

EFFLUENT LIMITATION GUIDELINES LITIGATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

- There are currently two active lawsuits challenging the EPA's pace in updating effluent guidelines under the Clean Water Act. See current *Waterkeeper Alliance et al. v. EPA, United States Court of Appeals for the Ninth Circuit*; and *Cape Fear River Watch v. EPA, United States District Court, Washington, DC*.
- Additional litigation is likely and risks EPA being subject to court supervision of the program.
- Effluent guidelines are a powerful and effective way to set water pollution control standards for entire industry categories. This vital Clean Water Act tool requires the EPA to identify the best available technology that is economically achievable for a specific industry and set regulatory requirements based on the performance of that technology.
- The CWA calls on the EPA to periodically update effluent guidelines to keep pace with advances in wastewater treatment technology and incentivize industry to innovate.
- Many of the existing effluent guidelines are more than 30 years old and have never been updated.
- The EPA currently has four effluent guidelines rulemakings underway; both contract dollars and staffing limit the number of effluent guidelines revisions that can be worked on in any given year.
- Recent interest in effluent guidelines in both the House and the Senate has focused on per- and polyfluoroalkyl substances (PFAS), where there is interest in the EPA doing more effluent guidelines revisions and at a faster pace.

KEY POINTS:

- Petitions and litigation challenging the EPA's failure to update effluent guidelines more frequently in accordance with the CWA threaten to subject the program to court supervision.
- Effluent guidelines under the CWA are national industry-specific regulations for controlling wastewater discharged to surface waters and municipal sewage treatment plants. They are intended to be based on the performance of the most stringent treatment technologies that are both available and economically achievable.
- To date the EPA has promulgated effluent guidelines for 59 industrial categories ranging from oil & gas extraction to organic chemical manufacturing and sugar processing.
- Currently, the EPA is working on four effluent guidelines rulemakings: Meat and Poultry Products Final Rule; PFAS Manufacturers Notice of Proposed Rulemaking (NPRM); Metal Finishing NPRM; and Landfills NPRM; and recently completed the Steam Electric Power Generation Final Rule in 2024.
- PFAS pollution of surface water has become an issue of national importance and under the Effluent Guidelines Program the EPA is uniquely positioned to address PFAS pollution from industrial discharges efficiently and effectively to prevent future PFAS contamination from occurring.
- Bills and amendments since 2019 in both the House and the Senate would require the EPA to revise effluent guidelines for as many as ten industries, with a focus on PFAS, on extremely short schedules.
- An effluent guideline rulemaking, for a single industrial category, requires on average an annual expenditure of about \$1.5M plus 3 FTEs for a period of four to five years. The current available extramural resources allocated to this program support four to five rulemakings at a time.

ONGOING/UPCOMING REVIEWS FOR FY2024:

- Meat and Poultry Products Final Rule: The EPA is in the process of finalizing a revision to the existing effluent

guideline to limit discharges of nutrients and other pollutants from facilities that process meat and poultry, such as slaughterhouses and rendering facilities. The EPA is under a consent decree to finalize the effluent guideline by August 31, 2025.

- PFAS – Organic Chemicals, Synthetic Fibers, and Plastic Manufacturing NPRM: The EPA is in the process of revising the existing effluent guideline to limit discharges of PFAS from facilities that manufacture PFAS. The EPA intends to publish the proposed effluent guideline in the fall of 2024 with the final rule completed approximately 18 months after the proposal.
- PFAS – Metal Finishing and Electroplating NPRM: The EPA is in the process of revising the existing effluent guideline to address PFAS discharges from metal finishers, specifically those facilities engaged in chrome plating. The EPA intends to publish the proposed effluent guideline in Spring 2026.
- PFAS – Landfills NPRM: The EPA is revising the existing effluent guideline for Landfills to address PFAS discharges in leachate from landfills. The EPA intends to publish the proposed effluent guideline in 2028.

KEY EXTERNAL STAKEHOLDERS:

<input checked="" type="checkbox"/> Congress	<input checked="" type="checkbox"/> Industry	<input checked="" type="checkbox"/> States	<input checked="" type="checkbox"/> Tribes	<input checked="" type="checkbox"/> Media	<input checked="" type="checkbox"/> Other Federal Agency
<input checked="" type="checkbox"/> NGO	<input checked="" type="checkbox"/> Local Governments	<input checked="" type="checkbox"/> Public			

MOVING FORWARD:

- The Effluent Guidelines Program in OW's Office of Science and Technology reviews existing effluent guidelines annually and produces a biennial effluent guidelines plan, as required by CWA Section 304. The biennial plan lays out where the program plans to revise existing effluent guidelines or establish new effluent guidelines for categories of industry for the first time, in addition to identifying ongoing rulemakings and ongoing or planned industry studies. The analysis that supports the annual reviews and biennial plans indicates that more industry studies and effluent guidelines rulemakings are warranted than the program's resources can support. Moving forward, the program is working to streamline these activities; however, due to the need to be fully prepared for potential legal challenges to these rulemakings, there are limitations to how much streamlining can be done. The program therefore remains vulnerable to continued challenges that affect the volume and pace of ongoing and future effluent guidelines work.