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OMB Backs EPA's Long-Stalled Plan For Setting Host Of New Effluent Limits

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The White House has finalized its review of EPA's long-stalled plan for setting new or revised Clean Water Act (CWA) technology-based discharge limits for industrial sectors, allowing EPA to possibly set first-time standards for gas drilling operations, hospitals and dental offices, as well as revised standards for power plants.

The White House Office of Management & Budget released EPA's 2010 Effluent Guidelines Program Plan Sept. 23 after 9 months of review. The biennial plan, required by section 304(m) of the water act, identifies which sectors will be subject to new or revised effluent limitations guidelines (ELGs) and will provide EPA's schedule for writing the rules.

EPA's preliminary 2010 plan, issued in December 2009, looked at amending its ELG policy for the oil and gas sector to list coalbed methane operations as a first-time source category subject to the standards. The agency also proposed addressing unused pharmaceuticals at health care facilities and ore mining and dressing. EPA also plans to revise its ELG for the electric power plant sector.

Though EPA has not responded to questions about the plan, one source has noted that the lengthy White House review of the plan, submitted to OMB Jan. 24, could be related to the difficulty in performing an economic analysis on coalbed methane limits while gas prices have been significantly volatile.

Last year, when EPA submitted the plan for review, the price was at around \$10 per thousand cubic feet (MCF) and the current natural gas price is between \$4 and \$5/MCF, the source notes. "So that would give you very different economics," the source says. The average natural gas price is what companies pay for gas.

And, the source says, there is a "great deal of difficulty of how to capture the diversity of the industry" that is filled with many very small providers, and also the variety of pollutants that are at issue depending where the drilling is done.

While EPA has been considering adding coalbed methane as a source category for several years, a key agency official also said earlier this year that the agency is considering listing hydraulic fracturing operations as a source category subject to an ELG that could be finalized in 2013 or 2014.

Wastewater treatment plants often accept "very substantial amounts of shale gas produced water from shale gas extraction operations," Ephraim King, director of the Office of Science & Policy in EPA's water office, said at a May 11 meeting of the National Association of Clean Water Agencies, which represents municipal wastewater agencies. "There is not an insignificant concern" because high chloride levels interfere with the treatment plants' operations, causing "very significant water quality impacts."

Environmentalists urged EPA to set discharge limits for produced water from the operations based on the water's electrical conductivity levels, a measure of salinity, to prevent harm to farm lands. However, industry groups said state regulation is most appropriate because of the variability of produced water characteristics among different states.

Sources Under Review

Even before the plan's release, EPA has indicated how it plans to address sectors subject to new requirements. The agency, ahead of issuing its preliminary 2010 ELG plan, announced that it plans to develop an ELG for the dental point source category to limit discharges of mercury from dental amalgam.

State officials this week approved a resolution urging EPA "to ensure consistent and effective implementation" of the ELG "so as to most effectively use the limited resources of federal, state, and local governments, and avoid duplication of effort."

The Environmental Council of the States (ECOS) approved a resolution Sept. 26 urging EPA to take a lead role in convening a volunteer National Amalgam Separator Review Committee with municipal wastewater treatment plants, local and state governments, and national representatives to evaluate and share amalgam separator data, "so as to ease the burden on state and local governments implementing the effluent guideline for dental facilities."

This review committee would serve as a centralized point of contact for separator manufacturers to submit test reports and certifications for review and should be charged with determining the appropriate scientific criteria for evaluating performance data; reviewing test reports; identifying data gaps and deficiencies; and "providing a list of amalgam separator specifications in a format that is easily accessible for regulators and dentists," ECOS says.

The group, which represents state environmental commissioners, urged EPA last year to set an ELG for dental offices.

The agency also said it would complete its development of best management practices (BMPs) to reduce discharges of pharmaceuticals from medical facilities as part of the final plan. EPA proposed BMPs to help hospitals and other health care facilities limit the volume of unused pharmaceuticals that they release into waterways. The draft plan advises health care facilities to alter dispensing practices, review purchasing practices and inventory control, and find ways to reuse, donate or properly dispose of unused pharmaceuticals. However, the pharmaceutical industry is questioning the legality of the guidance, saying it is beyond the scope of EPA's jurisdiction.

The preliminary plan said the agency is revising its ELG for power plants – an ELG that the agency has separately agreed to propose by July 2012 and finalize by January 2014.

And EPA says it is planning to consider ore mining and dressing, which EPA says ranks among the top dischargers of toxic pollutants.