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The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
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Sent via certified mail & electronic mail.

Re: EPA's Annual Review of Effluent Limitation Guidelines Under the Clean Water Act

Dear Administrator Regan,

Next year marks the fiftieth anniversary of the 1972 Clean Water Act. The Act established certain national goals, including an interim goal to achieve water quality levels that are “fishable and swimmable,” and the ultimate goal to eliminate water pollution in order to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Congress gave EPA broad new regulatory and enforcement powers to achieve those ambitious objectives, such as the responsibility to develop increasingly stringent pollution limits for industries that send large quantities of pollution into our nation’s waterways (known as effluent limitation guidelines or “ELGs”). Despite some progress, 60% of the rivers and stream miles that have been assessed fail to meet water quality standards because they are impaired by pollutants—which means that fewer than half of the country’s assessed waterways are reliably safe and clean.¹ While we applaud EPA’s recent determination that the ELGs for three industries warrant revision,² the fact remains that the Agency is not carrying out its annual review and revise duties as required by Congress. As we approach a landmark anniversary of the Clean Water Act, we write to voice our concerns over EPA’s stagnant process for revising these national water pollution limits.

The Clean Water Act charged EPA with establishing pollution limits based on the best available treatment methods, and then reviewing these limits annually to keep pace with advances in technologies to reduce—and ultimately eliminate—water pollution from industrial sources. In the 1970s and 1980s, EPA began to meet that obligation head on. During those two decades,

¹ Data taken from EPA, National Water Quality Inventory: Report to Congress (Aug. 2017) [hereinafter “EPA Report to Congress”], at 8, 11, 18, available at https://www.epa.gov/sites/default/files/2017-12/documents/305btrc_finalowow_08302017.pdf.

² On September 14, 2021, EPA announced its determination that revision of the following ELGs or pretreatment standards are warranted: (1) Meat and Poultry Products Category to address nutrient discharges; (2) Organic Chemicals, Plastics, & Synthetic Fibers Category to address Per- and Polyfluoroalkyl Substances (“PFAS”) discharges; and (3) Metal Finishing Category to address PFAS discharges. Preliminary Effluent Guidelines Program Plan 15, 86 Fed. Reg. 51,155 (Sept. 14, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-09-14/pdf/2021-19787.pdf>.

EPA promulgated national water pollution limits for 50 out of the 59 industries currently subject to such limits.³ But since then, EPA has failed to lower these limits as new, more effective treatment methods become available, which is one of the reasons so many rivers, streams, and estuaries are so far from achieving the goals promised by the Clean Water Act.

The table attached to this letter identifies when EPA first created and last revised the national water pollution limits for each industry and why the revisions were made. EPA has an annual duty to revise these existing limits, if appropriate.⁴ Under the Clean Water Act, revision is appropriate if the existing limits no longer reflect the degree of pollution reduction achievable through the application of appropriately advanced technology.⁵ Nevertheless, limits for 39 of the 59 industries were last updated more than 30 years ago, and 17 of those date back to the 1970s.

In fact, the average age of these national water pollution limits is 31 years old. To provide context, the World Wide Web was first launched 31 years ago. In 1990, Apple was still 11 years away from releasing the iPod and 17 years away from its first public release of the iPhone. And at that time, facilities filled out discharge monitoring reports by hand and submitted them by mail. Fast-forward to the present, the internet is now widely accessible through cell phones, Apple just introduced the thirteenth generation of the iPhone, and facilities submit their discharge monitoring reports electronically—allowing for quicker, more accurate pollution reporting with less labor.

Yet, today some of the biggest industrial sources of water pollution operate under national limits that were written more than 30 years ago, including:

- Ferroalloy Manufacturing (last revised 1975)
- Cement Manufacturing (last revised 1977)
- Carbon Black Manufacturing (last revised 1978)
- Petroleum Refining (last revised 1985)

Given that the Clean Water Act charged EPA with reviewing these limits annually to keep pace with advances in technology, it is clear EPA's review process is fundamentally flawed. To illustrate, EPA commenced a detailed study in 2014 into the national water pollution limits for the Petroleum Refining industry, which were last revised in 1985. In 2019, the Agency concluded this five-year study by deciding not to revise the limits for refineries,⁶ a decision that EPA reaffirmed earlier this year.⁷ However, EPA admitted in its Response to Comments that “the current review did not evaluate whether the existing Refinery ELGs continue to represent

³ For the other nine industries, EPA created national limits for seven in the 2000s and two in the 2010s.

⁴ 33 U.S.C. § 1314(b).

⁵ *Id.*

⁶ EPA, Preliminary Plan 14 (Oct. 24, 2019) at 4-1 (“Based on the data gathered during the study, the EPA is concluding the study and not taking further action at this time.”).

⁷ EPA, Final Plan 14 (Jan. 6, 2021) at 6-1 (“EPA is concluding its detailed study of wastewater discharges from the petroleum industry (40 CFR 419) and is not taking further action on this source category at this time.”).

[Best Available Technology],” as the Clean Water Act requires.⁸ EPA’s failure, over the course of a multi-year review, to consider the very question that would establish the necessity of updating these limits, demonstrates the complete breakdown of EPA’s existing review process. Meanwhile, according to the limited data available from the Toxics Release Inventory, discharges of nitrate compounds to surface waters from refineries tripled between 1996 and 2019.

We respectfully request that EPA prioritize the ELG program, given its effectiveness in reducing water pollution across the country, and reconsider its approach to reviewing and revising these national limits for industries, as the current pace is far too slow to keep up with even the most obvious improvements in wastewater treatment methods. To start, EPA’s regular review process should examine whether existing limits currently reflect the degree of pollution reduction achievable through today’s modern technology. In addition, we recommend that EPA apply the data and information the Agency has already obtained regarding current technology when reviewing recurring wastewater treatment issues that are common to multiple industries. EPA has found that more than 40% of our rivers and streams are impaired by nutrients,⁹ which include nitrogen compounds such as nitrates. The Agency has known for several decades that wastewater systems installed to remove ammonia will generate nitrates as a byproduct that, like ammonia, will feed algae growth and depress oxygen levels. To meet the goals of the Chesapeake Bay cleanup plan, states have already required industrial sources in the watershed to install “denitrification systems” that have successfully reduced nitrate discharges. As denitrification systems are already broadly available and in operation at industrial plants, EPA could apply its knowledge about this “best available technology” when reviewing national limits for refineries and other industrial categories—ultimately allowing the Agency to eliminate tens of millions of pounds of nitrates and help to heal waterways that are now choked with algae or starved of oxygen. Such stream-lined approaches would also allow EPA to satisfy its Clean Water Act obligations as Congress intended.

As it stands, EPA simply cannot fulfill its mandate of setting increasingly protective, technology-based pollution limits for any industrial sources if it does not regularly review whether existing limits reflect best available technology. EPA’s current review process is not only hindering the Agency from cleaning up some of the most obvious sources of water pollution but also preventing the country from restoring its waterways, as promised by the Clean Water Act nearly fifty years ago.

We would welcome the opportunity to meet with you to discuss our concerns and recommendations. In the meantime, thank you for considering our views.

⁸ EPA, Comment Response Document for Preliminary Plan 14 (Dec. 2020) at 77.

⁹ EPA 2017 Report to Congress, *supra* note 1, at 7.

Sincerely,



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Table. EPA's Water Pollution Limits for Industries, Sorted from Oldest to Newest¹⁰

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Rubber Manufacturing	428	1974	never revised	47	
Asbestos Manufacturing	427	1974	1975	46	Added pretreatment standards.
Canned and Preserved Seafood (Seafood Processing)	408	1974	1975	46	Added pretreatment standards.
Dairy Products Processing¹¹	405	1974	1975	46	Added pretreatment standards.
Ferroalloy Manufacturing¹²	424	1974	1975	46	Added more subparts.
Soap and Detergent Manufacturing	417	1974	1975	46	Added pretreatment standards.
Ink Formulating	447	1975	never revised	46	
Paint Formulating	446	1975	never revised	46	
Paving and Roofing Materials (Tars and Asphalt)	443	1975	never revised	46	
Canned and Preserved Fruits and Vegetable Processing	407	1974	1976	45	Revoking certain limitations after D.C. Cir. found that industry did not have sufficient opportunity to comment.

¹⁰ EPA, Industrial Effluent Guidelines (last accessed Aug. 18, 2021) [hereinafter "EPA's ELG Chart"], available at <https://www.epa.gov/eg/industrial-effluent-guidelines>.

¹¹ EPA's ELG Chart lists the year of last revision as 1974; however, EPA last revised some aspect of this industrial category in 1975. See Dairy Processing Point Source Category, 40 Fed. Reg. 6,432 (Feb. 11, 1975), available at https://www.epa.gov/sites/default/files/2018-08/documents/dairy-products_final_02-11-1975_40-fr-6432.pdf.

¹² EPA's ELG Chart lists the year of last revision as 1974; however, EPA last revised some aspect of this industrial category in 1975. See Ferroalloy Manufacturing Point Source Category, 40 Fed. Reg. 8,030 (Feb. 24, 1975), available at https://www.epa.gov/sites/default/files/2016-09/documents/ferroalloy-mfg_int-final_subpts_d-g_40-fr-8030_02-24-1975.pdf.

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Explosives Manufacturing	457	1976	never revised	45	
Gum and Wood Chemicals	454	1976	never revised	45	
Hospitals	460	1976	never revised	45	
Photographic	459	1976	never revised	45	
Cement Manufacturing¹³	411	1974	1977	44	Amendment proposed and received comments from industry in support.
Carbon Black Manufacturing	458	1976	1978	43	Amendments as a result of petitions filed with 5th Cir. and using monitoring information from EPA Region VI and submitted by the companies that petitioned.
Mineral Mining and Processing	436	1975	1979	42	Revoked portions of the regulation after the 4th Cir. invalidated them.
Timber Products Processing	429	1974	1981	40	Revisions prompted by settlement agreement with NRDC.
Textile Mills	410	1974	1982	39	Revisions prompted by settlement agreement with NRDC.
Inorganic Chemicals	415	1982	never revised	39	

¹³ EPA's ELG Chart lists the year of last revision as 1974; however, EPA last revised some aspect of this industrial category in 1977. See Cement Manufacturing Point Source Category, 42 Fed. Reg. 10,681 (Feb. 23, 1977), available at https://www.epa.gov/sites/default/files/2018-07/documents/cement-mfg_final_02-23-1977_42-fr-10681.pdf.

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Electroplating	413	1974	1983	38	Revisions prompted by settlement agreement with NRDC.
Coil Coating	465	1982	1983	38	Revisions prompted by settlement agreement with NRDC.
Electrical and Electronic Components	469	1983	never revised	38	Promulgated in response to settlement agreement in NRDC v. Train.
Plastics Molding and Forming	463	1984	never revised	37	
Petroleum Refining¹⁴	419	1974	1985	36	Revisions prompted by settlement agreement with NRDC.
Porcelain Enameling	466	1982	1985	36	Revisions in response to settlement agreement with members of the porcelain enamel industry.
Metal Molding and Casting (Foundries)	464	1985	never revised	36	
Glass Manufacturing¹⁵	426	1974	1986	35	Amended to comply with new Best Conventional Pollutant Control Technology (“BCT”) guidelines following judicial challenge.
Grain Mills¹⁶	406	1974	1986	35	Amended to comply with new BCT guidelines following judicial challenge.

¹⁴ EPA’s ELG Chart lists the year of last revision as 1982; however, EPA last revised some aspect of this industrial category in 1985. *See* Petroleum Refining Point Source Category, 50 Fed. Reg. 32,414 (Aug. 12, 1977), *available at* https://www.epa.gov/sites/default/files/2015-09/documents/petro-refining_settlement_correction_50-fr-32414_08-12-1985.pdf.

¹⁵ EPA’s ELG Chart lists the year of last revision as 1975; however, EPA last revised some aspect of this industrial category in 1986. *See* Best Conventional Pollutant Control Technology; Effluent Limitations Guidelines, 51 Fed. Reg. 24,974 (July 9, 1986), *available at* https://www.epa.gov/sites/default/files/2018-11/documents/effluent-guidelines-bct_final_51-fr-24974_07-09-1986.pdf.

¹⁶ EPA’s ELG Chart lists the year of last revision as 1974; however, EPA last revised some aspect of this industrial category in 1986. *See id.*

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Phosphate Manufacturing ¹⁷	422	1974	1986	35	Amended to comply with new BCT guidelines following judicial challenge.
Sugar Processing ¹⁸	409	1974	1986	35	Amended to comply with new BCT guidelines following judicial challenge.
Copper Forming	468	1983	1986	35	Amendments pursuant to settlement agreement with regulated entity.
Metal Finishing	433	1983	1986 (pending)	35	The changes in 1986 were only “grammatical clarification[s]” and corrected errors in the list of regulated toxic organic pollutants.
Battery Manufacturing	461	1984	1986	35	Revisions pursuant to settlement agreement with regulated entity.
Fertilizer Manufacturing ¹⁹	418	1974	1986	35	In response to petitions from industry.
Ore Mining and Dressing (Hard Rock Mining)	440	1975	1988	33	In response to Consent Decree with Trustees for Alaska.
Aluminum Forming	467	1983	1988	33	Settlement agreement to resolve a lawsuit challenging the original regulations of 1983 (with regulated entities).
Nonferrous Metals Forming	471	1985	1989	32	In response to settlement agreement with regulated entity.

¹⁷ EPA’s ELG Chart lists the year of last revision as 1974; however, EPA last revised some aspect of this industrial category in 1986. *See id.*

¹⁸ EPA’s ELG Chart lists the year of last revision as 1984; however, EPA last revised some aspect of this industrial category in 1986. *See id.*

¹⁹ EPA’s ELG Chart lists the year of last revision as 1975; however, EPA last revised some aspect of this industrial category in 1986. *See id.*

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
and Metal Powders					
Nonferrous Metals Manufacturing	421	1976	1990	31	In response to multiple settlement agreements (with regulated entities).
Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF)	414	1987	1993 (pending)	28	1993 Amendments respond to Fifth Cir.'s decisions.
Leather Tanning and Finishing	425	1982	1996	25	In response to “a petition submitted by the leather tanning industry.”
Pesticide Chemicals²⁰	455	1978	1998	23	Revisions to analytical methods made to “introduce greater flexibility in the use of approved [testing] methods.”
Landfills	445	2000	never revised	21	Never revised, but established pursuant to settlement agreement with NRDC.
Transportation Equipment Cleaning	442	2000	never revised	21	
Waste Combustors	444	2000	never revised	21	Never revised, but established pursuant to settlement agreement with NRDC.

²⁰ EPA’s ELG Chart lists the year of last revision as 1996; however, EPA last revised some aspect of this industrial category in 1998. *See* Amendments to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Organic Pesticide Chemicals Manufacturing Industry, 63 Fed. Reg. 39,440 (July 22, 1998), available at <https://www.federalregister.gov/documents/1998/07/22/98-19514/amendments-to-the-effluent-limitations-guidelines-pretreatment-standards-and-new-source-performance>.

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Centralized Waste Treatment	437	2000	pending	21	Following Detailed Study (released 2018), stakeholders expressed concern regarding discharge options.
Coal Mining	434	1975	2002	19	Amendment to regulations to create consistency with Rahall Amendment.
Pharmaceutical Manufacturing	439	1976	2003	18	Following 1998 amendments, “received comments from the regulated community and after [EPA’s] own analysis and review, [EPA] determined that several minor amendments which are discussed below were warranted.”
Metal Products and Machinery	438	2003	never revised	18	
Meat and Poultry Products	432	1974	2004 (pending)	17	Revisions prompted by settlement agreement with NRDC.
Concentrated Aquatic Animal Production	451	2004	never revised	17	Promulgations required by June 30, 2004 under consent decree with NRDC.
Iron and Steel Manufacturing	420	1974	2005	16	Revisions proposed after concern expressed by steel mill representatives.
Pulp, Paper, and Paperboard²¹	430	1974	2007	14	Revisions to “introduce greater flexibility in the use of approved [testing] methods.”

²¹ EPA’s ELG Chart lists the year of last revision as 2002; however, EPA last revised some aspect of this industrial category in 2007. See Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act, 72 Fed. Reg. 11,200 (Mar. 12, 2007), available at <https://www.govinfo.gov/content/pkg/FR-2007-03-12/pdf/07-1073.pdf>.

ELG (Industrial Category)	40 CFR Part	Year of Promulgation	Year of Last Revision	Age of ELG (Years)	If Applicable, Reason for Revision
Concentrated Animal Feeding Operations (CAFO)	412	1974	2008	13	In response to order from 2d Cir.
Airport Deicing	449	2012	never revised	9	
Construction and Development	450	2009	2014	7	Guidelines first promulgated as result of permanent injunction. Amendments result of settlement agreement with regulated entity.
Oil and Gas Extraction	435	1975	2016	5	Revision meant to “[fill] a gap in existing federal wastewater regulations to ensure that the current industry practice of not sending wastewater discharges from this sector to POTWs continues into the future.”
Dental Offices	441	2017	never revised	4	Never revised, but promulgated because the US joined an international agreement, the Minamata Convention on Mercury, addressing widespread mercury pollution. Also, corrections were made to the regulation the same year.
Steam Electric Power Generating	423	1974	2020 (pending)	1	EPA has initiated a rulemaking to strengthen certain discharge limits.