

9/17/04

Comments Provided to Agency Web Site: <http://www.epa.gov/edocket>

Attention: Docket ID No. OW-2004-0032

Ladies and Gentlemen of EPA:

These comments are in response to the U.S. Environmental Protection Agency's Preliminary Effluent Guidelines Program Plan for 2005, as published in the September 2, 2004 Federal Register (69 FR pp. 53705-53721) and is being submitted September 17, 2004 via on-line docket procedures at <http://www.epa.gov/edocket>.

Firstly, but least important, why is the "2005 annual review of existing effluent guidelines" embedded within a Federal Register listing only entitled "Notice of Availability of 2004 Effluent Guidelines Program Plan"? (The item of concern to be considered under Docket ID No. OW-2004-0032 is buried under outline item "VI." in a total list of "VII." items). It's beneficial that you reference back to section "V." (pp.53708-53717) to help us review the 2004 background, yet, should not the 2005 review stand alone as a separate document in the Federal Register for easier notification and accessibility to the concerned public? Secondly, when "Legal Authority" references are listed in the Federal Register notice, why shouldn't internet addresses be provided for easier and better access?

Specifically, concerning the 2005 Program Plan, we question the credibility and viability of expanding the "Organic Chemicals, Plastics, and Synthetic Fibers" category (OCPSF)[40 CFR part 414] to include "chemical formulating, packaging, and repackaging (including adhesives and sealants)":

A. On page 75527 of the December 31, 2003, Federal Register (68 FR 75515-75531) document we find the following: "In comments on the draft Strategy a commenter identified chemical formulating, packaging, and repackaging (including adhesives and sealants) operations as an unregulated subcategory for which effluent guidelines should potentially be developed. EPA intends to review chemical formulating, packaging, and repackaging (including adhesives and sealants) operations for possible inclusion in the OCPSF point source category because of the potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options." You have adopted this comment by carrying a shortened version of this idea into the 2004 & 2005 plans (by reference) with the statement "As part of its 2003 review of the OCPSF effluent guidelines, EPA identified a potential additional subcategory for more detailed review: Chemical formulating, packaging, and repackaging (including adhesives and sealants) operations." [September 2, 2004, 69 FR pp. 53710]

How can a commenter and EPA personnel describe a category "chemical formulating, packaging, and repackaging (including adhesives and sealants)" when terms in that category itself have not yet been fully defined, especially the term "chemical formulating"?

Even the EPA's own definitions exclude "formulating." See EPA Publication 175-B-97-001, Terms of Environment - Glossary, Abbreviations, and Acronyms. The following definitions were downloaded from that publication at <http://www.epa.gov/OC/EPATERMS/fterms.html> :

"Formulation: The substances comprising all active and inert ingredients in a pesticide."

"Chemical Compound: A distinct and pure substance formed by the union of two or more elements in definite proportion by weight."

"Chemical Element: A fundamental substance comprising one kind of atom; the simplest form of matter."

"Packaging: The assembly of one or more containers and any other components necessary to ensure minimum compliance with a program's storage and shipment packaging requirements. Also, the containers, etc. involved."

While,

"Repackaging": NOT LISTED IN GLOSSARY

"Formulating": NOT LISTED IN GLOSSARY

Should not the definition of "formulating" be the act of developing a recipe or

a specification?

Formulating originates from the verb "formulate" which has the following synonyms: "codify, coin, compose, concoct, contrive, cook up, couch, define, detail, develop, devise, draft, draw up, dream up, evolve, express, forge, frame, hatch, indite, invent, make, make up, map out, originate, particularize, phrase, prepare, put, set down, specify, systematize, vamp, word, work out" [Source: Roget's New Millennium Thesaurus, First Edition (v.1.0.5), copyright © 2004 by Lexico Publishing Group, LLC., all rights reserved]. One doesn't keep on formulating ink, for example, every time a batch of ink is produced or manufactured. The formulating process usually involves reviewing all essential variables first (on paper or computer), then performing bench-scale size trials to evaluate the characteristics of the invented formula. Essentially, the formulating process aims to invent a formula that is "cast in cement" and, from that point forward, the formula becomes the standard specification or recipe to make all subsequent production-size batches. Industry mass production of one type/color of ink, for example, would never be successful if one discarded the formula after every batch and had to contrive a new formula to match the discarded version. If industrial production is not kept successful (by means of efficient processes, dedicated workers, continued financial support, and common-sense regulations), then EPA would have no industry to regulate.

B. Are you trying to only include "adhesives and sealants" into the category of "Organic Chemicals, Plastics, and Synthetic Fibers"? Such OCPSF's are chemical compounds solely manufactured or, better yet, synthesized from base, usually reactive chemicals. The similarities between the two would not warrant them to be placed in the OCPSF category. Raw materials that make up adhesives and sealants are typically mixed or blended in order to achieve the best properties desired for proper adhesive, color and/or sealant characteristics, while the OCPSF's are manufactured through chemically reacting at least one chemical compound with another, the process is otherwise known as a chemical reaction -or- synthesis.

C. This proposed subcategory [chemical formulating, packaging, and repackaging (including adhesives and sealants)] not only doesn't fit into the OCPSF category but its discharges are likely to be "trivial". Analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that the record shows are making non-trivial discharges of toxic or non-conventional pollutants to waters of the United States. Once finished goods, like adhesives and sealants, have been made, the producer needs to transfer as much as possible from the producing vessel into the end user container; any loss is not desirable from an economic standpoint, so, such equipment is frequently dedicated to the product at hand and seldom cleaned out. The end result, as far as the Clean Water Act goes, is that there is no water contamination, and, likely, Congress would not even need such areas regulated. As EPA has stated (69 FR pp. 53718-9) "..... EPA does not believe that it is necessary, nor was it Congress's intent, to develop national effluent guidelines regulations for categories of sources that are likely to pose an insignificant risk to human health or the environment. See Senate Report No. 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31."

D. This "chemical formulating, packaging, and repackaging (including adhesives and sealants)" proposed subcategory does not seem to have been covered by Congress especially since the terminology has not been properly defined and the broad use of "packaging and repackaging" is redundant to all goods manufactured.

Consequently,

1. If you are only trying to cover "adhesives and sealants", please don't corrupt them with other non-appropriate terms. Realize, however, that "adhesives and sealants" are not exclusive to the OCPSF category since both can be made not only through synthetic reactions in certain cases but, more frequently, through the mixing of raw materials (without reactions).

2. If you are trying to cover "chemical formulating", what authority gives EPA the auspice to start a new Industry Category where an industry is merely mixing chemicals together? There are no chemical reactions or synthesis involved in this "chemical formulating" action which the OCPSF category would necessarily require.

re. So "chemical formulating" should be deleted; if it is deleted, then the other terms can't stand valid alone.

3. The the original commenter seeking "packaging and repackaging" to be included in this new proposed subcategory must be trying to parlay off of FIFRA (Federal Insecticide, Fungicide, & Rodenticide Act) regulations. In FIFRA, not only the production but the downline packaging, repackaging and labeling of the pesticide is strictly regulated primarily due to consumer health and safety issues and for describing in writing the product's proper use. Remember that "packaging and repackaging" is merely a necessity of providing the goods a means to reach commerce. If one were to consider all of the industries covered under EPA's Industry Category listing, many would have to include some form of packaging to transport their goods to a downline customer. It would appear that the phrase "packaging and repackaging" is unnecessary in any EPA Industry Category since all goods requiring packaging would have to be readily accommodated, unless the company desires to no longer be in financial existence. If industry were not financially alive, then EPA would have no industry to regulate. (Note: one form of packaging, from the Pulp and Paper Industry Category is already adequately covered under 40 CFR part 430.)

So, it would behoove EPA to zero-in on "adhesives and sealants" if that is their intention for this day and time; maybe use "Adhesives and Sealants Manufacturing" as a potential category? Is there difficulty in initiating a true and specific Industry Category or is it much easier to be vague and enter wide-ranging, questionable-meaning terms into a new subcategory to confuse the public further? This vagueness cannot be what Congress intended.

4. On page 75530 of the December 31, 2003, Federal Register (68 FR 75515-75531) document EPA had solicited comments for "Chemical Formulating, Packaging, and Repackaging (SIC codes 2841, 2842, 2844, 2851, 2891, 2893, 2899)". This EPA listing for the proposed subcategory to include seven SIC codes did not even show the following manufacturing identities which we have added (below) to help everyone better understand these codes. We have also cross-referenced the SIC codes to the more currently used NAICS codes in the following chart, accordingly:

SIC	SIC DESCRIPTION	NAICS	COMPARATIVE NAICS DESCRIPTION
2841*	Soaps and Other Detergents, Except Speciality Cleaners	325611	Soap and Other Detergent Manufacturing (pt)
2842	Speciality Cleaning, Polishing, and Sanitary Preparations	325612	Polish and Other Sanitation Good Manufacturing
2844	Perfumes, Cosmetics, and Other Toilet Preparations		
2844	Toilet Preparations, Except Toothpaste	32562	Toilet Preparation Manufacturing
2844	Toothpaste	325611	Soap and Other Detergent Manufacturing (pt)
2851* (pt)	Paints, Varnishes, Lacquers, Enamels, and	32551	Paint and Coating Manufacturing

Allied Products

2891	Adhesives and Sealants	32552	Adhesive Manufacturing
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2893*	Printing Ink	32591	Printing Ink Manufacturing
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2899	Chemicals and Chemical Preparations, NEC		
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2899	Frit	32551	Paint and Coating Manufacturing (pt)
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2899	Table Salt	31194	Spice and Extract Manufacturing (pt)
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2899	Fatty Acids	325199	All Other Basic Organic Chemical Manufacturing (pt)
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2899	Other	325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing (pt)
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Downloaded in part from <http://www.census.gov/epcd/naics/NSIC3B.HTM#S28>

Such a wide range of industrial activity is incredulous when suggested into a new subcategory under OCPSP and even redundant since several of these are already covered in previous EPA activity as specific Industrial Categories.

* Note that SIC 2841 appears to be already covered under 40 CFR 417, so why is the redundancy recommended in this OW-2004-32 docket?

* Note that SIC 2851 appears to be already covered under 40 CFR 446, so why is the redundancy recommended in this OW-2004-32 docket?

* Note that SIC 2893 appears to be already covered under 40 CFR 447, so why is the redundancy recommended in this OW-2004-32 docket?

Moreover, one should understand that SIC 2893 industries do not involve the synthesizing of new chemicals (or the manufacturing of chemical compounds, as EPA would say) but primarily the mixing of raw materials already synthesized by another manufacturer. All of the seven SIC codes, except SIC 2841, represent manufacturers that have similar characteristics in that they should not be subcategorized or redundantly subcategorized under the "Organic Chemicals, Plastics, and Synthetic Fibers" category.

Respectfully submitted,
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P.S. Notwithstanding the concern over the proposed "chemical formulating, packaging, and repackaging (including adhesives and sealants)" category, is there not a misnomer in the categories "Ink Formulating" [40 CFR 447] and "Paint Formulating" [40 CFR 446]? Should they not be "Ink Manufacturing" and "Paint Manufacturing" respectively, relative to the earlier discussion on "Formulating"?

