

the Administrative Procedure Act, 5 U.S.C. 553 (d) and (c), by failing to provide notice and opportunity to comment prior to taking final action on the original McLennan County nonattainment designation. The court also found that the revision to attainment promulgated on April 8, 1980, did not necessarily moot the controversy because, on the basis of the record before it, it could not find that a further redesignation of McLennan County to nonattainment was not imminent.

EPA believes that the ozone attainment designation promulgated on April 8, 1980, accurately reflects the most recent available ozone monitoring data for McLennan County. In addition, EPA complied with notice and comment requirements prior to promulgating this designation. Consequently, EPA believes that this April 8, 1980, designation moots the case before the Fifth Circuit. However, to satisfy the Court's remand order, EPA is today proposing to reaffirm the ozone attainment designation for McLennan County and is soliciting comments on this proposal.

#### Technical Basis for Designation

In February 1979, EPA relaxed the ozone NAAQS from 0.08 parts per million (ppm), maximum hourly average concentration, to 0.12 ppm (44 FR 8218, Feb. 8, 1979). EPA also promulgated a new method for determining violations of the O<sub>3</sub> standard. In this method, EPA averages the number of exceedances of the standard recorded at a particular monitoring site during the most recent three calendar years. As long as the average remains less than or equal to 1, the area is considered to be in compliance with the ozone standard. (See Appendix H to 40 CFR 50 (1979)). An exceedance is any monitored hourly average reading of over 0.12 ppm. If there are gaps in the daily data for a particular year or ozone season, the missing data can be estimated from existing data through the use of a mathematical formula.

To determine the status of McLennan County, EPA examined the most recent data submitted by Texas in support of its redesignation request. This data consisted of incomplete data for the calendar years 1977 and 1978.<sup>1</sup> EPA estimated the O<sub>3</sub> readings for the missing dates. For purposes of clarity in the following chart, the term "exceedance" is used to describe a daily maximum hourly average ozone

measurement that is greater than the level of the standard. Therefore, the expected number of days with maximum hourly average ozone concentrations above the level of the standard may be simply stated as the "expected number of exceedances." The expected exceedances relate to accounting for incomplete sampling and the expected number is basically an arithmetic average.

Year	Highest reading (ppm)	2d highest reading (ppm)	Expected exceedances
1977	0.126	0.117	1.2
1978	.120	.120	0

EPA then averaged the number of exceedances for the two years to arrive at an average expected exceedance value of 0.6. Because this value is less than 1, EPA believes that McLennan County should properly be designated as attainment for ozone under the relaxed 0.12 ppm standard.

#### Proposed Action

EPA hereby proposes to reaffirm the ozone attainment status designation for McLennan County, Texas. EPA solicits public comment on this proposal.

EPA has determined that a thirty day comment period is sufficient because EPA has already provided an earlier thirty day comment period for consideration of these issues and this data. See 44 FR 58922 (October 12, 1979).

Pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only reaffirms an area air quality designation. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

Under Executive Order 12291, EPA must judge whether a regulation is Major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it merely proposes to approve State actions. It imposes no new regulatory requirements. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at The Environmental Protection Agency, Region 6, Dallas, Texas 75270.

(Sec. 107(d), 171(2), and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7407(d), 7501(2) and 7601(a))

Dated: April 8, 1981.

Frances E. Phillips,  
Acting Regional Administrator.

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#### 40 CFR Part 434

[WH-FRL 1814-8]

#### Coal Mining Point Source Category, Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Changes to proposed rulemaking; notice of availability of development documents; initiation of the comment period; and corrections to the proposed regulation.

SUMMARY: On January 13, 1981, the EPA proposed regulations under the Clean Water Act to limit the discharge of effluents to waters of the United States from coal mining and preparation facilities (46 FR 3136).

Copies of the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coal Mining Point Source Category and Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coal Mining Point Source Category* are available from EPA on request.

One substantive change to the January 13, 1981 publication and corrections to typographical and grammatical errors are identified below.

DATE: Comments on the proposed regulation for the coal mining point source category must be submitted to the EPA by July 28, 1981.

ADDRESS: Send comments on all aspects of the proposed regulation to: Mr. William A. Telliard, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: EGD Docket Clerk, Coal Mining. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Unit, Room 2922 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. William A. Telliard at the above address, (202) 426-2724. The economic analysis documents may be

<sup>1</sup>Texas did not supply EPA with O<sub>3</sub> data for 1979. Convinced that McLennan County had attained the standard, Texas relocated the McLennan County O<sub>3</sub> monitor to another area of the state for which additional monitoring data was needed.

obtained from Ms. Sandra Jones, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 426-2617.

**SUPPLEMENTARY INFORMATION:** On January 13, 1981, EPA proposed effluent limitations guidelines and new source performance standards under the Clean Water Act, 33 U.S.C. 1251 et seq. for the coal mining point source category, 40 CFR Part 434, 46 FR 3136. These proposed limitations contain alternate effluent limitations that apply during precipitation events. See, e.g., § 434.63. Since proposal of the regulation, the Agency has reconsidered the treatment facility design volume necessary to qualify for alternate effluent limitations during precipitation events. The storm exemption language in the January 13 proposal (e.g., 434.63(c)(1)) required that treatment facility design, construction, operation, and maintenance be based upon water volumes from all surface water draining into it, including waters from the undisturbed (virgin) area and inactive (reclaimed) area, in addition to the active mining area. Today's proposal modifies the basis for the design volume by excluding from consideration waters from undisturbed areas which drain into the treatment facility. The Agency has received information that significant additional capital and operating costs are incurred in sizing a treatment facility to contain drainage from undisturbed areas and that such costs are unwarranted. Furthermore, safety considerations may preclude the sizing and placement of a facility large enough to contain all surface drainage, especially in steep-slope mining areas.

The Agency proposed to retain the requirement that in order to obtain the alternate limitations for the storm exemption the treatment facility must be designed to contain water volumes from the active and reclaimed mining areas. Collected drainage from the reclaimed area is often a source of significant amounts of sediment. A pond designed to contain drainage from the active and reclaimed areas assures adequate detention time for the sedimentation process and reasonable storage capacity for the entrained sediment.

In addition, the commingling provision, which has been rewritten for purposes of clarity in the January 13, 1981 proposal, explicitly includes coverage of drainage collected from reclamation areas (e.g., § 434.61). For instance, commingled drainage from reclamation areas and acidic drainage from an active mining area would be subject to effluent limitations as follows:

Dry weather	Precip. < 10 yr <sup>1</sup>	Precip. > 10 yr <sup>1</sup>
(Base) condition	24 hr event	24 hr event
TSS, 35 mg/l avg.....	SS 0.5 ml/l max.....	pH 6 to 9.
Fe, 3.5 mg/l avg.....	pH 6 to 9.....	
Mn, 2.0 mg/l avg.....		
pH, 6 to 9.....		

<sup>1</sup> Where the treatment facility is designed, constructed, operated and maintained to contain the volume of water from the 10-year, 24-hour event draining from active mining areas and reclamation areas. Otherwise, effluent limitations for dry weather conditions apply.

For the purpose of regulating a commingled discharge, limitations for settleable solids need not be imposed when TSS limitations are applicable, as in the "Dry Weather" example above.

**Regulatory Flexibility Analysis and Regulatory Impact Analysis:** The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires that EPA prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities.

In addition, Executive Order 12291 requires that EPA prepare a Regulatory Impact Analysis for each major rule. The Order defines a "major rule" as any regulation that is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These analyses may be done in conjunction with or as a part of any other analysis conducted by the Agency.

This notice merely corrects errors in the January 13, 1981 proposed regulation and, by reducing the volume of water which a facility must contain in order to qualify for the 10-year, 24-hour storm exemption, *decreases* any burden which earlier regulation may have imposed on industry. Therefore, this notice does not have a significant impact on a substantial number of small entities and is not a major rule. Accordingly, it does not trigger the requirements for a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This Notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

#### Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record supporting this proposal be pointed to with specificity and that suggested revisions or corrections be

supported by data or other relevant information.

For the purpose of clarity, the entire January 13, 1981 proposed regulation is being published as part of today's notice. However, a substantial portion of the BPT requirements remain unaffected by today's proposal and are not being reprocessed today; accordingly, comments addressed to these requirements are not appropriate to this rulemaking. EPA solicits comments only on those portions of BPT which change the prior BPT regulation—that is, the proposals covering post-mining discharges, the revised storm provision and the inclusion of western mines.

EPA is particularly interested in receiving comments and data on the following issues:

(1) Industry and other sources are invited to submit any data from pilot or commercial scale studies of the performance of flocculant addition or granular media filtration, particularly on the effectiveness of toxic metals removal. Although the Agency has undertaken a variety of treatability studies to address these technologies, EPA is aware of the possible variation of technology performance given the diverse characteristics of raw wastewaters extant in the coal mining industry.

(2) The Agency solicits comments on its proposal to establish national regulations until bond release, and on the need for establishing national regulations for existing and new mines beyond bond release.

(3) The Agency invites comments on the revised storm exemption language, particularly the requirement that treatment facility design be based upon water volumes from active mining areas and reclamation areas but not the undisturbed or virgin areas draining into the treatment facility. The Agency is interested in receiving additional case-specific examples which demonstrate the feasibility or infeasibility of designing a treatment facility to accommodate all such waters, i.e., active, reclaimed and undisturbed, with respect to containing the water volume from a 10-year, 24-hour precipitation event. This includes site-specific information on:

- Land availability for locating and constructing such a facility;
- Size of the total drainage area involved for the treatment facility;
- Ratios (or other similar expressions) of undisturbed areas, reclamation areas, and active mining areas comprising the total drainage area;
- Wastewater treatment capital and operating cost comparisons assuming:

(1) water volumes for only the active mining area; (2) water volumes from reclamation areas and active mining areas; and (3) water volumes from the entire drainage area;

- Capital and operating costs and benefits associated with diversion ditching/diking to eliminate or minimize commingling of waters from undisturbed areas with waters from active mining areas and reclamation areas;

- Effluent reduction benefits attributable to treatment facilities sized to accommodate the entire drainage area;

- Safety Safety considerations in construction and operation of the treatment facility to contain waters from the entire drainage area;

- Local geographical and geological factors affecting the location, design, performance and operation of the treatment facility; and

- Planned life of the treatment facility for: (1) the active mining phase and (2) the reclamation phase.

In order to properly assess the economic impacts of any such case-specific examples, the Agency would appreciate receiving the following related information:

- Present drainage diversion efforts;
- Current yearly production;
- Identification of market (contract or spot);
- Estimated remaining life of the mine;
  - Age of the mine;
  - Total annual mine operating costs, exclusive of wastewater treatment;
  - Total annual wastewater treatment costs;
    - F.O.B. price per short ton of coal; and
    - Number of employees at the mine.

#### Corrections

Referring to the preamble in the January 13, 1981 Federal Register Notice (46 FR 3136):

1. Page 3139, column 2, line 63, "regional state" is corrected to read "regional and state".
2. Page 3140, column 1, line 20, "miles" is corrected to read "mines".
3. Page 3140, column 1, line 46, "will continue" is corrected to read "continued".
4. Page 3140, column 1, line 53, "establish" is corrected to read "establish".
5. Page 3149, column 1, line 32, "prtovision" is corrected to read "provision".

Numerous typographical errors appeared in the regulation section of the January 13, 1981 publication. Most notably, the concentration units in the effluent limitations tables were

incorrect. Additionally, a grammatical error in § 434.63, paragraph (c)(2) resulted in an incorrect reference to effluent limitations. These and numerous other typographical errors are corrected in the regulation appearing below.

Dated: May 20, 1981.

Walter C. Barber,  
Acting Administrator.

It is hereby proposed to revise Part 434 of Title 40 as follows:

### PART 434—COAL MINING POINT SOURCE CATEGORY, BPT, BAT, BCT LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS

#### Subpart A—General Provisions

Sec.

- 434.10 Applicability.  
434.11 General Definitions.

#### Subpart B—Coal Preparation Plants and Coal Preparation Plant-Associated Areas

- 434.20 Applicability.  
434.21 [Reserved]  
434.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available [BPT].  
434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable [BAT].  
434.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology [BCT].  
434.25 New Source Performance Standards [NSPS].

#### Subpart C—Acid or Ferruginous Mine Drainage

- 434.30 Applicability; description of the acid or ferruginous mine drainage subcategory.  
434.31 [Reserved]  
434.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
434.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).  
434.35 New Source Performance Standards (NSPS).

#### Subpart D—Alkaline Mine Drainage

- 434.40 Applicability; description of the alkaline mine drainage subcategory.  
434.41 [Reserved]

Sec.

- 434.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
434.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).  
434.45 New Source Performance Standards [NSPS].

#### Subpart E—Post-Mining Areas

- 434.50 Applicability.  
434.51 [Reserved]  
434.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
434.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
434.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).  
434.55 New Source Performance Standards (NSPS).

#### Subpart F—Miscellaneous Provisions

- 434.60 Applicability.  
434.61 Commingling of Waste Streams.  
434.62 Alternate Effluent Limitations for pH.  
434.63 Effluent Limitations During Precipitation Events.  
Appendix—Determination of Settleable Solids.

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

#### Subpart A—General Provisions

##### § 434.10 Applicability.

This part applies to discharges from any coal mine at which the extraction of coal is taking place or is planned to be undertaken.

##### § 434.11 General definitions.

(a) The term "acid or ferruginous mine drainage" means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or more than 10 mg/l.

(b) The term "active mining area" means the areas, on and beneath land,

used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant-associated areas and post-mining areas.

(c) The term "alkaline mine drainage" means mine drainage which, before any treatment, has a pH equal to or more than 6.0 and a total iron concentration of less than 10 mg/l.

(d) The term "bond release" means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

(e) The term "coal preparation plant" means a facility where coal is crushed, screened, sized, cleaned, dried, or otherwise prepared and loaded for transit to a consuming facility.

(f) The term "coal preparation plant-associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.

(g) The term "coal preparation plant water circuit" means all pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.

(h) The term "mine drainage" means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

(i) The abbreviation "ml/l" means milliliters per liter.

(j) The term "new source coal mine" means a coal mine (excluding coal preparation plants and coal preparation plant-associated areas):

(1) The construction of which is commenced after May 29, 1981; or

(2) Which is determined by the EPA Regional Administrator to constitute a "major alteration." 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 proposal of applicable 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 wastewater 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 acquires additional land or mineral rights;

(vi) A mine operation makes significant capital investment in additional equipment or additional facilities; and

(vii) Such other factors as the Regional Administrator deems relevant.

(k) The term "post-mining area" means: (1) a reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

(l) The term "reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

(m) The term "settleable solids" is that matter measured by the volumetric method specified in the Appendix.

(n) The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

(o) The terms "treatment facility" and "treatment system" mean all structures which contain, convey, and as necessary, chemically treat coal mine drainage, coal preparation plant process wastewater, or drainage from coal preparation plant associated areas, which remove pollutants regulated by this Part from such waters. This includes all pipes, channels, ponds, basins, tanks and all other equipment serving such structures.

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

**§ 434.20 Applicability.**

The provisions of this Subpart are applicable to discharges from coal preparation plants and coal preparation plant-associated areas, as indicated, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

**§ 434.21 [Reserved]**

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

(a) Except as provided in 40 CFR 125.30–125.32, and sections 434.61, 434.62 and 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant-associated areas subject to the provisions of this Subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0
TSS.....	70	35
pH—Within the range of 6.0 to 9.0 at all times.		

(b) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant-associated areas subject to the provisions of the subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
TSS.....	70	35
pH—Within the range of 6.0 to 9.0 at all times.		

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

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and 434.63 of this Part 434, the following

limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant-associated areas subject to the provisions of the Subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0

(b) Except as provided in 40 CFR 125.30-125.32, and §§ 434.61 and 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant-associated areas subject to the provisions of this Subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5

**§ 434.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30-125.32, and §§ 434.61, 434.62 (in the case of discharges normally exhibiting a pH of less than 6.0 prior to treatment) and 434.63, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant-associated areas subject to the provisions of this Subpart after application of the best conventional pollutant control technology (BCT):

**BCT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS.....	70.0	35.0
pH—Within the range 6.0 to 9.0 at all times.		

**§ 434.25 New Source Performance Standards (NSPS).**

The following new source performance standards (NSPS) shall be achieved by any new source coal preparation plant and coal preparation plant-associated areas, as indicated:

(a) For new source coal preparation plants, there shall be no discharge of process wastewater pollutants from the coal preparation plant water circuit to surface waters.

(b) Except as provided in sections 434.61, 434.62 and 434.63 of this Part 434, the following new source performance standards shall apply for discharges from new source coal preparation plant-associated areas:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese.....	4.0	2.0
TSS.....	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

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

**§ 434.30 Applicability; description of the acid or ferruginous mine drainage subcategory.**

The provisions of this subpart are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

**§ 434.31 [Reserved]**

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

Except as provided in 40 CFR 125.30-125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of

underground mines, § 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this Subpart after application of the best practicable control technology currently available:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese.....	4.0	2.0
TSS.....	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

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

Except as provided in 40 CFR 125.30-125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this Subpart after application of the best available technology economically achievable:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0

**§ 434.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30-125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by

a point source subject to the provisions of this Subpart after application of the best conventional pollutant control technology (BCT):

**BCT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS.....	70.0	35.0
pH—Within the range 6.0 to 9.0 at all times.		

**§ 434.35 New Source Performance Standards (NSPS).**

Except as provided in §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following new source performance standards shall be achieved for any discharge from a new source subject to this Subpart:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0
TSS.....	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

**Subpart D—Alkaline Mine Drainage**

**§ 434.40 Applicability; description of the alkaline mine drainage subcategory.**

The provisions of the Subpart are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

**§ 434.41 [Reserved]**

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

Except as provided in 40 CFR 125.30–125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following limitations establish the

concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this Subpart after application of the best practicable control technology currently available:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
TSS.....	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

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

Except as provided in 40 CFR 125.30–125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this Subpart after application of the best available technology economically achievable:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5

**§ 434.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30–125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this Subpart after application of the best conventional pollutant control technology (BCT):

**BCT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS.....	70.0	35.0
pH—Within the range 6.0 to 9.0 at all times.		

**§ 434.45 New Source Performance Standards (NSPS).**

Except as provided in § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this Part 434, the following new source performance standards shall be achieved for any discharge from a new source subject to this Subpart:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total.....	7.0	3.5
TSS.....	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

**Subpart E—Post-Mining Areas.**

**§ 434.50 Applicability.**

The provisions of this subpart are applicable to discharges from post-mining areas.

**§ 434.51 [Reserved]**

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

**(a) Reclamation Areas**

The limitations in this subsection apply to discharges from reclamation areas until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best practicable control technology currently available:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable solids	0.5 ml/l	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the limitations set forth in paragraph (a)(1) of this section:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) of this section shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility from active mining areas and reclamation areas during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) of this section at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt). The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in paragraph (a)(2)(i) of this section.

**(b) Underground Mine Drainage.**

The limitations in this subsection apply to discharges from the underground workings of underground mines until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.62 of this Part 434, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

(2) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this Part 434, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

**BPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
TSS	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

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

**(a) Reclamation Areas.**

The limitations of this subsection apply to discharges from reclamation areas until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best available technology economically achievable:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable solids	0.5 ml/l	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i). Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following

limitations instead of the limitations set forth in paragraph (a)(1) of this section:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) of this section shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility from active mining areas and reclamation areas during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) of this section at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt).

The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in paragraph (a)(2)(i) of this section.

**(b) Underground Mine Drainage**

The limitations in this subsection apply to discharges from the underground workings of underground mines until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.62 of this Part 434, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(2) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this Part 434, the following limitations establish the concentration or quality of

pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

**BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5

**§ 434.54 effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

(a) **Reclamation Areas.** The limitations of this subsection apply to discharges from reclamation areas through bond release. Except as provided in 40 CFR 125.30-125.32 and § 434.61 of the Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology (BCT):

**BCT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(b) **Underground Mine Drainage.** The limitations of this subsection apply to discharges from the underground workings of underground mines until bond release. Except as provided in 40 CFR 125.30-125.32, and §§ 434.61 and 434.62 of this Part 434, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology:

**BCT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
TSS	70.0	35.0
pH—Within the range 6.0 to 9.0 at all times.		

**§ 434.55 New Source Performance Standards (NSPS).**

The following new source performance standards shall apply to the post-mining areas of all new source coal mines:

(a) **Reclamation Areas.** The standards of this subsection apply to discharges from reclamation areas at new source coal mines until bond release. (1) Except as provided in § 434.61 of this Part 434, the following new source performance standards shall be achieved for a discharge subject to the provisions of this subsection:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Settleable solids	0.5 ml/l	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i). Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within a 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the limitations set forth in paragraph (a)(1) of this section:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) of this section shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility from active mining areas and reclamation areas during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) of this section at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt). The operator shall have the burden of proof that the preceding conditions have

been met in order to qualify for the alternate limitations in paragraph (a)(2)(i) of this section.

(b) **Underground Mine Drainage.**

The standards in this subsection apply to discharges from the underground workings of new source underground mines until bond release.

(1) Except as provided in §§ 434.61 and 434.62 of this Part 434, the following new source performance standards shall be achieved for the discharge of any acid or ferruginous mine drainage subject to this subsection:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

(2) Except as provided in § 434.61 of this Part 434, the following new source performance standards shall be achieved for the discharge of any alkaline mine drainage subject to this subsection:

**NSPS Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Concentration in mg/l		
Iron, total	7.0	3.5
TSS	70.	35.
pH—Within the range 6.0 to 9.0 at all times.		

**Subpart F—Miscellaneous Provisions**

**§ 434.60 Applicability.**

The provisions of this Subpart F apply to this Part 434 as specified in Subparts B, C, D and E.

**§ 434.61 Commingling of Waste Streams.**

Where waste streams from any facility covered by this Part are combined for treatment or discharge with waste streams from another facility, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for the pollutant applicable to any component waste stream of the discharge.

**§ 434.62 Alternate Effluent Limitation for pH.**

Where the application of

neutralization and sedimentation treatment technology results in inability to comply with the otherwise applicable manganese limitations, the permit issuer may allow the pH level in the final effluent to exceed 9.0 to a small extent in order that the manganese limitations can be achieved.

#### § 434.63 Effluent Limitations During Precipitation Events.

(a) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the otherwise applicable limitations:

##### Effluent Limitations During Precipitation

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable solids.....	0.5 ml/l	
pH—Within the range of 6.0 to 9.0 at all times.		

(b) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the otherwise applicable limitations:

##### Effluent Limitations During Precipitation

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range of 6.0 to 9.0 at all times.		

(c) The alternate limitations provided in paragraphs (a) and (b) of this section shall apply only if:

(1) The treatment facility is designed, constructed, operated and maintained to contain at a minimum the volume of water which would drain into the treatment facility from active mining areas and reclamation areas during the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume);

(2) The treatment facility is designed, constructed, operated and maintained to consistently achieve the effluent limitations set forth in § 434.22 (a), § 434.22 (b), § 434.23 (a), § 434.23 (b), § 434.24 (a), § 434.25 (b), § 434.32 (a), § 434.33 (a), § 434.34 (a), § 434.35 (a),

§ 434.42 (a), § 434.43 (a), § 434.44 (a), or § 434.45 (a) of this Part during periods of no precipitation (or snowmelt); and

(3) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt). The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in paragraphs (a) and (b) of this section:

#### Appendix—Determination of Settleable Solids

The following procedure is used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Parts 13 and 21

#### Deletion of the Permit Requirement To Import or Export Migratory Birds

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule.

**SUMMARY:** The Service would amend 50 CFR Part 21, which is promulgated under authority of the Migratory Bird Treaty Act, to delete the import and export permit requirement found at 50 CFR 21.21. Importers and exporters of lawfully possessed migratory birds, including parts and products, would no longer be required to obtain a permit from the Service, but still would have to comply with other applicable provisions of State and Federal law. The import and export permit requirement was established in 1961, before a number of statutes were enacted which collectively restrict or prohibit the importation or exportation of most migratory birds. Also, the possession of migratory birds is now highly regulated. The combined effect on migratory birds of the other import and export controls and the Service's own enforcement of the possession prohibitions enables the Service to maintain effective enforcement of the Migratory Bird Treaty Act without the import and export permit requirement.

**DATES:** Comments on the proposed rule must be received on or before June 29, 1981.

**ADDRESSES:** The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations. Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, N.W., Washington, D.C. 20005, between 7:45 a.m. and 4:15 p.m. Comments should bear the identifying notation REG 21-02-12. All materials received may also be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, N.W., Washington, D.C.

#### FOR FURTHER INFORMATION CONTACT:

John T. Webb, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

#### SUPPLEMENTARY INFORMATION:

##### Background

Among the various wildlife laws enforced by the Service is the Migratory Bird Treaty Act, 16 U.S.C. 703-712. The purpose of the Migratory Bird Treaty Act (hereinafter "MBTA") is to implement four bilateral treaties which the United States has signed with Canada, Mexico, Japan, and the Soviet Union for the conservation of migratory birds. Section 2 of the MBTA (16 U.S.C. 703) lists the comprehensive prohibitions developed to implement those treaties, and reads in part as follows:

*Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof \* \* \** [Emphasis added.]