RULES AND REGULATIONS

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 final compliance with Ohio Regulations AP-3-07 and AP-3-11 in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Increment</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start-up of Unit #2</td>
<td>Jan. 1, 1980</td>
</tr>
<tr>
<td>Start-up of Unit #1</td>
<td>Jan. 1, 1980</td>
</tr>
<tr>
<td>Complete testing of Unit #2</td>
<td>Feb. 15, 1980</td>
</tr>
<tr>
<td>Complete testing of Unit #1</td>
<td>Apr. 1, 1980</td>
</tr>
<tr>
<td>Achieve compliance with Ohio Regulations AP-3-07 and AP-3-11.</td>
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</table>

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 as 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 indicated 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 shall have the right to inspect 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 7603.

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 patellative or other 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.

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 take such action as U.S. EPA may require by July 1, 1979, will result in a requirement to pay a noncompliance penalty unless exempted under Section 114. 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 noncompliance 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, 2400 South Dearborn Street, Chicago, Illinois 60604, (312) 823-2000. A copy of all submissions and notifications shall be made to the Toledo Pollution Control Agency, 20 Main Street, Toledo, Ohio 43605.


DOUGLAS M. COSTLE,
Administrator.

Toledo Edison Company has reviewed this ORDER and 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.


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

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

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 from new and existing sources of the mining point source category. This review complies with the settlement agreement agreed to 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., 1970). 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 promulgation of certain standards of performance relating to existing sources. These standards are to be promulgated in accordance with the procedures set forth in Section 306 of the "Act." 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 assigned to mine operations by the Mining Enforcement and Safety Administration of the Department of Labor ("MSHA"), formerly the Mining Enforcement and Safety Administration of the Department of Interior. MSHA requires every coal mine operator to assign a Notification of Legal Identity, which provides information relative to mine ownership and location (30 CFR Part 82). Upon receipt of these Notices, it is the responsibility of the mine owner or operator to maintain_CALREMOVE new source standards of performance. These standards incorporate several adjustments to the proposed standards of performance. 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.

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At the time of proposal of performance standards on September 19, 1977 (42 FR 46992), 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. 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 22161.

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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 pond system rather than directly to navigable waterways. The discharges from those ponds to navigable waters, of course, are covered by these effluent limitations guidelines.

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 to the current operator. If the 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 terminate at little or no loss. Similarly, the "facilities" or "equipment" for which contracts are let must be substantial in terms 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, specialized 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. To avoid the possible difficulties which a "major alteration" could occur, in that event, a mine presently classified as existing would qualify, for example, but 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 easily 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(1)(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 transactional details do not necessarily translate into changes in the extent of pollution sources. Nor do they indicate a present intention to increase mining activity.

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 pond system rather than directly to navigable waterways. The discharges from those ponds to navigable waters, of course, are covered by these effluent limitations guidelines. But once these limitations are expressed in concentration terms, it is 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 substantive 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 extent that data on iron discharge 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 objections raised in response.

**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 justified by the observation that certain Western 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 states, 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 western coal mines from these regulations for TSS those States in which mines have demonstrated an ability to discharge TSS in lower concentrations than the effluent limitations established in this regulation. 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)(4).

**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 language used 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 isovolp 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 in compliance with 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 similar 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 or best available technology not currently available. The correction will be made to the regulation.

**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 clarification of EPA FWPCA authority that Subpart E must be consistent with the provisions of 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 amendment of standards of performance at this time for inactive mines and areas under reclamation.

EPA intends to propose BAT regulations for 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, (46 CFR Part 6 (42 FR 24500). 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 40 CFR 434.0.) The Agency also 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 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 ecological habitats, 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 broad 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.” The Agency requested that this draft document be reorganized in terms 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 will 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 72x10^12 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 $2.09 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 regulations.

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 lead to some small extent case economic impacts of the regulations.

For both coal mines and preparation plants, capital requirements through 1985 would range from $125 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 specified by one of the performance. If that is the case, the Agency may allow by permit less frequent monitoring of these 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-580), 401 M Street, S.W., Washington, D.C. 20460.


DOUGLAS M. COSTE
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.

(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-
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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 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 characteristics

<table>
<thead>
<tr>
<th>Milligrams per liter</th>
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<tbody>
<tr>
<td>TSS</td>
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<tr>
<td>Iron, total</td>
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<td>Manganese, total</td>
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<tr>
<td>pH</td>
</tr>
</tbody>
</table>

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

Subpart E is added as follows:

5. Subpart E is added as follows:

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

§ 434.55 [Reserved]

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

§ 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, 1978 (38 FR 21202). Moreover, the Development Document for Final Effluent 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.

The following parties submitted written comments: West Virginia Citizen Action Group Salt River Project; Desert, Price and Rhodes (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; John McCormack and Associates; National Coal Association; State of Utah, Office of the Governor; The North American Coal Corporation; The State of North Dakota; Commission 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; Nacal Chemical, U.S.A.-Texas; The Phillips Generating Company; CP & I Steel Corporation; Peabody Coal Company; Knife River Coal Mining Company; 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. Molihan, 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 existing state of the law. 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 on number of mines and their Total Solid Suspended Loadings. It was suggested that this system deals with mine operations, its use here would violate Section 306(c)(2)(D) 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 require the 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 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 the major alteration test. One argued that the guidance criteria established in the regulations is too vague, but failed to offer any specific alternative language. Although this is true, there are sufficient 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 disagreed. EPA stated that if a single criterion, should exclusively govern the determinations. 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 employ the same language that it used in the BPT regulations for discharges from deep mines after closure and cessation of mining activity. The Agency declines to do so because it has insufficient data at this time to impose limitations on inactive mine discharges. BAT limitations, however, may impose effective limitations for discharges from areas under reclamation.

Other comments noted that these regulations conflict forth a clear distinction. 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 sources 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, this comment is based on one. It includes 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 reasoning, 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 Impoundment of total suspended solids 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 of this action is that 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.

(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 of 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 reconsideration, EPA has retained the same standard, 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 regulate 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 main-
tained 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 appropri-
ate, in conjunction with its BAT review of this point source category.
(10) One comment asked EPA to conduct specific economic impact analyses on indi-
vidual mining districts. EPA believes that its nationwide analysis adequately considers re-
gional impacts of the regulations.
(11) Several commenters contended that discharges from preparation plant associat-
ed areas are not point source discharges and that, therefore, these regulations should not
apply. EPA’s study of the industry re-
veals 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 numer-
ous private interests regarding the proce-
dures for environmental review of new source coal mine permits. Although not a part of these regulations, EPA had dis-
cussed these procedures in the preamble to
the proposed new source performance standards for this point source category (42 FR 46392). At that time, it outlined a
method with due regard for the general NEPA regulations. By using screening proce-
dures to identify coal mines that are most likely to have significant impact on the en-
vironment. Under that scheme, EPA would use two criteria, the rate of production and the
mining method, as preliminary indica-
tors of environmental impact, and, thus, of the need for an environmental impact state-
ment.
Some of the comments referred to this
approach a full NEPA review of all under-
ground drift mines operated in pitch-
ings seams, due to the risk of acid mine drainage. Others wanted NEPA review if a mine could
significantly affect a watershed. After con-
sideration of these comments, EPA has de-
decided to retain the procedures. First, the Agency believes that the propriety of envi-
nmental review should not be determined on narrow grounds. This method carefully avoids that consequence. Second, this ad-
ministratively 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 Re-
clamation Act of 1977 (Pub. L. 95-87). EPA is
aware of the Department of the Interior’s
parallel role in regulating coal mines; conse-
quently, the Agency will continue to work
closely with the Office of Surface Mining of
that Department to ensure that mutual reg-
ulatory efforts are neither duplicative nor
conflicting.

[4110–35–M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FI-
NANCING ADMINISTRATION, DE-
PARTMENT OF HEALTH, EDUCA-
TION, AND WELFARE

SUBCHAPTER B—MEDICARE PROGRAM

PART 405—FEDERAL HEALTH INSUR-
ANCE FOR THE AGED AND DIS-
ABLED

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

AGENCY: Health Care Financing Ad-
ministration (HCFA), HHS.

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 implemented 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 excep-
tions, Medicare payment could not previously be made for these services because of the general statutory pro-
hibition against Medicare payment for
services furnished by Federal provid-
ers.


FOR FURTHER INFORMATION, CONTACT:

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

The Medicare statute (title XVIII of
the Social Security Act) generally pro-
hibits payment (other than for emer-
gency services) (1) to any Federal pro-
vider of services, except those provid-
ing 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 fur-
nish 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
to care. (See Sections 1814(a),
1833(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 facili-
ties (SNFs), except in the case of cer-
tain 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 serv-
ices furnished in Veterans Administra-
tion (VA) hospitals under section
115(a) of the Veterans Omnibus

However, these provisions cannot be
implemented until a number of admin-
istrative issues are resolved by the VA
and the Department of Health, Educa-
tion, and Welfare, as provided by sec-

115(a) of Pub. L. 94–581. We are con-
cerned that, under these circum-
stances, 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 agree-
ment on these administrative ques-
tions is reached between the Depart-
ment and the VA, implementing regu-
lations 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 fa-
cility coverage. Since these amend-
ments have been deferred for publica-
tion in a future NPRM, these com-
ments will be considered in the redraft-
of that NPRM.

2. Another group endorsed the pro-
posed amendments related to IHS hos-
pital and extended care coverage, ex-
pressing 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 ser-
VICES, the latter is required to furnish
without charge.

Since the reimbursement for these
services is required by Section 1800 of

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