



EPA Proposes New Agency-Wide Guidelines For Ecological Risk Assessments

The Environmental Protection Agency is seeking public comment on its "Proposed Guidelines for Ecological Risk Assessment" (EPA/630/R-95/002B), published in the Federal Register on September 9, 1996 (61 FR 47551). The proposed guidelines were developed as part of an interoffice development program by a technical panel of the Risk Assessment Forum. The proposed guidelines expand upon the EPA's 1992 report "Framework for Ecological Risk Assessment" (EPA/630/R-92/001, February 1992). Ecological risk assessment is a process for organizing and analyzing data, information, assumptions and uncertainties to evaluate the likelihood of adverse ecological effects.

The proposed guidelines are the EPA's first agency-wide ecological risk assessment guidelines. They are broad in scope, describing general principles and providing numerous examples to show how ecological risk assessment can be applied to a wide range of systems, stressors, and biological/spatial/temporal scales. This general approach provides sufficient flexibility to permit EPA offices and regions to develop specific guidance suited to their particular needs. Because of their broad scope, the proposed guidelines do not provide detailed guidance in specific areas nor are they highly prescriptive. Frequently, rather than requiring that certain procedures always be followed, the proposed guidelines describe the strengths and limitations of alternate approaches. EPA preferences are expressed where possible, but because ecological risk

ALSO IN THIS ISSUE:

EPA To Assess Nonpoint Source Pollution Inputs To Sediments.....	3
EPA Issues BMP Approach To NPDES Permits	3
EPA Considers Using State Fish Advisories In CWA Enforcement	4
Proposed Corps Of Engineers Nationwide Wetlands Permits.....	5
NMFS Proposes New Regulations To Protect Right Whales	6
Navy, EPA Sign SINKEX Agreement	9
Legal Challenge To Navy's San Diego Bay Dredging Plan Rejected	10
Navy Revises Shipboard Solid Waste Discharge EIS.....	11
Methods For Data Gathering, Monitoring Could Be Easier To Modify.....	12
Court Allows Lawsuits To Enforce Water Quality Standards.....	13
Improved Automated Trace Metals Analyzer Developed.....	13
New BBS Posts Developing Rules And Federal Regulations	15

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assessment is a rapidly evolving discipline, requirements for specific approaches could soon become outdated. In the future, the EPA intends to develop a series of detailed guidance documents on specific ecological risk assessment topics after these proposed guidelines have been finalized. The proposed guidelines emphasize the importance of interactions between risk assessors and risk managers as well as the critical role of problem formulation to ensuring that the results of the risk assessment can be used for decision-making.

Comments on the Proposed Guidelines are due to the EPA by December 9, 1996, and should be submitted to: US Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), Attn: File ORD-ERA-96-01, Waterside Mall, 401 M Street SW, Washington, DC 20460. Please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively, provide comment on how the attachments relate to the main comment(s), and submit an unbound original and three copies. Please identify all comments and attachments with the file number ORD-ERA-96-01. Mailed comments must be postmarked by the date indicated.

Comments may be sent by e-mail to: A-and-R-Docket@epamail.epa.gov and must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks, in WordPerfect™ 5.1 or ASCII file format. All electronic submissions must be identified by the file number ORD-ERA-96-01. All submissions will be placed into the public record.

The electronic version of the proposed guidelines is accessible on the EPA's Office of Research and Development home page on the Internet at <http://www.epa.gov/ORD/WebPubs/fedreg>. The document is available on 3½-inch high-density computer diskettes in Wordperfect™ 5.1 format from ORD Publications, Technology Transfer and Support Division, National Risk Management Research Laboratory, Cincinnati, OH; telephone: (513) 569-7562; fax: (513) 569-7566. Please provide the EPA document number (EPA/630/R-95/002B) when ordering.

Copies are also available for inspection at EPA headquarters and regional libraries, through the US Government Depository Library program, and for purchase from the National Technical Information Service (NTIS), Springfield, VA; telephone: (703) 487-4650, FAX: (703) 321-8547. Please provide the NTIS document number (PB96-193198; Price Code A13: \$47.00) when ordering. For more information, contact Bill van der Schalie at the EPA's National Center for Environmental Assessment at (202) 260-4191.

EPA Press Release, Friday, September 6, 1996.

Federal Register, Vol. 61, No. 175, September 9, 1996, pp. 47551-47631.



EPA To Assess Nonpoint Source Pollution Inputs To Contaminated Sediments

The Environmental Protection Agency's Standards and Applied Science Division within the Office of Science and Technology has initiated an effort to assess the contribution of nonpoint sources to sediment contamination. The initial effort will focus on selected nonpoint source categories including harvested croplands (pesticides), urban areas and atmospheric deposition (PAHs, PCBs, metals, pesticides), and inactive and abandoned mine sites (where information is available). The EPA plans to coordinate closely with other federal agencies including the USDA's Agricultural Research Service, the US Geological Survey and the US Fish and Wildlife Service for this effort.

Contaminated Sediment News, EPA-823-N-96-002, No. 16, April 1996, p. 2.

EPA Issues Interim Approach For Water Quality-Based Effluent Limitations In NPDES Storm Water Permits

In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for National Pollutant Discharge Elimination System (NPDES) storm water permits, the EPA is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), the EPA will use an interim permitting approach for NPDES storm water permits.

During a meeting of the Urban Wet Weather Federal Advisory Committee held on August 1-2, 1996, panel members agreed to allow the EPA to draft an approach to encourage facilities to ensure that their industrial materials and processes do not come in contact with storm water. A committee work group earlier attempted to draft an options paper, but determined it would be more efficient for the EPA to develop the approach. The group directed the EPA to consider several criteria as it developed the draft, including that it be practicable, effective, environmentally protective, efficient in terms of costs and administrative burdens, conducive to easy enforcement, and fair.

The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, to attain water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate. This interim permitting approach is not intended to affect those storm water



permits that already include appropriately derived numeric water quality-based effluent limitations. Since the policy only applies to water quality-based effluent limitations, it does not affect technology-based limitations, such as those based on effluent guidelines or the permit writer's best professional judgment, that are incorporated into storm water permits.

Each storm water permit should include coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations for subsequent permits. Such a monitoring program may include, ambient monitoring, receiving water assessment, discharge monitoring (as needed), or a combination of monitoring procedures designed to gather necessary information.

For further information, contact Bill Swietlik, Storm Water Phase I Matrix Manager, Office of Wastewater Management, at (202) 260-9529 or William Hall, Urban Wet Weather Flows Matrix Manager, Office of Wastewater Management, at (202) 260-1458, e-mail: hall.william@epamail.epa.gov.

Federal Register, Vol. 61, No. 166, August 26, 1996, p. 43761.
Environment Reporter, Vol. 27, No. 15, August 9, 1996, p. 840.

EPA Considers Using State Fish Advisories To Target CWA Enforcement

The EPA is developing a new national Clean Water Act (CWA) enforcement and compliance strategy that will target those industrial dischargers whose effluent contributes to fish contamination and human dietary consumption advisories. Fish advisories have traditionally been used to warn the public that fish in a particular waterbody are contaminated and dangerous to eat. States are solely responsible for issuing fish advisories. The EPA consolidates the state advisories in a national database and releases the information to the public in an annual report. The EPA is considering using this information to help target future enforcement and compliance assurance efforts.

The EPA has begun preliminary discussions that are aimed at developing a national strategy to identify dischargers who may contribute to fish contamination. This "risk-based targeting" approach to enforcement will help the agency use its resources more effectively and identify priority enforcement targets. For example, the EPA would examine an area where a fish advisory may show that lead contamination is prevalent; the agency would then identify facilities in the area which discharge lead to the waterbody and may be contributing to the problem. Once the EPA has identified potentially



problematic facilities, the agency would examine the facility's permits to determine whether they are in compliance with their discharge limits. If a facility is not in compliance, EPA would consider bringing an enforcement action. Even if a facility is in compliance, the permitting authority would have the option of setting new permit limits in an attempt to reduce pollutant loadings.

Outstanding issues that have yet to be addressed include: (1) significant state to state differences in pollutant levels which trigger fish advisories, (2) a way to make the data relatively compatible in order to identify the highest risk areas, and (3) consideration of the impact of nonpoint source pollution on contamination levels.

Defense Environmental Alert, Vol. 4, No. 18, September 4, 1996.

Proposed Corps Of Engineers Nationwide Wetlands Permits Expected In November

A proposal to reissue a series of nationwide wetlands permits is expected to be made by November 21, 1996, despite a legal challenge to one of those permits, according to the US Army Corps of Engineers. All of the permits are set to expire on January 21, 1997, except for the permit that allows an owner of a small tract of land to build or expand his or her single-family home in a wetlands area with minimal regulatory oversight, which will expire on September 25, 2000.

The final permits will be published 60 days before the expiration date to provide states an opportunity to review and certify or deny the permits in accordance with Section 401 of the Clean Water Act and the Coastal Zone Management Act. However, according the National Wildlife Federation, the permits do not include provisions calling for public review and comment. As a result, citizens have no means of ensuring the sequential steps have been taken to avoid, minimize, and compensate for wetlands losses.

The nationwide permits include a set of general conditions aimed at minimizing a project's effect on the environment. An individual seeking coverage under a nationwide permit would notify the corps of his or her project. The project would be considered approved within 30 days, unless the corps notifies the applicant that special conditions must be met or that an individual permit is required. Among other things, permits included in the proposal would:

- Authorize discharges of dredge or fill material into non-tidal wetlands necessary to manage, construct, and/or maintain habitat areas for wildlife;



- Authorize discharges of dredge or fill material into waters that are associated with certain minimal effects determinations and are exempted under the recently passed Food Security Act;
- Authorize certain work and/or discharges of dredge material incidental to active mining of sand and gravel and recreational mining; and
- Authorize the excavation and removal of accumulated sediment and associated vegetation for maintenance of existing flood control facilities, such as debris basins.

Environment Reporter, Vol. 27, No. 15, August 9, 1996, p. 841.

NMFS Proposes New Regulations To Protect Right Whales

The northern right whale (*Eubalaena glacialis*) has been recognized as the world's most endangered large whale species. Recent mortalities off the Atlantic coast of the United States place the western Atlantic population of the northern right whale in an even more precarious position. Vessel interactions are identified as one of the major threats facing these whales, especially collisions with, and disturbances to whales. The National Marine Fisheries Service (NMFS) proposes to prohibit all approaches within 500 yards (460 m), whether by vessel, aircraft or other means. The proposed rule would restrict head-on approaches to northern right whales, would prohibit any vessel maneuver that would intercept a northern right whale within 500 yards (460 m), and would require northern right whale avoidance measures under specified circumstances. Exceptions would be provided for emergency situations and where certain authorizations are provided

Components of the Proposed Rule

The size of the buffer zone: In order to ensure compliance with the mandates in the proposed rule, a person would be expected to avoid close approaches to all large whales that cannot be identified as to species in waters along the east coast of the United States, especially in right whale high-use areas when those whales are expected to be present. The NMFS has concluded that a 500-yard (460-m) buffer zone would allow people to observe right whales (and other large whales if they are unable to identify the species with certainty) while providing a measure of protection and safety for these animals consistent with sound management practices.

Applicability to various approach activities: The proposed rule would apply broadly to approaches by vessels, aircraft or other means. The NMFS recognizes that many small vessels, vessels traveling at very slow speeds, swimmers, aircraft and certain other types of close-approaches have little or no potential to



cause serious injury to right whales; nonetheless, such approaches would be prohibited. First, close human contact has the potential to disturb or harass a right whale even if it does not result in injury. For example, if right whales become habituated to small vessels or vessels operating at slow speeds and fail to dive and orient themselves away from vessels, then they may become more vulnerable to larger vessels or vessels traveling at higher speeds. While not currently a serious problem, NMFS wants to discourage potential activities such as airplane or helicopter whale-watching operations or other activities that could disturb or cause behavioral changes in right whales. Finally, a 500-yard (460-m) no-approach prohibition is much easier for the public to understand and easier to enforce than the more general prohibition on harassment. NMFS has concluded that this type of regulation will minimize risks and potential risks and would be justified given the precarious status of right whales.

Deliberate versus unintentional approaches: Approaches to right whales, whether deliberate or unintended, present the potential serious problems described above. Disturbance of right whales may be more likely when approaches are intentional because such contact may be closer in proximity, more prolonged, or more intense. Ship strikes and serious injuries and mortalities may be more likely to result from accidental approaches. While intentional misconduct sometimes is considered especially culpable, the prohibitions on takings imposed under the MMPA and the ESA are not limited to intentional takings but also include unintentional or incidental takings as well.

Vessels at anchor or mooring: The proposed rule would not apply to anchored vessels. A vessel at anchor can not approach a right whale, and the proposed rule specifically states that whale avoidance measures are not applicable to vessels that are not underway, that is, vessels that are anchored, made fast to the shore, or aground. In addition, it is unlikely that the proposed rule would prevent access to safe anchorages or harbors since, in most circumstances, a vessel still would have room to maneuver and approach the harbor or anchorage even if a right whale was in the vicinity.

Applicability of proposed rule to research and fishing operations: The proposed rule it is not expected to interfere unreasonably with research or fishing operations. Research on northern right whales for which a permit is issued under the ESA or MMPA would be exempt from the proposed rule. With respect to other types of research, researchers would be encouraged to use areas where, or seasons when, right whales are unlikely to be present, or would need to contact NMFS to explore ways to conduct the research without adverse impacts on right whales.

Operations which limit maneuverability, such as hauling back a tow, should not be initiated if a right whale is sighted, and certainly should not begin if the right whale is within or almost within 500 yards (460 m) of the vessel. If haulback operations are initiated and a right whale subsequently approaches the vessel, under most circumstances, the haulback should be completed because of safety concerns and requirements for safe vessel operation. By statute, the vessel must take all reasonable actions in order to avoid violating the ESA and MMPA prohibitions on "takes." Once the operation is completed or



maneuverability is again unrestricted, the vessel should move slowly but deliberately and steadily in a direction away from the right whale in accordance with the right whale avoidance measures.

Maintaining a lookout and exercising due diligence: Vessel operators are required by COLREGS, Rule 5 (See 33 CFR Part 81 App. A, Part B, Section 1, Rule 5) and by Rule 5 of the Inland Navigation Rules (33 U.S.C. 2005) to maintain a proper lookout. That lookout should use all available means appropriate under the circumstances to watch for whales, especially right whales. If the vessel is in an area (and time) where right whales are known to occur, or may be expected to occur, additional care is required. This proposed rule would require vessel operators to exercise due diligence to avoid head-on approaches to right whales. Similarly, vessel operators would be required to comply with instructions received from NMFS, the US Coast Guard, the U.S. Navy, or port authorities concerning measures necessary to avoid approaches to right whales.

Appropriate speed: Vessel operators are required by COLREGS, Rule 6, to proceed at safe speed so that the vessel can take proper and effective action to avoid collision and “be stopped within a distance appropriate to the prevailing circumstances and conditions” (72 COLREGS, see 33 CFR Part 81 App. A, Part B, Section 1, Rule 6). An identical requirement is imposed under the Inland Navigational Rules, 33 USC 2006. Under circumstances where right whales are known to occur, or may be expected to be in the area where a vessel is operating, a “distance appropriate to the prevailing circumstances” would be at least 500 yards (460 m) from a right whale.

Vessels restricted in their ability to maneuver or in certain areas: In order to avoid prohibited approaches to right whales in these situations, extra caution including additional efforts to maintain a lookout or additional reductions in speed may be necessary. If a right whale is positively identified and observed near a port, in a channel, in an established shipping lane, or in others areas with a high concentration of shipping activity, a vessel operator should report the sighting to the US Coast Guard or the appropriate port authority, and request assistance, if appropriate. Where the presence of a right whale would inhibit the entry of a large ship into a port or otherwise interfere with vessel operations, a vessel operator should contact the US Coast Guard or port authority for assistance or instruction.

Aircraft: The proposed rule would prohibit an aircraft from approaching or circling over a right whale at an altitude below 1500 ft (460 m).

Jurisdictional applicability: The proposed rule would apply to all persons, vessels and aircraft subject to the jurisdiction of the United States. The proposed rule also would state clearly the NMFS’ interpretation of US jurisdiction within the territorial sea and the US exclusive economic zone (EEZ).

Written comments must be received on or before November 5, 1996. Comments on the proposed rule should be addressed to Chief, Marine Mammal Division, Office of Protected Resources (FPR), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimates or



any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

For further information contact Margot Bohan or Michael Payne, NMFS/FPR, 301-713-2322; Doug Beach, NMFS/Northeast Regional Office, 508-281-9254; or Kathy Wang, NMFS/Southeast Regional Office, 813-570-5312.

Federal Register, Volume 61, Number 153, August 7, 1996, pp. 41116-41123.

Navy, EPA Sign Agreement For Carrying Out SINKEXs

The Navy and the Environmental Protection Agency signed an agreement on August 19, 1996, allowing limited resumption of military ship-sinking exercises (SINKEXs) until the EPA finalizes pending disposal regulations for polychlorinated biphenyls (PCB). The exercises, which entail sinking vessels containing PCBs, were halted pending a final rule. The agreement paves the way for the military to proceed on a limited basis, ending delays that the Navy asserts have impeded fleet readiness training and other operations. The agreement specifies that the Navy must remove certain equipment containing PCBs from vessels before using them for the exercises. The arrangement covers just one of several PCB-related issues the Navy and the EPA have been negotiating for several months. The Navy has expressed concern that pending regulations for PCBs pose an undue burden for the department.

The Navy will be allowed to use up to eight vessels for SINKEXs during the time covered by the pact, which remains in effect until the issuance of EPA's final regulations. The rule will create a mechanism whereby the Navy can apply for a permit to continue sinking exercises, according to the EPA. The permit process will include a risk assessment and an opportunity for public input. The EPA does not expect the limited SINKEXs allowed under the interim agreement to adversely affect the marine environment. The pact states that the Navy may use for SINKEX only those vessels it has prepared by taking several steps, including: removing all transformers containing at least 3 pounds of dielectric fluid and making all attempts to remove items with less than 3 pounds of the fluid, and flushing hydraulic and heat transfer equipment. The Navy is currently conducting a study on the environmental impacts of PCBs in sinking exercises. The agreement stipulates that the Navy will continue "to evaluate the leaching of PCBs under environmental conditions" at SINKEX sites.

Defense Environmental Alert, Vol. 4, No. 18, September 4, 1996.



Legal Challenge To Navy's San Diego Bay Dredging Plan Rejected

In June 1996, a coalition of environmental groups filed a complaint against the Navy over its plans to dredge nine million cubic yards of sediment from the San Diego Bay area to allow for the berthing of NIMITZ-class nuclear-powered aircraft carriers. The challenges related to a time-critical removal action the Navy is conducting that includes the construction of a confined disposal facility (CDF) to house dredged contaminated sediment. The removal action is being conducted under Superfund law. The plaintiffs challenged the Navy on the decision to undertake the action under the Superfund law, charging that the Navy has failed to take certain measures as prescribed by a RCRA permit that applies in part to the confined disposal facility.

The Navy argued that the plaintiffs' claims of environmental violations are precluded by a provision in Superfund law that prohibits federal judicial review of challenges to a pending government cleanup. The Navy argued that section 113(h) of the Comprehensive Environmental Response, Compensation & Liability Act, also overrides any claims that challenge Superfund cleanup actions, pointing to an earlier Ninth Circuit Court ruling on the issue.

On July 18, 1996, the Navy filed its response, rejecting the claims and opposing the groups' motion for a preliminary injunction. The case, *Environmental Health Coalition v. John Dalton*, was heard by the US District Court for the Southern District of California on August 12, 1996. US District Judge Barry Ted Moskowitz denied a preliminary injunction against the Navy, which could have delayed the project indefinitely. District Judge Moskowitz ruled that Federal Law prevented him from having jurisdiction over these preliminary phases of the project.

The dredging project is required because of the scheduled 1997 closure of Naval Air Station Alameda. A NIMITZ-class aircraft carrier formerly stationed at NAS Alameda is scheduled to be homeported in San Diego in 1998. The project involves the creation of a suitable turning basin and creating a 13.5-acre landfill on one side of North Island Naval Air Station. The landfill is to be used as a wharf, a platform for maintenance facilities and a disposal site for contaminated sediments in the dredging zone. The project also includes deepening the main navigational channel in San Diego Bay. Dredged sediment from this portion of the project is to be analyzed for chemical and physical properties and biological toxicity in order to determine environmentally-safe disposal options. Suitable material dredged from the channel have been proposed for replenishment of several San Diego area beaches.

San Diego Union Tribune, Tuesday, August 13, 1996, p. B-2.
Defense Environmental Alert, Vol. 4, No. 17, August 21, 1996.



Navy Revises Shipboard Solid Waste Discharge EIS After EPA, MMC Express Concern

The Navy has expanded its shipboard solid waste compliance efforts in regard to future waste discharges in the wake of the Environmental Protection Agency's requiring the Navy to move into compliance with the standard in the future. The Navy is requesting an exemption from the legal restriction covering disposal of solid waste in certain ocean areas and instead allow the discharges, provided the waste is first pulped and shredded. Both the EPA and the Marine Mammal Commission (MMC) requested that the Navy accommodate an alternative to the discharges when designing its new ships.

According to the Navy's plan, paper and cardboard would be pulped, mixed with seawater, and the resulting slurry discharged into the ocean. Metal and glass would be shredded, then placed in burlap bags for discharge. The Navy's draft environmental impact statement (EIS) for the disposal of shipboard solid waste maintains that 95 percent of the pulped paper and cardboard would settle to the sea floor and naturally degrade. The metal and glass would also sink to the sea floor, and the biological impact of both types of discharges would not be significant.

The EPA expressed several concerns regarding the draft EIS. The EPA suggested that the Navy design new ships to provide sufficient storage space for the waste, allowing for off-loading when in port and/or for the retrofitting of waste processing technology. The EPA requested additional information and analysis in the EIS to fully address impacts associated with discharges to sensitive ecosystems, such as coral reefs. The EPA also noted that a cumulative impacts analysis is required under the National Environmental Policy Act and advised the Navy to conduct long-term monitoring of the disposal program.

The MMC advised space should be made available in new ships to allow for the retention of glass and metal wastes, and incinerators should be constructed for use on large vessels until alternative technologies are found. The commission recommended reducing solid waste discharges as much as possible, and recycling. Glass and metal waste on ships operating in special areas, and possibly other areas, should be processed, stored and returned to port to be recycled. The commission also expressed concern that the small particle size of the shredded glass and metal may lead to increased ingestion rates by small species of marine life or affect benthic communities.

Legislation to allow Navy discharges of pulped or shredded waste to take place in the special areas has been attached to both House and Senate defense authorization bills. The Disposal of US Navy Shipboard Solid Waste Final Environmental Impact Statement was issued in August 1996.

Defense Environmental Alert, Vol. 4, No. 14, July 11, 1996.



Methods For Data Gathering, Monitoring Could Be Easier To Modify Under EPA Plan

Approved methods for data gathering and environmental monitoring under the Clean Water Act could be modified without regulatory approval more easily under a revised document that the Environmental Protection Agency released on July 24, 1996. The draft guidance document describes a comprehensive initiative to expand method flexibility and expedite approval of analytical methods for waste water and drinking water in 40 CFR parts 136 and 141. The revised proposal also suggested that the physical and chemical techniques used to perform the actual measurements might be changed.

The primary purpose of this plan is to increase the flexibility to modify existing methods and to provide a mechanism for non-EPA organizations to develop new methods. This increased flexibility could reduce the need for EPA, state, regional and local permitting authorities to review and provide formal approval to adaptations of specific methods.

The formal proposal is expected in October 1996. The EPA will then conduct pilot studies during the public comment period. Issuance of the final rule is expected in December 1997. For further information, contact the Engineering and Analysis Division of the Office of Science and Technology within EPA's Office of Water.

Environment Reporter Vol. 27, No. 13, July 26, 1996, p. 649.

Supreme Court Allows Ruling To Stand On Suits To Enforce Water Quality Standards

On June 24, 1996, the US Supreme Court declined to consider whether state water quality standards included in a Clean Water act discharge permit are "conditions" enforceable in a citizen suit (*Portland v. Northwest Environmental Advocates*, US SupCt, No. 95-1732, 6/24/96). This action allows to stand a decision by the US Ninth Circuit Court of Appeals that such standards are enforceable permit conditions (*Northwest Environmental Advocates v. Portland*, 56 F.3d 979, 40 ERC 1801, 1995; 26 ER 342).

The Ninth Circuit Court originally ruled that the state water quality standards contained in a discharge were not enforceable in a citizen suit (*Northwest Environmental Advocates v. Portland*, 11 F.3d 900, 38 ERC 1856, 1993; 24 ER 1565). The court based its decision on the language which allows private parties to enforce effluent limitations and conditions on discharge permits. The court originally interpreted this



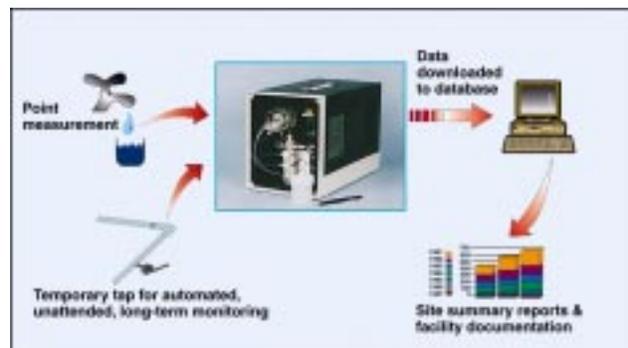
language to intend that citizen suits can enforce only numerical limitations on substances permittees can discharge, and excludes commitments to comply with water quality standards not translated into specific numeric limits.

The Supreme Court later stated in *Public Utility District No.1 of Jefferson County v. Washington DEC* (114 S.Ct. 1900, 38 ERC 1593, 1994; 25 ER 227) that the Washington Department of Ecology may apply broader, non-numeric water quality standards, such as requiring the maintenance of minimum stream flows, for facility certification under the Clean Water Act. The Ninth Circuit Court then reversed its earlier opinion and ruled that state water quality standards contained in a discharge permit are permit conditions enforceable in a citizen suit.

Environment Reporter, Vol. 27, No. 9, June 26, 1996, p. 511.

Improved Automated Trace Metals Analyzer Developed

Metal contamination arises from many sources and does not biodegrade in the environment. Prevention of soil and sediment contamination can only be accomplished by effective real or near-real-time monitoring of effluents, process streams, and runoff. Field measurement of metals is difficult due to the size and complexity of the standard analytical instrumentation. Current laboratory methods employ either Atomic Absorption Spectroscopy or Inductively Coupled Plasma Spectroscopy. Although these instruments are capable of low parts per billion measurements, they are expensive, sensitive to matrix effects, and require experienced operators as well as significant infrastructure support for field use. These systems are also not well suited for continuous automated monitoring of effluent and process streams.



The Benchtop Automated Trace Metal Analyzer is capable of measuring over 45 different metals. The instrument can be configured for portable, industrial or benchtop use and is capable of continuous unattended monitoring.

An automated trace metals analyzer has been developed at the Environmental Sciences Division of the Naval Command, Control and Ocean Surveillance Center Research, Development, Test and Evaluation Division (NRaD) based on the electrochemical technique of potentiometric stripping analysis. This technique, capable of measuring over 45 metals, was pioneered by D. Jagner in the early 1970's. Recent



advances in electronics now enable instrumentation using this technique to perform a completely automated metal analyses to less than one part per billion in about three minutes.

The instrument, weighing less than ten pounds, provides a capability to perform on-site, discrete analyses or continuous, automatic monitoring at programmed intervals over extended periods. The analyzer can be packaged in many configurations to suit specific requirements. These include minimum size for maximum portability, NEMA enclosures for industrial locations, or bench top systems for laboratory settings.

Specifications

Metals tested to date	Arsenic, Cadmium, Chromium (VI), Copper, Lead, Mercury, Selenium, Zinc
Measurement sensitivity	Sub parts per billion (PPB)
Measurement range tested (varies with standard concentration used)	0-600 PPB
Measurement modes	Discrete sampling, continuous at timed intervals, external event driven
Unattended monitoring duration	5 days at 48 samples per day
Measurement rate	Maximum 1 sample per minute, 1 sample per 3 minutes typical
Sample volume	3 ml
Data Storage capacity	500 MB Fixed Disk, 1.44 MB 3.5" FDD
Down-load data format	Compatible with most data bases
User interface	Windows [®] -based graphical interface.
Power Requirements	1A at 115 VAC, optional DC converter available.
Operating environment	0° to 70° Celsius (non-condensing)

The instrument is in its final year of demonstration/validation testing funded by the Environmental Security Technology Certification Program. Metals validated under this program include copper, zinc, lead, chromium (VI), cadmium, mercury, arsenic and selenium. A three-year Cooperative Research and Development Agreement (CRADA) has been signed to transition this government technology into



commercial use. For further information, contact Mike Putnam, NCCOSC RDTE DIV D361, at (619) 553-2794, e-mail: d361@nosc.mil.

New Bulletin Board Service To Post Developing Rules And Federal Regulations

A new bulletin board service (BBS) allows facility owners and operators wishing to track proposed or final rules and regulations. The Federal Register Electronic New Delivery (FREND) bulletin board offers public access to developing federal rules and changing regulations. The BBS maintains a list of documents that are on the Public Inspection Desk at EPA and dates when they will be published in the *Federal Register* for viewing or downloading. The list, accessed through the Federal Register Finding Aids menu option, is updated daily.

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Environmental Compliance Bulletin, Vol. 3. No. 17, July 29, 1996, p. 12.



ABOUT THE MARINE ENVIRONMENTAL UPDATE

This newsletter is produced quarterly by the Marine Environmental Support Office (MESO), and is dedicated specifically to inform the Navy about marine environmental issues that may influence how the Navy conducts its operations. MESO is located at the Naval Command, Control and Ocean Surveillance Center Research, Development, Test and Evaluation Division (NRaD) in San Diego, California. The mission of MESO is to provide Navy-wide technical and scientific support on marine environmental science, protection and compliance issues. This support covers a broad spectrum of activities, including routine requests for data and information, technical review and consultation, laboratory and field studies, comprehensive environmental assessments, and technology transfer. Significant developments in marine law, policy, and scientific advancements will be included in the newsletter, along with references and points of contact for further information. The Marine Environmental Support Office may be reached at:

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