

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 461**

[OW-FRL-(3038-F)]

Water Pollution, Battery Manufacturing Point-Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is amending the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) by existing and new sources that conduct battery manufacturing operations in the lead subcategory. EPA agreed to propose and promulgate these amendments in a settlement agreement which resolved a lawsuit challenging the final battery manufacturing regulation promulgated by EPA on March 9, 1984 (49 FR 9108).

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best available technology economically achievable" (BAT) and "new source performance standards" (NSPS) for direct discharges; (2) certain modifications of the pretreatment standards for new and existing indirect discharges (PSNS and PSES); and (3) guidance which allows consideration of employee shower wastewater as a process wastewater under certain circumstances.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for the purpose of judicial review at 1:00 p.m. Eastern time on September 11, 1986. This regulation shall become effective October 14, 1986. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Address questions on this final rule to Mary L. Belefski, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The record for the final rule will be available for public review not later

than September 29, 1986 in the EPA Public Information Reference Unit, Room 2404 (Rear), (EPA Library), 401 M Street, SW., Washington, DC. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Question regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

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I. Legal Authority

The regulation described in this notice is promulgated under authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-217).

II. Background**A. Rulemaking and Settlement Agreement**

On March 9, 1984, EPA promulgated a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) Effluent Limitations Guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES); and Pretreatment Standards for New Sources (PSNS) for the Battery Manufacturing Point Source Category (40 CFR Part 461, 49 FR 9108). The preamble to the regulation describes the history of the rulemaking.

After publication of the battery manufacturing regulation, certain members of the battery manufacturing industry and the Battery Council International filed a petition to review portions of the regulation that pertained to the lead subcategory (*Battery Council International v. EPA*, 4th Cir. No. 84-1507).

On March 27, 1985, the parties entered into a settlement agreement which resolved all issues raised by petitioners. On April 25, 1985, the United States Court of Appeals for the Fourth Circuit entered an order staying briefing in the lawsuits. In the Settlement Agreement, EPA agreed to publish a notice of proposed rules and preamble language and to solicit comments regarding certain amendments to the final battery manufacturing regulation. If EPA promulgated amendments to the battery manufacturing regulation and preamble language that are substantially the same as and do not alter the meaning of the proposed language, the petitioners agreed to dismiss the lawsuit and not challenge the new amendments.

B. Effect of the Settlement Agreement

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of certain sections of 40 CFR Part 461 pending final action by EPA on the proposed amendments. The April 25, 1985 court order granted this request.

All limitations and standards proposed to be amended by regulation were stayed by the court order (i.e., they are not currently in effect). However, pending the Agency's final action on the proposed revisions, the parties agreed to treat these proposed amendments and preamble as applicable. All other limitations and standards have remained the same, and EPA is not deleting or amending any of them.

III. Amendments to the Battery Manufacturing Regulation

In accordance with the Settlement Agreement, on January 28, 1986, EPA proposed to amend the effluent limitations and standards for battery wash operations in the lead subcategory. EPA also proposed to provide guidance for the handling of battery employee shower wastewater and nonregulated wastewater sources in the lead subcategory.

EPA received only two comments on the proposal, one from Battery Council International (BCI), and the other from General Motors. Both commenters supported the proposed amendments. Accordingly, EPA is promulgating the following provisions as final amendments to the battery manufacturing regulation.

A. Effluent Limitations and Standards for Battery Wash Operations in the Lead Subcategory

The BAT, PSES, NSPS and PSNS limitations and standards for the battery

wash (with detergent) operation in the lead subcategory were based upon discharging wastewater from the washing of each battery once during the production process. Based upon subsequent reevaluation of this aspect of lead battery production, EPA concludes that batteries are washed with detergent twice at many plants (once after formation and once prior to shipping after the batteries have been in storage); that wastewater from each such battery wash operation may contain pollutants and is properly considered a process wastewater requiring treatment; and that an additional flow allowance for a second battery wash is appropriate for purposes of calculating the mass limits for battery washing operations. Consequently, EPA is doubling the battery wash (with detergent) mass limits for all pollutants covered by battery wash (detergent) BAT, PSES, NSPS and PSNS limitations and standards.

The amended regulation, like the previous regulation, would provide no allowance for discharges from battery wash operations that do not use detergent. The wastewater from such operations may be reused and thus does not need to be discharged.

B. Battery Employee Shower Wastewater

When EPA promulgated the battery manufacturing regulation on March 9, 1984, EPA determined that no flow allowance should be provided for employee showers. EPA reasoned that relatively few employees in battery plants are exposed to high lead dust levels and that adequate means are available for assuring that substantially all lead is removed prior to showering. EPA concluded that there is thus no need for a plant to discharge battery employee shower wastewater as process wastewater (i.e., as water that has contacted and become contaminated with substantial amounts of lead) and that the battery employee shower wastewater can be discharged as sanitary wastewater. See 49 FR 9108, 9123 (March 9, 1984).

The petitioners in *Battery Council International v. EPA*, argued that in some cases, battery employee shower wastewater may be significantly contaminated and require treatment. No data was submitted to demonstrate the actual concentrations of lead in various battery shower wastewaters and EPA continues to believe that battery shower wastewater should not be classified as a process wastewater. However, showers are required by the Occupational Safety and Health Administration (OSHA) for battery plant employees working in

areas with lead exposure in excess of 50 mg/m³. See 29 CFR 1910.1025. This indicates a potential for the contamination of some employee shower wastewater with some amount of lead. Therefore, EPA agrees with petitioners that individual plants should have the opportunity to demonstrate that their particular wastewaters are significantly contaminated and should be accounted for accordingly. EPA is addressing this concern in two ways, one for indirect dischargers and one for direct dischargers.

First, for indirect dischargers in the battery manufacturing point source category, EPA is amending the battery regulation, § 461.34(c), that modifies the way that the combined wastestream formula, 40 CFR 403.6(e), applies to contaminated shower wastewaters. The combined wastestream formula provides a means for determining final discharge requirements for indirect dischargers that combine different wastestreams prior to the treatment and discharge of these combined wastestreams to the publicly owned treatment works. The formula treats certain types of wastestreams, including sanitary wastestreams that are not regulated by a categorical pretreatment standard, as "dilution" streams (F_D in the combined wastestream formula). Thus, battery shower wastewater is considered a dilution stream under the existing regulation.

Under the final § 461.34(c), where battery employee shower wastewater contains a significant amount of lead, and the discharger combines this wastewater with process wastestreams prior to treatment and discharge, the Control Authority is authorized to exercise its discretion to classify the stream as an unregulated stream rather than a dilution stream. Classification as an unregulated stream would result in the consideration of the battery shower wastewater as a contaminated stream that may be combined with regulated wastestreams for purposes of treatment and provided an appropriate flow allowance.

EPA has selected 0.20 mg/l as the concentration of lead that represents a significant contamination of battery employee shower wastewater. This is the lead concentration that was used by EPA as a basis for establishing the monthly average lead mass limitations and standards in the regulation. EPA anticipates that a demonstration of significant contamination would be based on data that can appropriately be compared to the monthly average of 0.20 mg/l. Guidance and sample calculations for pretreatment Control Authorities will

be presented in a "Guidance Manual for Battery Manufacturing Pretreatment Standards." This document can be obtained by writing to the contact listed in the "Address" section of this preamble.

Second, for direct dischargers in the battery manufacturing point source category, EPA is stating its policy that where battery employee shower wastewater is shown to be significantly contaminated (greater than 0.20 mg/l), permit writers should likewise provide an allowance when developing the permit. In such situations, it would be appropriate for the permit writer to develop a mass allowance based upon the product of the employee shower wastewater discharge rate and the treatment effectiveness used as a basis for the promulgated regulation (as specified in the Final Development Document for Effluent Limitations Guidelines and Standards for Battery Manufacturing, Vol. II, Table VII-21; EPA 440/1-84/067-V.II).

IV. Guidance to Permit Writers for Handling Non-Regulated Wastewater Sources

For those waste streams not given flow allowances in the regulation, the Agency does not believe they warrant treatment on a national basis because they are generally not contaminated or occur at only one or two plants. The Agency believes that such wastewater sources as noncontact cooling water and boiler blowdown ordinarily do not contain significant quantities of toxic pollutants. However, in some instances wastewater sources such as these may be contaminated. In certain circumstances, the permit writer or Control Authority may develop mass limitations for site-specific wastewater sources:

If the permit writer makes a threshold determination that a wastestream is sufficiently contaminated to require a discharge allowance and further determines that combined treatment with other process wastewater is appropriate, then the permit writer should develop a mass discharge limitation for a site-specific waste stream. The permit writer must use his best professional judgment to decide which nonregulated wastestreams are sufficiently contaminated to require treatment, and which require combined treatment with other process wastewaters.

When consideration of site-specific wastewater sources is warranted as discussed above, the permit writer must quantify the discharge rate of the wastestream. The mass allowance

provided for the waste stream is then obtained from the product of the discharge rate and treatment effectiveness of the technology basis of the promulgated regulation. For example, if the permit writer determines that boiler blowdown requires treatment, he or she must determine the flow rate of contaminated water to be treated. The permit writer can then determine the appropriate treatment technology basis and treatment effectiveness values by referring to the final development document for battery manufacturing. The product of the discharge rate and treatment effectiveness is then the allowed mass discharge. This quantity can then be added to the other building blocks (i.e., mass discharge for the regulated streams) to determine total allowed mass discharge for each pollutant.

In cases where an indirect discharger combines boiler blowdown or non-contact cooling water with regulated streams, the combined wastestream formula (40 FR 403.6(e)) as amended on May 17, 1984, applies. See 49 FR 21024, 21037 (May 17, 1984).

V. Environmental Impact of the Amendments to the Battery Manufacturing Regulation

The amendments will allow 111 existing direct and indirect dischargers to discharge a greater amount of pollutants than was allowed by the March 1984 regulation. The increase in the mass of pollutants allowed to be discharged is not expected to be substantial, however.

The increased quantity of lead that will be discharged at BAT and PSES due to the flow change under the amended regulation averages only 1.7 pounds per plant per year. Increases for copper and iron will be 5.3 and 5.1 pounds per plant per year. For new sources, the increases for these pollutants will be 33% smaller than the increases for existing sources.

For the 1984 promulgated regulation, it was estimated that 72,047 kkg per year of wastewater treatment sludges will be generated at BAT-PSES of which 93 percent was from the lead subcategory. As a result of these proposed amendments, sludge generation will be decreased by less than one percent to about 71,980 kkg. However, lead battery sludges are not specifically listed under RCRA as a hazardous waste and because of excess lime in the BAT-PSES treatment systems, the Agency believes that the sludges will pass the EP toxicity test. Nevertheless, a separate analysis showed that even if all lead battery sludges were classified as hazardous, there would be no adverse economic

impact on the industry from solid waste generation.

VI. Economic Impact of the Amendments

The amendments will not alter the recommended technologies for complying with the battery manufacturing regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 9116). Since the Agency concluded at the time that the regulation was economically achievable, and since it is expected that the amendments will not impose higher cost than the final regulation was estimated to impose, the Agency has concluded that these amendments will not alter the determinations with respect to economic impact that were made previously.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of \$100 million or more, or meet other economic criteria. This regulation, like the regulation promulgated in March 1984, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VIII. Regulatory Flexibility Analysis

Pub. L. 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 9, 1984 final regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities [49 FR 911]. For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, since the amendments would not alter economic impact of the regulation. The Agency has not, therefore, prepared a formal analysis for this regulation.

IX. OMB Review

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 Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays. This rule does not contain any

information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

X. List of Subjects in 40 CFR Part 461

Battery manufacturing industry, Primary batteries, dry and wet, Storage batteries, Waste treatment and disposal, Water pollution control.

Dated: August 21, 1986.

Lee M. Thomas,
Administrator.

For the reasons stated above, EPA is amending 40 CFR Part 461 as follows:

PART 461—BATTERY MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 461 continues to read:

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308 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.

2. Section 461.32 is amended by revising paragraph (a)(4) to read as follows:

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

(a) * * *

(4) Subpart C—Battery Wash (Detergent).

BAT EFFLUENT LIMITATIONS

Pollutant or Pollutant Property	Maximum for any 1 Day	Maximum for monthly average
Metric units—mg/kg of lead used		
English units—pounds per 1,000,000 lb of lead used		
Copper.....	1.71	0.90
Lead.....	0.38	0.18
Iron.....	1.08	0.55

* * * * *

3. Section 461.33 is amended by revising paragraph (a)(4) to read as follows:

§ 461.33 New Source performance standards (NSPS).

(a) * * *

(4) Subpart C—Battery Wash (Detergent)—NSPS.

Pollutant or pollutant Property	Maximum for any 1 Day	Maximum for monthly average
Metric units—mg/kg of lead used		
English units—pounds per 1,000,000 lb of lead used		
Copper.....	1.152	0.549
Lead.....	0.252	0.117
Iron.....	1.08	0.55
Oil and grease.....	9.0	9.0
TSS.....	13.5	10.8
pH.....	(1)	(1)

¹ Within the limits of 7.5 to 10.0 at all times.

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4. Section 461.34 is amended by revising paragraph (a)(4) to read as follows:

§ 461.34 Pretreatment standards for existing sources (PSES).

(a) * * *

(4) Subpart C—Battery Wash—(Detergent)—PSES.

Pollutant or pollutant Property	Maximum for any 1 Day	Maximum for monthly average
Metric units—mg/kg of lead used		
English units—pounds per 1,000,000 lb of lead used		
Copper.....	1.71	0.90

Pollutant or pollutant Property	Maximum for any 1 Day	Maximum for monthly average
Lead.....	0.38	0.18

* * * * *

5. Section 461.35 is amended by revising paragraph (a)(4) to read as follows:

§ 461.35 Pretreatment standards for new sources (PSNS).

(a) * * *

(4) Subpart C—Battery Wash—(Detergent)—PSNS.

Pollutant or pollutant Property	Maximum for any 1 Day	Maximum for monthly average
Metric units—mg/kg of lead used		
English units—pounds per 1,000,000 lb of lead used		
Copper.....	1.152	0.549
Lead.....	0.252	0.117

* * * * *

6. Section 461.34 is amended by adding a new paragraph (c) to read as follows:

§ 461.34 Pretreatment Standards For Existing Sources (PSES).

* * * * *

(c)(1) In cases where battery employee shower wastewater containing concentrations of lead exceeding 0.20 mg/l is combined with process wastewaters prior to treatment, the Control Authority may, for purposes of applying the Combined Wastestream Formula under § 403.6(e) of this Chapter, notwithstanding the provisions of § 403.6(e), exercise its discretion and classify battery employee shower wastewater as an unregulated rather than a dilute (F_D) wastestream.

(2) Before the Control Authority may exercise its discretion to classify such a stream as an unregulated stream, the battery manufacturer must provide engineering, production, and sampling and analysis information sufficient to allow a determination by the Control Authority on how the stream should be classified.

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