

of all relevant facts, including public comment, it has been determined that the schedule hereinafter set forth requires compliance as expeditiously as practicable, and that the terms of this ORDER comply with 113(d) of the Act.

Therefore, it is hereby ORDERED that:

I. The Company shall achieve compliance with Ohio Regulations AP-3-07 and AP-3-11 in accordance with the following schedule:

Increment	Date
Begin on-site construction	Achieved
Begin tie-in outage for Unit #2	Nov. 15, 1979
Start-up of Unit #2	Jan. 1, 1980
Begin tie-in outage for Unit #1	Jan. 1, 1980
Start-up of Unit #1	Feb. 15, 1980
Complete testing of Unit #2	Feb. 15, 1980
Complete testing of Unit #1	Apr. 1, 1980
Achieve compliance with Ohio Regulations AP-3-07 and AP-3-11.	Apr. 15, 1980

II. Nothing herein shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

III. No later than 15 days after any date for achievement of an incremental step for final compliance specified in this ORDER, the Company shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this ORDER, the Company shall immediately notify U.S. EPA in writing of the anticipated delay, reasons therefore, and the estimated length of the delay.

The Company shall submit quarterly reports to U.S. EPA detailing progress made with respect to each requirement of this ORDER. In addition, photographs shall be submitted along with these reports, showing progress made since the previous quarter. U.S. EPA personnel shall be admitted to the facility at any reasonable time for the purpose of viewing the construction progress.

IV. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7503.

V. Pursuant to Section 113(d)(7) of the Act, during the period of this ORDER, until completion of the program set out in Paragraph 1 herein, the Company shall use the best practicable systems of emission reduction so as to maximize the reliability and efficiency of the existing controls on Unit #1 and Unit #2, minimize particulate matter emissions, avoid any imminent and substantial endangerment to the public health, and comply with the requirement of the applicable implementation plan as it is able to.

Written operating and maintenance procedures for the existing controls shall be submitted to U.S. EPA for approval within one month from the effective date of this ORDER. These procedures shall provide for maximizing reliability and efficiency; malfunction reporting, record keeping, and corporate reviewing. Failure to submit or comply with the procedures will constitute a violation of this ORDER.

VI. A continuous opacity monitoring system for the stack which is being constructed to service Units #1 through #4 shall be installed, calibrated, maintained and operated in accordance with the procedures set forth in Appendix B of 40 CFR Part 60 no later than April 15, 1980. Pursuant to Section 114, monitor data shall be retained by the Company for at least two years subsequent to recording. On a quarterly basis, the Company shall report all 6-

minute data averages from the monitor [reduced as specified in 40 CFR Section 60.13(b)] in excess of 20 percent.

VII. The Company is hereby notified that failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty unless exempted under Section 120 of the Act. In the event of such failure, the Company will be formally notified pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VIII. Nothing herein shall be construed to be a waiver by the Company of its right to challenge the reasonableness, legality or constitutionality of the imposition of non-compliance penalties on the Company.

IX. The Company hereby waives its right to file a petition for review of this ORDER pursuant to Section 307(b)(1) of the Act.

X. All submissions and notifications to U.S. EPA, pursuant to this ORDER, shall be made to the Air Compliance Section, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2090. A copy of all submissions and notifications shall be made to the Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio 43605.

Dated: January 2, 1979.

DOUGLAS M. COSTLE,  
Administrator.

Toledo Edison Company has reviewed this ORDER; consents to the requirements set forth in this ORDER, and believes it to be a reasonable means by which the Bay Shore Station can achieve final compliance with Ohio Regulations AP-3-07 and AP-3-11. The Company denies the existence of any past or present violation of the Ohio Implementation Plan at its Bay Shore Station, but for purposes of settlement consents to the abatement program set forth herein.

Dated: November 15, 1978.

LOWELL E. ROE,  
Vice President, Facilities Development,  
Toledo Edison Company.

[FR Doc. 79-1060 Filed 1-11-79; 8:45 am]

[6560-01-M]

#### SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 1036-71]

#### PART 434—COAL MINING POINT SOURCE CATEGORY

##### Standards of Performance for New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 19, 1977, the Environmental Protection Agency (EPA) proposed regulations setting forth limitations on the discharge of pollutants into navigable waters from new source coal mines and coal preparation plants, as required by the Federal Water Pollution Control Act. The rules promulgated today establish final standards of performance for

new sources in the coal mining point source category. Changes and clarifications in response to comments received on the proposed regulations are included in the rules promulgated today. These standards of performance will be incorporated in National Pollutant Discharge Elimination System permits issued by EPA or by States with approved programs.

EFFECTIVE DATE: February 12, 1979.

FOR FURTHER INFORMATION CONTACT:

William Telliard, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

#### SUPPLEMENTARY INFORMATION:

On October 17, 1975, EPA proposed regulations adding Part 434 to Title 40 of the Code of Federal Regulations (40 FR 48830). Those regulations, with subsequent amendments, established effluent limitations guidelines based on use of the best practicable control technology currently available (BPT) for existing sources in the coal mining point source category. These were followed, on April 26, 1977, with final BPT effluent limitations guidelines for this category (42 FR 21380).

On September 19, 1977, the Agency published proposed standards of performance for new sources (NSPS) within this category based on application of the best available demonstrated control technology (42 FR 46932). Many comments were received concerning these proposed standards. After consideration of these comments, and incorporation of certain adjustments, the Agency today promulgates final standards of performance for new sources in the coal mining point source category.

The Agency is not at this time promulgating pretreatment standards for new sources in this category, nor does it intend to promulgate such standards in the future, because there are no known situations in which such standards would be applicable. Nor is the Agency at this time promulgating final regulations establishing effluent limitations reflecting best available technology economically achievable (BAT) which were proposed on May 13, 1976 (41 FR 19841). The Agency intends to promulgate BAT regulations in 1980 after careful consideration of the discharge of certain "priority pollutants" from mines and preparation plants in the coal mining point source category. This review complies with the settlement agreement approved by the U.S. District Court for the District of Columbia in *Natural Resources Defense Council, et al v. Train*, 8 ERC 2120 (D.C.D.C., 1976). During that

review, these new source standards will be reconsidered.

#### LEGAL AUTHORITY

These standards of performance are authorized by Section 306 of the Federal Water Pollution Control Act ("Act"), as amended in 1977 by the Clean Water Act, Pub. L. 95-217. This section requires the achievement by new sources of a Federal standard of performance determined by the Administrator to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 403(c) of the Act requires the Administrator to issue to States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants in accordance with Section 306. The "Development Document" referred to below fulfills these requirements.

Finally, section 501(a) authorizes the Agency to prescribe regulations as necessary to carry out its functions under the Act.

#### SUMMARY AND BASIS OF EFFLUENT LIMITATIONS GUIDELINES

The report entitled "Development Document for Performance Standards for the Coal Mining Point Source Category, May 1976," details the analyses undertaken in support of these regulations and is available for inspection at the EPA Public Information Reference Unit, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, at all EPA regional offices, and at State Water Pollution Control Offices. The report on the potential economic effects of these regulations is also available for inspection at these locations. Persons wishing to obtain copies may write to the National Technical Information Service, Springfield, Virginia 22151.

At the time of proposal of performance standards on September 19, 1977 (42 FR 46932), interested persons were asked to submit written comments to the Agency by November 18, 1977. Copies of all public comments which were received are available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, S.W., Washington, D.C.

The regulations promulgated today incorporate several adjustments to the proposed standards of performance. In large part, these changes reflect EPA's consideration of the substantial number of comments received from industrial and environmental groups. The

comments are addressed in detail in Appendix A to the preamble; major issues and changes in the proposed regulations are summarized below.

#### SUMMARY AND OUTLINE OF ISSUES AND MAJOR CHANGES

The definition of "new source coal mine" used in these regulations is tied closely to an identification number system implemented by the Mining Safety and Health Administration of the Department of Labor ("MSHA"), formerly the Mining Enforcement and Safety Administration of the Department of the Interior. MSHA requires every coal mine operator to file a Notification of Legal Identity, which provides information relating to mine ownership and location (30 CFR Part 82). Upon receipt of these Notices, it assigns identification numbers to the mines on a routine, first come-first serve basis.

This identification system offers EPA a convenient vehicle for identifying new source coal mines. If a mine has received an MSHA number before the promulgation date of these regulations, it will be considered an existing source and, therefore, will not be required to meet the standards of this Part. Conversely, if a mine receives a number after the promulgation date of these regulations, the mine constitutes a new source and must satisfy the requirements of this Part.

It should be noted that in the proposed NSPS (September 19, 1977), the date for determining a "new source coal mine" was the date the regulation was proposed. However, in that promulgation of the regulation was delayed past one hundred and twenty days after the date of proposal because the Agency needed additional time to address the substantial number of comments received on the proposed regulation, the date for determining a "new source coal mine" in this final rule is the date this rule is promulgated.

In some instances, however, the MSHA identification system might not yield a fair result. It is possible, for example, that some delay in registration could occur; in that event, a mine which was in existence when these regulations were promulgated could be classified as a new source. To avoid this possibility, the regulations offer an option. If a mine owner or operator can demonstrate that contractual obligations to purchase unique facilities or equipment (as defined in 40 CFR Part 6, Appendix A) existed before the promulgation date of these regulations, his mine will be considered existing rather than new. To carry his burden of proof, the owner or operator must show that substantial contractual obligations existed. A building contract would qualify, for example, but not

options to purchase or contracts terminable at little or no loss. Similarly, the "facilities" or "equipment" for which contracts are let must constitute items of significant value, the purchase of which represents a substantial commitment to go forward with the commercial endeavor. Such items include structures, structural materials unique to a particular site, and machinery, process equipment or construction equipment for use at a particular site.

Furthermore, a mine presently categorized as existing may subsequently be reclassified as new if it undergoes a "major alteration." Changes which are substantial enough to create, in effect, a new source would fall under the term. However, normal expansion of mining operations would not be considered a major alteration and would, therefore, not bring a site under these regulations. Of course, determining whether a particular change constitutes a simple modification or a major alteration can be accomplished fairly only on a case-by-case basis. This the Agency will do, taking into account a range of factors relating to mine operation and capital investment (see Section 434.11(i)(2) of the regulations). A factor that will not be determinative of whether a "major alteration" has occurred is the acquisition of additional land or mineral rights. The Agency has deleted this criterion from the proposed regulations because simple legal transactions do not necessarily translate into creation of new point sources. Nor do they indicate a present intention to increase mining activity.

#### COAL PREPARATION PLANTS AND ASSOCIATED AREAS

Although recycling is a common practice, the Agency has deleted the requirement that process water in preparation plants be reused. There are several reasons for this change. First, reuse of process water is essentially a function of the economics of operation of a preparation plant: sensible operators will strive to achieve recycle quite apart from the pollution control aspect.

More importantly, most preparation plants are surrounded by associated areas. Common settling ponds service the coal preparation plant and associated area. Discharges from the preparation plants often are channeled to the common ponds rather than directly to navigable waterways. The discharges from those ponds to navigable waters, of course, are covered by these effluent limitations guidelines. But since those limitations are expressed in concentration terms, it is often impossible to apportion the pollution coming from the preparation plant discharges. Thus, there would be little practical difference between regulations containing a recycle provision

and those that do not. And it appears that the recycle language would have caused substantial confusion for those involved in the permit drafting process.

#### LIMITATIONS ON IRON

Among the effluent limitations imposed in these new source performance standards are maximum concentration limits on iron. When these regulations were proposed, the daily maximum limitation for total iron was set at 3.5 mg/l. This figure provoked several objections from the industry to the effect that a daily maximum of only 1.17 times the 30 day average (set at 3 mg/l in the proposed regulations) was unrealistic. In response to these objections, EPA reviewed its data and has determined that it fails to substantiate the 3.5 limitation. Therefore, in that other effluent limitations for the coal mining point source category have been based on long term data indicating that a daily maximum of twice the 30 day average can be maintained, final limitations promulgated for total iron are 3.0 mg/l as a 30 day average and 6.0 mg/l as a daily maximum.

#### WESTERN COAL MINES SUBCATEGORY

In the proposed new source performance standards for the coal mining point source category, the Agency established a separate Subpart for Western Coal Mines (Subpart F). That approach was based on data indicating that many Western coal mines are able to discharge pollutants in lower concentrations than Eastern coal mines. Factors offered to explain this difference included the relatively more even topography of Western mines, the emphasis on conserving scarce water supplies, and the lower concentration of pollutants in the geologic formations being exploited. Proposed standards of performance for this subcategory were founded upon data gathered from reports on NPDES permits and from sampling and analysis at certain Western mines.

This proposed approach prompted comments from the mining industry. These comments pointed out that although many Western mines, defined as those mines located west of the 100 meridian, West Longitude, are located in more even topography, still others are situated in areas topographically similar to Eastern coal fields.

EPA has reviewed this information and believes that insufficient data presently exists to justify a regionally based imposition of standards of performance with respect to all pollutant parameters covered by these regulations. However, such data may be forthcoming in the future. For example, it is clear that many mines in certain Western states are achieving total

suspended solids (TSS) limitations more stringent than those applicable to Eastern mines. See the preamble for proposed Standards of Performance for New Sources (42 FR 46933, September 19, 1977) and for BPT Effluent Limitations and Guidelines (42 FR 21380, April 26, 1977).

If, in the future, available information justifies separate consideration for Western mines, this Subpart will be amended.

Therefore, EPA today reserves Subpart F for that purpose. As an immediate measure, the Agency today excepts from national regulations with respect to TSS those States in which mines have demonstrated an ability to discharge TSS in lower concentrations than the effluent limitations established in these regulations. This exception means that persons initiating mining activity in those States will receive TSS limitations based on the best engineering judgment of the State or Federal permitting authority pursuant to Section 402(a)(1).

#### EXEMPTION FOR DISCHARGE RESULTING FROM EXTRAORDINARY VOLUMES DUE TO PRECIPITATION EVENTS

A number of coal mining companies and environmental groups requested clarification of the overflow exemption contained in the proposed standards of performance.

While the language, in an attempt to clarify, does differ slightly from the exemption in the BPT regulation, the intent is the same. Simply put, each discharger should design, construct and properly maintain his containment or treatment facilities. The treatment facilities should be constructed to include the volume which would result from a "10-year/24-hour precipitation event" at the mine or preparation plant. A 10-year/24-hour precipitation event is a measurement of precipitation in inches of water which can be found from the isopleth maps in "Rainfall Frequency Atlas of the U.S.," a publication of the U.S. Department of Commerce. For example, using the "10-year/24-hour precipitation event" for Charleston, West Virginia, a treatment facility should be constructed to include the volume of water that would result from 4 inches of rain over the mine or preparation plant area covered by the regulation. Should a 10-year/24-hour precipitation event or a snow melt of equivalent volume cause an overflow or discharge of effluent that is not within the effluent limitations, that amount of overflow or discharge caused by the precipitation event will be allowed, provided that the treatment facility has been constructed, operated and maintained to meet the stated design. The soundness and justification for the specific design, construction, operation

and maintenance of the waste water treatment facility is left to the operator or owner of the mine or preparation plant.

A change has been made in the provision to emphasize that the burden is on the discharger to show that the exemption is warranted. A technical correction will be made to the regulation based on best practicable technology currently available to clarify that that meaning applies to those regulations also.

For a detailed discussion of this exemption, see the preamble to the BPT Effluent Limitations Guidelines (42 FR 21381-21382, April 26, 1977).

#### AREAS UNDER RECLAMATION

The proposed regulations added Subpart E-Areas Under Reclamation, but imposed no standards of performance due to on-going data collection and analysis. The addition of this Subpart occasioned numerous comments. Environmental groups urged the Agency, for example, to promulgate standards of performance for Subpart E because "areas under reclamation" could use the same technology to comply with standards of performance as are used for mine drainage originating from an "active mine area." Others suggested that Subpart E should address post-mining discharges from closed, abandoned or orphaned mines. Still others requested clear delineation of EPA FWPCA authority and that of the Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). It was further maintained that specific effluent limitations for discharges from areas under reclamation would be inappropriate.

After close consideration of these comments, the Agency has chosen to add Subpart E as originally proposed because there is insufficient information to justify imposition of standards of performance at this time for inactive mines and areas under reclamation.

EPA intends to propose BAT regulations and revised new source performance standards in 1979. As part of this review, EPA will continue to gather and analyze information with respect to water pollution originating in surface mines undergoing reclamation and, if warranted, may at the time it proposes the revised BAT limitations, propose standards of performance for Subpart E.

#### ENVIRONMENTAL REVIEW OF NEW SOURCE MINES PERMITS

General regulations governing the application of NEPA to new source permits were promulgated on January 11, 1977, (40 CFR Part 6 (42 FR 2450)). EPA expanded these general regulations by issuing a separate policy

memorandum on the applicability of NEPA to new source coal mines. (A summary of this guidance was included in 42 FR 46932). The Agency received a number of comments on this summary. Many comments requested that NEPA review be extended to all underground drift mines operating in seams which have a potential for producing acid mine drainage. They further maintained that the adverse potential of post-mining discharge was sufficiently high to warrant automatic NEPA review of all mines. Other comments took a different view, arguing that NEPA review be contingent upon factors relating to down-stream water use.

As the Agency explained in the policy memorandum, environmental assessments of new source coal mines should be based upon mine size (design annual tonnage) and mining method (surface or underground). If the assessment suggested that a site may pose a significant risk of major environmental impact to the environment (in accordance with 40 CFR 2450 et seq.), an EIS would be prepared. This review could be triggered by appropriate evidence relating to any of the following: archaeological sites, sensitive ecosystems, habitats of endangered species, historical sites, wild and scenic rivers, wetlands, prime agricultural lands, significant surface water or ground water pollution, recreational land uses, air quality, noise level, community integrity and quality of life, mining in a saturated zone, presence of overburden with a potential for producing acid mine drainage, steep slope mines (over 25 percent), mining in an alluvial valley floor, and other criteria based on characteristics of particular regions.

The Agency believes that this approach is sound and fully comports with all legal requirements.

A number of comments were received addressing the EPA draft document "Best Practices for New Source Surface and Underground Coal Mines." They requested that this draft document be reappraised in light of the regulations required by the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). EPA agrees and will continue to work closely with the Department of Interior's Office of Surface Mining in those areas where these regulations affect the same activities. When final regulations are promulgated by the Department of the Interior, EPA will review the regulations and will issue, as appropriate, further guidance to Regional Administrators regarding the continued applicability of "best practice procedures."

ECONOMIC IMPACT ANALYSIS

The report, "Economic Impacts of Effluent Guidelines, Coal Mining" which supports these regulations, concludes that these new source performance standards should not significantly affect prices, production, employment, or balance of trade. The standards are predicted to cause 1985 raw coal prices to increase up to 32 cents per ton; this represents an average cost increase of no more than 1.6 percent. The economic analysis indicated that the higher price is expected to reduce 1985 demand from 897 to 894 million tons, a decrease of 0.3 percent. Assuming 12000 BTU per pound of coal, this annual reduction would approximate 72x10<sup>12</sup> BTU. These estimates which were based upon an earlier analysis done for the Agency, differ from current Administration estimates of approximately 1.2 billion tons of coal demanded in 1985. However, the price and proportionate production impacts are expected to be similar.

The proposed preparation plant standards of performance were predicted to increase the cost of prepared coal up to seven cents per ton. This increase was approximately 3.5 percent of the \$2.00 per ton charge for coal cleaning and proportionally less of the cost of prepared coal. No significant change in the demand for cleaned coal was expected to result from the regulation.

These promulgated regulations remain substantially unchanged from the proposed regulations; thus, the economic analysis remains applicable. However, these promulgated regulations have removed the requirement for preparation plants to recycle their waste streams. This could to some small extent ease economic impacts of the regulations.

For both coal mines and preparation plants, capital requirements through 1985 will total approximately \$126 to \$161 million. This is less than 2 percent of the eight to eleven billion dollars which the coal industry is expected to spend for capital expansion during this period.

The requirement to prepare Regulatory Analyses is governed by Executive Order 12044. EPA adopted guidelines to implement this policy. Although not necessary, the economic analysis prepared in support of this regulation fulfills the requirements of the executive order.

MONITORING

Raw process waste water or raw mine drainage at some mines and preparation plants may contain a pollutant controlled by this Part in undetectable or insubstantial quantities, or at substantially lower concentrations than allowed by the standard of performance. If that is the case, the

Agency may allow by permit less frequent monitoring of those parameters than is required for other pollutants in the discharge (see 40 CFR Part 125.27). A less frequent schedule in some circumstances may still be sufficient to assure that no change in concentrations is occurring. Such modifications in monitoring requirements will be considered on a case-by-case basis.

SMALL BUSINESS ADMINISTRATION  
LOANS

Section 8 of the FWPCA authorizes the Small Business Administration, through its economic disaster loan program, to make loans to assist certain small business concerns in effecting additions or alterations to their equipment, facilities, or methods of operation so as to meet water pollution control requirements under the FWPCA. These loans exist to aid concerns likely to suffer substantial economic injury without such assistance.

For further details on this Federal loan program, write to EPA, Office of Analysis and Evaluation (WH-586), 401 M Street, S.W., Washington, D.C. 20460.

Dated: December 20, 1978.

DOUGLAS M. COSTLE,  
Administrator.

Part 434 is amended as follows:

Subpart A—General Definitions

1. In § 434.11, paragraph (i) is added as follows:

§ 434.11 General Definitions.

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(i) The term "new source coal mine" shall mean a coal mine which:

(1) was not assigned the applicable Mining Safety and Health Administration (MSHA) identification number under 30 CFR Part 82 prior to the promulgation date of these new source performance standards and which, at such date, had no contractual obligation to purchase unique facilities or equipment as defined in Appendix A of 40 CFR Part 6, Guidance on Determining a New Source, or

(2) is determined by the Regional Administrator to constitute a "major alteration" in accordance with 40 CFR Part 6 Appendix A (even if the applicable MSHA identification number is assigned prior to the promulgation date of new source performance standards). In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of promulgation of ap-

plicable new source performance standards;

(i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;

(ii) a mine operation discharges into a drainage area not previously affected by waste water discharges from the mine;

(iii) a mine operation causes extensive new surface disruption;

(iv) a mine operation initiates construction of a new shaft, slope, or drift;

(v) a mine operation makes significant capital investment in additional equipment or additional facilities;

(vi) such other factors as the Regional Administrator deems relevant.

**Subpart B—Coal Preparation Plants and Associated Areas**

2. Section 434.25 is added as follows:

§ 434.25 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

(1) Discharge of pollutants shall not exceed the following limitations, if discharges from that point source normally are acidic prior to treatment:

Effluent limitations		
Effluent characteristics	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	70.0	35.0
Iron, total.....	6.0	3.0
Manganese, total.....	4.0	2.0
pH.....	within the range of 6 to 9	

(2) Discharge of pollutants shall not exceed the following limitations, if discharges from that point source normally are alkaline prior to treatment:

Effluent limitations		
Effluent characteristics	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	70.0	35.0
Iron, total.....	6.0	3.0
pH.....	within the range of 6 to 9	

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or dis-

charge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Where the application of neutralization and sedimentation treatment technology results in an inability to comply with the manganese limitation set forth in paragraph (a) of this section, the permit issuer may allow the pH level in the final effluent to be exceeded to a small extent in order that the manganese limitation in paragraph (a) of this section will be achieved.

**Subpart C—Acid or Ferruginous Mine Drainage Subcategory.**

3. Section 434.35 is added as follows:

§ 434.35 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

Effluent limitations		
Effluent characteristics	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	70.0	35.0
Iron, total.....	6.0	3.0
Manganese, total.....	4.0	2.0
pH.....	within the range of 6 to 9	

<sup>1</sup>These TSS limitations shall not apply to discharges from coal mines located in the following States: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. In these States, TSS limitations shall be determined on a case-by-case basis.

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or discharge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Drainage which is not from an active mining area shall not be required to meet the limitations set forth in paragraph (a) of this section as long as such drainage is not com-

mingled with untreated mine drainage which is subject to the limitations in paragraph (a) of this section.

(d) Where the application of neutralization and sedimentation treatment technology results in an inability to comply with the manganese limitation set forth in paragraph (a) of this section, the permit issuer may allow the pH level in the final effluent to be exceeded to a small extent in order that the manganese limitation in paragraph (a) of this section will be achieved.

**Subpart D—Alkaline Mine Drainage Subcategory**

4. Section 434.45 is added as follows:

§ 434.45 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

Effluent limitations		
Effluent characteristics	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	70.0	35.0
Iron, total.....	6.0	3.0
pH.....	within the range of 6 to 9	

<sup>1</sup>These TSS limitations shall not apply to discharges from coal mines located in the following States: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. In these States, TSS limitations shall be determined on a case-by-case basis.

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or discharge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Drainage which is not from an active mining area shall not be required to meet the limitations set forth in paragraph (a) of this section as long as such drainage is not commingled with untreated mine drainage which is subject to the limitations in paragraph (a) of this section.

5. Subpart E is added as follows:

**Subpart E—Areas Under Reclamation Subcategory**

§ 434.50 Applicability; description of the areas under reclamation subcategory.

§ 434.55 [Reserved]

§ 434.50 Applicability; description of the areas under reclamation subcategory.

The provisions of this subpart are applicable to discharges from surface mining areas where grading has been completed and the area of land is bonded by an appropriate reclamation bond.

§ 434.55 [Reserved]

**6. Subpart F is added as follows:**

**Subpart F—Western Coal Mines Subcategory**

§ 434.60 Applicability; description of the Western coal mines subcategory.

§ 434.65 [Reserved]

§ 434.60 Applicability; description of the western coal mines subcategory.

The provisions of this subpart are applicable to mine drainage resulting from the mining of coal of any rank including but not limited to bituminous, lignite, and anthracite from mines located west of the 100-degree meridian.

§ 434.65 [Reserved]

**APPENDIX A**

**SUMMARY OF PUBLIC PARTICIPATION**

Prior to this publication, the Environmental Protection Agency set forth in substantial detail factual determinations supporting the promulgation of these regulations. These appeared in the Notice of Final Rulemaking for existing sources (BPT) in the Coal Mining Point Source Category, published April 26, 1977 (42 FR 21380) and in the notice of Public Review Procedures, published October 6, 1973 (38 FR 21202). Moreover, the Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Coal Mining Point Source Category and the document entitled Economic Impact of Interim Final Effluent Guidelines on the U.S. Coal Mining Industry support these regulations. The public had opportunity to review these studies (42 FR 46932).

The following parties submitted written comments: West Virginia Citizen Action Group, Salt River Project, Dechert, Price and Rhoads (for Westmoreland Resources); A.T. Massey Coal Company; Peter Kiewit Sons' Company; Island Creek Coal Company; Consolidation Coal Company; United States Steel Corporation; AMAX Coal Company; State of West Virginia, Office of the Attorney General; State of West Virginia, Department of Natural Resources; Kentucky Coal Association Incorporated; Pennsylvania Power and Light Company; Jack McCormack and Associates; National Coal Association; State of Utah, Office of the Governor; The North American Coal Corporation; The State of North Dakota; Commonwealth of Pennsylvania, Department of Environmental Resources; Duquesne Light; Trout Unlimited; The Pittsburgh and Midway Coal Mining Company; the United

States Environmental Protection Agency, Region VIII; Utah Power and Light Company; Ashland Coal Company Incorporated; Dow Chemical, U.S.A.; Texas Utilities Generating Company; CF & I Steel Corporation; Peabody Coal Company; Knife River Coal Mining Company; Save Our Cumberland Mountains; East Tennessee Research Corporation; Utah International Incorporated; Bethlehem Steel Corporation; The Pittston Company Coal Group; The West Virginia Highlands Conservancy; National Mines Corporation; United States Department of the Interior; and the Honorable Robert H. Mollhan, House of Representatives.

(1) The Agency received comments questioning exemptions for discharges of extraordinary volume due to precipitation events. Some of these requested that EPA employ the same language that it used in the BPT regulations. EPA has decided, to modify that language but only to clarify the earlier statement. For a full discussion of this provision, see the preamble to these regulations.

(2) EPA received numerous comments concerning its definition of "new source coal mine." The majority of comments agree with the Agency decision to ground the determination upon the identification number system of the Mining Safety and Health Administration of the Department of Labor ("MSHA"). One comment maintained, however, that, as the MSHA identification system deals with mine operation, its use here would violate Section 306(a)(2) of the Clean Water Act, which ties the definition of "new source" to time of construction. The Agency agrees that commencement of construction is critical in this regard. Consequently, the regulations allow a mine owner or operator to demonstrate that construction occurred prior to the promulgation date of these regulations. A successful demonstration would rebut the presumption created by the time of issuance of the MSHA number.

Other comments requested a definition for "existing" sources. This definition is not necessary because any source which is not "new" is, by implication, "existing."

EPA also received comments concerning "major alterations" of coal mines. One argued that the guidance criteria established in the regulations is too vague, but failed to offer any specific alternative language. EPA has decided to retain these criteria because it believes them to be sufficient. They provide specific guidance to Regional Administrators who must make these case-by-case decisions, and also put owners and operators on notice in this regard. These criteria allow needed discretion and maintain a national uniformity in decision making.

Another comment suggested that "major alterations" be linked to degradation of water quality. Although in a given case, degradation alone could prompt a decision that a major alteration has occurred, EPA disagrees that this, or any other single criterion, should exclusively govern the determination. There are too many factors which indicate major operational change to exclusively rely on one.

(3) Numerous comments were received concerning Subpart E—Areas under Reclamation. Many of these comments asked EPA to include standards of performance for discharges from deep mines after closure and cessation of mining activity. The Agency declines to do so because it has in-

sufficient data at this time to impose limitations on inactive mine discharges. BAT limitations, however, may impose effluent limitations for discharges from areas under reclamation.

Other commenters noted that these regulations set forth no clear distinction between EPA control of coal mine discharges and that of the Office of Surface Mining of the Department of the Interior. EPA and the Department of the Interior are working together to ensure that these new source performance standards will neither jeopardize the efforts of the agencies nor unfairly burden the industry.

Finally, some commenters prefer regulation of discharges from areas under reclamation by other than effluent limitations. Once again, the lack of sufficient data precludes adoption of this suggestion. This possibility will receive attention during BAT review.

(4) With respect to the proposed maximum daily limitations for total iron, commenters complained that the 3.5 mg/l figure was too stringent. In these regulations, EPA has amended that standard to 6.0 mg/l. For a discussion of its reasons, see the preamble to these regulations.

(5) EPA received comments on Subpart F—Western Coal Mines. They requested deletion of the category or, in the alternative, the imposition of total suspended solid limitations identical to those imposed in the rest of the Nation. In response, EPA has removed the TSS limitations set forth in the proposed new source performance standards. The effect is that TSS limitations for western mines will reflect best engineering judgment on a case-by-case basis. For a fuller discussion, see the preamble to these regulations.

(6) Industry commented that the TSS limitations are too stringent. The Agency carefully considered this objection; it believes that these standards reflect the best available demonstrated control technology in the industry.

Another comment suggested that EPA base TSS limitations on ambient total solids in the receiving stream. Because new source performance standards are technology-based, it would be inappropriate to key the regulations to receiving water quality.

Finally, one comment asserted that EPA should prepare a cost-benefit analysis focusing solely on removal of total suspended solids. EPA believes that its more broad economic analysis is both appropriate and adequate.

(7) Certain comments questioned the pH limitation with respect to manganese. In the proposed new source performance standards, EPA authorized exceedance of the upper pH limit to 9.5 when necessary to meet the manganese limitation. Comments asked EPA to abandon the 9.5 ceiling and to adopt in its place the approach contained in the BPT regulation. That regulation allows exceedance "to a small extent." Upon consolidation, EPA has reinstated the BPT language, in order to maximize discretion in the permit issuing authority.

(8) EPA received numerous comments concerning its recycling proposal. Specifically, these comments requested guidance on the amount of process waste water that must be returned to the process. Because EPA has decided not to require recycling, these inquiries require no response.

(9) State officials commented that EPA's decision to forego regulation of post-mining

discharges at this time will unfairly burden their regulatory programs. They also maintained that the continuation of non-uniform state standards would influence the location of new industry.

Although these allegations may be true, EPA cannot impose effluent limitations in the absence of sufficient data. The Agency will study the post-mining discharge problem and promulgate standards, as appropriate, in conjunction with its BAT review of this point source category.

(10) One comment asked EPA to conduct specific economic impact analyses on individual mining districts. EPA believes that its nationwide analysis adequately considers regional impacts of the regulations.

(11) Several commenters contended that discharges from preparation plant associated areas are not point source discharges and that, therefore, these regulations should not apply. EPA's study of the industry reveals the contrary: most discharges are from point sources. Consequently, we decline to remove coal preparation plant associated areas from coverage. Of course, only point sources as defined in the Act are covered.

(12) EPA received comments from numerous private interests regarding the procedures for environmental review of new source coal mine permits. Although not a part of these regulations, EPA had discussed these procedures in the preamble to the proposed new source performance standards for this point source category (42 FR 46932). At that time, it outlined a method which expands upon the general NEPA regulations by using screening procedures to identify coal mines that are most likely to have significant impact on the environment. Under that scheme, EPA would use two criteria, the rate of production and the mining method, as preliminary indicators of environmental impact, and, thus, of the need for an environmental impact statement.

Some of the comments preferred to this approach a full NEPA review of all underground drift mines operated in pitching seams, due to the risk of acid mine drainage. Others wanted NEPA review if a mine could significantly affect a watershed. After consideration of these comments, EPA has decided to retain the procedures. First, the Agency believes that the propriety of environmental review should not be determined on narrow grounds. This method carefully avoids that consequence. Second, this administratively expedient procedure will help to shorten the time required to determine whether full NEPA review is warranted; other suggested procedures would extend this time unnecessarily.

Finally, commenters noted that EPA's draft document, "Best Practice for New Source Surface and Underground Coal Mines," overlapped regulations established under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). EPA is aware of the Department of the Interior's parallel role in regulating coal mines; consequently, the Agency will continue to work closely with the Office of Surface Mining of that Department to ensure that mutual regulatory efforts are neither duplicative nor conflicting.

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## [4110-35-M]

### Title 42—Public Health

## CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### SUBCHAPTER B—MEDICARE PROGRAM

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Payment Under Medicare for Items and Services Furnished by Indian Health Service Hospitals and Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Rule.

**SUMMARY:** These amendments permit payment for items and services furnished Medicare beneficiaries by hospitals and skilled nursing facilities of the Indian Health Service (IHS). The amendments implement Section 1880(a) of the Social Security Act, which was added by Section 401 of the Indian Health Care Improvement Act (Pub. L. 94-437). With certain exceptions, Medicare payment could not previously be made for these services because of the general statutory prohibition against Medicare payment for services furnished by Federal providers.

DATE: Effective January 12, 1979.

FOR FURTHER INFORMATION, CONTACT:

Mr. John B. Russell, Medicare Bureau, Health Care Financing Administration, Room 1H-5 East Low Rise Building, Baltimore, Maryland 21235 (301) 594-8260.

**SUPPLEMENTARY INFORMATION:** Section 401 of the Indian Health Care Improvement Act (Pub. L. 94-437), enacted on September 30, 1976, authorized Medicare payment for services furnished by IHS hospitals and skilled nursing facilities to Medicare beneficiaries. (See Section 1880 of the Social Security Act, 42 U.S.C. 1395qq.)

The Medicare statute (title XVIII of the Social Security Act) generally prohibits payment (other than for emergency services) (1) to any Federal provider of services, except those providing services to the general public as community institutions or agencies, (2) to any provider for items or services which the provider is obligated under a law of the United States or contract with the United States to furnish at public expense, and (3) for items or services which are paid for di-

rectly or indirectly by a governmental entity, whether or not the Medicare beneficiary was otherwise entitled to free care. (See Sections 1814(c), 1835(d), and 1862(a)(3) of the Act.) Therefore, prior to enactment of Pub. L. 94-437, payment could not be made under Medicare for services (other than emergency services) furnished by IHS hospitals and skilled nursing facilities (SNFs), except in the case of certain hospitals in Alaska that had been determined to be serving the general public as community institutions. Now Medicare payment can be made for services furnished by an IHS hospital or SNF, whether or not the Medicare beneficiary who receives the services is otherwise entitled to free care from the IHS.

A Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER on August 8, 1977 (42 FR 39995). The NPRM proposed to extend Medicare coverage also to certain services furnished in Veterans Administration (VA) hospitals under section 115(a) of the Veterans Omnibus Health Care Act (Pub. L. 94-581). However, these provisions cannot be implemented until a number of administrative issues are resolved by the VA and the Department of Health, Education, and Welfare, as provided by section 115(a) of Pub. L. 94-581. We are concerned that, under these circumstances, amending the regulations would be misleading or confusing. For this reason, the proposed extension to VA hospitals has been omitted from these final regulations. When agreement on these administrative questions is reached between the Department and the VA, implementing regulations will be published in a new NPRM.

### COMMENTS RECEIVED AND RESPONSES

Nine comments were received with regard to the NPRM. A summary of the comments and the Department's responses follow:

1. One group of comments related to the proposed amendments on VA facility coverage. Since those amendments have been deferred for publication in a future NPRM, these comments will be considered in the redraft of that NPRM.

2. Another group endorsed the proposed amendments related to IHS hospital and extended care coverage, expressing the view that they would result in improved utilization of medical services.

3. One commenter objected to one Federal agency (HCFA) reimbursing another Federal agency (IHS) for services the latter is required to furnish without charge.

Since the reimbursement for these services is required by Section 1880 of