

FEDERAL REGISTER: 46 FR 2045 (January 8, 1981)

AGENCY: Environmental Protection Agency (EPA).

40 CFR Part 122 [EN-FRL 1710-7]

Consolidated Permit Regulations; NPDES Application Requirements for Coal Mines

ACTION: Suspension of portion of final rule.

SUMMARY: This action suspends for the Coal Mining Point Source Category a portion of the requirement in EPA's consolidated permit regulations that certain testing data for organic toxic pollutants be submitted as part of the application for a National Pollution Discharge Elimination System (NPDES) permit. During the suspension, EPA will reconsider the appropriateness of this requirement in light of the coal industry's petition for reconsideration based upon newly presented data.

EFFECTIVE DATE: January 8, 1981.

FOR FURTHER INFORMATION CONTACT: Gail S. Goldberg, Office of Water Enforcement (EN-336), Washington, DC. 20460, (202) 426-7035.

SUPPLEMENTARY INFORMATION:

On May 19, 1980, EPA issued final consolidated permit regulations and the NPDES permit application forms under the Clean Water Act (45 FR 33290). Included in those regulations and the NPDES permit application form is a requirement that applicants provide data obtained through sampling and analysis to characterize their process waste streams for those pollutants specifically listed in Appendix A to Part 122. Applicants in the coal mining industry, which is listed as a primary industry in the Consent Decree issued in *NRDC v. Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979, 12 ERC 1833, 1841, must test their process wastewater discharges for toxic pollutants.

The May 19 regulations, at 40 CFR Part 122.53(d)(7)(ii)(A), provide that:

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (d)(8) of this section.

Table I of Appendix D, requires that applicants in the coal mining industry test and report data on all four organic pollutant fractions. Table II of Appendix D lists the organic toxic pollutants in each fraction.

Exempted from this testing requirement are coal mines whose average annual production is less than 100,000 tons of coal, and applicants whose outfalls were analyzed by EPA during EPA's industry sampling program, if the data is less than three years old and remains representative of the present discharge.

The National Coal Association (NCA) petitioned the Agency for reconsideration and stay of certain provisions of EPA's NPDES regulations and permit application form requirements, NCA requested that EPA stay application of 40 CFR Part 122.53(d)(7)(ii)(A) and 40 CFR Part 122.53(d)(7)(ii)(B) (for total phenols only) as they relate to the coal mining point source category pending a determination or reconsideration, NCA argued that effluent data contained in the Agency's Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards for the Coal Mining Point Source Category, July 1980, demonstrates that the 114 organic toxics and total phenols are not present in coal mine discharges in quantities or frequencies justifying these sampling and analytical requirements. Furthermore, they argued that when pollutants were detected, their presence was shown to be caused by contamination during sampling and analysis. {2046}

EPA has stated its willingness, at 45 FR 33528, to "continue to investigate existing data and add or delete requirements to ensure that waste streams be analyzed only for pollutants which may be discharged." We believe that NCA's petition raises sufficiently substantial questions about the testing requirement for coal mines to justify today's suspension of 40 CFR 122.53(d)(7)(ii)(A) pending further evaluation of this new presentation of data on organic toxic pollutants. This suspension of the requirement in 122.53(d)(7)(ii)(A) that coal mines sample and analyze for 114 organic toxic pollutants (and the parallel suspension of the requirement that applicants complete Item V-C of the NPDES application Form 2c, 45 FR 33563) will relieve

the industry from the cost of meeting testing requirements that may prove unnecessary. When the Agency completes its analysis of the data from coal mines, we will change the requirement if appropriate or reinstate it, if not. During the suspension, however, coal mines will still be required under Section 122.53(d)(7)(iii)(A), to sample and analyze their waste streams for those organic pollutants which they know or have reason to believe exist in their discharge. In addition, as applicants in the primary industries listed in the NRDC Consent Decree, coal mines must report quantitative results for the 13 metals on the toxic pollutant list and for cyanide and total phenols. Items V-A, B, and D must still be completed, accordingly to the instructions in the NPDES application Form 2c and in accordance with Section 122.53(d)(7)(i), (ii)(B) (iii), (iv) and (v).

We reject NCA's request that we change the requirement in 40 CFR 122.53(d)(7)(ii)(B) that all primary industries test for total phenols. These industries must continue to test and report results for total phenols in their process wastewater outfalls because phenols are a significant toxic pollutant. They have been commonly found in discharges from primary industries, and are more likely to be found in discharges from primary industries than from secondary industry outfalls. Further, information on total phenols indicates the possible presence of several phenolic compounds which are toxic pollutants. Reporting requirements for total phenols provide significant, useful information to the permit writer which outweigh the relatively minor cost associated with testing.

(Clean Water Act, 33, U.S.C. Section 1251 et seq.)

Dated: December 31, 1980.

Douglas M. Costle, Administrator .

Section 122.53 [Amended]

40 CFR Section 122.53(d)(7)(ii)(A), as it applies to coal mines, is suspended until further notice.

[FR Doc. 81-655 Filed 1-7-81; 8:45 am]

BILLING CODE 6560-33-M