 1011, Iron Ore; SIC 1021, Copper Ores; SIC 1031, Lead and Zinc Ores; SIC 1041, Gold Ores; SIC 1044, Silver Ores; SIC 1051, Aluminum Ore; SIC 1061, Ferroalloy Ores including Tungsten, Nickel, and Molybdenum; SIC 1092 Mercury Ores; SIC 1094 Uranium, Radium, and Vanadium Ores; and SIC 1099 Metal Ores, Not Elsewhere Classified including Titanium and Antimony.

Over 500 active mining and over 150 milling operations are located in the United States and most are in remote areas.

The industry includes facilities that mine ores to produce metallic products and all ore dressing and beneficiating operations at mills operated either in conjunction with a mine operation or at a separate location. A detailed overview of the ore mining industry can be found in the proposed regulation (47 FR 25682).

B. Prior EPA Regulations. On November 6, 1975, EPA published interim final regulations establishing BPT requirements for existing sources in the ore mining and dressing industry (see 40 FR 51722). These regulations became effective upon publication. However, concurrent with their publication, EPA solicited public comments with a view to possible revisions. On the same date, EPA published proposed BAT, NSPS, and pretreatment standards for this industry (see 40 FR 51738). Comments were also solicited on these proposals.

On May 24, 1976, as a result of the public comments received, EPA suspended certain portions of the interim final BPT regulations and solicited additional comments (see 41 FR 21191). EPA promulgated revised, final BPT regulations for the ore mining and dressing industry on July 11, 1978, (see 43 FR 29711, 40 CFR Part 440). On February 8, 1979, EPA published a clarification of the BPT regulations as they apply to storm runoff (see 44 FR 7953). On March 1, 1979, the Agency amended the final BPT regulations by deleting the requirements for cyanide applicable to froth flotation mills in the base and precious metals subcategory (see 44 FR 11546).

On December 10, 1979, the United States Court of Appeals for the Tenth Circuit upheld the BPT regulations, rejecting challenges brought by five industrial petitioners. *Kennecott Copper Corp. v. EPA*, 612 F. 2d 1232 (10th Cir. 1979).

The Agency withdrew the proposed BAT, NSPS, and pretreatment standards on March 19, 1981 (see 46 FR 17567). On June 14, 1982 the Agency proposed the BAT, BCT, and NSPS limitations and standards which are the subject of this rulemaking.

C. Description of This Regulation. As a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a list of toxic substances. Therefore, in this rulemaking, EPA efforts are primarily directed toward ensuring the achievement of limitations based upon the best available technology economically achievable (BAT) by July 1, 1984.

The BPT effluent limitations are included as part of this regulation for the convenience of the reader. Since there are no substantive changes in the BPT effluent limitations as sustained by the 10th Circuit, the BPT effluent limitations are not subject to further judicial review.

BAT limitations are established for seven subcategories in the ore mining and dressing point source category. The

BAT effluent limitations are being promulgated as they were proposed on June 14, 1982 (47 FR 25682). The technology basis for BAT is discussed in the proposed regulation and is discussed in greater detail in the development document supporting the proposed regulation and in the development document supporting this final regulation.

BCT effluent limitations are not being promulgated in this rulemaking. As discussed further in Section V, Changes from Proposal, BCT for this point source category is instead being included as part of the proposed regulation on the new BCT cost methodology. (47 FR 49176, October 29, 1982).

NSPS are established for seven subcategories. A NSPS for froth flotation mills extracting copper, lead, zinc, gold, silver, or molybdenum was proposed as zero discharge, but the standard is being amended to allow for a bleed in the mill circuit. Also, the upset and bypass storm provision for new sources requiring zero discharge is being changed and made identical to the provision for existing sources. All other standards of performance and general provisions are established essentially as proposed. This is discussed further in Section V, Changes from Proposal.

Finally, this regulation does not establish pretreatment standards because, as discussed in the proposed regulation, the Agency knows of no existing facilities which discharge to publicly owned treatment works and does not expect that any new sources will do so.

III. Summary of Legal Background

A. The Clean Water Act. The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was required to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines and pretreatment standards for 65 "priority" pollutants and classes of pollutants, for 21 major industries.

[See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979)].

Many of the basic elements of this Settlement Agreement were incorporated into the Clean Air Water Act of 1977 ("the Act"). Like the Settlement Agreement, the Act stressed control of the 65 classes of toxic pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMP) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage associated with, or ancillary to, the manufacturing of treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the proposed regulation and development document. The following is a brief summary:

1. Best Practicable Control Technology Currently Available (BPT). BPT limitations generally are based on the average of the best existing performance at plants of various sizes, ages and unit processes within the industry or subcategory. In establishing BPT limitations, we consider the total control of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes and the nonwater-quality environmental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. Best Available Technology Economically Achievable (BAT). BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction and nonwater-quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT). The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best

conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biological oxygen demanding pollutants (e.g., BOD5) total suspended solids (TSS), fecal coliform and pH] and any additional pollutants defined by the Administrator as "conventional," i.e., oil and grease. (See 44 FR 44551: July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F. 2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the cost of publicly owned treatment works (POTWs) for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

EPA recently proposed a new methodology on October 29, 1982 and simultaneously proposed BCT limitations for ore mining and dressing. (47 FR 49176).

4. *New Source Performance Standards (NSPS)*. NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS)*. Pretreatment standards (PSES and PSNS) are designed to control the discharge of pollutants into publicly owned treatment works. Pretreatment standards were not proposed for the ore mining and dressing category since no known indirect dischargers exist nor are any known to be planned. Ore mines are located in rural areas, generally far from a POTW. EPA expects that the cost of pumping mine and mill wastewater to a POTW would be prohibitive in most

cases, and on-site treatment is more cost effective in virtually every instance.

IV. Methodology and Data Gathering Efforts.

The methodology and data gathering efforts used in developing the proposed regulation were discussed in the preamble to the proposal, 47 FR 25682 (June 14, 1982). In summary, before publishing the proposed regulation the Agency conducted a data collection, analytical screening, and analytical verification program for the ore mining and dressing industry. This program stressed the acquisition of data on the presence and treatability of the 65 toxic pollutants and classes of toxic pollutants discussed previously. The 65 toxic pollutants and classes of pollutants potentially include thousands of specific pollutants. EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. (Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (U.S. EPA, April 1977)). Based on the results of that program, EPA identified several distinct treatment technologies, including both end-of-pipe and in-plant technologies, that are or can be used to treat ore mining and dressing industry wastewaters.

For each of these technologies, the Agency (i) compiled and analyzed historical and newly-generated data on effluent quality, (ii) identified its reliabilities and constraints, (iii) considered the nonwater quality impacts (including impacts on air quality, solid waste generation and energy requirements), and (iv) estimated the costs and economic impacts of applying it as a treatment and control system. Costs and economic impacts of the technology options considered are discussed in detail in two separate documents, *The Economic Impact Analysis of Promulgated New Source Performance Standards for the Ore Mining and Dressing Industry* and *The Economic Impact Analysis of Promulgated BAT Effluent Limitations and Standards for the Ore Mining and Dressing Industry*. A more complete description of the Agency's study methodology, data gathering efforts and analytical procedures supporting the regulation can be found in the *Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category* (U.S. EPA, November 1982).

V. Summary of Promulgated Regulation and Changes From Proposal

The final regulation does not change the proposed BAT regulations but does change the standards for new sources. The changes are the result of the Agency's consideration of public comments provided in response to the proposal and further evaluation of the information upon which the proposal was based.

A. *Subcategorization*. The proposed subcategorization scheme was similar to the subcategorization scheme found in the 1978 BPT regulations. That scheme subcategorizes the industry primarily on the basis of ore type. Each subcategory is further subdivided on the basis of whether the discharge is from a mine or a mill and, in some cases, according to the type of beneficiation process employed. In these final regulations the Agency is retaining the proposed subcategorization scheme with a few modifications resulting from comments received on the proposed regulation.

The 1978 BPT regulations contained a Ferrous Alloy Ores subcategory that addressed discharges from facilities mining or milling chromium, cobalt, columbium, tantalum, manganese, molybdenum, nickel, tungsten, and vanadium (recovered alone, rather than as a by-product of uranium mining or milling). The BPT regulations also contained a Base and Precious Metal Ores subcategory that addressed the discharges from facilities mining or milling copper, lead, zinc, gold, or silver. Prior to proposing the BAT and NSPS regulations, EPA found that the wastewater discharges from molybdenum mines and mills were more like the discharges from facilities in the Base and Precious Metals Ores subcategory than the discharges from the Ferrous Alloy subcategory. Consequently the proposed BAT and NSPS regulations placed molybdenum mines and mills into the Base and Precious metals subcategory, which was renamed the Copper, Lead, Zinc, Gold, Silver, Platinum and Molybdenum Ores subcategory. The proposal also eliminated the Ferrous Alloy subcategory and replaced it with the Nickel Ores subcategory, the Tungsten Ores subcategory, and the Vanadium Ores subcategory (recovered alone, not as a by-product of uranium mining and milling). For clarification, however, the proposal retained the old subcategorization scheme for the BPT limitations.

From the comments received, it is apparent that retention of the old BPT subcategorization scheme for the BPT

limitations has only confused, rather than clarified matters. The commenters suggested that, to eliminate this confusion, the Agency should use an identical subcategorization scheme for all the limitations and standards.

Accordingly, in this final regulation, the Agency is eliminating a separate subcategorization scheme for the BPT limitations, and is, instead, using the same scheme for all the BPT, BAT, and NSPS limitations. This change is solely for the purpose of clarification and will not alter in any way the actual numerical limitations which apply to facilities covered by the BPT regulations.

One additional modification to the subcategorization scheme is being made. The Agency is taking platinum ore out of the new Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores subcategory and establishing a new subcategory for these mines and mills. The Agency received comments that a new platinum mine and mill is being considered that will be substantially different than the existing mines and mills upon which the Agency based best demonstrated technology. The Agency is, therefore, establishing a new subcategory addressing platinum ore mines and mills and is reserving the new source performance standard.

B. Applicability. As discussed in the proposal, the Ore Mining and Dressing effluent guidelines limitations and standards are applicable to facilities discharging wastewater from ore mining and milling operations. They do not, however, provide a complete basis for calculating the limitations of operations known as "complex facilities," which combine wastestreams from processes such as refining and smelting with ore mining and milling wastestreams and then treat this combined stream before discharge. Each facility will be given effluent limitations that are derived from the BAT mine and mill guidelines and the smelter and refining guidelines and other applicable guidelines.

The Agency received voluminous comments from developers of a molybdenum mine and mill in southeastern Alaska. The developers argued that the mill differs substantially from the existing molybdenum mills upon which the Agency based the proposed NSPS. Specifically, they argue that precipitation is greater than at other facilities and that the terrain is unusually steep, necessitating the construction of a dam much larger than tailings impoundments at existing facilities. They further argue that since the mine and mill are located in the environmentally sensitive Misty Fjords

National Monument, construction of a massive tailings impoundment may result in greater long term environmental degradation than at existing facilities. In a related vein, they point out that the mine and mill are being developed in accordance with the dictates of the Alaska National Interest Lands Conservation Act (ANILCA), which requires an intensive study of the overall environmental impact of the mine and mill before construction begins. Finally, they note that the mine and mill are in an earthquake area, and that construction of a large tailings dam raises concerns for safety of the population below the dam.

The Agency disagrees with the commenter's assertions that the proposed molybdenum mine and mill differ significantly in topography and climate from existing mines and mills. Nevertheless, given the possibility that compliance with the zero discharge NSPS would result in substantial non-water quality environmental impacts, and given the fact these impacts are being subjected to an intense environmental scrutiny, the Agency believes it would be premature to subject the mine and mill to regulation at this time, before the environmental review process is fully completed.

Also, as the Agency stated in the preamble to the BPT regulations and in the proposed regulation for BAT and NSPS, under no circumstances will an owner or operator be required to violate applicable safety standards to meet the requirements of BPT, BAT, or NSPS. As discussed in these regulations, the Agency is confident that the national applicable effluent limitations guidelines and standards of performance do not pose a concern for the overall safety related to the water impoundments that may be required by the regulations. However, it would be premature to regulate this mine and mill before the potential for earthquake and avalanches in a deep mountain terrain has been completely evaluated by Federal and State agencies and others responsible for conducting a thorough study of the impacts of this proposed new mine and mill. Accordingly, the Agency is excluding this mine and mill from the regulations applicable to molybdenum mines and mills, thereby postponing consideration of the appropriate limitations for this facility until the permit proceedings.

The BPT limitations established a subpart for gold placer mines, but reserved effluent limitations because the Agency did not have sufficient technical or economic data. The proposal similarly reserved effluent limitations

and standards for the gold placer mine subpart because the data generated prior to proposal were not sufficiently comprehensive.

EPA still has no data upon which to base an economic assessment of gold placer mines and does not have sufficient technical data to promulgate or propose limitations for gold placer mines. The Agency is, therefore, continuing to reserve the subpart for gold placer mines in the promulgated regulation.

C. Best Practicable Technology Limitations. The BPT limitations for the ore mining industry were promulgated in 1978, were completely upheld in the Courts, and are repeated in this regulation solely for clarity. EPA received a few comments which recommended that the Agency relax the current BPT regulations. These comments are discussed in the response to public comments document.

D. Best Available Technology Limitations. EPA proposed BAT limitations equal to the BPT regulations currently applicable to this industry.

The rationale for setting BAT effluent limitations equivalent to BPT effluent limitations is discussed in the proposal (47 FR 25682), the development document supporting the proposed rule, and the development document supporting this final rule. In summary, the Agency established BAT equal to BPT either because BPT already specified zero discharge of process wastewater, or because application of candidate BAT did not reduce the level of the toxic or nonconventional pollutants, or because BPT removed a very high percentage of the relevant pollutants. Almost all the commenters agreed with EPA's decision to propose BAT equal to BPT. Accordingly, the Agency is finalizing the BAT limitations as proposed. The comments addressing the BAT limitation are discussed in the response to public comments document.

E. Best Conventional Technology Limitations. The Agency proposed BCT limitations equal to the BPT limitations for conventional pollutants. This was done even though the Agency had not established a new cost effectiveness test for conventional pollutant removal as directed by the Fourth Circuit Court of Appeals decision in *American Paper Institute v. EPA*, F. 2d (4th Cir. 1981). In the proposal the Agency reasoned that since BPT is the minimum level of control required by law, no possible reassessment of BCT pursuant to the Court's remand could result in BCT limitations for conventional pollutants less stringent than the BPT limitations.

A number of commenters took issue with the Agency's decision to propose BCT limitations in the absence of a new BCT methodology. The Agency agrees with these criticisms and has accordingly decided to withdraw the BCT limitations proposed on June 14, 1982. Instead, BCT Limitations for the ore mining and dressing point source category are being included as part of the proposed regulation on the new BCT methodology. This proposed regulation was published in the *Federal Register* on October 29, 1982, (47 FR 49176). Comments on the proposed BCT limitations must be submitted during the comment period for the BCT rulemaking.

F. New Source Performance Standards. EPA proposed new source performance standards (NSPS) equal to the BAT limitations for all elements of the ore mining and dressing industry with the exception of froth flotation mills in the copper, lead, zinc, gold, silver, platinum and molybdenum subcategory and the uranium mill subcategory. The Agency proposed NSPS requiring zero discharge for these latter two segments as discussed below.

1. Froth Flotation Mills. The proposed zero discharge requirement for new froth flotation mills was based on the fact that 46 out of 90 existing facilities for which we have data achieve zero discharge through total recycle and evaporation of process wastewater.

Industry commenters raised a number of objections to this proposal. First, they argued that most of the mills achieving zero discharge are in net evaporation areas with flat topography and that it was inappropriate to extrapolate from the treatment performance of mills in these areas to mills located in rainy or mountainous areas. They contended that in rainy or mountainous areas, the costs of constructing the tailings impoundment necessary to achieve zero discharge and the costs of transporting recycle water back to the mill could be prohibitive. They implied that this problem was greatly exacerbated by the proposed storm exemption for new sources, which granted relief to a facility only upon the occurrence of a ten year, twenty-four hour storm.

Second, they argued that EPA improperly assumed that new sources, unlike existing sources, would not experience extensive retrofit costs. They pointed out that the Agency's proposed definition of new source embraces both virgin or "greenfield" facilities and facilities constructed in conjunction with existing sources. These latter facilities, they stated, will incur substantial retrofit costs to achieve zero discharge.

Finally, they asserted that the Agency neglected to take into account the

buildup of reagents and other contaminants in the recycle water of a total recycle system. They claimed that these contaminants would interfere with the froth flotation process and cause severe loss of product, necessitating either the addition of fresh make up water or the treatment of the recycle water. They added that treating the recycle water may not always prove to be an effective solution because of the buildup of contaminants from the treatment of the recycle water. They pointed out the Agency had not calculated the costs of treating the recycle water or building the bigger impoundment to hold and recycle the wastewater.

The Agency disagrees with the commenters' first criticism that EPA failed to adequately take into account topographical and climatic constraints in proposing a zero discharge requirement for new sources. Mills currently achieving zero discharge are located in areas ranging from flat to extremely steep and mountainous. Zero discharge is thus demonstrated for a wide spectrum of topographical constraints. Similarly, although the majority of mills achieving zero discharge are located in dry areas, 15 are located in relatively wet areas. Zero discharge is thus demonstrated for wet areas as well as dry areas. Moreover, the standards promulgated for new source froth flotation mills allow a discharge of wastewater equivalent to the net precipitation (precipitation less evaporation) subject to the discharge limitations for mine drainage, e.g. 440.104(2)(i). By permitting the discharge of excess rainwater and runoff, this provision substantially minimizes the effect of climate on a facility's ability to meet zero discharge.

An assumption of the commenters' arguments is that the zero discharge requirement imposes significantly greater costs than the BPT requirement under the same set of topographical, climatic and land availability constraints. Many commenters implied that constructing a tailings pond necessary to achieve zero discharge in mountainous or rainy areas would be much more expensive than constructing a similarly situated pond to meet BPT requirements. Although there might have been some merit to this argument under the Agency's proposed storm exemption for new sources, this is no longer the case. Now that the Agency has amended the proposed storm provision to make it identical to the provision for existing sources, the pond required to meet BPT requirements will be approximately the same size as the pond required to meet

zero discharge. (See Development Document for further discussion).

One commenter, whose existing tailings pond is located several miles from the mill and several thousand feet below it, argued that, if this mill were a new source, the costs of recycling water to the mill to achieve zero discharge would prove much more expensive than meeting the BPT requirements. The Agency, however, considers such situations to be extremely rare. If a new source had to operate under similar constraints, the Agency would entertain a petition to modify the new source standard or create a new subcategory for this type of facility.

With respect to industry commenters' second criticism, EPA agrees with their claim that there would be retrofit costs associated with meeting zero discharge where a new source is constructed at the site of an existing source. It is not clear, however, whether this problem is anything but theoretical. EPA specifically asked industry to provide it with examples of construction at the site of an existing source which might constitute a new source under EPA's proposed criteria for "new source" (45 FR 59343, September 9, 1980). After evaluating these examples, EPA has concluded that only one of the examples provided by industry would constitute a "new source" under the proposed criteria—and this example involved construction at a "green field" site. (These examples are specifically discussed in the Response to Comments document). Nevertheless, EPA has redone its economic analysis to embrace situations where construction at the site of an existing source would clearly create a new source (i.e. total replacement of a mill). EPA has concluded that in such situations, the costs of achieving zero discharge will not cause an adverse economic impact.

EPA agrees with the commenters' third contention that we did not adequately consider the buildup of contaminants in the recycle water. Commenters have come forward with data demonstrating that the buildup of reagents and other contaminants can in fact interfere with the extractive process, causing severe loss of product. They have also demonstrated that treatment of the recycle water may not always be an economically viable option for dealing with this interference problem. Unfortunately, this interference is a complex phenomenon, which appears to be related to the characteristics of the ore at particular sites, making it impossible to carve out a subcategory of facilities afflicted with this problem. Accordingly, to

accommodate the problem, the final NSPS contains a special "bleed" provision which will allow facilities to discharge wastewater (subject to the NSPS mine drainage standards) if they can demonstrate to the permitting authority that total recycle would cause a major interference in the extractive metallurgical process and that appropriate treatment of recycle water is not adequate to remedy this interference. This provision will allow such facilities to substitute some fresh water for recycle water as industry stated and their data indicated was necessary, thereby avoiding the losses associated with buildup of contaminants in the recycle water. Specification of the exact amounts of water discharged and the appropriate treatment of recycle water will, of course, be left to the permitting authority. The Agency has, however, evaluated the costs and economic impact of at least two forms of treatment of recycle water. The first is pH adjustment (lime addition) and settling. Assuming a 24-hour retention time and a 10 percent safety factor, the Agency has concluded that the costs of such treatment of recycle water would not be significant enough to deter investment for a new mill with a tailings pond used for primary settling. The Agency has further determined that additional treatment consisting of a mixed media filter would not constitute a barrier to entry for such mills. The development document and economic document supporting this regulation discuss in more detail the Agency's considerations in creating the bleed provision and what treatment was considered as appropriate treatment of recycle water.

2. **Uranium Mills.** The Agency proposed zero discharge for new uranium mills based on data demonstrating that 18 of 19 existing mills do not discharge wastewater. The single existing mill which discharges, recycles over 80 percent of the requirement for its intake water. Zero discharge for new uranium mills is based on recycle, evaporation, and a combination of recycle and evaporation.

Industry commented that our data represented mills in arid areas and that we did not consider new mills that may locate in areas of high rainfall. They also requested that flexibility should be allowed to accommodate changes in the extractive processes currently used to recover uranium. Finally they commented that we should allow an effluent discharge because such a discharge is considered a valuable commodity in water short areas.

The ability of uranium mills to achieve zero discharge is well demonstrated and is recognized by Federal and State regulating authorities dealing with the uranium industry. It is true that existing uranium mills are located in arid areas. However, we know of no plans for construction of new mills in non-arid areas, although some firms have conducted exploration in such areas. Should any new mills locate in areas of high net precipitation, they can take advantage of the net precipitation provision and the storm exemption. If, despite these provisions, a uranium mill locates in an area where it is impossible to achieve zero discharge the facility can petition the Agency to change NSPS or create a separate subcategory for that type of facility.

The Agency does not believe that it needs to provide any additional flexibility to accommodate changes in the extractive processes used to recover uranium. Industry commenters failed to provide EPA with any information concerning new or different extractive processes. Furthermore, the current regulations only apply to certain identified extractive processes and thus would not apply to processes unrelated to processes used today.

Nor does the Agency believe that the zero discharge requirement will adversely affect water conservation. Even if there were a slight increase in water consumption attributable to compliance with zero discharge, that increase would not be significant when compared to the benefits derived from the use of recycle and evaporation systems. Accordingly, the zero discharge requirement for new uranium mills is promulgated as proposed.

3. **Storm Exemption.** The Agency proposed a storm exemption for new sources subject to zero discharge which would allow a discharge of excess wastewater upon the occurrence of a 10-year 24-hour precipitation event. Industry stated that the provision of the exemption imposed an impossible design requirement on them and should be changed to the requirement for existing sources.

After reviewing the industry comments, and data developed by the Agency, EPA has concluded that the industry comments are valid. Conditioning the storm exemption on the actual occurrence of a 10-year, 24-hour storm is inappropriate because overflows can occur from facilities designed, maintained, and operated to handle a 10-year, 24-hour precipitation event as a result of recurring storms or excessive snowmelt even though no individual event were equivalent to a

10-year, 24-hour precipitation event. The proposal would have required facilities to engage in the extremely difficult task of anticipating all such combinations of precipitation events. Accordingly, we have modified the storm exemption for new sources subject to zero discharge so that it is identical to the exemption for existing sources.

The Agency received requests for further explanation of the considerations to be taken into account in the design and construction of a facility which may be granted relief under the storm exemption. As a result of these requests we have made some clarifying changes in the language of the exemption. The first change is designed to clarify the nature of the operator's responsibilities during an upset or bypass overflow event. The storm exemption is designed to provide a limited exception to the requirements applicable to mines and mills under normal operating conditions. It grants relief from excess discharges which occur during and immediately after any precipitation or snowmelt—the intensity of the event is not specified. The storm exemption was not intended to grant the operator the option of ceasing or reducing efforts to contain or treat the runoff resulting from a rainfall or snowmelt, i.e., the operator does not have the option of turning off the lime feed to a facility at the start of or during a precipitation event, regardless of the design and construction of the facility. The operator must, instead, take all reasonable steps during and after the precipitation event to treat or contain the wastewater discharge and to limit the amount of overflow or excess discharge.

The second change is intended to clarify the nature of the design requirement for sources subject to a zero discharge limitation and to emphasize the fundamental differences between that requirement and the requirement for sources not subject to zero discharge. The storm exemption applicable to sources which are allowed to discharge requires the facility to be able to contain the maximum volume of wastewater which would be generated by the facility during a 24-hour period plus the volume of water which would result from a 10-year, 24-hour rainfall or treat the flows associated with these volumes. The rationale behind the containment requirement is that a facility with such capacity, even if full at the beginning of the storm, would be able to treat the storm runoff and normal plant discharge by providing at least a 24-hour retention time for settling

of the wastewaters before the water is discharged.

The design concept for the storm exemption applicable to sources subject to zero discharge requirements must, however, be different, because such sources are not permitted to discharge. Such sources must, therefore, be able to contain the amount of water equal to the volume of water in the pond under normal operating conditions (which includes water which is recycled or will be evaporated) plus the volume generated from a 10-year, 24-hour rainfall. In other words, the source must provide a freeboard over and above normal pond levels which can accommodate the water generated by a 10-year, 24-hour rainfall. Simply being able to hold the normal volume of wastewater from the mill process without discharge plus the 10-year, 24-hour rainfall will not suffice, unless the normal process wastewater is a fair measure of the volume of water in the pond under normal operating conditions.

The third change is designed to clarify the relationship between the storm exemption and the general upset and bypass provisions set in the consolidated permit regulations [See, 40 CFR 122.60]. The relationship between them should be set out more clearly. In the preamble to the proposal, we said that the storm exemption supersedes the general upset and bypass provisions with respect to precipitation events; that is, an operator wishing to obtain an excursion from the BAT or NSPS requirements during precipitation events must comply with the prerequisites of the storm exemption. We did not, however, state whether an operator also had to comply with any of the upset and bypass provisions contained in the consolidated permit regulations as well. To clarify this, the storm exemption is being changed to specifically require compliance with the notice provisions of the general upset and bypass provisions, in accordance with the Agency's original intent. In addition, we have added a sentence to clarify that the storm exemption, like the general upset and bypass provision, simply provides an affirmative defense to an enforcement action. Consequently, the burden of proving compliance with the conditions of the storm provision rests with the operator, just as in the case of the general upset and bypass exemptions.

Additional explanation of the storm exemption is offered in the development document supporting this rulemaking.

G. General Provisions and Definitions. As the result of the comments received on the proposed BAT and NSPS, the Agency is adding a definition for "in situ leach methods"

applicable to the Uranium, Radium and Vanadium Ores subcategory. This definition makes it clear that the no discharge standard of performance for in situ leach methods is applicable to the process wastewater used in and resulting from the actual in situ operation itself. In situ mine and mill process wastewater does not include discharges from wells from within or surrounding in situ mines used to restore aquifers after all actual mining activity (extraction of the ore, or pregnant liquor from the in situ process) has been completed. Such discharge would be from an inactive mine area and effluent limitations guidelines and standards of performance would not be directly applicable. Effluent limitations and standards are directly applicable to "active mining areas." During the actual working of the mine, if the discharge originates from an area outside of the in situ process area but directly associated with the "active mine area" such discharges are considered "mine drainage" and are subject to the effluent limitations or standards of performance for mine drainage from uranium mines. Mine drainage from areas outside of the areas used for the in situ process area include: drainage from development areas of a deep mines, and surface mine and runoff from mine and mill areas that are not directly involved in in situ leaching. Additional explanation is offered in the development document supporting this rulemaking.

The Agency received comments requesting that the Agency further explain the general provision having to do with waste streams which are combined for treatment from various subparts and segments of Part 440. We stated in the original provision that the quantity and quality of each pollutant or pollutant property in the combined discharge shall not exceed the quality and quantity of each pollutant or pollutant property that would have been discharged had each waste stream been treated separately. Further, the flow from the combined discharge shall not exceed the volume that would have been discharged had each wastestream been treated separately. An example that industry wished clarified is whether mine drainage commingled with the discharge from a new froth flotation mill is subject to the zero discharge requirements for new froth flotation mills. Such combined waste streams may be discharged subject to the limitations on mine drainage but the volume of the discharge cannot exceed the volume of mine drainage that would have been discharged had the mine drainage and the mill discharge been treated separately. It is immaterial

whether the mine drainage is introduced to the treatment system simultaneously with the discharge from the mill, e.g. two separate pipes leading to the tailings pond, or whether the mine drainage is introduced as part of the feed water and intake to the mill itself. Further explanation and guidance is provided in the development document supporting this final regulation.

One commenter suggested that EPA provide a special allowance, similar to the net precipitation provision, for underground water which seeps into the tailings impoundment, this commenter asserted that such seepage constituted a large portion of the water collecting in its impoundment. The Agency knows of only this one example of underground seepage at existing facilities subject to zero discharge and believes that the fundamentally different factors variance provision provides an avenue of relief for existing sources. To accommodate new sources, however, the Agency is adding a provision which will allow the permit writer to grant an additional discharge allowance in the case of significant groundwater infiltration, subject to the limitations on mine drainage.

There were requests from industry that a separate definition for "new source" applicable to ore mines and mills be included in the final regulation. The Agency feels that there is no reason to do so. As part of the consolidated permit regulations, Paragraph 122.66(b), the Agency promulgated criteria for determining what is a new source. On September 9, 1980, these criteria were withdrawn and new criteria were proposed. When finalized, these criteria will apply to the mining industry.

VI. Costs and Economic Impact

Executive Order 12291 requires EPA and other agencies to provide regulatory impact analyses for rules that result in an annual cost to the economy of \$100 million dollars or more, cause major price increases to the consumer and cause significant adverse effects on competition, employment, investment, productivity and the balance of trade. In addition, the Clean Water Act specifies that best available technology limitations must be economically achievable. The Regulatory Flexibility Act requires EPA to consider the effects of this rule on small entities, and if they are significant and affect a substantial number of small entities, to prepare a Regulatory Flexibility Analysis. The Agency has concluded that this is not a major rule and will not have a significant impact on a substantial number of small entities and, therefore,

a Regulatory Impact Analyses and a Regulatory Flexibility Analysis are not required.

The BAT limitations promulgated today do not reflect any treatment requirements beyond the treatment required for existing direct dischargers under the BPT rule promulgated July 11, 1978 (43 FR 29711). Additionally, EPA is not establishing pretreatment standards because no known indirect dischargers exist nor are any known to be in the planning stage. Accordingly, EPA expects no incremental costs or impacts for existing plants from this rulemaking. The costs for New Source standards are not expected to be a deterrent to investment and are not expected to change the rate of entry into the industry or slow the industry growth rate.

In developing this rule, the Agency considered various technology options and analyzed their economic impacts. This economic analysis is presented in two documents. One is the *Economic Impact Analysis of Promulgated New Source Performance Standards for the Ore Mining and Dressing Industry* which addresses new sources. The second document is *The Economic Impact Analysis of Promulgated BAT Effluent Limitations Guidelines for the Ore Mining and Dressing Industry* which addresses existing sources and is presently subject to a confidentiality requirement discussed previously. For each of the options considered during rulemaking, these analyses detail the investment and annual costs for the industry as a whole and for typical plants; assesses the impact of effluent control in terms of price and production changes, plant closures and employment effects; and assesses the potential impacts on the small plants in this industry.

VII. Nonwater Quality Environmental Impacts

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations.

In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, land requirements, water consumption and energy requirements.

Because this regulation does not impose any additional pollution control requirements on existing sources, implementation will not result in any substantial increase in air pollution,

energy use, solid waste generation, land requirements or water consumption.

The Agency similarly determined that the pollution control requirements for new sources, where they differ from existing sources requirements, will not result in adverse non-water quality impacts which would require alteration of the requirements.

In those subparts for which NSPS is more stringent than BAT, the increase in solid waste generated should not be greater than one percent.

In addition, section 7 of the Solid Waste Disposal Act Amendments of 1980 has exempted under Subtitle C of RCRA solid waste from the extraction, beneficiation, and processing of ores and minerals. This exemption will remain in effect until at least six months after the Administrator submits a study on the adverse environmental effects of solid waste from mining. The study is required to be submitted by October 21, 1983 (see 42 U.S.C. 6982).

Imposition of NSPS is not expected to create any significant adverse impacts on land requirements beyond those associated with BAT effluent limitations.

Achievement of NSPS will not result in a significant net increase in energy requirements. The main use of energy is for pumping, mixing, and control instrumentation. Wherever feasible, gravity flow is used in treatment facilities for mine drainage and mill process wastewater. Recycle at new froth flotation mills and new uranium mills will require electric power for pumps, but the Agency concludes that the impact of the energy consumed from compliance with the standards is justified by the benefits derived from the standards.

There should be no net water loss attributable to compliance with zero discharge of process wastewater from froth flotation mills and uranium mills. Moreover, even if there were a slight loss, it would not be significant when compared to the benefits derived from the use of recycle and evaporation systems.

VIII. Pollutants and Subcategories Not Regulated

Paragraph 8 of the modified Settlement Agreement, approved by the District Court for the District of Columbia on March 9, 1979 (12 ERC 1833), contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry categories and subcategories.

A. *Exclusion of Pollutants.* As discussed in greater detail in the proposal June 14, 1982 and in the development document supporting the

rule, paragraph 8(a)(iii) of the Revised Settlement agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. This provision includes pollutants below EPA's nominal detection limit. In addition, Paragraph 8(a)(iii) allows the exclusion of pollutants that were detected in amounts too small to be effectively reduced by technologies known to the Administrator. Pollutants excluded under these provisions are listed in Appendices B, C and D. One hundred and thirteen toxic organics, cyanide and six toxic metals are excluded from regulation under these provisions.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation pollutants detected in the effluent of only a small number of sources within the category and uniquely related to those sources. The toxic organic pollutant, 2,4-dimethylphenol, was detected in the effluent at only one facility and 2,4-dimethylphenol is excluded under this provision.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation pollutants that are effectively controlled by the technology upon which other effluent limitations and guidelines are based. Effluent limitations for TSS will effectively control the toxic pollutant asbestos (chrysotile). Arsenic and nickel found in discharges from ore mining and dressing are adequately controlled by the incidental removal associated with the control and removal of other metals found in the discharges from this industry, e.g., copper, lead, mercury, and zinc.

In addition to the toxic pollutants excluded for all subcategories, EPA is excluding certain toxic pollutants from particular subcategories and subparts because they were either not detected or detected in amounts too small to be effectively reduced by technologies known to the Administrator. See Appendix G for pollutants excluded by subcategory and subpart.

B. *Exclusion of Subcategories.* Paragraph 8(a)(iv) of the revised settlement Agreement allows the Administrator to exclude a category or subcategory from regulation if the amount and toxicity of each pollutant in the discharge does not justify developing national requirements in accordance with the schedule contained in the agreement. EPA is excluding the mill subpart in the Uranium, Radium and Vanadium subcategory from development of BAT regulations

because there is only one existing discharger and development of national regulations are not warranted for this single plant. EPA is excluding the Nickel subcategory, the Vanadium subcategory (mined alone and not as a byproduct) and, the Antimony subcategory from development of BAT and NSPS because there is only one known discharger in each of these subcategories and no new sources are expected. EPA is excluding the Platinum subcategory from development of NSPS because the one identified new source must use an entirely different treatment system than what was identified as best demonstrated technology and EPA lacks data on the system. EPA is differing regulations of the gold placer mine subpart of the Copper, Lead, Zinc, Gold, Silver, and Molybdenum subcategory until it completes data gathering efforts for this subpart.

Paragraph 8(b) of the Settlement Agreement allows the Administrator to exclude from regulation pretreatment standards for all point sources within a point source category. Pretreatment standards for both existing and new sources in this point source category are not justified because no indirect dischargers exist nor are any known to be planned.

IX. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs). BMPs are not addressed in this regulation.

X. Upset and Bypass Provisions

A recurring issue is whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, 590 F. 2d 1011 (D.C. Cir. 1978) and *Corn Refiners Assn., et al. v. Costle*,

594 F. 2d 1223 (8th Cir. 1979). [See also *American Petroleum Institute v. EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F. 2d 973 (4th Cir. 1976).]

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have promulgated Consolidated Permit Regulations that include upset and bypass provisions. [See 40 CFR 122.60, 45 FR 33290 (May 19, 1980).] The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage.

The Agency has received several inquiries on the relationship between the general upset and bypass provisions set forth in the consolidated permit regulations and the storm exemption contained in the regulations for ore mining and dressing. This relationship is discussed in Section V of this preamble.

XI. Variances and Modifications

Upon the issuance of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the ore mining and dressing industry. For the BPT effluent limitations promulgated on July 11, 1978, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. [See *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, *supra*.] This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it is now included in the NPDES regulations and will not be included in the ore mining and dressing industry BAT regulation. (See the NPDES regulations at 40 CFR Part 125, Subpart D.)

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory

modifications do not apply to toxic or conventional pollutants. To apply for these modifications a discharger must be in compliance with BPT. Because this rule will make BAT equal to BPT, EPA does not expect any applications for Section 301(c) or 301(g) modifications. [See 43 FR 40895 (September 13, 1978).] NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *E. I. du Pont de Nemours and Co v. Train*, *supra*.)

XII. Relationship to NPDES Permits

The BAT limitations and NSPS in this regulation will be applied to individual ore mines and mills through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines or policy. For example, even if this regulation does not control a particular pollutant, the permit-issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. Where manufacturing practices or treatment circumstances warrant additional controls, such limitations may be technology-based in conformance with the legislative history of the Act. However, such limitations are subject to administrative and judicial review as part of the permit issuance process. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised

and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

XIII. Public Participation

The Agency solicited public comment on the proposed rules published in the *Federal Register* on June 14, 1982, (47 FR 25682). In addition, the Agency accepted public comment on the development document and economic analysis supporting the proposed rules. The Agency received over fifty comment submittals.

Individual public comments received on the proposed regulation, and our responses, are presented in a report, "Responses to Public Comments, Proposed Ore Mining and Dressing Industry Effluent Guidelines and Standards," November 1982, which is part of the public record for this regulation.

Most of the major comments and the Agency's response are discussed in Section V of this preamble, Summary of Promulgated Regulation and Changes from Proposal.

XIV. Small Business Administration (SBA) Financial Assistance

The Agency is continuing to encourage small manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. Three basic programs are in effect: the Guaranteed Pollution Control Program, the Section 503 Program, and the Regular Guarantee Program. All the SBA loan programs are only open to businesses with net assets less than \$6 million, with an average annual after-tax income of less than \$2 million and with fewer than 250 employees.

The guaranteed pollution control program authorizes the SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution control facilities when the financing is provided through pollution control bonds, bank loans and debentures. Financing with SBA's guarantee of payment makes available long-term financing comparable with market rates. The program applies to projects that cost from \$150,000 to \$200,000.

The Section 503 Program, as amended in July 1980, allows for long-term loans to small and medium-sized businesses. These loans are made by SBA-approved local development companies, which for the first time are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed

by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs contact your district or local SBA Office. The SBA coordinator at EPA headquarters is Ms. Frances Desselles who may be reached at (202) 382-5373.

For further information and specifics on the Guaranteed Pollution Control Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

XV. List of Subjects in 40 CFR Part 440

Metals, Mines, Water pollution control, Waste treatment and disposal.

XVI. Availability of Technical Assistance

The justification for the proposed regulation is detailed in four major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*. EPA's technical conclusions are detailed in the *Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category*. The economic analysis for new sources is detailed in *Economic Analysis of New Source Performance Standards for the Ore Mining and Dressing Industry*. The economic analysis for existing sources is detailed in the *Economic Impact Analysis of Promulgated BAT Effluent Limitations Guidelines for the Ore Mining and Dressing Point Source Category*. The data contained in the analysis is covered by a third party agreement between the Agency and industry members who supplied the data. These data are confidential and can not be released until cleared by a confidentiality review panel. The Agency anticipates the BAT economic analysis will be made available to the general public shortly after this rule is promulgated.

A summary of the public comments received on the proposal and EPA's responses is presented in "Summary of Comments and Responses on the June 1982 Proposed Regulations for the Ore Mining and Dressing Industry," which is part of the public record for this regulation.

XVII. OMB Review

The regulation was submitted to the Office of Management and Budget for

review as required by Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), the reporting or recordkeeping provisions that are included in this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Dated: November 5, 1982.

Anne M. Gorsuch,
Administrator.

APPENDIX A

Abbreviations, Acronyms and Units Used in This Notice

- Act—The Clean Water Act.
- Agency—The U.S. Environmental Protection Agency.
- BADT—Best available demonstrated technology under sections 304(c) and 306.
- BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Act.
- BCT—The best conventional pollutant control technology, under section 304(b)(4) of the Act.
- BMP's—Best management practices under section 304(e) of the act.
- BPT—The best practicable control technology currently available, under section 304(b)(1) of the Act.
- CWA—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) as amended by the Clean Water Act of 1977 (P.L. 95-217).
- FWPCA—Federal Water Pollution Control Act.
- MSHA—The Department of Labor, Mine Safety and Health Administration.
- NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.
- NSPS—New source performance standards under section 306 of the Act.
- POTW—Publicly owned treatment works.
- RCRA—Resource Conservation and Recovery Act (PL 94-580) of 1976, Amendments to Solid Waste Disposal Act.

UNITS

- gpd—gallons per day.
- mgd—million gallons per day.
- mg/l—milligram(s) per liter.
- µg/l—microgram(s) per liter.

APPENDIX B

Toxic Organic Compounds Not Detected During Sampling

1. Acenaphthene.

2. Acrolein.
3. Acrylonitrile.
4. Benzidine.
5. Carbon Tetrachloride.
6. 1,2,4-Trichlorobenzene.
7. Hexachlorobenzene.
8. 1,2-Dichloroethane.
9. Hexachloroethane.
10. 1,1-Dichloroethane.
11. 1,1,2-Trichloroethane.
12. 1,1,2,2-Tetrachloroethane.
13. Chloroethane.
14. Bis(Chloromethyl) Ether.
15. Bis(2-Chloroethyl) Ether.
16. 2-Chloroethyl Vinyl Ether.
17. 2-Chloronaphthalene.
18. 2,4,6-Trichlorophenol.
19. Parachlorometa Cresol.
20. 2-Chlorophenol.
21. 1,2-Dichlorobenzene.
22. 1,3-Dichlorobenzene.
23. 1,4-Dichlorobenzene.
24. 3,3-Dichlorobenzidine.
25. 1,1-Dichloroethylene.
26. 2,4-Dichloro-phenol.
27. 1,2-Dichloropropane.
28. 1,3-Dichloropropylene.
29. 2,4-Dinitrotoluene.
30. 2,6-Dinitrotoluene.
31. 1,2-Diphenylhydrazine.
32. Fluoranthene.
33. 4-Chlorophenyl Phenyl Ether.
34. 4-Bromophenyl Phenyl Ether.
35. Bis(2-Chloroisopropyl) Ether.
36. Bis(2-Chloroethoxy) Methane.
37. Methyl Chloride.
38. Methyl Bromide.
39. Bromoform.
40. Dichlorodifluoromethane.
41. Chlorodibromomethane.
42. Hexachlorobutadiene.
43. Hexachlorocyclopentadiene.
44. Isophorone.
45. Naphthalene.
46. Nitrobenzene.
47. 2-Nitrophenol.
48. 4-Nitrophenol.
49. 2,4-Dinitrophenol.
50. 4,6-Dinitro-O-Cresol.
51. N-Nitrosodimethylamine.
52. N-Nitrosodiphenylamine.
53. N-Nitrosodi-N-Propylamine.
54. Benzo(A)Anthracene.
55. Benzo(A)Pyrene.
56. 3,4-Benzofluoranthene.
57. Benzo(K)Fluoranthene.
58. Chrysene.
59. Acenaphthylene.
60. Anthracene.
61. Benzo(G,H,I)Perylene.
62. Phenanthrene.
63. Dibenzo(A,H)Anthracene.
64. Indeno(1,2,3-C,D)Pyrene.
65. Pyrene.
66. Trichloroethylene.
67. Vinyl chloride.
68. Chlordane.
69. 4,4-DDT.
70. 4,4-DDE.

71. 4,4-DDD.
72. Endosulfan-Alpha.
73. Endosulfan-Beta.
74. Endosulfan Sulfate.
75. Endrin Aldehyde.
76. Heptachlor Epoxide.
77. γ BHC(Lindane)-Gamma.
78. PCB-1242 (AROCHLOR 1242).
79. PCB-1254 (AROCHLOR 1254).
80. PCB-1221 (AROCHLOR 1221).
81. PCB-1232 (AROCHLOR 1232).
82. PCB-1248 (AROCHLOR 1248).
83. PCB-1260 (AROCHLOR 1260).
84. PCB-1016 (AROCHLOR 1016).
85. Toxaphene.
86. 2,3,7,8-Tetrachlorodibenzo-p-Dioxin.

APPENDIX C

Toxic Organic Compounds Detected at Least One Facility but Always 10 μ g/l or Less

1. Chlorobenzene.
2. Dichlorobromoethane.
3. Fluorene.
4. Aldrin.
5. Dieldrin.
6. Endrin.
7. Heptachlor.
8. 1,1,1-Trichloroethane.
9. Chloroform.
10. Ethylbenzene.
11. Trichlorofluoromethane.
12. Diethyl Phthalate.
13. Tetrachloroethylene.
14. Toluene.
15. α BHC-Alpha.
16. β BHC-Beta.
17. Δ BHC-Delta.

APPENDIX D

Toxics Detected at Levels Too Small To Be Effectively Reduced by Technologies Known to the Administrator

1. Antimony.
2. Beryllium.
3. Silver.
4. Thallium.
5. Selenium.
6. Chromium.
7. Cyanide.
8. Benzene.
9. 1,2-Trans-Dichloroethylene.
10. Phenol.
11. Bis(2-Ethylhexyl) Phthalate.
12. Butyl Benzyl Phthalate.
13. Di-N-Butyl Phthalate.
14. Di-n-Octyl Phthalate.
15. Dimethyl Phthalate.
16. Methylene Chloride.
17. Pentachlorophenol.

APPENDIX E

Toxic Organic Compounds Detected From a Small Number of Sources and Uniquely Related to These Sources

- 2,4-dimethylphenol.

APPENDIX F

Pollutants Effectively Controlled by the Technology Upon Which Other Effluent Limitations and Guidelines Are Based

1. Asbestos.
2. Arsenic.
3. Nickel.

APPENDIX G

Pollutants Excluded by Subcategory and Subpart

Uranium Ore Subcategory—Mine Drainage

- Cadmium (not detected).
- Copper (present in amounts too small to treat).
- Lead (present in amounts too small to treat).
- Mercury (present in amounts too small to treat).

Tungsten Ore Subcategory—Mine Drainage

- Lead (not detected).
- Mercury (present in amounts too small to treat).

Tungsten Ore Subcategory—Mill Process Water

- Mercury (not detected).
- Mercury Ore Subcategory—Mine Drainage.
- Cadmium (not detected).
- Copper (not detected).
- Lead (not detected).
- Zinc (not detected).

Titanium Ore Subcategory—Mine Drainage

- Cadmium (not detected).
- Copper (present in amounts too small to treat).
- Lead (present in amounts too small to treat).
- Mercury (not detected).
- Zinc (present in amounts too small to treat).

Titanium Ore Subcategory—Mine Drainage

- Cadmium (not detected).
- Copper (present in amounts too small to treat).
- Lead (present in amounts too small to treat).
- Mercury (not detected).

Titanium Ore Subcategory—Mill with Dredges

- Cadmium (present in amounts too small to treat).
- Copper (present in amounts too small to treat).
- Lead (present in amounts too small to treat).
- Zinc (present in amounts too small to treat).

Mercury (present in amounts too small to treat).

APPENDIX H

Subcategories Excluded From Development of BAT or NSPS

Nickel Ore Subcategory.
Vanadium Ore Subcategory (Mined alone and not as a byproduct).
Antimony Ore Subcategory.
Platinum Ore Subcategory.
Uranium, Radium, and Vanadium Ores Subcategory.

Mills using the acid and alkaline leach process for the extraction of uranium.

For the purpose of clarity, the BPT effluent limitations guidelines are being published as part of today's regulation. However, the BPT limitations remain unaffected by today's regulation and are not subject to review. For the reasons discussed above, EPA is revising 40 CFR Part 440 to read as follows:

PART 440—ORE MINING AND DRESSING POINT SOURCE CATEGORY

Subpart A—Iron Ore Subcategory

- Sec.
- 440.10 Applicability: description of the iron ore subcategory.
- 440.11 [Reserved]
- 440.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.14 New Source Performance Standards (NSPS).
- 440.15 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart B—Aluminum Ore Subcategory

- 440.20 Applicability: description of the aluminum ore subcategory.
- 440.21 [Reserved]
- 440.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.24 New Source Performance Standards (NSPS).
- 440.25 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart C—Uranium, Radium, and Vanadium Ores Subcategory

- Sec.
- 440.30 Applicability: description of the uranium, radium and vanadium ores subcategory.
- 440.31 [Reserved]
- 440.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.34 New Source Performance Standards (NSPS).
- 440.35 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart D—Mercury Ore Subcategory

- 440.40 Applicability: description of the mercury ore subcategory.
- 440.41 [Reserved]
- 440.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.44 New Source Performance Standards (NSPS).
- 440.45 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart E—Titanium Ore Subcategory

- 440.50 Applicability: description of the titanium ore subcategory.
- 440.51 [Reserved]
- 440.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.54 New Source Performance Standards (NSPS).
- 440.55 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart F—Tungsten Ore Subcategory

- 440.60 Applicability: description of the tungsten ore subcategory.
- 440.61 [Reserved]
- 440.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Sec.

- 440.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.64 New Source Performance Standards (NSPS).
- 440.65 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart G—Nickel Ore Subcategory

- 440.70 Applicability: description of the nickel ore subcategory.
- 440.71 [Reserved]
- 440.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 440.74 New Source Performance Standards (NSPS). [Reserved]
- 440.75 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart H—Vanadium Ore Subcategory (Mined Alone and Not as a Byproduct)

- 440.80 Applicability: description of the vanadium ore subcategory.
- 440.81 [Reserved]
- 440.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 440.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
- 440.84 New Source Performance Standards (NSPS) [Reserved]
- 440.85 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart I—Antimony Ore Subcategory

- 440.90 Applicability: description of the antimony ore subcategory.
- 440.91 [Reserved]
- 440.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]
- 440.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
- 440.94 New Source Performance Standards (NSPS). [Reserved]
- 440.95 Effluent limitations representing the degree of effluent reduction attainable by

Sec.

the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory

440.100 Applicability: description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

440.101 [Reserved]

440.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.104 New Source Performance Standards (NSPS).

440.105 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart K—Platinum Ores Subcategory

440.110 Applicability: description of the platinum ore subcategory.

440.111 [Reserved]

440.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

440.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.114 New Source Performance Standards (NSPS) [Reserved]

440.115 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart L—General Provisions and Definitions

440.120 Applicability.

440.121 General Provisions.

440.122 General Definitions.

Authority: Sections 301, 304 (b) and (c), 306, and 501 of the Clean Water Act [The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (the Act)] as amended 33 U.S.C. 1311, 1314 (b) and (c), 1316, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

Subpart A—Iron Ore Subcategory

§ 440.10 Applicability: description of the iron ore subcategory.

The provisions of this Subpart A are applicable to discharges from (a) mines operated to obtain iron ore, regardless of the type of ore or its mode of occurrence; (b) mills beneficiating iron ores by physical (magnetic and nonmagnetic) and/or chemical separation and (c) mills beneficiating

iron ores by magnetic and physical separation in the Mesabi Range.

§ 440.11 [Reserved]

§ 440.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Fe (dissolved).....	2.0	1.0
pH.....		

¹ Within the range 6.0 to 9.0.

(b) Except as provided in paragraph (c) of this section, the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Fe (dissolved).....	2.0	1.0
pH.....	(1)	(1)

¹ Within the range 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (dissolved).....	2.0	1.0

(b) Except as provided in paragraph (c) of this section the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (dissolved).....	2.0	1.0

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to

beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.14 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part, any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by applying the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (dissolved).....	2.0	1.0
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0, to 9.0.

(b) Except as provided in paragraph (c) of this section, the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (dissolved).....	2.0	1.0
pH.....	(¹)	(¹)

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.15 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart B—Aluminum Ore Subcategory

§ 440.20 Applicability: Description of the aluminum ore subcategory.

The provisions of this Subpart B are applicable to discharges from facilities engaged in the mining of bauxite as an aluminum ore.

§ 440.21 [Reserved]

§ 440.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the

application of the best practicable control technology currently available (BPT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Fe.....	1.0	.5
Al.....	2.0	1.0
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 440.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (total).....	1.0	0.5
Al.....	2.0	1.0

§ 440.24 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part, any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe (total)	1.0	0.5
Al	2.0	1.0
pH	(¹)	(¹)
TSS	30.0	20.0

¹ Within the range of 6.0 to 9.0.

§ 440.25 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart C—Uranium, Radium and Vanadium Ores Subcategory

§ 440.30 Applicability: description of the uranium, radium and vanadium ores subcategory.

The provisions of this Subpart C are applicable to discharges from (a) mines either open-pit or underground, from which uranium, radium and vanadium ores are produced; and (b) mills using the acid leach, alkaline leach, or combined acid and alkaline leach process for the extraction of uranium, radium and vanadium. Only vanadium byproduct production from uranium ores is covered under this subpart.

§ 440.31 [Reserved]

§ 440.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, from which uranium, radium and vanadium ores are produced excluding mines using in-situ leach methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS	30	20
COD	200	100
Zn	1.0	0.5
Ra226 ¹ (dissolved)	10	3
Ra226 ¹ (total)	30	10
U	4	2
pH	(²)	(²)

¹ Values in picocuries per liter (pCi/l).

² Within the range 6.0 to 9.0.

(b) The concentrations of pollutants discharged from mills using the acid leach, alkaline leach or combined acid and alkaline leach process for the extraction of uranium, radium and vanadium including mill-mine facilities and mines using in-situ leach methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS	30	20
COD		500
As	1.0	.5
Zn	1.00	.5
Ra226 ¹ (dissolved)	10	3
Ra226 ¹ (total)	30	10
NH ₃		100
pH	(²)	(²)

¹ Values in picocuries per liter (pCi/l).

² Within the range 6.0 to 9.0.

§ 440.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, that produce uranium ore, including mines

using in-situ leach methods, shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
COD	200	100
Zn	1.00	.5
Ra226 ¹ (dissolved)	10.0	3.0
Ra226 ¹ (total)	30.0	10.0
U	4.0	2.0

¹ Values in picocuries per liter (pCi/l).

(b) [Reserved]

§ 440.34 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, that produce uranium ore, excluding mines using in situ leach methods, shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
COD	200	100
Zn	1.0	0.5
Ra ²²⁶ (dissolved)	10.0	3.0
Ra ²²⁶ (total)	30.0	10.0
U	4.0	2.0
pH	(¹)	(¹)
TSS	30.0	20.0

¹ Values in picocuries per liter (pCi/l).

² Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills using the acid leach, alkaline leach or combined acid and alkaline leach process for the extraction of uranium or from mines and mills using in situ leach methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has

addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.35 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart D—Mercury Ore Subcategory

§ 440.40 Applicability: description of the mercury ore subcategory.

The provisions of Subpart D are applicable to discharges from (a) mines, either open-pit or underground, that produce mercury ores; and (b) mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods.

§ 440.41 [Reserved]

§ 440.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, operated for the production of mercury ores shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS	30	20
Hg	.002	.001
Ni	.2	.1
pH	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to

navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a)(1) of this section.

§ 440.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The concentration of pollutants discharged in mine drainage from mines, either open pit or underground, that produce mercury ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Hg	0.002	0.001

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment

facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.44 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open pit or underground, that produce mercury ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Hg	0.002	0.001
pH	(¹)	(¹)
TSS	30.0	20.0

¹ Within the range of 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§440.45 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart E—Titanium Ore Subcategory

§ 440.50 Applicability: description of the titanium ore subcategory.

The provisions of this Subpart E are applicable to discharges from (a) mines obtaining titanium ores from lode deposits; (b) mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods; and (c) mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, zircon, and other heavy metals, and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods).

§ 440.51 [Reserved]

§440.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Fe.....	2.0	1.0
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Zn.....	1.0	.5
Ni.....	.2	.1
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, zircon, or other heavy metals, and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Fe.....	2	1
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 440.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30-125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe.....	2.0	1.0

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Zn.....	1.0	0.5

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, or zircon and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe.....	2.0	1.0

§ 440.54 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the applications of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe.....	2.0	1.0
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.1.

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Zn.....	1.0	0.5
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.1.

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucosene, monazite, zircon and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Fe.....	2.0	1.0
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.1.

§ 440.55 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
[Reserved]

Subpart F—Tungsten Ore Subcategory

§ 440.60 Applicability: description of the tungsten ore subcategory.

The provisions of this Subpart F are applicable to discharges from (a) mines that produce tungsten ore and (b) mills that process tungsten ore by either the gravity separation or froth-flotation methods.

§ 440.61 [Reserved]

§ 440.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5000 metric tons (5512 short tons) or more of tungsten bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
Pb.....	.6	.3
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5000 metric tons (5512 short tons) or discharged from mills processing less than 5000 metric tons (5512 short tons) of tungsten ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	50	30
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5000 metric tons (5512 short tons) or more of tungsten ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation, and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(d) The concentration of pollutants discharged from mills processing 5000 metric tons (5512 short tons) or more of tungsten ores per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 440.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from tungsten mines shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cd.....	0.10	0.05
Cu.....	0.30	0.15
Zn.....	1.0	0.5

(b) The concentration of pollutants discharged from mills shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cd.....	0.10	0.05
Cu.....	0.3	0.15
Zn.....	1.0	0.5

§ 440.64 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from tungsten mines shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cd.....	0.10	0.05
Cu.....	0.30	0.15
Zn.....	1.0	0.5
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cd.....	0.10	0.05
Cu.....	0.3	0.15
Zn.....	1.0	0.5
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range of 6.0 to 9.0.

§ 440.65 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart G—Nickel Ore Subcategory

§ 440.70 Applicability: description of the nickel ore subcategory.

The provisions of this Subpart G are applicable to discharges from (a) mines

that produce nickel ore and (b) mills that process nickel ore.

§ 440.71 [Reserved]

§ 440.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5000 metric tons (5512 short tons) or more of nickel bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.3	.15
Zn.....	1.0	.5
Pb.....	.6	.3
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less than 5,000 metric tons (5,512 short tons) of nickel ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	50	30
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of nickel ores per year by purely physical methods including ore crushing, washing, jigging, heavy media

separation and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(d) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of nickel ore per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 440.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.74 New source performance standards (NSPS). [Reserved]

§ 440.75 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart H—Vanadium Ore Subcategory (Mined Alone and Not as a Byproduct)

§ 440.80 Applicability: description of the vanadium ore subcategory.

The provisions of this Subpart H are applicable to discharges from (a) mines that produce vanadium ore (recovered alone and not as a by-product of uranium mining and mills) and (b) mills that process vanadium ore (recovered alone, not as a byproduct of uranium mining and mills).

§ 440.81 [Reserved]

§ 440.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5,000 metric tons (5,512 short tons) or more of vanadium bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
Pb.....	.6	.3
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less than 5,000 metric tons (5,512 short tons) of vanadium ore per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	50	30
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of vanadium ores per year by purely physical methods including ore crushing,

washing, jigging, heavy media separation, and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(d) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of vanadium ores per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 440.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.84 New source performance standards (NSPS). [Reserved]

§ 440.85 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart I—Antimony Ore Subcategory

§ 440.90 Applicability: description of the antimony ore subcategory.

The provisions of this Subpart I are applicable to discharges from (a) mines that produce antimony ore and (b) mills that process antimony ore.

§ 440.91 [Reserved]

§ 440.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

§ 440.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.94 New source performance standards (NSPS). [Reserved]

§ 440.95 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory

§ 440.100 Applicability: description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

(a) The provisions of this Subpart J are applicable to discharges from (1) mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores, or any combination of these ores from open-pit or underground operations other than placer deposits; (2) mills that use the froth-flotation process alone or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores, or any combination of these ores; (3) mines and mills that use dump, heap, in-situ leach or vat-leach processes to extract copper from ores or ore waste materials; (4) mills that use the cyanidation process to extract gold or silver; and (5) mines or mills and mills that use gravity separation methods (including placer or dredge mining or concentrating operations, and hydraulic mining operations) to extract gold ores or silver ores.

(b) The provisions of this subpart shall not apply to discharges from the Quartz Hill Molybdenum Project in the Tongass National Forest, Alaska.

§ 440.101 [Reserved]

§ 440.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the

degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain copper bearing ores, lead bearing ores, zinc bearing ores, gold bearing ores, or silver bearing ores, or any combination of these ores open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cu.....	.30	.15
Zn.....	1.5	.75
Pb.....	.6	.3
Hg.....	.002	.001
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills which employ the froth flotation process alone or in conjunction with other processes, for the beneficiation of copper ores, lead ores, zinc ores, gold ores, or silver ores, or any combination of these ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cu.....	.30	.15
Zn.....	1.0	.5
Pb.....	.6	.3
Hg.....	.002	.001
Cd.....	.10	.05
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable water from mines and mills which employ dump, heap, in situ leach or vat leach processes for the extraction of copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the

treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills which extract gold or silver by use of the cyanidation process. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage from mines or discharged from mine and mill complexes beneficiating gold ores or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be proposed and promulgated at a later date.

(f) The concentration of pollutants discharged in mine drainage from mines producing 5,000 metric tons (5,512 short tons) or more of molybdenum bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.3	.15
Zn.....	1.0	.5
Pb.....	.6	.3
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(g) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less than 5,000 metric tons (5,512 short tons) of molybdenum ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	50	30
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(h) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of molybdenum ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

(i) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of molybdenum ores per year by froth flotation methods shall not exceed:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
TSS.....	30	20
Cd.....	.10	.05
Cu.....	.30	.15
Zn.....	1.0	.5
As.....	1.0	.5
pH.....	(¹)	(¹)

¹ Within the range 6.0 to 9.0.

§ 440.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores or any combination of these ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cu.....	0.30	0.15
Zn.....	1.5	0.75
Pb.....	0.6	0.3
Hg.....	0.002	0.001
Cd.....	0.10	0.05

(b) The concentration of pollutants discharged from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores or any combination of these ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cu.....	0.30	0.15
Zn.....	1.0	0.5
Pb.....	0.6	0.3
Hg.....	0.002	0.001
Cd.....	0.10	0.05

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mine areas and mills processes and areas that use dump, heap, in situ leach or vat-leach processes to extract copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable

waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the cyanidation process to extract gold or silver. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage or discharged from mines and mills beneficiating gold or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be proposed and promulgated at a later date.

§ 440.104 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subsection must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce copper, lead, zinc, gold,

silver, or molybdenum bearing ores or any combination of these ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cu.....	0.30	0.15
Zn.....	1.5	0.75
Pb.....	0.6	0.3
Hg.....	0.002	0.001
Cd.....	0.10	0.05
pH.....	(¹)	(¹)
TSS.....	30.0	20.0

¹ Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores or any combination of these ores. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2)(i) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(ii) In the event there is a build up of contaminants in the recycle water which significantly interferes with the ore recovery process and this interference can not be eliminated through appropriate treatment of the recycle water, the permitting authority may allow a discharge of process wastewater in an amount necessary to correct the interference problem after installation of appropriate treatment. This discharge shall be subject to the limitations of paragraph (a) of this section. The facility shall have the burden of demonstrating to the permitting authority that the

discharge is necessary to eliminate interference in the ore recovery process and that the interference could not be eliminated through appropriate treatment of the recycle water.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mine areas and mills processes and areas that use dump, heap, in-situ leach or vat-leach processes to extract copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the cyanidation process to extract gold or silver. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage or discharged from mines and mills beneficiating gold or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be

proposed and promulgated at a later date.

§ 440.105 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart K—Platinum Ores Subcategory

§ 440.110 Applicability: Description of the platinum ore subcategory.

The provisions of this Subpart K are applicable to discharges from (a) mines that produce platinum ore and (b) mills that process platinum ore.

§ 440.110 [Reserved]

§ 440.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

§ 440.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce platinum bearing ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cu.....	0.30	0.15
Zn.....	1.5	0.75
Pb.....	0.6	0.3
Hg.....	0.002	0.001
Cd.....	0.10	0.05

(b) The concentration of pollutants discharged from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of platinum ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Milligrams per liter		
Cu.....	0.30	0.15
Zn.....	1.0	0.5
Pb.....	0.6	0.3
Hg.....	0.002	0.001
Cd.....	0.10	0.05

§ 440.114 New source performance standards (NSPS). [Reserved]

§ 440.115 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BTC). [Reserved]

Subpart L—General Provisions and Definitions

§ 440.130 Applicability

Abbreviations and methods of analysis set forth in 40 CFR 401 shall apply to Part 440 except as provided in these general provisions and definitions. The general provisions and definitions in this subpart apply to all subparts of Part 440 unless otherwise noted.

§ 440.131 General provisions.

(a) *Combined Waste Streams:* In the event that waste streams from various subparts or segments of subparts in Part 440 are combined for treatment and discharge, the quantity and concentration of each pollutant or pollutant property in the combined discharge that is subject to effluent limitations shall not exceed the quantity and concentration of each pollutant or pollutant property that could have been discharged had each waste stream been treated separately. In addition, the discharge flow from the combined discharge shall not exceed the volume that could have been discharged had each waste stream been treated separately.

(b) *Storm Exemption for Facilities Permitted to Discharge:* If, as a result of precipitation or snowmelt, a source with an allowable discharge under 40 CFR 440 has an overflow or excess discharge of effluent which does not meet the limitations of 40 CFR 440, the source may qualify for an exemption from such limitations with respect to such discharge if the following conditions are met:

(1) The facility is designed, constructed and maintained to contain the maximum volume of wastewater which would be generated by the facility during a 24-hour period without an increase in volume from precipitation

and the maximum volume of wastewater resulting from a 10-year, 24-hour precipitation event or treat the maximum flow associated with these volumes. In computing the maximum volume of wastewater which would result from a 10-year, 24-hour precipitation event, the facility must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the active mining area and runoff which is not diverted from the mill area.

(2) The facility takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

(3) The facility complies with the notification requirements of § 122.60 (g) and (h). The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(c) *Storm Exemption for Facilities Not Permitted to Discharge:* If, as a result of precipitation (rainfall or snowmelt), a source which is not permitted to discharge under 40 CFR 440, has an overflow or discharge which violates the limitations of 40 CFR 440, the source may qualify for an exemption from such limitations with respect to such discharge if the following conditions are met:

(1) The facility is designed, constructed, and maintained to contain the maximum volume of wastewater stored and contained by the facility during normal operating conditions without an increase in volume from precipitation and the maximum volume of wastewater resulting from a 10-year, 24-hour precipitation event. In computing the maximum volume of wastewater which would result from a 10-year, 24-hour precipitation event, the facility must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the area or process subject to zero discharge, and other runoff that is allowed to commingle with the influent to the treatment system.

(2) The facility takes all reasonable steps to minimize the overflow or excess discharge.

(3) The facility complies with the notification requirements of § 122.60(g) and (h). The storm exemption is designed to provide an affirmative defense to an enforcement action.

Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(d) *pH Adjustment:* (1) Where the application of neutralization and sedimentation technology to comply with relevant metal limitations results in an inability to comply with the pH range of 6 to 9, the permit issuer may allow the pH level in the final effluent to slightly exceed 9.0 so that the copper, lead, zinc, mercury, and cadmium limitations will be achieved.

(2) In the case of a discharge into natural receiving waters for which the pH, if unaltered by human activities, is or would be less than 6.0 and approved water quality standards authorize such lower pH, the pH limitations for the discharge may be adjusted downward to the pH water quality criterion for the receiving waters provided the other effluent limitations for the discharge are met. In no case shall a pH limitation below 5.0 be permitted.

(e) *Groundwater infiltration provision:* In the event a new source subject to a no discharge requirement can demonstrate that groundwater infiltration contributes a substantial amount of water to the tailing impoundment or wastewater holding facility, the permitting authority may allow the discharge of a volume of water equivalent to the amount of groundwater infiltration. This discharge shall be subject to the limitations for mine drainage applicable to the new source subcategory.

§ 440.132 General definitions.

(a) "Active mining area" is a place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

(b) "Annual precipitation" and "annual evaporation" are the mean annual precipitation and mean annual lake evaporation, respectively, as established by the U.S. Department of Commerce, Environmental Science Services Administration, Environmental Data Services, or equivalent regional rainfall and evaporation data.

(c) "Appropriate treatment of the recycle water" in Subpart J, § 440.104 includes, but is not limited to pH adjustment, settling and pH adjustment, settling, and mixed media filtration.

(d) "Groundwater infiltration" in § 440.131 means that water which enters the treatment facility as a result of the interception of natural springs, aquifers, or run-off which percolates into the ground and seeps into the treatment facility's tailings pond or wastewater holding facility and that cannot be diverted by ditching or grouting the tailings pond or wastewater holding facility.

(e) "In-situ leach methods" means the processes involving the purposeful introduction of suitable leaching solutions into a uranium ore body to dissolve the valuable minerals in place and the purposeful leaching of uranium ore in a static or semistatic condition either by gravity through an open pile, or by flooding a confined ore pile. It does not include the natural dissolution of uranium by ground waters, the incidental leaching of uranium by mine drainage, nor the rehabilitation of aquifers and the monitoring of these aquifers.

(f) "Mill" is a preparation facility within which the metal ore is cleaned, concentrated, or otherwise processed before it is shipped to the customer, refiner, smelter, or manufacturer. A mill includes all ancillary operations and structures necessary to clean, concentrate, or otherwise process metal ore, such as ore and gangue storage areas and loading facilities.

(g) "Mine" is an active mining area, including all land and property placed under, or above the surface of such land, used in or resulting from the work of extracting metal ore or minerals from their natural deposits by any means or method, including secondary recovery of metal ore from refuse or other storage piles, wastes, or rock dumps and mill tailings derived from the mining, cleaning, or concentration of metal ores.

(h) "Mine drainage" means any water drained, pumped, or siphoned from a mine.

(i) "Ten (10)-year, 24-hour precipitation event" is the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years as established by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, or equivalent regional or rainfall probability information.

(j) "U" (Uranium) is measured by the procedure discussed in 40 CFR 141.25(b)(2), or an equivalent method.

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