



The Pretreatment Training Course

Sponsored by:

U.S. Environmental Protection Agency -
Office of Water
&
Water Environment Federation

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Raleigh, NC 27612
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Table of Contents

Agenda

Glossary of Common Terminology

Module 1 The National Pretreatment Program

- ▶ Slide Presentation
- ▶ Narrative
- ▶ Appendix: Pretreatment Quiz
- ▶ Appendix: 40 CFR Part 403
- ▶ Appendix: 40 CFR Part 122
- ▶ Appendix: CWA - §§ 101, 212, 301, 307, 308, 309, 402, 502
(U.S.C. - §§ 1251, 1292, 1311, 1317, 1318, 1319, 1342, 1362)

Module 2 Pretreatment Program Regulations: Legal Authority

- ▶ Slide Presentation
- ▶ Narrative
- ▶ Appendix: Industrial Pretreatment Ordinance (Muncie, IN)

Module 3 Industrial User Identification and Classification

- ▶ Slide Presentation
- ▶ Narrative
- ▶ Appendix: Classifying Industrial Users Exercise
- ▶ Appendix: Industrial Permit Application Form (Muncie, IN)

Module 4 Industrial User Permitting

- ▶ Slide Presentation
- ▶ Narrative
 - Sample Transmittal Letter
 - Contents of an Industrial User Permit

Module 5 Pretreatment Standards: Prohibitions and Categorical Standards

- ▶ Slide Presentation
- ▶ Narrative
- ▶ Appendix: Effluent Guidelines Plan, October 7, 1996
- ▶ Appendix: Fact Sheet: Modification to Effluent Guidelines Consent Decree, February 7, 1997
- ▶ Appendix: Industrial Wastewater Contacts in the Effluent Guidelines Program
- ▶ Appendix: Summary Status of National Categorical Pretreatment Standards: Milestone Dates

Module 6 Pretreatment Standards: Local Limits

- ▶ Slide Presentation
- ▶ Narrative

- Module 7 Permitting Exercise
 - ▶ Exercise

- Module 8 Inspections and POTW Monitoring
 - ▶ Slide Presentation
 - ▶ Narrative
 - ▶ Appendix: Assorted Blank Forms
 - ▶ Appendix: Example Chain of Custody Record Form
 - ▶ Appendix: Example Field Measurement Record Form

- Module 9 Reporting Requirements
 - ▶ Slide Presentation
 - ▶ Narrative
 - ▶ Appendix: Example Lab Report Form for Periodic Compliance Reports
 - ▶ Appendix: Example Certification Form for Periodic Compliance Reports

- Module 10 Data Management and Compliance Evaluation
 - ▶ Slide Presentation
 - ▶ Narrative
 - ▶ Appendix: Periodic Compliance Report Evaluation Exercise
 - ▶ Appendix: 40 CFR Part 433, Metal Finishing Point Source Category
 - ▶ Appendix: 40 CFR Part 136 (without Appendices)

- Module 11 Enforcement
 - ▶ Slide Presentation
 - ▶ Narrative
 - ▶ Appendix: Enforcement Response Guide (Muncie, IN)

- Module 12 Resources and Funding
 - ▶ Slide Presentation
 - ▶ Narrative

- Module 13 Pretreatment Program Quiz
 - ▶ Quiz

- Module 14 Pollution Prevention in the Pretreatment Program
 - ▶ Slide Presentation
 - ▶ Narrative

- Module 15 Pretreatment Update
 - ▶ Slide Presentation
 - ▶ Appendix: List of Regional EPA and State Pretreatment Program Contacts

Bibliography: Available Reference Materials

Agenda: The Pretreatment Training Course

In October 1996, as part of the Metal Finishing Sector of the Common Sense Initiative (CSI), EPA published "Improving Industrial Pretreatment: Success Factors, Challenges, and Project Ideas." The report identified a need for more training options related to the Pretreatment Program. To address this need, EPA and WEF have produced this course.

The objective of this training course is to provide the basic regulatory framework and technical considerations that support the development and implementation of pretreatment programs under the National Pollutant Discharge Elimination System (NPDES) Permitting Program and the Clean Water Act (CWA).

This course is designed and recommended for environmental professionals responsible for implementing the Pretreatment Program at the local level, industrial dischargers, consultants, and especially individuals that are new to the program.

<u>DAY 1</u>	<u>DAY 2</u>
7:30 Registration	8:30 Quiz #1 Review (7) Permitting Exercise
8:30 Welcome	9:20 (8) Inspections and POTW Monitoring
8:40 Pretreatment Quiz	10:30 Break
8:50 (1) Overview of the National Pretreatment Program	10:45 (9) Reporting Requirements
10:00 Break	11:30 (10) Data Management and Compliance Evaluation
10:10 (2) Pretreatment Program Regulations: Legal Authority	12:15 Lunch
11:20 (3) Industrial User Identification and Classification	1:30 (11) Enforcement
12:00 Lunch	2:20 (12) Resources and Funding
1:15 (4) Industrial User Permitting	2:45 Break
2:15 Break	3:00 (13) Pretreatment Program Quiz
2:30 (5) Pretreatment Standards: Prohibitions and Categorical Standards	3:15 (14) Pollution Prevention in the Pretreatment Program
3:45 (6) Pretreatment Standards: Local Limits	3:45 (15) Pretreatment Update
4:30 Adjourn	4:30 Adjourn

Glossary of Common Terminology

Abbreviations

AA	Approval Authority or Atomic Absorption
BAT	Best Available Technology Economically Achievable (applies to non-conventional and toxic pollutants)
BCT	Best Conventional Pollutant Control Technology (applies to conventional pollutants)
BMP	Best Management Practices
BMR	Baseline Monitoring Report
BOD ₅	5-day Biochemical Oxygen Demand
BPJ	Best Professional Judgment
BPT	Best Practicable Control Technology Currently Available (generally applies to conventional pollutants and some metals)
CA	Control Authority
CFR	Code of Federal Regulations
CIU	Categorical Industrial User
COD	Chemical Oxygen Demand
CSO	Combined Sewer Overflow
CWA	Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 <u>et seq.</u>
CWF	Combined Wastestream Formula
CWT	Centralized Waste Treater
D.O.	Dissolved Oxygen
DMR	Discharge Monitoring Report
DSS	Domestic Sewage Study
ELG	Effluent Limitations Guidelines
EPA	Environmental Protection Agency
EPCRA	Emergency Preparedness and Community Right to Know Act
ERP	Enforcement Response Plan
FDF	Fundamentally Different Factors
FR	Federal Register
FWA	Flow Weighted Average
GC	Gas Chromatograph
GC/MS	Gas Chromatograph/Mass Spectrometer
gpd	Gallons per Day
IU	Industrial User
LEL	Lower Explosive Limit
MAHL	Maximum Allowable Headworks Loading
MAIL	Maximum Allowable Industrial Loading
MGD	Million Gallons per Day
MSDS	Material Safety Data Sheet
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NRDC	Natural Resources Defense Council
NSPS	New Source Performance Standard
O&G	Oil and Grease
O&M	Operations and Maintenance
OCPSF	Organic Chemicals, Plastics, and Synthetic Fibers
P2	Pollution Prevention
PCI	Pretreatment Compliance Inspection

PCS	Permit Compliance System
PIRT	Pretreatment Implementation Review Task Force
POTW	Publicly Owned Treatment Works
PSES	Pretreatment Standards for Existing Sources
PSNS	Pretreatment Standards for New Sources
QA/QC	Quality Assurance/Quality Control
RBC	Rotating Biological Contactor
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SIU	Significant Industrial User
SPCC	Spill Prevention Control and Countermeasures
SNC	Significant Noncompliance
SSO	Sanitary Sewer Overflow
SUO	Sewer Use Ordinance
TCLP	Toxicity Characteristic Leaching Procedure
TOMP	Toxic Organic Management Program
TRE	Toxicity Reduction Evaluation
TRI	Toxic Release Inventory
TSS	Total Suspended Solids
TTO	Total Toxic Organics
USC	United States Code
UST	Underground Storage Tank
WET	Whole Effluent Toxicity
WWTP	Wastewater Treatment Plant

Definitions

Act or "the Act"

The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

Approval Authority

The Director in an NPDES State with an approved State Pretreatment Program and the appropriate EPA Regional Administrator in a State that has not received approval for their Pretreatment Program.

Approved/Authorized Program or Approved State

A State or interstate program which has been approved or authorized by EPA under Part 123.

Baseline Monitoring Report (BMR)

A report submitted by categorical industrial users (CIUs) within 180 days after the effective date of an applicable categorical standard which indicates the compliance status of the user with the applicable categorical standard [40 CFR § 403.12(b)].

Best Available Technology (BAT)

A level of technology based on the very best(state of the art) control and treatment measures that have been developed or are capable of being developed and that are economically achievable within the appropriate industrial category.

Best Management Practices (BMPs)

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the U.S. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Practicable Control Technology (BPT)

A level of technology represented by the average of the best existing wastewater treatment performance levels within the industrial category.

Best Professional Judgment (BPJ)

The highest quality technical opinion developed by a permit writer after consideration of all reasonable available and pertinent data or information which forms the basis for the terms and conditions of a permit.

Blowdown

The discharge of water with high concentrations of accumulated solids from boilers to prevent plugging of the boiler tubes and/or steam lines. In cooling towers, blowdown is discharged to reduce the concentration of dissolved salts in the recirculating cooling water.

Bypass

The intentional diversion of wastestreams from any portion of a treatment (or pretreatment) facility.

Categorical Industrial User (CIU)

An industrial user subject to National categorical pretreatment standards.

Categorical Pretreatment Standards

Limitations on pollutant discharges to POTWs promulgated by EPA in accordance with Section 307 of the Clean Water Act, that apply to specific process wastewater discharges of particular industrial categories [40 CFR § 403.6 and 40 CFR Parts 405-471].

Chain of Custody(COC)

A record of each person involved in the possession of a sample from the person who collects the sample to the person who receives it in the laboratory.

Chronic

A stimulus that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of an organism. The measurement of chronic effect can be reduced growth, reduced reproduction, etc., in addition to lethality.

Clean Water Act (CWA)

Public law 92-500; 33 U.S.C. 1251 et seq.; legislation which provides statutory authority for both NPDES and Pretreatment programs. Also known as the Federal Water Pollution Control Act.

Code of Federal Regulations (CFR)

Title 40 of the Code of Federal Regulations published in a U.S. Government publication, the Federal Register, which contains environmental regulations.

Combined Sewer Overflow (CSO)

A discharge of untreated wastewater from a combined sewer system at a point prior to the headworks of a publicly owned treatment works. CSOs generally occur during wet weather (rainfall or snowfall). During periods of wet weather, these systems become overloaded, bypass treatment works, and discharge directly to receiving waters.

Combined Wastestream Formula (CWF)

Procedure for calculating alternative discharge limits at industrial facilities where a regulated wastestream from a categorical industrial user is combined with other wastestreams prior to treatment [40 CFR §403.6(e)].

Compliance Schedule

A schedule of remedial measures included in a permit or an enforcement order, including a sequence of interim requirements (for example, actions, operations, or milestone events) that lead to compliance with the CWA and regulations.

Composite Sample

Sample composed of two or more discrete samples. The aggregate sample will reflect the average water quality covering the compositing or sample period.

Concentration-based Limit

A limit based upon the relative strength of a pollutant in a wastestream, usually expressed in mg/l.

Continuous Discharge

A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes or other similar activities.

Control Authority

A POTW with an approved pretreatment program or the approval authority in the absence of a POTW pretreatment program [40 CFR § 403.12(a)].

Conventional Pollutants

BOD, TSS, fecal coliform, oil and grease, and pH

Daily Maximum Limitations

The maximum allowable discharge of pollutants during a 24 hour period. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Detection Limit

The minimum concentration of an analyte(substance) that can be measured and reported with a 99% confidence that the analyte concentration is greater than zero as determined by the procedure set forth in 40 CFR Part 136, Appendix B.

Development Document

Detailed report of studies conducted by the U.S. EPA for the purpose of establishing effluent guidelines and categorical pretreatment standards.

Dilute Wastestream

For purposes of the combined wastestream formula, the average daily flow (at least a 30-day average) from : (a) boiler blowdown streams, non-contact cooling streams, storm water streams, and demineralized backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the industrial user, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis, and such other information so the control authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (c) from any process wastestreams which were, or could have been, entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one more of the following reasons (see Appendix D of 40 CFR Part 403):

- a. the pollutants of concern are not detectable in the effluent from the industrial user (paragraph (8)(a)(iii));
- b. the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

- c. the pollutants of concern are present in amounts too small to be effectively deduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
- d. the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

Discharge Monitoring Report

The EPA uniform National form, including any subsequent additions, revisions or modifications for reporting of self-monitoring results by permittees. The form must be used by approved States as well as by EPA.

Effluent Limitation Guideline

Regulations published to adopt or revise a national standard prescribing limits on specific pollutants (in lbs/day or mg/l) from point sources in a particular industrial category (e.g., metal finishing, metal molding and casting, etc.)

Enforcement Response Plan

Step-by-step enforcement procedures followed by Control Authority staff to identify, document, and respond to violations.

Existing Source

Any source of discharge, the construction or operation of which commenced prior to the publication by the EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Flow Weighted Average Formula (FWA)

A procedure used to calculate alternative limits where wastestreams regulated by a categorical pretreatment standard and nonregulated wastestreams combine after treatment but prior to the monitoring point.

Flow Proportional Composite Sample

Combination of individual samples proportional to the flow of the wastestream at the time of sampling.

Fundamentally Different Factors

Case-by-case variance from categorical pretreatment standards based on the factors considered by EPA in developing the applicable category/subcategory being fundamentally different than factors relating to a specific industrial user.

General Prohibitions

No user shall introduce into a POTW any pollutant(s) which cause pass through or interference.[40 CFR § 403.5(a)]

Grab Sample

A sample which is taken from a wastestream on a one-time basis with no regard to the flow of the wastestream and without consideration of time.

Indirect Discharger

A nondomestic discharger introducing pollutants to a publicly owned treatment works.

Industrial User (IU) or User

A source of nondomestic waste. Any nondomestic source discharging pollutants to a POTW.

Industrial Waste Survey

The process of identifying and locating of industrial users and characterizing their industrial discharge.

Inhibition Concentration

Point estimate of the toxicant concentration that would cause a given percent reduction (e.g., IC25) in a nonlethal biological measurement of the test organisms, such as reproduction or growth.

Interference

A discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with ... [applicable] statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations) ...

Local Limits

Conditional discharge limits imposed by municipalities upon industrial or commercial facilities that discharge to the municipal sewage treatment system.

Monthly Average

The arithmetic average value of all samples taken in a calendar month for an individual pollutant parameter. The monthly average may be the average of all grab samples taken in a given calendar month, or the average of all composite samples taken in a given calendar month.

National Pollutant Discharge Elimination System (NPDES)

The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. This includes an approved program.

National Pretreatment Standard or Pretreatment Standard

Limitations on pollutant discharges to POTWs promulgated by EPA in accordance with Section 307 of the Clean Water Act, that apply to specific process wastewater discharges of particular industrial categories [40 CFR § 403.6 and 40 CFR Parts 405-471]. This term also includes the prohibited discharge standards under 40 CFR § 403.5, including local limits.

New Source

Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section provided that:

- (a) The building, structure, facility or installation is constructed at a site at which no other discharge source is located;
or

- (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

90-Day Final Compliance Report

A report submitted by categorical industrial users within 90 days following the date for final compliance with the standards. This report must contain flow measurement (of regulated process streams and other streams), measurement of pollutants, and a certification as to whether the categorical standards are being met.

Nonconventional Pollutants

Any pollutant that is neither a toxic pollutant nor a conventional pollutant (e.g., manganese, ammonia, etc.)

Non-Contact Cooling Water

Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. The only pollutant contributed from the discharge is heat.

Non-Regulated Wastestream

Unregulated and dilute wastestreams.

Pass Through

A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation)

Periodic Compliance Report

A report on compliance status submitted by the categorical user to the control authority at least semiannually [40 CFR § 403.12(e)].

Point Source

Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fixture, container, rolling stock concentrated animal feeding operation vessel, or other floating craft from which pollutants are or may be discharged.

Pollutant

Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.

Pretreatment

The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.

Pretreatment Standards for Existing Sources (PSES)

Categorical Standards and requirements applicable to industrial sources that began construction prior to the publication of the proposed pretreatment standards for that industrial category. (see individual standards at 40 CFR Parts 405-471.)

Pretreatment Standards for New Sources (PSNS)

Categorical Standards and requirements applicable to industrial sources that began construction after the publication of the proposed pretreatment standards for that industrial category. (see individual standards at 40 CFR Parts 405-471.)

Priority Pollutant

Pollutant listed by the Administrator of EPA under Clean Water Act 307(a). The list of the current 126 Priority Pollutants can be found in 40 CFR Part 423 Appendix A.

Process Wastewater

Any water which, during manufacturing or processing, comes into contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Production-Based Standards

A discharge standard expressed in terms of pollutant mass allowed in a discharge per unit of product manufactured.

Publicly Owned Treatment Works (POTW)

Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

Regulated Wastestream

A wastestream from an industrial process that is regulated by a categorical standard.

Removal Credits

Variance from a pollutant limit specified in a categorical pretreatment standard to reflect removal by the POTW of said pollutant [40 CFR § 403.7].

Representative Sample

A sample from a wastestream that is as nearly identical in composition to that in the larger volume of wastewater being discharged and typical of the discharge from the facility on a normal operating day.

Sanitary Sewer Overflow (SSO)

Untreated or partially treated sewage overflows from a sanitary sewer collection system.

Self-Monitoring

Sampling and analyses performed by a facility to ensure compliance with a permit or other regulatory requirements.

Sewer Use Ordinance (SUO)

A legal instrument implemented by a local government entity which sets out all the requirements for the discharge of pollutants into a publicly owned treatment works.

Significant Industrial User (SIU)

EPA defines a significant industrial user to be a. Any user subject to a categorical pretreatment standard (national effluent guidelines); b. Any user that discharges an average of 25,000 gallons per day or more of process wastewater, or that contributes a process wastestream making up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or c. Any other user designated by the control authority (POTW) to be a significant industrial user [40 CFR § 403.3(t)].

Significant Noncompliance(SNC)

[40 CFR § 403.8(f)(2)(vii)] Industrial user violations meeting one or more of the following criteria:

- 1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- 2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutants parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- 3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other dischargers, interference or pass through (including endangering the health of POTW personnel or the general public);
- 4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- 5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- 6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- 7) Failure to accurately report noncompliance;
- 8) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Slug Discharge

Any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a noncustomary batch discharge.

Specific Prohibitions

No user shall introduce into a POTW:

- 1) Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR Part 261.21;
- 2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;
- 3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;
- 4) Any pollutant, including oxygen demanding pollutants(BOD, etc.) Released in a discharge at a flow rate and/or concentration which will cause interference with the POTW;
- 5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C(104°F) unless the Approval Authority, upon request of the POTW, approves alternative temperature limits;
- 6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
- 7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- 8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

Standard Industrial Classification(SIC)

A system used to identify various types of industries.

Storm Water

Rain water, snow melt, and surface drainage.

Time Proportional Composite Sample

A sample consisting of a series of aliquots collected from a representative point in the discharge stream at equal times intervals over the entire discharge period on the sampling day.

Toxic Pollutant

Any pollutant listed as toxic under section 307(a)(1) of the CWA, or in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA.

Toxicity Reduction Evaluation

A site-specific study conducted in a stepwise process designed to identify the causative agents of effluent toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in effluent toxicity.

Toxicity Identification Evaluation

Set of procedures to identify the specific chemicals responsible for effluent toxicity.

Unregulated Wastestream

A wastestream not regulated by a categorical standard nor considered a dilute wastestream.

Upset

An exceptional incident in which there is unintentional and temporary noncompliance with permit limits because of factors beyond the reasonable control of the discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

Water Quality Criteria

Comprised of numeric and narrative criteria. Numeric criteria are scientifically derived ambient concentrations developed by EPA or States for various pollutants of concern to protect human health and aquatic life. Narrative criteria are statements that describe the desired water quality goal.

Water Quality Standard

A law or regulation that consists of the beneficial designated use or uses of a waterbody, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular waterbody, and an antidegradation statement.

Whole Effluent Toxicity

The total toxic effect of an effluent measured directly with a toxicity test.

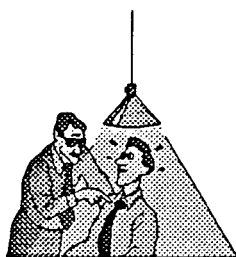
EPA's Pretreatment Training Course

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and
Water Environment Federation**

"The National Pretreatment Program and You"

Quiz Time



History of Water Protection

- 1899 Rivers and Harbors Act**
- 1956 Federal Water Pollution Control Act**
- 1963 Rachel Carson's Silent Spring**
- 1963 Robert Zimmerman changed his name to?**
- 1965 Water Quality Act**

History of Water Protection, cont.

- 1970 EPA established through an executive order**
- 1972 FWPCA Amendments create NPDES Program**
- 1977 Clean Water Act**
- 1987 Water Quality Act**
- 1997 Clean Water Act Reauthorization**

How Acts Are Implemented

- **Act passed/signed**
- **Federal Register notice**
- **Regulations into effect**
- **Appropriate Entities act out provisions**

Statutory Basis

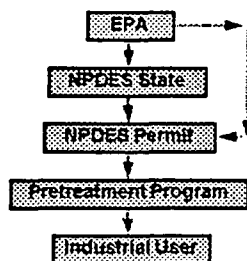
Clean Water Act [33 U.S.C. 1251, et seq.]

101	308
212	309
301	402
307	502

National Pollutant Discharge Elimination System("NPDES") [40 CFR Part 122]

- NPDES applies to all "point sources discharging pollutants" into "waters of the United States"
- point sources must obtain an NPDES permit from EPA or their delegated State
- NPDES permits require development of Pretreatment Programs

The connection: 40 CFR Part 122

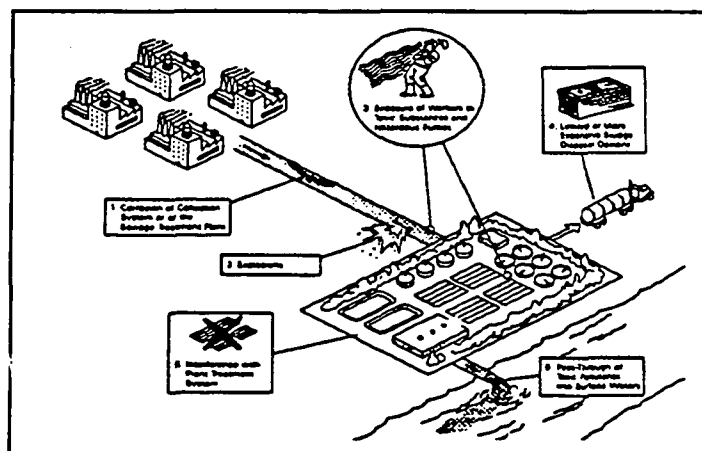


Evolution of Pretreatment Regulations

- 1973 - 40 CFR Part 128 promulgated
- 1978 - 40 CFR Part 403 promulgated
- 1983 - POTW program approval deadline
- 1985 - Pretreatment Implementation Review Task Force("PIRT") report released
- 1986 - Domestic Sewage Study(DSS) Report to Congress
- 1988 - PIRT Rules promulgated
- 1990 - DSS regulations promulgated
- 1993 - Removal credit/pollutant eligibility revised

40 CFR Part 403

- U.S. Code of Federal Regulations(CFR)
 - Title 40 - Protection of the Environment
 - ◆ Chapter I - Environmental Protection Agency
 - Subchapter N - Effluent Guidelines and Standards
 - Part 403 - General Pretreatment Regulations for Existing and New Sources of Pollution



40 CFR Part 403 Objectives

- To prevent the introduction of pollutants into POTWs which will:
 - interfere,
 - pass through, and/or
 - be incompatible.
- To improve opportunities to recycle and reclaim wastewaters and sludges.
- To protect POTW workers.

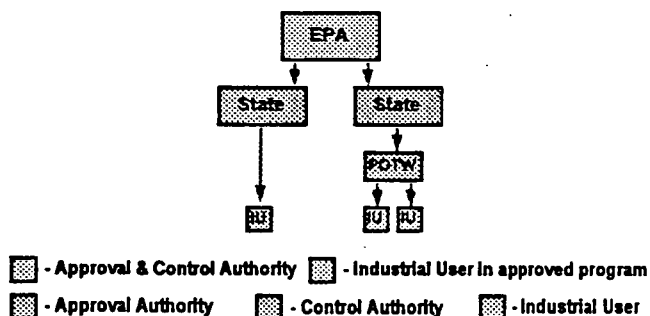
Slide Show Presentation

Who Must Develop a Program?

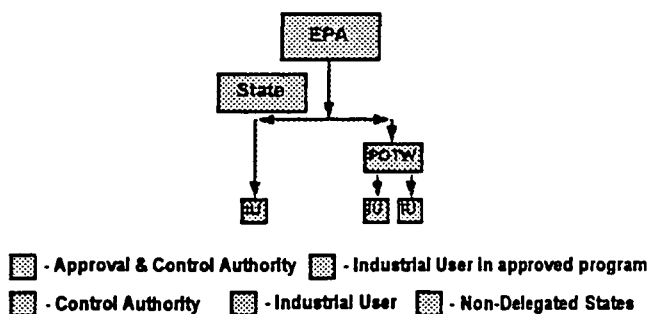
- POTWs with:
 - combined design flow > 5 MGD, and
 - receiving flow from CIUs, and/or
 - receiving pollutants which pass through or interfere.
- Approval Authority may require program be developed, regardless.
- NPDES State's may assume responsibility.

Approval Authority VS. Control Authority

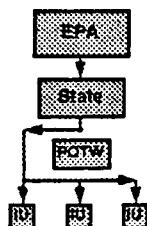
Delegated States



Non-Delegated States



40 CFR § 403.10(e), States



■ - Approval Authority

■ - Control Authority ■ - Industrial User ■ - no pretreatment program

The National Pretreatment Program

Overview of major legislative, regulatory, and judicial events affecting the Pretreatment Program.

Congress's first step in protecting the national waters was the passage of the 1899 Rivers and Harbors Act, 33 United States Code (U.S.C.) Part 407 et seq. (commonly known as the "Refuse Act"). The Refuse Act, which was originally intended to protect navigation, prohibited the discharge from a ship or shore installation into navigable waters of the United States of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state without a permit." The first direct consideration given by the legislature to the control of water pollution did not occur until 1948 with the passage of the Water Pollution Control Act (WPCA). Although the WPCA established no Federal goals or guidelines, it did provide limited funding for State and local governments to address their water pollution control problems. Controlling industrial water pollution was limited to providing funding to study it. The WPCA gave the U.S. Surgeon General the responsibility of developing a program to control interstate water pollution but provided minimal Federal enforcement authority.

In 1956, the passage of the Federal Water Pollution Control Act (FWPCA) provided additional funding to State and local governments and clarified some requirements through enforcement actions. The 1961 amendments to the FWPCA allowed citizen suits but only through written consent of the Governor. The Water Quality Act of 1965 required States to establish water quality standards for all interstate waters. This Act also created the Federal Water Pollution Control Administration which was empowered to develop water quality standards for States who failed to do so. Again, the Federal government's role was limited to assisting local governments address their water pollution control problems. Insufficient data, lack of water quality standards, and the burden of proof of demonstrating a discharge had caused a violation of a standard impeded enforcement actions being taken.

As a result of the lack of success in developing water quality standards programs and ineffective enforcement of the FWPCA, the Refuse Act of 1899 was revived and from 1969-1971, the Army Corp of Engineers was empowered to issue discharge permits. As a result of an apparent conflict with a requirement of the 1969 National Environmental Policy Act, and that the Refuse Act had been revived without congressional authorization, on October 18, 1972, amendments to the FWPCA were enacted.

The FWPCA Amendments of 1972 set up a comprehensive regulatory scheme for controlling water pollution discharges and resolved the differences between the water quality standards approach of the 1965 Water Quality Act and the effluent standards approach of the Refuse Act. The 1972 amendments to the FWPCA set a National goal of eliminating the discharge of pollutants into the navigable waters by 1985. The amendments also abandoned water quality as the primary regulatory approach in favor of EPA-promulgated, industry-by-industry, technology-based effluent limitations and extended Federal jurisdiction to all waters of the United States.

The National Pollutant Discharge Elimination System (NPDES) permit program was also established (Section 402) under the 1972 amendments to implement these "technology-forcing" standards. This was to supersede the Refuse Act permitting program. Under this scheme, a permit is required for any discharge into the waters of the United States. The permit cannot be issued unless the discharge meets Federal effluent guidelines or, where no guidelines exist, the issuing Agency's best professional judgment on how to meet statutory requirements. The Act further required more stringent permit limitations based on State water quality standards and criteria. It also required EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs and authorized EPA to establish standards for toxic pollutants from existing and new sources. In addition, the amendments provided EPA with extensive enforcement authority, including issuance of Administrative Orders, and established civil penalties of up to \$10,000 per day of violation and criminal penalties of up to \$25,000 per day of violation and 1 year in prison.

EPA promulgated the initial regulations for State NPDES programs on December 22, 1972, (37 FR 28391) and promulgated substantive NPDES permitting requirements on May 22, 1973 (38 FR 13528). In the initial, or "first-round," permitting effort, EPA and States with NPDES program authority issued over 65,000 NPDES permits. EPA issued the vast majority of these permits prior to promulgation of Best Practicable Control Technology (BPT) effluent guidelines by relying on its authority under Section 402(a)(1) of the Act to issue permits with "such conditions as the Administrator determines to be necessary to carry out the provisions of this Act."

In response to the statutory amendments, EPA promulgated 40 CFR Part 128 Pretreatment Standards in late 1973. This regulation contained general prohibitions against interference with treatment plant operation and pass through of pollutants to receiving waters. It also established pretreatment standards for the discharge of incompatible pollutants from specific categories of industries. EPA's development of BPT National effluent guidelines focused largely on conventional pollutants such as Biochemical Oxygen Demand (BOD), suspended solids, and acidity and alkalinity. In 1975, the Natural Resources Defense Council (NRDC) and several other environmental groups filed suit against EPA challenging: (1) EPA's criteria for identifying toxic pollutants under Section 307(a) of the FWPCA, and EPA's failure to promulgate effluent standards under this section; and (2) EPA's failure to promulgate pretreatment standards under Section 307(b) of the Act for numerous industrial categories and pollutants. In settling this litigation, EPA and NRDC entered into a consent agreement whereby EPA was to regulate toxic pollutants through effluent guidelines and standards. [NRDC vs. Train, 8 ERC 2120 (D. D.C. 1976)].

The consent agreement required EPA to regulate the discharge of 65 categories of priority pollutants (which included 129 chemical substances) from 21 industrial categories. The decree required adoption of Best Available Technology (BAT) effluent limitation guidelines in each category by June 30, 1983, and set similar requirements for new sources and indirect dischargers. NPDES permits issued or renewed after January 1, 1976, had to be modified to reflect these new effluent standards. (On March 9, 1979, the consent agreement was modified (12 ERC 1833) to adopt the 1977 amendments to the Act. This included adopting a BAT compliance deadline of June 30, 1984 extending the deadline for developing technology-based effluent limitations for toxics, and regrouping the 21 primary industrial categories into 34 categories.)

In February, 1977, EPA published proposed General Pretreatment Regulations (40 CFR Part 403). This package proposed four major options for creating the framework to deal with the problems of pollution from indirect dischargers. The 1977 proposal generated extensive public and congressional debate. EPA held numerous public meetings and hearings which produced testimony or written comments from 400 individuals or groups.

In December, 1977, Congress developed amendments to the FWPCA. Under these amendments, known formally as the Clean Water Act, Congress incorporated much of the NRDC consent agreement to:

- Adopt the list of priority pollutants as the list of toxic pollutants to be regulated by EPA
- Require establishment of BAT effluent limitation guidelines by July 1, 1980
- Require compliance with BAT effluent limitations by July 1, 1984
- Allow EPA to add to or delete from the list of toxic pollutants.

The amendments also added significant pretreatment provisions.

- EPA was given the authority to take enforcement actions in a State with NPDES program approval to prevent the introduction of pollutants into a POTW that is discharging pollutants in violation of its permits (EPA previously had this authority only in unapproved States).

- EPA was authorized to take a civil action against an indirect discharger for violating any pretreatment standard and against the receiving POTW if that POTW does not begin enforcement action within 30 days following notice from the Administrator.
- EPA was authorized to require POTWs to submit pretreatment programs for agency approval.
- States were required to include conditions in NPDES permits that ensure the identification of sources introducing pollutants to POTWs and to implement a program to ensure compliance with pretreatment standards by each such source.

On June 26, 1978, the Agency promulgated the General Pretreatment Regulations (40 CFR Part 403) which established mechanisms and procedures for applying National pretreatment standards and for establishing State and local programs. The regulations complied with the new pretreatment mandates set forth in the Clean Water Act. The General Pretreatment Regulations (40 CFR Part 403) replaced the previous pretreatment requirements contained in 40 CFR Part 128. In the subsequent fiscal year, EPA for the first time allocated significant Agency resources to implement the National Pretreatment Program.

In August of 1978, the Chemical Manufacturers Association (CMA), the U.S. Brewers Association, the Pacific Legal Foundation and the Natural Resources Defense Council brought actions challenging various aspects of the regulations. On May 31, 1979, EPA entered into an agreement with the industrial petitioners which sought to settle most of the issues raised by these parties during litigation. Accordingly, the Agency published proposed amendments to the General Pretreatment Regulations on October 29, 1979. The parties to the settlement agreed not to litigate the issues covered by the agreement if the language of the final amended regulations did not differ significantly from the October proposal.

The proposed amendments to the General Pretreatment Regulations centered on simplifying and easing the requirements for a POTW to grant removal credits altering the categorical discharge limits applicable to its industrial users. In addition to changes proposed pursuant to the settlement agreement, the proposed amendments included changes initiated by EPA to resolve inconsistencies and to clarify ambiguous provisions of the June 1978 regulations.

On January 28, 1981, EPA promulgated amendments to the General Pretreatment Regulations (40 CFR Part 403) which were to take effect on March 13, 1981. However, the President's regulation freeze issued on January 29, 1981, delayed the effective date until March 30, 1981. On April 2, 1981, a notice in the Federal Register indefinitely postponed the effective date of the amendments pending a decision by the President's Task Force on Regulatory Relief of the Office of Management and Budget.

On July 8, 1981, the United States Court of Appeals for the Third Circuit issued an opinion finding that the indefinite postponement of the amendments to the General Pretreatment Regulations contradicted the notice and comment provisions of the Administrative Procedures Act. To remedy this violation, the Court directed the Agency to retroactively reinstate all of the amendments, effective March 30, 1981.

Various parties challenged the pretreatment regulations and the electroplating categorical pretreatment standards. All the cases were consolidated in *National Association of Metal Finishers (NAMF) et al. vs. EPA* in the United States Court of Appeals for the Third Circuit. The pretreatment provisions challenged in the litigation included:

- Definitions of "new source," "interference," and "pass through"
- Combined wastestream formula (CWF)
- Removal credits provision
- Fundamentally different factors (FDF) variance provision.

In its ruling issued on September 20, 1983, the Third Circuit Court of Appeals upheld the electroplating standards, the CWF, and the removal credits provision. However, the court remanded to EPA the challenged definitions and the FDF provision of the General Pretreatment Regulations. As a result of these decisions, on February 10, 1984, EPA suspended the regulatory definitions of the terms in question and modified the FDF provision so that an FDF variance was not available for toxic pollutants. However, in February 1985, the Supreme Court reversed the judgment of the Third Circuit Court of Appeals with regards to the challenged FDF provisions. Therefore, EPA continues to have the authority to grant FDF variances from pretreatment standards for conventional, nonconventional, and toxic pollutants.

On February 3, 1984, the EPA Administrator established the Pretreatment Implementation Review Task Force (PIRT) to evaluate problems experienced by States, municipalities, and industries during the implementation of pretreatment program requirements. PIRT reviewed program development, approval and implementation regulations and procedures. In a report titled Pretreatment Implementation Review Task Force Final Report to the Administrator, dated January 30, 1985, PIRT submitted its findings and recommendations. PIRT recommended that EPA:

- Develop guidance to simplify and clarify the pretreatment program requirements
- Expedite issuance of water quality standards
- Expeditiously develop sludge management and disposal requirements
- Publish guidance on regulation of research and development and Federal facilities
- Provide guidance on industrial monitoring frequencies
- Develop an Inspection Training Program for Control Authorities
- Develop a uniform data reporting format for the annual Control Authority report
- Step up enforcement actions against Control Authorities without program approval
- Step up enforcement actions against industrial users not submitting baseline monitoring reports and those not in compliance with categorical standards
- Increase the resources available to implement the National Pretreatment Program by increasing manpower at EPA and increasing grant funding to States and Control Authorities
- Define roles and relationships between EPA, States and Control Authorities.

PIRT also suggested a number of regulatory revisions which included changes to the definitions of "interference," "pass through," and "new source" and to various other provisions of the 40 CFR Part 403 regulations.

On July 10, 1984, in response to PIRT's recommendations, EPA promulgated a revised definition of "new source" to replace the definition previously remanded as part of the Third Circuit Court of Appeals' decision in *NAMF et al. vs. EPA*. In addition, on January 14, 1987, EPA promulgated revised definitions of "interference" and "pass through" to replace those also suspended pursuant to that decision. (The definitions of pass through and interference are important for use during determinations of industrial user violations of the general or specific prohibitions and during evaluations of a Control Authority's need to develop local limits.)

In August, 1984, EPA promulgated revisions to the removal credit provision. However, on April 30, 1986, in the case of *NRDC vs. EPA*, 16 ELR 20693 (3rd Cir. 1986) the Court held that EPA could not grant removal credits authority to POTWs primarily due to the absence of technical sludge regulations (i.e., regulations outlining the specific criteria for sludge disposal).

In an effort to clarify the General Pretreatment Regulations, to remove inconsistencies, and to correct errors, erroneous references and inadvertent omissions, EPA promulgated amendments to 40 CFR Part 403 on June 4, 1986. In response to a PIRT recommendation, EPA promulgated updated versions of Appendices B and C in the June 4, 1986 ruling. A revised Appendix D was promulgated on October 9, 1986.

In February, 1987, Congress passed the Water Quality Act of 1987. These amendments:

- Revised Section 301(h) to require POTWs serving populations greater than 50,000 and holding a waiver from secondary treatment requirements for discharge to marine waters to enforce pretreatment standards and requirements
- Revised Section 301(n) to recognize that categorical industries may be eligible for FDF variances
- Revised Section 304(1) to require States to identify water bodies which remain impaired due to toxicity after imposition of BAT/BCT controls, and develop additional controls to eliminate the toxicity
- Revised Section 307(e) to extend categorical standard compliance deadlines for innovative technology
- Revised Section 309(c) to designate knowing and/or negligent violations of requirements as Federal criminal offenses
- Revised Section 402(m) to prohibit EPA from requiring additional pretreatment of conventional pollutants as a substitute for the POTW's inadequate treatment of such wastes
- In addition, Congress reaffirmed *NRDC vs. EPA*, 16 ELR 20693 (3rd Cir. 1986) which held that EPA could not approve POTW requests for removal credits due to, among other reasons, the lack of Federal technical sludge standards.

While these Amendments affected EPA resources, they did not require the Agency to make major revisions to existing regulations or policies.

EPA promulgated further significant revisions to the General Pretreatment Regulations on October 17, 1988 (53 FR 40562). These revisions clarified existing regulations, addressed additional PIRT recommendations, and provided conformity with the NPDES regulations. In general, these revisions involved new or modified requirements regarding: (1) pretreatment standards and requirements - local limits, (2) Control Authority program requirements - enforcement remedies, (3) Control Authority and State program approvals, and (4) industrial user and Control Authority compliance monitoring and reporting requirements.

Another study impacting the Pretreatment Program was the Domestic Sewage Study (DSS). The study was submitted to Congress by EPA in response to Section 3018(a) of the Resource Conservation and Recovery Act (RCRA). That provision directed the Agency to report to Congress on wastes discharged to POTWs through sewer systems that are exempt from regulation under RCRA as a result of the Domestic Sewage Exclusion. On June 22, 1987, EPA issued a Federal Register notice (52 FR 23477) which summarized the principal public comments on the Agency's preliminary approaches to fulfilling the recommendations of the DSS. This notice also discussed the program and research activities which EPA had underway to aid in this effort. Changes to the General Pretreatment Regulations to implement some DSS recommendations were proposed in the Federal Register on November 23, 1988 (53 FR 47632). These regulations were subsequently promulgated in the Federal Register on July 24, 1990 (55 FR 30082). The DSS regulations generally included revisions regarding the following new or modified requirements: (1) whole effluent toxicity testing, (2)

specific discharge prohibitions, (3) local discharge limits, (4) notification of hazardous waste discharges, (5) controls for spills and batch discharges, (6) industrial user control mechanisms, and (7) monitoring and enforcement.

In 1987, Section 405(d) of the Clean Water Act was amended to require EPA to establish standards that adequately protect public health and the environment from any reasonably anticipated adverse effects of pollutants in sewage sludge that is used or disposed. These amendments also required that any NPDES permit include sewage sludge use or disposal standards unless these requirements are included in another permit. In addition, the amendments expanded the regulated universe to include all "treatment works treating domestic sewage" (TWTDS), even those not needing an NPDES permit. TWTDS include all sewage sludge or wastewater treatment systems used to store, treat, recycle, and reclaim municipal or domestic sewage.

In response to these sewage sludge statutory mandates, EPA has undertaken several rulemakings. On May 2, 1989 (54 FR 19716), EPA revised 40 CFR Parts 122 and 124 to establish procedures and requirements to integrate sewage sludge management into NPDES permits. At the same time, the Agency revised 40 CFR Part 123 governing the approval of State NPDES programs and promulgated a new part, 40 CFR Part 501 (State Management Program Regulations), that established program requirements and procedures for States to seek approval of non-NPDES sewage sludge management programs. On February 19, 1993, EPA published regulations at 40 CFR Part 503 (58 FR 9248), Standards for the Use or Disposal of Sewage Sludge, that address the standards mentioned in Section 405(d). Part 503 contains requirements for the use/disposal of sewage sludge when it is:

- Applied to land for a beneficial purpose (land application)
- Placed on a surface disposal site (surface disposal)
- Fired in a sewage sludge incinerator (incineration)
- Placed in a municipal solid waste landfill (MSWLF).

For each of the first three use/disposal practices, Part 503 presents general requirements, specifies numeric limits on pollutant concentrations in sewage sludge, describes management practices and, in some cases, details operational requirements. It also includes monitoring, record keeping, and reporting requirements.

Specific requirements for sewage sludge disposed of in an MSWLF do not appear in Part 503. Rather, these requirements are found in 40 CFR Part 258, which was jointly promulgated under the CWA and the Resource Conservation and Recovery Act. Part 503 requires compliance with criteria in 40 CFR Part 258. If a municipal wastewater treatment works uses a MSWLF to dispose of its sewage sludge, the treatment works must ensure that the sludge is nonhazardous and passes the Paint Filter Liquid Test.

Part 503 also affected the National Pretreatment Program. Treatment works with sewage sludge not meeting the sludge quality standards in 40 CFR Part 503 for a particular use/disposal practice must clean up the influent by establishing more stringent local limits on industrial users. In addition, at the same time that it promulgated Part 503, EPA took the opportunity to publish revisions to 40 CFR § 403.7, the removal credits provision. This amendment to the General Pretreatment Regulations contains an appendix with two lists of pollutants eligible for a removal credit with respect to the use or disposal of sewage sludge.

Pretreatment Program Objectives, Organizational Structure, and Responsibilities

The National Pretreatment Program is designed to reduce the amount of pollutants discharged by industry and other non-domestic wastewater sources into municipal sewer systems, and thereby, reduce the amount of pollutants released into the environment from wastewater treatment plants. The program is a cooperative effort of Federal, State, and local regulatory environmental

agencies established to protect water quality. The term "pretreatment" refers to pollutant control requirements for non-domestic sources discharging wastewater to sewer systems that are connected to POTWs. Limits on the amount of pollutants allowed to be discharged are established by EPA, the State, or the local authority. Pretreatment limits may be met by the industry through pollution prevention/waste minimization (e.g., production substitution, recycling and reuse of materials) or treatment of the wastewater.

The requirement for development of a POTW pretreatment program is included as a condition of a POTW's NPDES permit. POTWs required to develop programs to include those:

- with combined design flows of greater than five(5) million gallons per day ("MGD"), and
- receiving pollutants from categorical industrial users, and/or
- receiving pollutants which pass through the POTW treatment plant or interfere with POTW operations.

POTWs with design flows less than or equal to five (5) MGD may be required to develop a program if necessary to prevent interference or pass through. States with approved pretreatment programs may choose to assume responsibility for a local program as provided for in 40 CFR Part 403.10(e).

Industrial Users are regulated by the National Pretreatment Program through three types of regulatory entities: EPA, Approval Authorities, and Control Authorities. Approval Authorities oversee Control Authorities while Control Authorities regulate industrial users. An Approval Authority can denote the EPA or a delegated State while a Control Authority can denote EPA, a delegated State, or a POTW. General responsibilities of each of these regulatory entities are as follows:

EPA

Headquarters

- Oversee program implementation at all levels
- Develop and modify regulations for the pretreatment program
- Develop policies to clarify and further define the program
- Develop technical guidance for program implementation
- Initiate enforcement actions as appropriate

Regions

- Fulfill Approval Authority responsibilities for States without program delegation
- Oversee State program implementation
- Initiate enforcement actions as appropriate.

Approval Authorities

- Notify POTWs of their responsibilities
- Review and approve POTW pretreatment programs
- Review modifications to categorical pretreatment standards
- Oversee POTW program implementation
- Provide technical guidance to POTWs
- Regulate industries in POTWs without pretreatment programs
- Initiate enforcement actions, against noncompliant POTWs or industries.

Control Authorities

- **Develop and maintain an approved pretreatment program**
- **Evaluate compliance of regulated industrial users**
- **Initiate enforcement action against industries as appropriate**
- **Submit reports to approval authority**
- **Develop local limits (or demonstrate why they are not needed)**
- **Develop and implement an enforcement response plan.**

Pretreatment Quiz

1. Where are the General Pretreatment Regulations found? 40 CFR Part _____
2. According to the General Pretreatment Regulations, what size POTWs (based on gallons per day design flow) must be evaluated to determine the need to develop and implement a pretreatment program? _____
3. Define *Interference and Pass Through*: _____

4. What year was EPA established? _____
5. List three criteria that are used to determine if an industrial user should be considered a significant industrial user?
 - a. _____
 - b. _____
 - c. _____
6. Name all the EPA Administrators starting with the current Administrator.

7. List the pollutants that EPA policy dictates must be evaluated for the need for local limits: _____

8. What is the Internet address for EPA's home page on the world wide web? _____

9. According to the General Pretreatment Regulations, how often (at a minimum) must a POTW inspect and sample each of their significant industrial users? _____
10. Cross media transfers refer to: (circle all that apply)
- a. irritable news reporters on assignment
 - b. a biological experiment on cloning
 - c. EPA's reorganizational approach
 - d. none of the above, actually it means _____
- _____
- _____
11. How many years must POTWs and industries retain their records and test results?

12. True OR False : Enforcement response plans are required for POTWs with approved programs.
13. Name the EPA region we are currently in, and the name of the Pretreatment Coordinator for this region.
Region _____ Coordinator _____
14. An electroplating firm that discharges to the local POTW, owns 60% of the metal that it plates and has been in business at the same location since 1980. What categorical standard(s) apply? 40 CFR _____ and Category name _____
15. What is the Pollution Prevention Hierarchy as defined in The Pollution Prevention Act of 1990? _____
- _____
16. Who is Bob Zimmerman more commonly known as? _____

Name

Remember... Valuable prizes will be offered for both accuracy and creativity!

PART 403-GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Authority: 33 U.S.C. 1251 et seq.

Source: 46 FR 9439, Jan. 28, 1981; Amended 62 FR 38406, July 17, 1997, unless otherwise noted.

Editorial Note: Nomenclature change to part 403 appears at 51 FR 20430, June 4, 1986.

§ 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2) (C)(iii), 301(b)(1)(A)(ii), 301(b)(2) (A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act". It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies:

(1) To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in § 403.3;

(2) To POTWs which receive wastewater from sources subject to National Pretreatment Standards;

(3) To States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and

(4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

[46 FR 9439, Jan. 28, 1981, as amended at 48 FR 2776, Jan. 21, 1983; 60 FR 33926, June 29, 1995]

§ 403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3 Definitions.

For the purposes of this part:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 shall apply to this regulation.

(b) The term Act means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(c) The term Approval Authority means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.

(d) The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in this regulation (§§ 403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with § 403.11 of this regulation.

(e) The term Director means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(f) The term Water Management Division Director means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(g) The term Indirect Discharge or Discharge means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(h) The term Industrial User or User means a source of Indirect Discharge.

(i) The term Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(j) The term National Pretreatment Standard, Pretreatment Standard, or Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to § 403.5.

(k)(1) The term New Source means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing

plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(l) The terms NPDES Permit or Permit means a permit issued to a POTW pursuant to section 402 of the Act.

(m) The term NPDES State means a State (as defined in 40 CFR 122.2) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

(n) The term Pass Through means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(o) The term Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(p) The term POTW Treatment Plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(q) The term Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by § 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with § 403.6(e).

(r) The term Pretreatment requirements means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(s) The term Regional Administrator means the appropriate EPA Regional Administrator.

(t) Significant Industrial User. (1) Except as provided in paragraph (t)(2) of this section, the term Significant

Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (t)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

(u) The term Submission means:

(1) A request by a POTW for approval of a Pretreatment Program to the EPA or a Director;

(2) A request by a POTW to the EPA or a Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or

(3) A request to the EPA by an NPDES State for approval of its State pretreatment program.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 5132, Feb. 10, 1984; 49 FR 28059, July 10, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986; 52 FR 1600, Jan. 14, 1987; 53 FR 40610, Oct. 17, 1988; 55 FR 30129, July 24, 1990]

§ 403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with § 403.10 of this regulation.

§ 403.5 National pretreatment standards: Prohibited discharges.

(a)(1) General prohibitions. A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(2) Affirmative Defenses. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate that:

(i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

(ii)(A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was

developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(b) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40°C (104°F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) When specific limits must be developed by POTW.

(1) Each POTW developing a POTW Pretreatment Program pursuant to § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

(2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(d) Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

(e) EPA enforcement actions under section 309(f) of the Clean Water Act. If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the

Clean Water Act.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20430, June 4, 1986; 52 FR 1600, Jan. 14, 1987; 55 FR 30129, July 24, 1990; 60 FR 33926, June 29, 1995]

§ 403.6 National pretreatment standards: Categorical standards.

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

(a) Category Determination Request-(1) Application Deadline.

Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) Contents of Application. Each request shall contain a statement:

- (i)** Describing which subcategories might be applicable; and
- (ii)** Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(3) Deficient requests. The Water Management Division Director or Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Director, the request for a determination shall be denied.

(4) Final decision. (i) When the Water Management Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Director will then make a

written determination of the applicable subcategory and state the reasons for the determination.

(ii) Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. The Water Management Division Director may waive receipt of these determinations. If the Water Management Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Director's decision is final.

(iii) Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Director's decision, the Water Management Division Director's decision will be final.

(iv) The Water Management Division Director or Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Water Management Division Director, he or she shall send a copy of the determination to the Director.

(5) Requests for hearing and/or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

(b) Deadline for Compliance with Categorical Standards. Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c)(1) Concentration and mass limits. Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

(3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average

flow rate, such as the average daily flow rate during the representative year.

(5) Equivalent limitations calculated in accordance with paragraphs (c)(3) and (c)(4) of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(6) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(7) Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(d) Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority (as defined in § 403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in § 403.12(a), or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) Alternative concentration limit.

$$C_T = \frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \left[\frac{F_T - F_D}{F_T} \right]$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i .

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from:

(a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
- (4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

(ii) Alternative mass limit.

$$M_T = \left[\begin{array}{c} N \\ \sum_{i=1}^N M_i \end{array} \right] \left[\begin{array}{c} F_T - F_D \\ N \\ \sum_{i=1}^N F_i \end{array} \right]$$

where

M_T =the alternative mass limit for a pollutant in the combined wastestream.

M_i =the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i =the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D =the average daily flow (at least a 30-day average) from:

(a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).
 F_T =The average flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N =The total number of regulated streams.

(2) Alternate limits below detection limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(3) Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of § 403.12(g).

(4) Choice of monitoring location. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 21037, May 17, 1984; 49 FR 31224, Aug. 3, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986; 53 FR 40610, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993]

§ 403.7 Removal credits.

(a) Introduction-(1) Definitions. For the purpose of this section:

(i) Removal means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

(ii) Sludge Requirements shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) and State regulations contained in any State sludge management plan prepared pursuant to subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(2) General. Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical Pretreatment Standard(s). The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with paragraph (a)(4) of this section. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.

(3) Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met:

(i) Application. The POTW applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (e) of this section.

(ii) Consistent removal determination. The POTW demonstrates and continues to achieve consistent

removal of the pollutant in accordance with paragraph (b) of this section.

(iii) POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by part 403; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (d) of this section.

(iv) Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants.

(A) For any pollutant listed in appendix G section I of this part for the use or disposal practice employed by the POTW, when the requirements in 40 CFR part 503 for that practice are met.

(B) For any pollutant listed in appendix G section II of this part for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in appendix G section II of this part in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in appendix G section II of this part.

(C) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR part 258.

(v) NPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s), as modified by the removal credit provision.

(4) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x=pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r=removal credit for that pollutant as established under paragraph (b) of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y=revised discharge limit for the specified pollutant (expressed in same units as x)

(b) Establishment of Removal Credits; Demonstration of Consistent Removal-(1) Definition of Consistent Removal. "Consistent Removal" shall mean the average of the lowest 50 percent of the removal measured according to paragraph (b)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and

subject to approval by the Approval Authority. If the substance is not measurable in the influent, the date may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(2) Consistent Removal Data. Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (b)(1) of this section, which demonstrates Consistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

(i) Representative Data; Seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

(ii) Representative Data; Quality and Quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (b)(1) of this section.

(iii) Sampling Procedures: Composite. (A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(B)(1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.

(2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

(iv) Sampling Procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not

exceeding 15 minutes.

(v) Analytical methods. The sampling referred to in paragraphs (b)(2) (i) through (iv) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(vi) Calculation of removal. All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.

(c) Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (b) of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of paragraph (b) of this section, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(d) Exception to POTW Pretreatment Program Requirement. A POTW required to develop a local pretreatment program by § 403.8 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(1) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in § 403.12(b)(1) through (7) (except new or modified industrial users must only submit the information required by § 403.12(b)(1) through (6)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit;

(2) The POTW must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of §§ 403.8 and 403.9 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's NPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(3) The POTW must:

(i) Compile and submit data demonstrating its consistent removal in accordance with paragraph (b) of this section;

(ii) Comply with the conditions specified in paragraph (a)(3) of this section; and

(iii) Submit a complete application for removal credit authority in accordance with paragraph (e) of this section;

(4) If a POTW receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the

conditions in paragraphs (d)(2) and (3) of this section, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(5) If a POTW grants conditional removal credits and the POTW or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in paragraph (d)(1) of this section, the conditional credit shall be terminated by the POTW or the Approval Authority for the non-complying Industrial User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.

(6) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of § 403.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereunder.

(e) POTW application for authorization to give removal credits and Approval Authority review-(1) Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the Approval Authority.

(2) To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the Approval Authority.

(3) When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

(4) Contents of the Application. An application for authorization to give removal credits must be supported by the following information:

(i) List of pollutants. A list of pollutants for which removal credits are proposed.

(ii) Consistent Removal Data. The data required pursuant to paragraph (b) of this section.

(iii) Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of Industrial Users calculated in accordance with paragraph (a)(4) of this section.

(iv) Local Pretreatment Program Certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (d) of this section.

(v) Sludge Management Certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in paragraph (a)(3)(iv) of this section.

(vi) NPDES Permit Limit Certification. A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits and conditions as required in paragraph (a)(3)(v) of this section.

(5) Approval Authority Review. The Approval Authority shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of § 403.11 and shall, in no event, have more than 180 days from public notice of an application to complete review.

(6) EPA review of State removal credit approvals. Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(7) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(f) Continuation and withdrawal of authorization

(1) Effect of authorization. (i) Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in paragraph (a)(3)(iv) of this section or its NPDES permit limits and conditions as required by paragraph (a)(3)(v) of this section. If a POTW elects at a later time to extend removal credits to a certain categorical Pretreatment Standard, industrial subcategory or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.

(2) Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's NPDES Permit as soon as possible and shall become an enforceable requirement of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions specified in paragraph (f)(4) of this section.

(3) Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

(4) Modification or withdrawal of removal credits-(i) Notice of POTW. The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:

(A) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(B) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's NPDES Permit.

(ii) Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

(iii) Public notice of withdrawal or modification. The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority).

(g) Removal credits in State-run pretreatment programs under § 403.10(e). Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program (as provided in § 403.10(e)), the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of paragraph (a)(3) of this section.

(h) Compensation for overflow. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually Overflow untreated

wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1) of (h)(2) or this section. However, this subsection shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2)(i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$rc = r m \frac{8760 - Z}{8760}$$

Where:

rm = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section

rc = removal corrected by the Overflow factor

Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(ii) After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum-61" (same document) published on December 16, 1975, by EPA Office of Water Program Operations (WH-546). (See appendix A.) Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Approval Authority, may continue to be claimed according to the formula in paragraph (h)(2)(i) of this section as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should Federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Removal may, subject to the approval of the Approval Authority, continue to be claimed according to the formula in paragraph (h)(2)(i) of this section where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its NPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Approval Authority shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.)

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[49 FR 31221, Aug. 3, 1984, as amended at 51 FR 20430, June 4, 1986; 53 FR 42435, Nov. 5, 1987; 58 FR 9386, Feb. 19, 1993; 58 FR 18017, Apr. 7, 1993]

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

(a) POTWs required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in § 403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.

(b) Deadline for Program Approval. A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within three (3) years as provided for in 40 CFR part 125, subpart G. POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

+ (c) Incorporation of approved programs in permits. A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA to incorporate the approved Program as enforceable conditions of the Permit. The modification of a POTW's NPDES Permit for the

purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in Sec. 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

+ (d) Incorporation of compliance schedules in permits. [Reserved].

(e) Cause for reissuance or modification of Permits. Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

(1) Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

(3) Incorporate a modification of the permit approved under section 301(h) or 301(i) of the Act;

(4) Incorporate an approved POTW Pretreatment Program in the POTW permit; or

(5) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(6) Incorporate the removal credits (established under § 403.7) in the POTW permit.

(f) POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 40 CFR 403.3(t), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(A) Statement of duration (in no case more than five years);

(B) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(C) Effluent limits based on applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(D) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(E) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of

technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12.

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

+ (vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in § 403.14.

(2) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in § 403.12;

(v) Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial

User at least once a year. Evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (A) Description of discharge practices, including non-routine batch discharges;
- (B) Description of stored chemicals;
- (C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

- (D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

- (vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under § 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

- (vii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

- (C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

- (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

- (F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

- (G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

(3) Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f) (1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see § 403.9(b)).

(4) Local limits. The POTW shall develop local limits as required in § 403.5(c)(1), or demonstrate that they are not necessary.

(5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

+ (6) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in Sec. 403.3(u)(1). The list shall identify the criteria in Sec. 403.3(u)(1) applicable to each industrial user and, for industrial users meeting the criteria in Sec. 403.3(u)(ii), shall also indicate whether the POTW has made a determination pursuant to Sec. 403.3(u)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to Sec. 403.9 as a non-substantial modification pursuant to Sec. 403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to Sec. 403.12(i)(1).

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[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, 20430, June 4, 1986; 51 FR 23759, July 1, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33926, June 29, 1995; 62 FR 38406, July 17, 1997]

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.

(a) Who approves Program. A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in § 403.11.

(b) Contents of POTW program submission. The program description must contain the following information:

(1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in § 403.8. This statement shall:

- (i) Identify the provision of the legal authority under § 403.8(f)(1) which provides the basis for each procedure under § 403.8(f)(2);

(ii) Identify the manner in which the POTW will implement the program requirements set forth in § 403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,

(iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

(2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

(4) A description of the funding levels and full- and part-time manpower available to implement the Program;

(c) Conditional POTW program approval. The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) of this section, may be relaxed if the Submission demonstrates that:

(1) A limited aspect of the Program does not need to be implemented immediately;

(2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

(3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

(d) Content of removal allowance submission. The request for authority to revise categorical Pretreatment Standards must contain the information required in § 403.7(d).

(e) Approval authority action. Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in § 403.11.

(f) Notification where submission is defective. If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the requirements of paragraph (b) or (c) of this section, and, if appropriate, paragraph (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual

notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c) of this section, and, if appropriate, paragraph (d) of this section.

(g) Consistency with water quality management plans. (1) In order to be approved the POTW Pretreatment

Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR part 403. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in § 403.11(b)(1)(ii) prior to approval or disapproval of the Program.

(2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[53 FR 9439, Jan. 28, 1981, as amended at 53 FR 40612, Oct. 17, 1988; 58 FR 18017, Apr. 7, 1993]

§ 403.10 Development and submission of NPDES State pretreatment programs.

(a) Approval of State Programs. No State NPDES program shall be approved under section 402 of the Act after the effective date of these regulations unless it is determined to meet the requirements of paragraph (f) of this section. Notwithstanding any other provision of this regulation, a State will be required to act upon those authorities which it currently possesses before the approval of a State Pretreatment Program.

+ (b) [Reserved]

+ (c) Failure to request approval. Failure of an NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, to seek approval of a State Pretreatment Program and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

+ (d) [Reserved]

(e) State Program in lieu of POTW Program. Notwithstanding the provision of § 403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in § 403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

(f) State Pretreatment Program requirements. In order to be approved, a request for State Pretreatment Program Approval must demonstrate that the State Pretreatment Program has the following elements:

(1) Legal authority. The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) of this section shall certify that the Director has authority under State law to operate and enforce the State Pretreatment Program to the extent required by this part and by 40 CFR 123.27. At a minimum, the Director shall have the authority to:

(i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's; require compliance by POTW's with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(ii) Ensure continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the Director by the POTW in accordance with § 403.12 and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the Director by the Industrial Users in accordance with § 403.12;

(iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment

conditions incorporated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in § 403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient);

(v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Director;

(vi) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13; and

(vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§ 403.7, 403.9 and 403.11.

(2) Procedures. The Director shall have developed procedures to carry out the requirements of sections 307(b) and (c), and 402(b)(1), 402(b)(2), 402(b)(8), and 402(b)(9) of the Act. At a minimum, these procedures shall enable the Director to:

(i) Identify POTW's required to develop Pretreatment Programs in accordance with § 403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in § 403.8(f)(2);

(ii) Provide technical and legal assistance to POTW's in developing Pretreatment Programs;

(iii) Develop compliance schedules for inclusion in POTW Permits which set forth the shortest reasonable time schedule for the completion of tasks needed to implement a POTW Pretreatment Program. The final compliance date in these schedules shall be no later than July 1, 1983;

(iv) Sample and analyze:

(A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see § 403.7); and

(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;

(v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed. This data acquisition shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court;

(vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical Pretreatment Standards submitted by a POTW to the Director; and

(vii) Consider requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13.

(3) Funding. The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.

(g) Content of State Pretreatment Program submission. The request for State Pretreatment Program approval will consist of:

(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this part. The authorities cited by the Attorney General in this statement shall be in the form

of lawfully adopted State statutes or regulations which shall be effective by the time of approval of the State Pretreatment Program; and

(ii) Copies of all State statutes and regulations cited in the above statement;

(iii) States with approved Pretreatment Programs shall establish Pretreatment regulations by November 16, 1989, unless the State would be required to enact or amend statutory provision, in which case, such regulations must be established by November 16, 1990.

(2) A description of the funding levels and full- and part-time personnel available to implement the program; and

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.24) which may be necessary for EPA and the State to implement the requirements of this part.

(h) EPA Action. Any approved NPDES State requesting State Pretreatment Program approval shall submit to the Regional Administrator three copies of the Submission described in paragraph (g) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (g) the Regional Administrator shall:

(1) Notify the Director that the Submission has been received and is under review; and

(2) Commence the program revision process set out in 40 CFR 123.62. For purposes of that section all requests for approval of State Pretreatment Programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

(i) Notification where submission is defective. If, after review of the Submission as provided for in paragraph (h) of this section, EPA determines that the Submission does not comply with the requirements of paragraph (f) or (g) of this section EPA shall so notify the applying NPDES State in writing. This notification shall identify any defects in the Submission and advise the NPDES State of the means by which it can comply with the requirements of this part.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20429, June 4, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30131, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33926, June 29, 1995]

§ 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

(a) Deadline for review of submission. The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of § 403.9(b) and, where removal credit authorization is sought with §§ 403.7(e) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of § 403.8 (b) and (f), and, where removal credit authorization is sought, with § 403.7. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of § 403.9(b) and, in the case of a removal credit application, §§ 403.7(e) and 403.9(b).

(b) Public notice and opportunity for hearing. Upon receipt of a Submission the Approval Authority shall

commence its review. Within 20 work days after making a determination that a Submission meets the requirements of § 403.9(b) and, where removal allowance approval is sought, §§ 403.7(d) and 403.9(d), the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

+ (A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish and wildfish resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

+ (B) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that meaningful public notice.

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group

of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) Approval authority decision. At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) EPA objection to Director's decision. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the

date the objections are issued.

(e) Notice of decision. The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with § 403.7, for removal of pollutants subject to Pretreatment Standards.

(f) Public access to submission. The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, June 4, 1986; 53 FR 40613, Oct. 17, 1988; 62 FR 38406, July 17, 1997]

§ 403.12 Reporting requirements for POTW's and industrial users.

(a) Definition. The term Control Authority as it is used in this section refers to: (1) The POTW if the POTW's Submission for its pretreatment program (§ 403.3(t)(1)) has been approved in accordance with the requirements of § 403.11; or (2) the Approval Authority if the Submission has not been approved.

(b) Reporting requirements for industrial users upon effective date of categorical pretreatment standard-baseline report. Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)-(7) of this section. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)-(5) of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

(1) Identifying information. The User shall submit the name and address of the facility including the name of the operator and owners;

(2) Permits. The User shall submit a list of any environmental control permits held by or for the facility;

(3) Description of operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

(4) Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) Regulated process streams; and

(ii) Other streams as necessary to allow use of the combined wastestream formula of § 403.6(e). (See paragraph (b)(5)(v) of this section.)

The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) Measurement of pollutants.

- (i) The user shall identify the Pretreatment Standards applicable to each regulated process;
- (ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;
- (iii) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.
- (iv) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
- (v) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of § 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with § 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;
- (vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;
- (vii) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
- (viii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;
- (6) Certification. A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (k) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and
- (7) Compliance schedule. If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.
- (i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.
- (ii) If the categorical Pretreatment Standard is modified by a removal allowance (§ 403.7), the combined wastestream formula

(§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(c) Compliance schedule for meeting categorical Pretreatment Standards. The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

(d) Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b) (4)-(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in § 403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(e) Periodic reports on continued compliance. (1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(2) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by § 403.6(d), the report required by paragraph (e)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.

(3) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in § 403.6(c), the report required by paragraph (e)(1) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of

production (or other measure of operation), the report required by paragraph (e)(1) shall include the User's actual average production rate for the reporting period.

(f) Notice of potential problems, including slug loading. All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by § 403.5(b), by the Industrial User.

(g) Monitoring and analysis to demonstrate continued compliance.

(1) The reports required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under §§ 403.12(b) (6) and 403.12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the Industrial User is not required to resample if:

(i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or

(ii) The Control Authority performs sampling at the User between the time when the User performs its initial sampling and the time when the User receives the results of this sampling.

(3) The reports required in paragraph (e) of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(4) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, §§ 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(5) If an Industrial User subject to the reporting requirement in paragraph (e) of this section monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(4) of this section, the results of this monitoring shall be included in the report.

(h) Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the

pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(i) Annual POTW reports. POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements.

(2) A summary of the status of Industrial User compliance over the reporting period;

+ (3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

+ (4) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

+ (5) Any other relevant information requested by the Approval Authority.

(j) Notification of changed discharge. All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

(k) Compliance schedule for POTW's. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by § 403.8.

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(2) No increment referred to in paragraph (h)(1) of this section shall exceed nine months;

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.

(l) Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in § 403.6(a)(2)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the

corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (1)(1) or (1)(2) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (1)(1) or (1)(2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (1)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (1)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(m) Signatory requirements for POTW reports. Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(n) Provisions Governing Fraud and False Statements: The reports and other documents required to be submitted or maintained under this section shall be subject to:

(1) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;

(2) The provisions of sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and

(3) The provisions of section 309(c)(6) regarding responsible corporate officers.

(o) Record-keeping requirements. (1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), (e), and (h) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention

shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

(p)(1) The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12

(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

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§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

(a) Definition. The term Requester means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.

(b) Purpose and scope. In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(c) Criteria-(1) General criteria. A request for a variance based upon fundamentally different factors shall be approved only if:

(i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and

(ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and

(iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.

(2) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:

(i) The alternative limit requested is no less stringent than justified by the fundamental difference;

(ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under § 403.5;

(iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

(iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(3) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:

(i) The alternative limit request is no more stringent than justified by the fundamental difference; and

(ii) Compliance with the alternative limit would not result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(d) Factors considered fundamentally different. Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;

(2) The volume of the User's process wastewater and effluent discharged;

- (3) Non-water quality environmental impact of control and treatment of the User's raw waste load;
- (4) Energy requirements of the application of control and treatment technology;
- (5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;
- (6) Cost of compliance with required control technology.
- (e) Factors which will not be considered fundamentally different. A variance request or portion of such a request under this section may not be granted on any of the following grounds:
 - (1) The feasibility of installing the required waste treatment equipment within the time the Act allows;
 - (2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;
 - (3) The User's ability to pay for the required waste treatment; or
 - (4) The impact of a Discharge on the quality of the POTW's receiving waters.
- (f) State or local law. Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.
- (g) Application deadline.
 - (1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.
 - + (2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the Federal Register.
 - (3) Where the User has requested a categorical determination pursuant to § 403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to §403.6(a)(4).
- (h) Contents submission. Written submissions for variance requests, whether made to the Administrator (or his delegate) or the Director, must include:
 - (1) The name and address of the person making the request;
 - (2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;
 - (3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;
 - (4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;
 - (5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;
 - (6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in paragraph (h)(5) of this section;
 - (7) A description of the Industrial User's existing water pollution control facilities;
 - (8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and
 - (9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.
- (i) Deficient requests. The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.

(j) Public notice. Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

- (i) The POTW into which the Industrial User requesting the variance discharges;
- (ii) Adjoining States whose waters may be affected; and
- (iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) Review of requests by state.

(1) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).

(l) Review of requests by EPA.

(1) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Administrator (or his delegate) will:

(i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;

(ii) Provide the following information in his written determination:

(A) The recommended alternative discharge limits for the Industrial User concerned;

(B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;

(C) The supporting evidence submitted to the Administrator (or his delegate); and

(D) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;

(iii) Notify the Director and the POTW of his or her determination; and

(iv) Send the information described in paragraphs (l)(2) (i) and (ii) of this section to the Requestor (and to the Industrial User where they are not the same).

(m) Request for hearing. (1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the

findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in § 1.25 of this title) within 30 days of the Regional Administrator's decision.

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§ 403.14 Confidentiality.

(a) EPA authorities. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) Effluent data. Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.

(c) State or POTW. All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.

§ 403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section.

(a) Application. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraphs (b) and (c) of this section are met.

(b) Criteria. (1) The Industrial User must demonstrate that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(c) The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis.

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[53 FR 40614, Oct. 17, 1988, as amended at 58 FR 18017, Apr. 7, 1993]

§ 403.16 Upset provision.

(a) Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

(c) Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
- (3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):
 - (i) A description of the Indirect Discharge and cause of noncompliance;
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
 - (iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (d) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(e) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(f) User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

[46 FR 9439, Jan. 28, 1981, as amended at 53 FR 40615, Oct. 17, 1988]

§ 403.17 Bypass.

(a) Definitions. (1) Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) Notice. (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) Prohibition of bypass. (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless;

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

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[53 FR 40615, Oct. 17, 1988, as amended at 58 FR 18017, Apr. 7, 1993]

§ 403.18 Modification of POTW Pretreatment Programs.

+ (a) General. Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under Sec. 403.11.

+ (b) Substantial modifications defined. Substantial modifications include:

+ (1) Modifications that relax POTW legal authorities (as described in Sec. 403.8(f)(1)), except for

modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

- + (2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under Sec. 403.5(c);

- + (3) Changes to the POTW's control mechanism, as described in Sec. 403.8(f)(1)(iii);

- + (4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

- + (5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

- + (6) Changes to the POTW's confidentiality procedures; and

- + (7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

- + (c) Approval procedures for substantial modifications.

- + (1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see Sec. 403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

- + (2) The Approval Authority shall approve or disapprove the modification based on the requirements of Sec. 403.8(f) and using the procedures in Sec. 403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

- + (3) The Approval Authority need not publish a notice of decision under Sec. 403.11(e) provided: The notice of request for approval under Sec. 403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

- + (4) Notices required by Sec. 403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of Sec. 403.11.

- + (d) Approval procedures for non-substantial modifications.

- + (1) The POTW shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (c)(1) of this section.

- + (2) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

- + (3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

- + (e) Incorporation in permit. All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

[53 FR 40615, Oct. 17, 1988, as amended at 58 FR 18017, Apr. 7, 1993; 62 FR 38406, July 17, 1997]

APPENDIX A TO PART 403-PROGRAM GUIDANCE MEMORANDUM
U.S. Environmental Protection Agency

December 16, 1975.

Program Guidance Memorandum-61

Subject: Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges.
From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546).
To: Regional Administrators, Regions I-X.

This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

I. COMBINED SEWER OVERFLOWS

A. Background

The costs and benefits of control of various portions of pollution due to combined sewer overflows and by-passes vary greatly with the characteristics of the sewer and treatment system, the duration, intensity, frequency and areal extent of precipitation, the type and extent of development in the service area, and the characteristics, uses and water quality standards of the receiving waters. Decisions on grants for control of combined sewer overflows, therefore, must be made on a case-by-case basis after detailed planning at the local level. Where detailed planning has been completed, treatment or control of pollution from wet-weather overflows and bypasses may be given priority for construction grant funds only after provision has been made for secondary treatment of dry-weather flows in the area. The detailed planning requirements and criteria for project approval follow.

B. Planning Requirements

Construction grants may be approved for control of pollution from combined sewer overflows only if planning for the project was thoroughly analyzed for the 20 year planning period: 1. Alternative control techniques which might be utilized to attain various levels of pollution control (related to alternative beneficial uses, if appropriate), including at least initial consideration of all the alternatives described in the section on combined sewer and stormwater control in "Alternative Waste Management Techniques and Best Practicable Waste Treatment" (Section C of Chapter III of the information proposed for comment in March 1974). 2. The costs of achieving the various levels of pollution control by each of the techniques appearing to be the most feasible and cost-effective after the preliminary analysis. 3. The benefits to the receiving waters of a range of levels of pollution control during wet-weather conditions. This analysis will normally be conducted as part of State water quality management planning, 208 areawide management planning, or other State, regional or local planning effort. 4. The costs and benefits of addition of advanced waste treatment processes to dry-weather flows in the area.

C. Criteria for Project Approval

The final alternative selected shall meet the following criteria:

1. The analysis required above has demonstrated that the level of pollution control provided will be necessary to protect a beneficial use of the receiving water even after technology based standards required by Section 301 of Pub. L. 92-500 are achieved by industrial point sources and at least secondary treatment is achieved for dry-weather municipal flows in the area. 2. Provision has already been made for funding of secondary treatment of dry-weather flows in the area. 3. The pollution control technique proposed for combined sewer overflow is a more cost-effective means of protecting the beneficial use of the receiving waters than other combined sewer pollution control techniques and the addition of treatment higher than secondary treatment for dry-weather municipal flows in the area. 4. The marginal costs are not substantial compared to marginal benefits. Marginal costs and benefits for each alternative may be displayed graphically to assist with determining a project's acceptability under this criterion. Dollar costs should be compared with quantified pollution reduction and water quality improvements. A descriptive narrative should also be included analyzing monetary, social and environmental costs compared to benefits, particularly the significance of the beneficial uses to be protected by the project.

II. STORMWATER DISCHARGES

Approaches for reducing pollution from separate stormwater discharges are now in the early stages of development and evaluation. We anticipate, however, that in many cases the benefits obtained by construction of treatment works for this purpose will be small compared with the costs, and other techniques of control and prevention will be more cost-effective. The policy of the Agency is, therefore, that construction grants shall not be used for construction of treatment works to control pollution from separate discharges of stormwater except under unusual conditions where the project clearly has been demonstrated to meet the planning requirements and criteria described above for combined sewer overflows.

III. MULTI-PURPOSE PROJECTS

Projects with multiple purposes, such as flood control and recreation in addition to pollution control, may be eligible for an amount not to exceed the cost of the most cost-effective single purpose pollution abatement system. Normally the Separable Costs-Remaining Benefits (SCRB) method should be used to allocate costs between pollution control and other purposes although in unusual cases another method may be appropriate. For such cost allocation, the cost of the least cost pollution abatement alternative may be used as a substitute measure of the benefits for that purpose. The method is described in "Proposed Practices for Economic Analysis of River Basin Projects," GPO, Washington, D.C., 1958, and "Efficiency in Government through Systems Analysis," by Roland N. McKean, John Wiley & Sons, Inc., 1958.

Enlargement of or otherwise adding to combined sewer conveyance systems is one means of reducing or eliminating flooding caused by wet-weather conditions. These additions may be designed so as to produce some benefits in terms of reduced discharge of pollutants to surrounding waterways. The pollution control benefits of such flood control measures, however, are likely to be small compared with the costs, and the measures therefore would normally be ineligible for funding under the construction grants program. All multi-purpose projects where less than 100% of the costs are eligible for construction grants under this policy shall contain a special grant condition precluding EPA funding of non-pollution control elements. This condition should, as a minimum, contain a provision similar to the following: "The grantee explicitly acknowledges and agrees that costs are allowable only to the extent they are incurred for the water pollution control elements of this project." Additional special conditions should be included as appropriate to assure that the grantee clearly understands which elements of the project are eligible for construction grants under

Pub. L. 92-500.

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+ APPENDIX B-C-[Removed and Reserved]

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+ [Removed 60 FR 33926, June 29, 1995]

APPENDIX D TO PART 403-SELECTED INDUSTRIAL SUBCATEGORIES CONSIDERED DILUTE FOR PURPOSES OF THE COMBINED WASTESTREAM FORMULA

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above. This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR part 444)

- Carpet and Upholstery Cleaning
- Coin-Operated Laundries and Dry Cleaning
- Diaper Services
- Dry Cleaning Plants except Rug Cleaning
- Industrial Laundries
- Laundry and Garment Services, Not Elsewhere Classified
- Linen Supply
- Power Laundries, Family and Commercial

Electrical and Electronic Components {1} (40 CFR part 469)

{1} The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR parts 413/433).

- Capacitors (Fluid Fill)
- Carbon and Graphite Products
- Dry Transformers
- Ferrite Electronic Devices
- Fixed Capacitors
- Fluorescent Lamps
- Fuel Cells
- Incandescent Lamps
- Magnetic Coatings
- Mica Paper Dielectric

Motors, Generators, Alternators
Receiving and Transmitting Tubes
Resistance Heaters
Resistors
Switchgear
Transformer (Fluid Fill)

Metal Molding and Casting (40 CFR part 464)

Nickel Casting
Tin Casting
Titanium Casting

Gum and Wood Chemicals (40 CFR part 454)

Char and Charcoal Briquets

Inorganic Chemicals Manufacturing (40 CFR part 415)

Ammonium Chloride
Ammonium Hydroxide
Barium Carbonate
Calcium Carbonate
Carbon Dioxide
Carbon Monoxide and Byproduct Hydrogen
Hydrochloric Acid
Hydrogen Peroxide (Organic Process)
Nitric Acid
Oxygen and Nitrogen
Potassium Iodide
Sodium Chloride (Brine Mining Process)
Sodium Hydrosulfide
Sodium Hydrosulfite
Sodium Metal
Sodium Silicate
Sodium Thiosulfate
Sulfur Dioxide
Sulfuric Acid

Leather (40 CFR part 425)

Gloves
Luggage

Paving and Roofing (40 CFR part 443)

Asphalt Concrete
Asphalt Emulsion
Linoleum
Printed Asphalt Felt
Roofing

Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills
(40 CFR parts 430 and 431)
Groundwood-Chemi-Mechanical

Rubber Manufacturing (40 CFR part 428)

Tire and Inner Tube Plants
Emulsion Crumb Rubber
Solution Crumb Rubber
Latex Rubber
Small-sized General Molded, Extruded and Fabricated Rubber
Plants, {2}
 {2} Footnote: Except for production attributed to lead-
 sheathed hose manufacturing operations.
Medium-sized General Molded, Extruded and Fabricated Rubber
Plants {2}
Large-sized General Molded, Extruded and Fabricated Rubber
Plants {2}
Wet Digestion Reclaimed Rubber
Pan, Dry Digestion, and Mechanical Reclaimed Rubber
Latex Dipped, Latex-Extruded, and Latex-Molded Rubber {3}
 {3} Footnote: Except for production attributed to chromic
 acid form-cleaning operations.
Latex Foam {4}
 {4} Footnote: Except for production that generates zinc
 as a pollutant in discharge.

Soap and Detergent Manufacturing (40 CFR part 417)

Soap Manufacture by Batch Kettle
Fatty Acid Manufacture by Fat Splitting
Soap Manufacture by Fatty Acid
Neutralization
Glycerine Concentration
Glycerine Distillation
Manufacture of Soap Flakes and Powders
Manufacture of Bar Soaps
Manufacture of Liquid Soaps
Manufacture of Spray Dried Detergents
Manufacture of Liquid Detergents
Manufacture of Dry Blended Detergents
Manufacture of Drum Dried Detergents
Manufacture of Detergent Bars and Cakes

Textile Mills (40 CFR part 410)

Apparel manufacturing
Cordage and Twine
Padding and Upholstery Filling

Timber Products Processing (40 CFR part 429)
Barking Process
Finishing Processes
Hardboard-Dry Process

[51 FR 36372, Oct. 9, 1986]

APPENDIX E TO PART 403-SAMPLING PROCEDURES

I. COMPOSITE METHOD

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. GRAB METHOD

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

[49 FR 31225, Aug. 3, 1984]

APPENDIX F-[RESERVED]

APPENDIX G TO PART 403-POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT

- + I. Regulated Pollutants in Part 503 Eligible for a Removal Credit
- +

Pollutants	Use or disposal practice		
	LA	SD	I
+Arsenic	X	X	X
+Beryllium			X
+Cadmium	X		X
+Chromium		X	X
+Copper	X		
+Lead	X		X
+Mercury	X		X
+Molybdenum	X		
+Nickel	X	X	X
+Selenium	X		
+Zinc	X		
+Total hydrocarbons			X {1}

+ Key:

+ LA-land application.

+ SD-surface disposal site without a liner and leachate collection system.

+ I-firing of sewage sludge in a sewage sludge incinerator.

+ {1} The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator:

+ Acrylonitrile, Aldrin/Dieldrin(total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD,DDE,DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

II. Additional Pollutants Eligible for a Removal Credit
[milligrams per kilogram-dry weight basis]

Pollutant	Use or disposal practice				
	LA	SD	I		
			Unlined {1}	Lined {2}	
+Arsenic			100	{3}	
+Aldrin/Dieldrin (Total)	2.7				
+Benzene	16 {3}	140		3400	
+Benzo(a)pyrene	15	100 {3}	100 {3}		
+Bis(2-ethylhexyl)phthalate		100 {3}	100 {3}		
+Cadmium		100 {3}	100 {3}		
+Chlordane	86	100 {3}	100 {3}		
+Chromium			100 {3}		
+Copper		46 {3}	100 {3}	1400	
+DDD, DDE, DDT (Total)	1.2	2000	2000		
+ 4 Dichlorophenoxy-acetic acid		7	7		
+Fluoride	730				
+Heptachlor	7.4				
+Hexachlorobenzene	29				
+Hexachlorobutadiene	600				
+Iron	78 {3}				
+Lead		100 {3}	100 {3}		
+Lindane	84	28 {3}	28 {3}		
+Malathion		0.63	0.63		
+Mercury		100 {3}	100 {3}		
+Molybdenum		40	40		
+Nickel			100 {3}		
+N-Nitrosodimethylamine	2.1	0.088	0.088		
+Pentachlorophenol	30				
+Phenol		82	82		
+Polychlorinated biphenyls	4.6	<50	<50		
+Selenium		4.8	4.8	4.8	
+Toxaphene	10	26 {3}	26 {3}		
+Trichloroethylene	10 {3}	9500	10 {3}		
+Zinc		4500	4500	4500	

+ Key: LA-land application.

+ SD-surface disposal.

+ I-incineration.

- + {1} Sewage sludge unit without a liner and leachate collection system.
- + {2} Sewage sludge unit with a liner and leachate collection system.
- + {3} Value expressed in grams per kilogram-dry weight basis.
- + {4} Value to be determined on a case-by-case basis.

+

+

+ [58 FR 9386, Feb. 19, 1993; amended 60 FR 54764, Oct. 25, 1995]

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Definitions and General Program Requirements

Sec.

- 122.1 Purpose and scope.
- 122.2 Definitions.
- 122.3 Exclusions.
- 122.4 Prohibitions (applicable to State NPDES Programs, see § 123.25).
- 122.5 Effect of a permit.
- 122.6 Continuation of expiring permits.
- 122.7 Confidentiality of information.

Subpart B—Permit Application and Special NPDES Program Requirements

- 122.21 Application for a permit (applicable to State programs, see § 123.25).
- 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).
- 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).
- 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).
- 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).
- 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).
- 122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).
- 122.28 General permits (applicable to State NPDES programs, see § 123.25).
- 122.29 New sources and new dischargers.

Subpart C—Permit Conditions

- 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).
- 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).
- 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).
- 122.44 Establishing limitations, standards and other permit conditions (applicable to State NPDES programs, see § 123.25).
- 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).
- 122.46 Duration of permits (applicable to State programs, see § 123.25).
- 122.47 Schedules of compliance.
- 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).
- 122.49 Considerations under Federal law.
- 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

- 122.61 Transfer of permits (applicable to State programs, see § 123.25).
- 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).
- 122.63 Minor modifications of permits.
- 122.64 Termination of permits (applicable to State programs, see § 123.25).

APPENDIX A TO PART 122—NPDES PRIMARY INDUSTRY CATEGORIES

APPENDIX B TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED ANIMAL FEEDING OPERATION (§ 122.23)

APPENDIX C TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY (§ 122.24)

APPENDIX D TO PART 122—NPDES PERMIT APPLICATION TESTING REQUIREMENTS (§ 122.21)

APPENDIX E TO PART 122—RAINFALL ZONES OF THE UNITED STATES

APPENDIX F TO PART 122—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO LATEST DECENNIAL CENSUS BY BUREAU OF CENSUS

APPENDIX G TO PART 122—PLACES WITH POPULATIONS GREATER THAN 100,000 AND LESS THAN 250,000 ACCORDING TO LATEST DECENNIAL CENSUS BY BUREAU OF CENSUS

APPENDIX H TO PART 122—COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE LATEST DECENNIAL CENSUS BY THE BUREAU OF CENSUS

APPENDIX I TO PART 122—COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000, BUT LESS THAN 250,000 ACCORDING TO THE LATEST DECENNIAL CENSUS BY THE BUREAU OF CENSUS

AUTHORITY: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

SOURCE: 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

Subpart A—Definitions and General Program Requirements

§ 122.1 Purpose and scope.

(a) *Coverage.* (1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 of the *Clean Water Act* (CWA) (Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C.1251 *et seq.*)

(2) These regulations cover basic EPA permitting requirements (part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (part 123), and procedures for EPA processing of permit

§ 122.2

applications and appeals (part 124). Part 124 is also applicable to other EPA permitting programs, as detailed in that part.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined in § 122.2.

(2) The following are point sources requiring NPDES permits for discharges:

(i) Concentrated animal feeding operations as defined in § 122.23;

(ii) Concentrated aquatic animal production facilities as defined in § 122.24;

(iii) Discharges into aquaculture projects as set forth in § 122.25;

(iv) Discharges of storm water as set forth in § 122.26; and

(v) Silvicultural point sources as defined in § 122.27.

(3) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

(4) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in § 122.1, where he or she finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under § 122.21 within 180 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

(c) *State programs.* Certain requirements set forth in part 122 and 124 are made applicable to approved State programs by reference in part 123. These references are set forth in § 123.25. If a sec-

tion or paragraph of part 122 or 124 is applicable to States, through reference in § 123.25, that fact is signaled by the following words at the end of the section or paragraph heading: (*Applicable to State programs, see § 123.25*). If these words are absent, the section (or paragraph) applies only to EPA administered permits.

(d) *Relation to other requirements—(1) Permit application forms.* Applicants for EPA issued permits must submit their applications on EPA's permit application forms when available. Most of the information requested on these application forms is required by these regulations. The basic information required in the general form (Form 1) and the additional information required for NPDES applications (Forms 2 a through d) are listed in § 122.21. Applicants for State issued permits must use State forms which must require at a minimum the information listed in these sections.

(2) *Technical regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR parts 125, 129, 133, 136, 40 CFR subchapter N (parts 400 through 460), and 40 CFR part 503.

(e) *Public participation.* This rule establishes the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These requirements carry out the purposes of the public participation requirements of 40 CFR part 25 (Public Participation), and supersede the requirements of that part as they apply to actions covered under parts 122, 123, and 124.

(f) *State authorities.* Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18781, May 2, 1989; 55 FR 48062, Nov. 16, 1990; 58 FR 9413, Feb. 19, 1993; 60 FR 33931, June 29, 1995]

§ 122.2 Definitions.

The following definitions apply to parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is

§ 122.2

subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Approved program or approved State means a State or interstate program which has been approved or authorized by EPA under part 123.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMPs means "best management practices."

Class I sludge management facility means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infre-

quent shutdowns for maintenance, process changes, or other similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Direct discharge means the "discharge of a pollutant."

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works;

§ 122.2

and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

DMR means "Discharge Monitoring Report."

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Facility or activity means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

General permit means an NPDES "permit" issued under § 122.28 authorizing a category of discharges under the CWA within a geographical area.

Hazardous substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

Indirect discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

Major facility means any NPDES "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after Au-

§ 122.2

gust 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 123 and 124. "Permit" includes an NPDES "general permit" (§ 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar

dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).

POTW means "publicly owned treatment works."

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Proposed permit means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

Publicly owned treatment works ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Recommencing discharger means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the au-

§ 122.2

thorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Secondary industry category means any industry category which is not a "primary industry category."

Secretary means the Secretary of the Army, acting through the Chief of Engineers.

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage from vessels means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this part.

Standards for sewage sludge use or disposal means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of § 123.31 of this chapter.

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

Variance means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limi-

§ 122.3

tation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the United States or waters of the U.S. means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in

saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

* NOTE: At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in § 122.2, the last sentence, beginning "This exclusion applies . . ." in the definition of "Waters of the United States." This revision continues that suspension.¹

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 50 FR 6940, 6941, Feb. 19, 1985; 54 FR 254, Jan. 4, 1989; 54 FR 18781, May 2, 1989; 54 FR 23895, June 2, 1989; 58 FR 45039, Aug. 25, 1993; 58 FR 67980, Dec. 22, 1993]

§ 122.3 Exclusions.

The following discharges do not require NPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous

¹ EDITORIAL NOTE: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

§ 122.4

Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.44(m).

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 254, 258, Jan. 4, 1989]

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived;

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.44;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

[48 FR 14153, Apr. 1, 1983, as amended at 50 FR 6940, Feb. 19, 1985]

§ 122.5 Effect of a permit.

(a) *Applicable to State programs, see § 123.25.*

(1) Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and "standards for sewage sludge use or disposal" under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405 (a)-(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(2) Compliance with a permit condition which implements a particular "standard for sewage sludge use or disposal" shall be an affirmative defense in any enforcement action brought for a violation of that "standard for sewage sludge use or disposal" pursuant to sections 405(e) and 309 of the CWA.

(b) *Applicable to State programs, See § 123.25.*

The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18782, May 2, 1989]

§ 122.29

as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under § 122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the FEDERAL REGISTER or the publication by a State in accordance with applicable State law. The request shall be processed under part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(c) *Offshore oil and gas facilities* (Not applicable to State programs). (1) The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to "new sources," "new dischargers," or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) of this section that no general permit is appropriate, he shall promptly provide a project

decision schedule covering the issuance of the general permit or permits for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(3)(i) (A) through (G).

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38048, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 54 FR 18782, May 2, 1989; 55 FR 48072, Nov. 16, 1990; 57 FR 11412 and 11413, Apr. 2, 1992]

§ 122.29 New sources and new dischargers.

(a) *Definitions.* (1) *New source and new discharger* are defined in § 122.2. [See Note 2.]

(2) *Source* means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(3) *Existing source* means any source which is not a new source or a new discharger.

(4) *Site* is defined in § 122.2;

(5) *Facilities or equipment* means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria for new source determination.* (1) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 122.2, and

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an existing source at the same site. In determin-

§ 122.29

ing whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

(3) Construction on a site at which an existing source is located results in a modification subject to § 122.62 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (b)(1) (ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) *Requirement for an environmental impact statement.* (1) The issuance of an NPDES permit to new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR part 6, subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 122.21(k) (special provisions for applications from new sources) and 40 CFR part 6, subpart F;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator, to the extent allowed by law, shall issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact.

(d) *Effect of compliance with new source performance standards.* (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes per-

mit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under § 122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38048, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 50 FR 6941, Feb. 19, 1985]

Subpart C—Permit Conditions

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more

§ 122.43

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

The following conditions, in addition to those set forth in § 122.41, apply to all NPDES permits within the categories specified below:

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 µg/l);

(ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or

(iv) The level established by the Director in accordance with § 122.44(f).

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) Five hundred micrograms per liter (500 µg/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7).

(iv) The level established by the Director in accordance with § 122.44(f).

(b) *Publicly owned treatment works.* All POTWs must provide adequate notice to the Director of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality

and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation;

(d) *Storm water discharges.* The initial permits for discharges composed entirely of storm water issued pursuant to § 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 55 FR 48073, Nov. 16, 1990; 57 FR 60448, Dec. 18, 1992]

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits (§§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), and for EPA permits only 122.47(b) (alternates schedule of compliance) and 122.49 (considerations under Federal law).

§ 122.44

(b)(1) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for NPDES permits being processed under subpart E or F of part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 122.62.

(2) New or reissued permits, and to the extent allowed under § 122.62 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 122.44 and 122.45.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a) *Technology-based effluent limitations and standards* based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with § 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(b)(1) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute pro-

ceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(2) *Standards for sewage sludge use or disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(c) *Reopener clause:* for any discharger within a primary industry category (see appendix A), requirements under section 307(a)(2) of CWA as follows:

(1) On or before June 30, 1981: (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the FEDERAL REGISTER that the limitations are "approved" for the purpose of this regulation.)

(2) On or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph (c)(1) of this section.

(3) The Director shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant,

the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

§ 122.44

(2) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under part 125, subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR part 125, subpart D;

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

(e) *Technology-based controls for toxic pollutants.* Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or (10) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c); or

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or
(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) *Notification level.* A "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(g) *Twenty-four hour reporting.* Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) *Durations for permits,* as set forth in § 122.46.

(i) *Monitoring requirements.* In addition to § 122.48, the following monitoring requirements:

§ 122.44

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the

terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(i) (1), (4), (5), and (6) at least annually.

(j) *Pretreatment program for POTWs.* Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and 40 CFR part 403.

(2) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR part 403 when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

(k) *Best management practices* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

(l) *Reissued permits.* (1) Except as provided in paragraph (i)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was

§ 122.45

based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) *Exceptions*—A permit with respect to which paragraph (1)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if—

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) *Limitations*. In no event may a permit with respect to which paragraph (1)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation

of a water quality standard under section 303 applicable to such waters.

(m) *Privately owned treatment works*. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) *Grants*. Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) *Sewage sludge*. Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) *Coast Guard*. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) *Navigation*. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.58.

(r) *Great Lakes*. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 49 FR 38049, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985; 54 FR 256, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 54 FR 23895, June 2, 1989; 57 FR 11413, Apr. 2, 1992; 57 FR 33049, July 24, 1992; 60 FR 15386, Mar. 23, 1995]

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

(a) *Outfalls and discharge points*. All permit effluent limitations, standards and prohibitions shall

be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) *Production-based limitations.* (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

(2)(i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)(A)(1) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(2) *For the automotive manufacturing industry only,* the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(1) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(1) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to

the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(3) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR part 136 unless:

(1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

(3) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(d) *Continuous discharges.* For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

(e) *Non-continuous discharges.* Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).

(f) *Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

§ 122.46

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) *Pollutants in intake water.* (1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(h) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling

water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(i) *Disposal of pollutants into wells, into POTWs or by land application.* Permit limitations and standards shall be calculated as provided in § 122.50.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 54 FR 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989]

§ 122.46 Duration of permits (applicable to State programs, see § 123.25).

(a) NPDES permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 122.6, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E), if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(e) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 50 FR 6940, Feb. 19, 1985; 60 FR 33931, June 29, 1995]

§ 122.47 Schedules of compliance.

(a) *General (applicable to State programs, see § 123.25).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance

§ 122.62

to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

(b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.41, 122.42, 122.43, and 122.44.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984]

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

§ 122.61 Transfer of permits (applicable to State programs, see § 123.25).

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.62(b)(2)), or a minor modification made (under § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the per-

mit (see § 122.41), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of § 124.5(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

NOTE: Certain reconstruction activities may cause the new source provisions of § 122.29 to be applicable.

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits §§ 122.21, 122.29, this cause shall include any significant information derived from effluent testing required under § 122.21(k)(5)(vi) or § 122.21(h)(4)(iii) after issuance of the permit.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

§ 122.62

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under part 133; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after FEDERAL REGISTER notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in § 122.21 or § 125.27(a).

(6) *307(a) toxics.* When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also § 122.44(c)) or 40 CFR § 403.10(e) (pretreatment program).

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(h).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(h)(1)(ii)(B).

(9) *Pretreatment.* As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).

(10) *Failure to notify.* Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(11) *Non-limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(12) *Notification levels.* To establish a "notification level" as provided in § 122.44(f).

(13) *Compliance schedules.* To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(14) [Reserved]

(15) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(16) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(17) [Reserved]

(18) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 122.64, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 122.41(i)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 122.61(b)) but will not be revoked and reissued after the effective

date of the transfer except upon the request of the new permittee.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 25981, June 25, 1984; 49 FR 37009, Sept. 29, 1984; 49 FR 38050, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 51 FR 20431, June 4, 1986; 51 FR 26993, July 28, 1986; 54 FR 256, 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 60 FR 33931, June 29, 1995]

§ 122.63 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with part 124 draft permit and public notice as required in § 122.62. Minor modifications may only:

- (a) Correct typographical errors;
- (b) Require more frequent monitoring or reporting by the permittee;
- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- (d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e)(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.29.

(2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(f) [Reserved]

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984; 51 FR 20431, June 4, 1986; 53 FR 40616, Oct. 17, 1988; 60 FR 33931, June 29, 1995]

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(b) The Director shall follow the applicable procedures in part 124 or State procedures in terminating any NPDES permit under this section.

[48 FR 14153, Apr. 1, 1983; 50 FR 6940, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989]

APPENDIX A TO PART 122—NPDES PRIMARY INDUSTRY CATEGORIES

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.44 and 122.46.

Industry Category

Adhesives and sealants
Aluminum forming
Auto and other laundries
Battery manufacturing
Coal mining
Coil coating
Copper forming
Electrical and electronic components
Electroplating
Explosives manufacturing
Foundries
Gum and wood chemicals
Inorganic chemicals manufacturing
Iron and steel manufacturing
Leather tanning and finishing
Mechanical products manufacturing
Nonferrous metals manufacturing
Ore mining
Organic chemicals manufacturing
Paint and ink formulation
Pesticides
Petroleum refining
Pharmaceutical preparations
Photographic equipment and supplies

Pt. 122, App. B

Plastics processing
Plastic and synthetic materials manufacturing
Porcelain enameling
Printing and publishing
Pulp and paper mills
Rubber processing
Soap and detergent manufacturing
Steam electric power plants
Textile mills
Timber products processing

APPENDIX B TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED ANIMAL FEEDING OPERATION (§ 122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

- (1) 1,000 slaughter and feeder cattle,
- (2) 700 mature dairy cattle (whether milked or dry cows),
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 500 horses,
- (5) 10,000 sheep or lambs,
- (6) 55,000 turkeys,
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

- (1) 300 slaughter or feeder cattle,
- (2) 200 mature dairy cattle (whether milked or dry cows),
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 150 horses,
- (5) 3,000 sheep or lambs,
- (6) 16,500 turkeys,
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
- (9) 1,500 ducks, or
- (10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing

over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The term *manmade* means constructed by man and used for the purpose of transporting wastes.

APPENDIX C TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY (§ 122.24)

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuride*, *Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

APPENDIX D TO PART 122—NPDES PERMIT APPLICATION TESTING REQUIREMENTS (§ 122.21)

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRIAL CATEGORY FOR EXISTING DISCHARGERS

Industrial category	GC/MS Fraction ¹			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	2	2	2	
Aluminum Forming	2	2	2	
Auto and Other Laundries	2	2	2	2
Battery Manufacturing	2	2	2	
Coal Mining	2	2	2	2
Coil Coating	2	2	2	
Copper Forming	2	2	2	
Electric and Electronic Components	2	2	2	2
Electroplating	2	2	2	
Explosives Manufacturing	2	2	2	
Foundries	2	2	2	
Gum and Wood Chemicals	2	2	2	2

Industrial category	GC/MS Fraction ¹				
	Volatile	Acid	Base/neutral	Pesticide	
Inorganic Chemicals Manufacturing	2	2	2		24V tetrachloroethylene
Iron and Steel Manufacturing	2	2	2		25V toluene
Leather Tanning and Finishing	2	2	2	2	26V 1,2-trans-dichloroethylene
Mechanical Products Manufacturing	2	2	2		27V 1,1,1-trichloroethane
Nonferrous Metals Manufacturing	2	2	2	2	28V 1,1,2-trichloroethane
Ore Mining	2	2	2	2	29V trichloroethylene
Organic Chemicals Manufacturing	2	2	2	2	31V vinyl chloride
Paint and Ink Formulation	2	2	2	2	
Pesticides	2	2	2	2	<i>Acid Compounds</i>
Petroleum Refining	2	2	2	2	1A 2-chlorophenol
Pharmaceutical Preparations	2	2	2		2A 2,4-dichlorophenol
Photographic Equipment and Supplies	2	2	2	2	3A 2,4-dimethylphenol
Plastic and Synthetic Materials Manufacturing	2	2	2	2	4A 4,6-dinitro-o-cresol
Plastic Processing	2	2	2	2	5A 2,4-dinitrophenol
Porcelain Enameling	2	2	2	2	6A 2-nitrophenol
Printing and Publishing	2	2	2	2	7A 4-nitrophenol
Pulp and Paper Mills	2	2	2	2	8A p-chloro-m-cresol
Rubber Processing	2	2	2	2	9A pentachlorophenol
Soap and Detergent Manufacturing	2	2	2		10A phenol
Steam Electric Power Plants	2	2	2		11A 2,4,6-trichlorophenol
Textile Mills	2	2	2	2	
Timber Products Processing	2	2	2	2	<i>Base/Neutral</i>

¹The toxic pollutants in each fraction are listed in Table II.
²Testing required.

TABLE II—ORGANIC TOXIC POLLUTANTS IN EACH OF FOUR FRACTIONS IN ANALYSIS BY GAS CHROMATOGRAPHY/MASS SPECTROSCOPY (GS/MS)

<i>Volatiles</i>			
1V acrolein		11B bis(2-chloroethyl)ether	
2V acrylonitrile		12B bis(2-chloroisopropyl)ether	
3V benzene		13B bis(2-ethylhexyl)phthalate	
5V bromoform		14B 4-bromophenyl phenyl ether	
6V carbon tetrachloride		15B butylbenzyl phthalate	
7V chlorobenzene		16B 2-chloronaphthalene	
8V chlorodibromomethane		17B 4-chlorophenyl phenyl ether	
9V chloroethane		18B chrysene	
10V 2-chloroethylvinyl ether		19B dibenzo(a,h)anthracene	
11V chloroform		20B 1,2-dichlorobenzene	
12V dichlorobromomethane		21B 1,3-dichlorobenzene	
14V 1,1-dichloroethane		22B 1,4-dichlorobenzene	
15V 1,2-dichloroethane		23B 3,3'-dichlorobenzidine	
16V 1,1-dichloroethylene		24B diethyl phthalate	
17V 1,2-dichloropropane		25B dimethyl phthalate	
18V 1,3-dichloropropylene		26B di-n-butyl phthalate	
19V ethylbenzene		27B 2,4-dinitrotoluene	
20V methyl bromide		28B 2,6-dinitrotoluene	
21V methyl chloride		29B di-n-octyl phthalate	
22V methylene chloride		30B 1,2-diphenylhydrazine (as azobenzene)	
23V 1,1,2,2-tetrachloroethane		31B fluoranthene	
		32B fluorene	
		33B hexachlorobenzene	
		34B hexachlorobutadiene	
		35B hexachlorocyclopentadiene	
		36B hexachloroethane	
		37B indeno(1,2,3-cd)pyrene	
		38B isophorone	
		39B naphthalene	
		40B nitrobenzene	
		41B N-nitrosodimethylamine	
		42B N-nitrosodi-n-propylamine	
		43B N-nitrosodiphenylamine	
		44B phenanthrene	

PL 122, App. D

45B pyrene
46B 1,2,4-trichlorobenzene

Pesticides

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

TABLE III—OTHER TOXIC POLLUTANTS (METALS AND CYANIDE) AND TOTAL PHENOLS

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

TABLE IV—CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS REQUIRED TO BE TESTED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite

Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

TABLE V—TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dinitrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine Dodecylbenzenesulfonate
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor

Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
TDE (Tetrachlorodiphenylethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

[Note 1: The Environmental Protection Agency has suspended the requirements of § 122.21(g)(7)(ii)(A) and Table I of Appendix D as they apply to certain industrial categories. The suspensions are as follows:

a. At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) as it applies to coal mines.

b. At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

c. At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and

Wood Chemicals industry (40 CFR part 454), and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues these suspensions.]*

For the duration of the suspensions, therefore, Table I effectively reads:

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRY CATEGORY

Industry category	GC/MS fraction ²			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	
Auto and other laundries	(1)	(1)	(1)	(1)
Battery manufacturing	(1)		(1)	
Coal mining				
Coil coating	(1)	(1)	(1)	
Copper forming	(1)	(1)	(1)	
Electric and electronic compounds	(1)	(1)	(1)	(1)
Electroplating	(1)	(1)	(1)	
Explosives manufacturing ..		(1)	(1)	
Foundries	(1)	(1)	(1)	
Gum and wood (all subparts except D and F)	(1)	(1)		
Subpart D—tall oil rosin	(1)	(1)	(1)	
Subpart F—rosin-based derivatives	(1)	(1)	(1)	
Inorganic chemicals manufacturing	(1)	(1)	(1)	
Iron and steel manufacturing	(1)	(1)	(1)	
Leather tanning and finishing	(1)	(1)	(1)	
Mechanical products manufacturing	(1)	(1)	(1)	

* Editorial Note: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

Pt. 122, App. E

TABLE 1—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRY CATEGORY—Continued

Industry category	GC/MS fraction ²			
	Volatile	Acid	Neutral	Pesticide
Nonferrous metals manufacturing	(¹)	(¹)	(¹)	(¹)
Ore mining (applies to the base and precious metals/Subpart B)		(¹)		
Organic chemicals manufacturing	(¹)	(¹)	(¹)	(¹)
Paint and ink formulation	(¹)	(¹)	(¹)	
Pesticides	(¹)	(¹)	(¹)	(¹)
Petroleum refining	(¹)			
Pharmaceutical preparations	(¹)	(¹)	(¹)	
Photographic equipment and supplies	(¹)	(¹)	(¹)	
Plastic and synthetic materials manufacturing	(¹)	(¹)	(¹)	(¹)
Plastic processing	(¹)			
Porcelain enameling	(¹)	(¹)	(¹)	(¹)
Printing and publishing	(¹)			
Pulp and paperboard mills—see footnote ³	(¹)	(¹)	(¹)	
Rubber processing	(¹)	(¹)	(¹)	
Soap and detergent manufacturing	(¹)	(¹)	(¹)	
Steam electric power plants	(¹)	(¹)		
Textile mills (Subpart C—Greige Mills are exempt from this table)	(¹)	(¹)	(¹)	
Timber products processing	(¹)	(¹)	(¹)	(¹)

¹ Testing required.

² The pollutants in each fraction are listed in Item V-C.
³ Pulp and Paperboard Mills.

Subpart ³	GC/MS fractions			
	VOA	Acid	Base/neutral	Pesticides
A	2	(¹)	2	(¹)
B	2	(¹)	2	2
C	2	(¹)	2	2
D	2	(¹)	2	2
E	(¹)	(¹)	2	(¹)
F	(¹)	(¹)	2	2
G	(¹)	(¹)	2	2
H	(¹)	(¹)	2	2
I	(¹)	(¹)	2	2
J	(¹)	(¹)	(¹)	2
K	(¹)	(¹)	2	2
L	(¹)	(¹)	2	2
M	(¹)	(¹)	2	2
N	(¹)	(¹)	2	2
O	(¹)	(¹)	2	2
P	(¹)	(¹)	2	2
Q	(¹)	(¹)	2	(¹)
R	2	(¹)	2	2
S	(¹)	(¹)	2	(¹)
T	(¹)	(¹)	2	(¹)
U	(¹)	(¹)	(¹)	2

¹ Must test.

² Do not test unless "reason to believe" it is discharged.

³ Subparts are defined in 40 CFR Part 430.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985]

APPENDIX E TO PART 122—RAINFALL ZONES OF THE UNITED STATES

EC01MR92.016

(Following are excerpts from the United States Code (USC) as originated in the Clean Water Act (CWA). Sections that apply to the National Pretreatment Program are highlighted in the Table of Contents with the full text of these sections attached.)

CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I - RESEARCH AND RELATED PROGRAMS

- §1251** **Congressional declaration of goals and policy. (CWA §101)**
- §1252 Comprehensive programs for water pollution control.
- §1252a Reservoir projects, water storage; modification; storage for other than for water quality, opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits.
- §1253 Interstate cooperation and uniform laws.
- §1254 Research, investigations, training, and information.
- §1254a Research on effects of pollutants.
- §1255 Grants for research and development.
- §1256 Grants for pollution control programs.
- §1257 Mine water pollution control demonstrations.
- §1257a State demonstration programs for cleanup of abandoned mines for use as waste disposal sites; authorization of appropriations.
- §1258 Pollution control in the Great Lakes.
- §1259 Training grants and contracts.
- §1260 Applications; allocation.
- §1261 Scholarships.
- §1262 Definitions and authorizations.
- §1263 Alaska village demonstration projects.
- §1264 Omitted.
- §1265 In-place toxic pollutants.
- §1266 Hudson River reclamation demonstration project.
- §1267 Chesapeake Bay.
- §1268 Great Lakes.
- §1269 Long Island Sound.
- §1270 Lake Champlain Management Conference.
- §1271 Sediment survey and monitoring.

SUBCHAPTER II - GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

- §1281 Congressional declaration of purpose.
- §1281a Total treatment system funding.
- §1281b Availability of Farmers Home Administration funds for non-Federal share.
- §1282 Federal share.
- §1283 Plans, specifications, estimates, and payments.
- §1284 Limitations and conditions.
- §1285 Allotment of grant funds.
- §1286 Reimbursement and advanced construction.
- §1287 Authorization of appropriations.
- §1288 Area wide waste treatment management.
- §1289 Basin planning.
- §1290 Annual survey.
- §1291 Sewage collection systems.
- §1292** **Definitions. (CWA §212)**
- §1293 Loan guarantees.
- §1293a Contained spoil disposal facilities.
- §1294 Public information and education on recycling and reuse of wastewater, use of land treatment, and reduction of wastewater volume.
- §1295 Requirements for American materials.
- §1296 Determination of priority of projects.
- §1297 Guidelines for cost-effectiveness analysis.
- §1298 Cost effectiveness.
- §1299 State certification of projects.

SUBCHAPTER III - STANDARDS AND ENFORCEMENT

- §1311** **Effluent limitations. (CWA §301)**
- §1312 Water quality related effluent limitations.
- §1313 Water quality standards and implementation plans.
- §1313a Revised water quality standards.
- §1314 Information and guidelines
- §1315 State reports on water quality; transmittal to Congress.
- §1316 National standards of performance.
- §1317** **Toxic and pretreatment effluent standards. (CWA §307)**
- §1318** **Records and reports; inspections. (CWA §308)**
- §1319** **Enforcement. (CWA §309)**
- §1320 International pollution abatement
- §1321 Oil and hazardous substance liability.
- §1322 Marine sanitation devices.
- §1323 Federal facilities pollution control.
- §1324 Clean lakes.
- §1325 National Study Commission.
- §1326 Thermal discharges.
- §1327 Omitted.
- §1328 Aquaculture.
- §1329 Nonpoint source management programs.
- §1330 National estuary program.

SUBCHAPTER IV - PERMITS AND LICENSES

- §1341 Certification.
- §1342** **National pollutant discharge elimination system. (CWA §402)**
- §1343 Ocean discharge criteria.
- §1344 Permits for dredged or fill material.
- §1345 Disposal or use of sewage sludge.

SUBCHAPTER V - GENERAL PROVISIONS

- §1361 Administration.
- §1362** **Definitions. (CWA §502)**
- §1363 Water Pollution Control Advisory Board.
- §1364 Emergency powers.
- §1365 Citizen suits.
- §1366 Appearance.
- §1367 Employee protection.
- §1368 Federal procurement.
- §1369 Administrative procedure and judicial review.
- §1370 State authority.
- §1371 Authority under other laws and regulations.
- §1372 Labor standards.
- §1373 Public health agency coordination.
- §1374 Effluent Standards and Water Quality Information Advisory Committee.
- §1375 Reports to Congress.
- §1376 Authorization of appropriations.
- §1377 Indian tribes.

SUBCHAPTER VI - STATE WATER POLLUTION CONTROL REVOLVING FUNDS

- §1381 Grants to States for establishment of revolving funds.
- §1382 Capitalization grant agreements.
- §1383 Water pollution control revolving loan funds.
- §1384 Allotment of funds.
- §1385 Corrective action.
- §1386 Audits, reports, and fiscal controls; intended use plan.
- §1387 Authorization of appropriations.

1251. Congressional declaration of goals and policy (CWA §101)

- (a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter -

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
 - (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
 - (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
 - (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
 - (5) it is the national policy that Area wide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;
 - (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and
 - (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.
-

- (b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

- (c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

- (d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

- (e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

- (f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

- (g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

§1292. Definitions (CWA §212)

As used in this subchapter -

- (1) The term "construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 1314(d)(3) of this title, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.
- (2)
 - (A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.
 - (B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.
 - (C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after October 18, 1972, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.
- (3) The term "replacement" as used in this subchapter means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

§1311. Effluent limitations (CWA §301)

- (a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

- (b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved -

- (1)
 - (A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

- (B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,
 - (C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.
- (2) (A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;
- (B) Repealed. Pub. L. 97-117, Sec. 21(b), Dec. 29, 1981, 95 Stat. 1632.
 - (C) With respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;
 - (D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;
 - (E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and
 - (F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.
- (3) (A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and
- (B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator, and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter:-

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

(g) Modifications for certain nonconventional pollutants

(1) General authority

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that -

- (A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;
- (B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and
- (C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants

(A) General authority

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing

(i) Sufficient information

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

(ii) Toxic criteria determination

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

(iii) Listing as toxic pollutant

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

(iv) Nonconventional criteria determination

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions

A petition for listing of a pollutant under this paragraph -

- (i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;
- (ii) may be filed before promulgation of such guideline; and
- (iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(E) Burden of proof

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants

The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that -

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;
- (2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;
- (7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;
- (8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;
- (9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged. For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this

subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(i) Municipal time extensions

- (1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.
- (2) (A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and -
 - (i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or
 - (ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or
 - (iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works, and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.
- (B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of -

- (A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than (FOOTNOTE 1) the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987;

(FOOTNOTE 1) So in original. Probably should be "than".

- (B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

- (2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) Compliance requirements under subsection (g). -

- (A) Effect of filing. - An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.
- (B) Effect of disapproval. - Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

- (4) Deadline for subsection (g) decision. - An application for a modification with respect to a pollutant filed under subsection (g) of this section must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industry wide application.

(l) Toxic pollutants

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that -

- (A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;
 - (B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;
 - (C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;
 - (D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
 - (E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;
 - (F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;
 - (G) the applicant accepts as a condition to the permit a contractual (FOOTNOTE 2) obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;
- (FOOTNOTE 2) So in original. Probably should be "contractual".
- (H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and
 - (I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

- (2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.
- (3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.
- (4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: Provided, That if the effluent from a source with a permit issued under this

subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors

(1) General rule

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that -

- (A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;
- (B) the application -
 - (i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or
 - (ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;
- (C) the alternative requirement is no less stringent than justified by the fundamental difference; and
- (D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) Time limit for applications

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) Time limit for decision

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) Submission of information

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports

Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

(o) Application fees

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remining operations

(1) In general

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

(3) Definitions

For purposes of this subsection -

(A) Coal remining operation

The term "coal remining operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

(B) Remined area

The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(C) Pre-existing discharge

The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) to any coal remining operation, including the application of such Act to suspended solids.

§1317. Toxic and pretreatment effluent standards (CWA §307)

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

- (1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.
- (2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.
- (3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.
- (4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.
- (5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

- (6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.
 - (7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.
- (b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws
- (1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.
 - (2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.
 - (3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.
 - (4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.
- (c) New sources of pollutants into publicly owned treatment works
- In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.
- (d) Operation in violation of standards unlawful
- After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.
- (e) Compliance date extension for innovative pretreatment systems
- In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 1311(k) of this title, the owner or operator of the publicly

owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years -

- (1) if the Administrator determines that the innovative system has the potential for industrywide application, and
- (2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator) -
 - (A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 1342 of this title or of section 1345 of this title or to contribute to such a violation, and
 - (B) concurs with the proposed extension.

§1318. Records and reports; inspections (CWA §308)

- (a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to

- (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter;
- (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
- (3) any requirement established under this section; or
- (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title -
 - (A) the Administrator shall require the owner or operator of any point source to
 - (i) establish and maintain such records,
 - (ii) make such reports,
 - (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods),
 - (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and
 - (v) provide such other information as he may reasonably require; and
 - (B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials -
 - (i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and
 - (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

- (b) Availability to public; trade secrets exception; penalty for disclosure of confidential information

Any records, reports, or information obtained under this section

- (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and

- (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

§1319. Enforcement (CWA §309)

(a) State enforcement; compliance orders

- (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.
- (2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person -
 - (A) by issuing an order to comply with such condition or limitation, or
 - (B) by bringing a civil action under subsection (b) of this section.
- (3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

- (4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.
- (5) (A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.
- (B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.
- (6) Whenever, on the basis of information available to him, the Administrator finds
- (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title,
- (B) that such person cannot meet the requirements for a time extension under section 1311(i)(2) of this title, and
- (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.
- (b) Civil actions
- The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.
- (c) Criminal penalties
- (1) Negligent violations
- Any person who -
- (A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or
- (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment

works under section 1342 of this title by the Administrator or a State; shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

(2) Knowing violations

Any person who -

- (A) knowingly violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or
- (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 1342 of this title by the Administrator or a State; shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

(3) Knowing endangerment

(A) General rule

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(B) Additional provisions

For the purpose of subparagraph (A) of this paragraph -

- (i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury -
 - (I) the person is responsible only for actual awareness or actual belief that he possessed; and
 - (II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;
- (ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of -
 - (I) an occupation, a business, or a profession; or

- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this subparagraph by a preponderance of the evidence;
 - (iii) the term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and
 - (iv) the term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (4) False statements

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.
- (5) Treatment of single operational upset

For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.
- (6) Responsible corporate officer as "person"

For the purpose of this subsection, the term "person" means, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.
- (7) Hazardous substance defined

For the purpose of this subsection, the term "hazardous substance" means (A) any substance designated pursuant to section 1321(b)(2)(A) of this title, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) (but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of this title, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of title 15.
- (d) Civil penalties; factors considered in determining amount

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State, (FOOTNOTE 1) or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(FOOTNOTE 1) So in original.
- (e) State liability for judgments and expenses

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) Wrongful introduction of pollutants into treatment works

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 1317 of this title, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this chapter. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this chapter.

(g) Administrative penalties

(1) Violations

Whenever on the basis of any information available -

- (A) the Administrator finds that any person has violated section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by a State, or
- (B) the Secretary of the Army (hereinafter in this subsection referred to as the "Secretary") finds that any person has violated any permit condition or limitation in a permit issued under section 1344 of this title by the Secretary, the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

(2) Classes of penalties

(A) Class I

The amount of a class I civil penalty under paragraph (1) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) Class II

The amount of a class II civil penalty under paragraph (1) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

(3) Determining amount

In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(4) Rights of interested persons

(A) Public notice

Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(B) Presentation of evidence

Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

(C) Rights of interested persons to a hearing

If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(5) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

(6) Effect of order

(A) Limitation on actions under other sections

Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter, except that any violation -

- (i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,
- (ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or
- (iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be, shall not be the subject of a civil penalty action under subsection (d) of this section or section 1321(b) of this title or section 1365 of this title.

(B) Applicability of limitation with respect to citizen suits

The limitations contained in subparagraph (A) on civil penalty actions under section 1365 of this title shall not apply with respect to any violation for which -

- (i) a civil action under section 1365(a)(1) of this title has been filed prior to commencement of an action under this subsection, or
- (ii) notice of an alleged violation of section 1365(a)(1) of this title has been given in accordance with section 1365(b)(1)(A) of this title prior to commencement of an action under this subsection and an action under section 1365(a)(1) of this title with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

(7) Effect of action on compliance

No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this chapter or with the terms and conditions of any permit issued pursuant to section 1342 or 1344 of this title.

(8) Judicial review

Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment -

- (A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or
- (B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(9) Collection

If any person fails to pay an assessment of a civil penalty -

- (A) after the order making the assessment has become final, or
- (B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be, the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(10) Subpoenas

The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts

business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(11) Protection of existing procedures

Nothing in this subsection shall change the procedures existing on the day before February 4, 1987, under other subsections of this section for issuance and enforcement of orders by the Administrator.

§1342. National pollutant discharge elimination system (CWA §402)

(a) Permits for discharge of pollutants

- (1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.
- (2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.
- (3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.
- (4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.
- (5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

- (1) To issue permits which -

- (A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, 1343 of this title;
 - (B) are for fixed terms not exceeding five years; and
 - (C) can be terminated or modified for cause including, but not limited to, the following:
 - (i) violation of any condition of the permit;
 - (ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
 - (iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
 - (D) control the disposal of pollutants into wells;
- (2) (A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or
- (B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;
- (3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;
- (4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;
- (5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;
- (6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;
- (7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;
- (8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and
- (9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.
- (c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator
- (1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this

section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

- (2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.
- (3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.
- (4) Limitations on partial permit program returns and withdrawals. - A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of -
 - (A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and
 - (B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.
- (d) Notification of Administrator
 - (1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.
 - (2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.
 - (3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.
 - (4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.
- (e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.
- (f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.
- (g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

- (h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

- (i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

- (j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

- (k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

- (l) Limitation on permit requirement

- (1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

- (2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

- (m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment

works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if -

- (A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and
- (B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if -

- (A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and
- (B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if -

- (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;
- (B)
 - (i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or
 - (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;
- (C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;
- (D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n); or 1326(a) of this title; or
- (E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

- (A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
- (B) A discharge associated with industrial activity.
- (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
- (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

- (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
- (3) Permit requirements
 - (A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.
 - (B) Municipal discharge

Permits for discharges from municipal storm sewers -

 - (i) may be issued on a system- or jurisdiction-wide basis;
 - (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
 - (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
- (4) Permit application requirements
 - (A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.
 - (B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.
- (5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of -

 - (A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;
 - (B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and
 - (C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality. Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).
- (6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

§1362. Definitions (CWA §502)

Except as otherwise specifically provided, when used in this chapter:

- (1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.
- (2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.
- (3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
- (4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.
- (5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
- (6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.
- (7) The term "navigable waters" means the waters of the United States, including the territorial seas.
- (8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.
- (9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.
- (10) The term "ocean" means any portion of the high seas beyond the contiguous zone.
- (11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.
- (12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.
- (13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease,

behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

- (14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.
- (16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.
- (17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.
- (18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D - Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.
- (19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (20) The term "medical waste" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

Pretreatment Program Regulations

[40 CFR Part 403]

Local Pretreatment Programs

- § 403.8 • Requirements of a POTW developed pretreatment program
- § 403.9 • Contents/legal authority of a POTW pretreatment program
- § 403.11 • POTW pretreatment program approval procedures
- § 403.18 • Modifications of POTW Pretreatment Programs

Program Requirements Affecting IUs

- § 403.5 • General & specific prohibitions
- § 403.6 • Categorical standards
- § 403.7 • Removal credits
- § 403.13 • Variances for fundamentally different factors
- § 403.15 • Net/Gross calculation

POTW and IU Requirements

§ 403.12 ● POTW & IU reporting requirements

Specific IU Rights

§ 403.16 ● Upset provisions

§ 403.17 ● Bypass provisions

Miscellaneous Requirements

§ 403.2 ● Objectives of regulations

§ 403.3 ● Definitions

§ 403.4 ● State or local law

§ 403.14 ● Confidentiality

What Minimum Procedures Make Up a Pretreatment Program?

[40 CFR § 403.8(f)(2)]

- **Industrial Users**
 - identify, locate, and notify
 - receive, sample, and analyze
 - survey, investigate, and enforce
- **Public**
 - allow participation
 - notify of violators

Minimum Pretreatment Program Procedures, continued

[40 CFR § 403.8(f)(2)]

- **Additional procedures:**
 - Funding
 - Local limits
 - Enforcement Response Plan
 - SIU list

Legal Authority, a Must

- **State law**
- **Local regulations**
 - Sewer Use Ordinance("SUO")
or
 - Rules and Regulations

POTW Legal Authority [40 CFR § 403.8(f)(1)]

- Deny or condition discharges
- Require compliance
- Control through permit or similar means
- Require compliance schedules to comply
- Inspect, survey, and monitor
- Enforce
- Comply with confidentiality requirements

Local Regulations

- Sewer Use Ordinance
- Rules and Regulations

Prohibitions and Limitations

- General/Specific
- Categorical Standards
- Local Limits

Control Discharges

- Deny/condition new or increased contributions
- Issue control mechanisms/compliance schedules
- Require development of slug/spill control plans
- Require pretreatment facilities

Reports & Notices

- BMRs/90 day compliance reports
- Compliance schedule progress reports
- Periodic compliance reports
- Notice of potential problems
- Notice of limit violations and resampling
- Notice of changed conditions/discharge
- Notice of hazardous waste discharged

Compliance Monitoring

- Right of entry
- Right to inspect
- Right to sample
- Right to require installation of monitoring/flow measuring equipment
- Right to inspect and copy record

Remedies for Noncompliance (Enforcement)

- Non-emergency response
 - injunctive relief
 - civil/criminal penalties
- Emergency response

Other Requirements

- Test procedures
- Signatory
- Record keeping
- Confidentiality
- Annual publishing of IUs in SNC
- Public participation/access to information

Local Regulations- Approval Process

- Submission to Approval Authority
- Public notice
- Approval Authority decision
- Public access to information

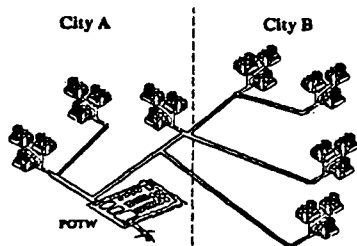
Ancillary Issues

- Chamber of Commerce
- Big Business
- Politics
- Attorney familiarity with subject
- Special interest groups

Interjurisdictional Issues

A POTW's program accepts discharges from IUs located outside the Control Authority's legal jurisdiction.

Municipality With POTW Receiving Discharge From Another Municipality



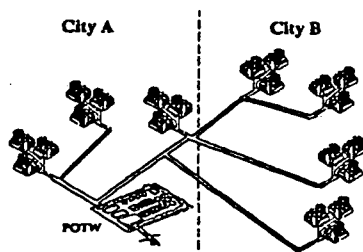
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Interjurisdictional Issues

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Municipality With POTW Receiving Discharge From Another Municipality



Pretreatment Program Regulations: Legal Authority

General Pretreatment Program Regulations [40 CFR Part 403]

The preamble to the General Pretreatment Regulations explains the purpose of the regulations and how they were developed. Where regulations have been challenged, regulatory agencies and courts have looked to the preamble (among other sources) for the intent and interpretation of the regulations. Consequently, State and POTW personnel implementing regulations should review applicable sections of the preamble to better interpret the regulations. Preambles are published in the Federal Register for most regulations or regulation amendments.

The General Pretreatment Program Regulations are found in 40 CFR (Code of Federal Regulations), Chapter I, Subchapter N, Part 403; commonly referred to as 40 CFR Part 403. These regulations are divided into 18 sections (§), and 7 appendices (three of which are "reserved"). These are listed below, along with brief explanations of the contents.

§ 403.1 Purpose and Applicability

Establishes responsibilities for Federal, State and local government, industry, and the public.

§ 403.2 Objectives of General Pretreatment Regulations

- to prevent the introduction of pollutants into POTWs which will interfere with the POTWs operation or its municipal sludge use and/or disposal; pass through the POTW treatment plant, or be incompatible with the POTW
- to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3 Definitions

The following are key terms which are defined under this section of the General Pretreatment Regulations. [An understanding of these terms is important to ensure adequate implementation and enforcement of a pretreatment program.]

- Industrial user (IU)
- Interference
- National pretreatment standard
- New source
- Pass through
- Publicly Owned Treatment Works (POTW)
- Significant industrial user (SIU)

§ 403.4 State or Local Law

The General Pretreatment Regulations are not meant to affect any State or local regulatory requirements as long as these requirements are not less stringent than the Federal regulations. States with approved NPDES permit programs are required to develop an approved State pretreatment program.

§ 403.5 National Pretreatment Standards: Prohibited Discharges

General and specific prohibited discharge standards that Control Authorities must incorporate into their pretreatment programs are provided in this section. The general prohibitions specify that pollutants introduced into Publicly Owned Treatment Works (POTWs) by a nondomestic source shall not pass through the POTW or interfere with the operation or performance of the treatment works. Control Authorities that are required to develop local pretreatment programs (and other POTWs where interference and pass through are likely to recur) must develop and enforce specific limitations (local limits) to implement the general prohibitions against interference, pass through, and sludge contamination. The specific prohibitions specify prevention of the discharge of pollutants that cause any of the following conditions to occur at the POTW:

- Fire or explosion hazard (including discharges with a closed-cup flashpoint less than 140°F)
- Corrosive structural damage (no pH < 5.0 S.U.)
- Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference
- Any pollutant released in a discharge at a flow rate and/or pollutant concentration causing interference
- Heat in amounts causing inhibition of biological activity in the POTW resulting in interference or raising temperatures at the POTW treatment plant greater than 40°C (104°F)
- Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in quantities that will cause pass through or interference
- Pollutants resulting in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems
- Trucked or hauled wastes, except at discharge locations designated by the POTW.

Amendments to 40 CFR Part 403 on January 14, 1987, provided industrial users with an affirmative defense (if specified conditions are met) for actions brought against it for alleged violations of the general or specific prohibitions contained in this section regarding interference, pass through, or worker health and safety problems.

§ 403.6 National Pretreatment Standards: Categorical Pretreatment Standards

Development and implementation of categorical pretreatment standards, including compliance deadlines, concentration and mass limits, equivalent limits, prohibition of dilution as a substitute for treatment, and use of the combined wastestream formula to determine discharge limitations is discussed in this section.

§ 403.7 Revision of Categorical Pretreatment Standards to Reflect Control Authority Removal of Pollutants

This provision on removal credits provides the criteria and procedures to be used by a Control Authority to grant a categorical industrial user (CIU) variance from a pollutant limit specified in a categorical pretreatment standard to reflect removal by the POTW treatment plant of said pollutant

§ 403.8 Control Authority Pretreatment Programs: Development by Control Authority

The requirements for pretreatment program development by a Control Authority are outlined in this section. Included are criteria for determining which POTWs must develop pretreatment programs; program approval deadlines; incorporation of approved programs and compliance schedules in NPDES permits; and program and funding requirements.

The Control Authority is required to have sufficient legal authority to enforce the approved pretreatment program. At a minimum, this legal authority shall enable the Control Authority to:

- Deny or condition new or increased contributions
- Issue significant industrial users individual control mechanisms
- Require compliance schedules for the installation of technology
- Require self-monitoring and reporting by industrial users
- Carry out all inspection, surveillance and monitoring procedures
- Obtain remedies for noncompliance.

It is also stated in this section that all Control Authorities with approved programs, or programs under development, must develop and implement procedures to ensure compliance with the requirements of a pretreatment program. Such procedures shall enable the Control Authority to:

- Identify and locate appropriate industrial users
- Identify the character and volume of pollutants being discharged by those industrial users
- Notify those industrial users of applicable pretreatment standards and requirements
- Receive and analyze reports and notices
- Sample and analyze the effluent from industrial users and conduct surveillance activities
- Evaluate the need for each significant industrial user to develop a slug/spill plan
- Investigate instances of noncompliance and enforce
- Comply with public participation requirements (along with this procedure, the regulations define significant noncompliance).

Under this provision, the Control Authority also must have sufficient resources to implement the regulatory requirements, develop local limits (or demonstrate that they are not necessary), and develop an Enforcement Response Plan.

§ 403.9 Control Authority Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval

Requirements and procedures for submission and review of Control Authority pretreatment programs are discussed in this section. Included are discussions of conditional program approval; Approval Authority action; and notification where submissions are defective.

§ 403.10 Development and Submission of NPDES State Pretreatment Programs

Requirements and procedures for submission and review of NPDES State pretreatment programs are provided in this section. Included are discussions of deadlines for approval of State programs; legal authority, procedural and funding requirements; and contents of program submissions.

§ 403.11 Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits

Included in this section are procedures for accepting or denying Control Authority requests for program approval or for removal credits.

§ 403.12 Reporting Requirements for Control Authorities and Industrial Users

Reports required from industrial users include the following:

- Baseline monitoring reports - Required to be submitted to the Control Authority within 180 days of the effective date of the categorical pretreatment standards. In addition, new source BMR reporting requirements are discussed.
- Compliance schedule (for meeting categorical pretreatment standards) progress reports - Required to be submitted to the Control Authority within 14 days of completion of compliance schedule milestone or due dates.
- Report on compliance with categorical pretreatment standard deadline (final compliance report) - Required to be submitted to the Control Authority within 90 days of the compliance date of the categorical pretreatment standards.

- Periodic reports on continued compliance - Required to be submitted by categorical and significant noncategorical industrial users to the Control Authority at least semiannually, usually in June and December after the compliance date.
- Notice of potential problems including slug loadings - Required to be submitted by all industrial users immediately upon identification of discharges including slug loadings that could cause problems to the POTW.
- Notice of changed discharge - Required to be submitted to the Control Authority by all industrial users in advance of any significant change in volume or character of pollutants discharged.
- Notice of Violation/Resampling requirement - Required to be submitted to the Control Authority by an industrial users within 24 hours of becoming aware of a violation. Resampling must be conducted and the results submitted to the Control Authority within 30 days.
- Notice of Discharge of Hazardous Waste - Required to be submitted to the POTW, EPA, and the State by all industrial users whose discharge would be considered a hazardous waste, if disposed of in a different manner.

Reports required from POTWs include the following:

- Compliance schedule progress reports (for development of pretreatment programs)
- Annual reports to Approval Authority

Signatory certification and record keeping and analytical testing requirements for POTW/Control Authorities and industrial users are also specified in this section.

§ 403.13 Variances from Categorical Pretreatment Standards for Fundamentally Different Factors

This provision allows an industrial user or any interested person to request a variance from categorical pretreatment standards based on the factors considered by EPA in developing the applicable category/subcategory being fundamentally different than factors relating to a specific industrial user.

§ 403.14 Confidentiality

The confidentiality requirements and prohibitions for EPA, States, and POTWs are covered in this section. This section expressly states that effluent data is available to the public without restriction.

§ 403.15 Net/Gross Calculation

This provision allows for adjustment of categorical pretreatment standards to reflect the presence of pollutants in the industrial user's intake water if said water draws from the same body of water as that which the POTW discharges.

§ 403.16 Upset Provision

This provision allows an upset (which meets the conditions of an upset as specified in this provision) to be an affirmative defense against an action brought for noncompliance with categorical pretreatment standards. The industrial user shall have the burden of proof for such a defense.

§ 403.17 Bypass

Requires industrial users to operate their treatment systems at all times. Defines criteria for allowing a bypass to occur and notification procedures for both anticipated and unanticipated bypasses.

§ 403.18 Modification of POTW Pretreatment Programs

This provision specifies procedures and criteria for "minor" and "substantial" modifications to approved POTW pretreatment programs and incorporation of substantial modifications into the POTW's NPDES permit.

Appendix A: Program Guidance Memorandum

Addresses EPA policy on grants for treatment and control of combined sewer overflows (CSO) and stormwater discharges.

Appendix B: [Reserved]**Appendix C: [Reserved]****Appendix D: Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula**

The Appendix D published on January 21, 1981, provided a list of industrial subcategories that had been exempted (pursuant to Paragraph 8 of the *NRDC, Inc. et al. vs. Costle Consent Decree*) from regulation by categorical pretreatment standards. Appendix D was revised on October 9, 1986, to update the list of exempted industrial categories and to correct previous errors by either adding or removing various subcategories or by changing the names of some categories or subcategories. Each of the subcategories, as indicated by the Appendix D title, contains wastestreams that are classified as dilute for purposes of applying categorical pretreatment standards to other wastestreams and for using the combined wastestream formula to adjust these standards.

Appendix E: Sampling Procedures

This appendix discusses the composite and grab sampling methods for the collection of influent and effluent samples at a POTW treatment plant.

Appendix F: [Reserved]**Appendix G: Pollutants Eligible for a Removal Credit**

This appendix identifies regulated pollutants in 40 CFR Part 503 as well as additional pollutants eligible for a removal credit.

POTW Legal Authority

[Note-unless specified otherwise, for the purposes of this section, Control Authority means an approved POTW pretreatment program.]

Overview

The Control Authority's ability to implement and enforce its pretreatment program is determined by its legal authority. Control Authorities must have the legal authority to impose and enforce the National categorical pretreatment standards in 40 Code of Federal Regulations (CFR) Chapter I, Subchapter N, Parts 405-471 and the requirements found in the General Pretreatment Regulations (40 CFR Part 403). Federal regulations do not provide Control Authorities with the legal authority to carry out local pretreatment programs; Federal regulations [40 CFR § 403.8(f)] merely set forth the legal authority requirements which POTWs seeking to obtain (and maintain) pretreatment program approval must possess.

Regardless of whether the Control Authority is a single municipality or a regional sewerage authority composed of several jurisdictions, its legal authority derives from State law. Most Control Authorities have broad regulatory powers. For example, many State laws authorize Control Authorities to enforce "pretreatment requirements" against users discharging wastes to their sewer systems. This broad legal authority allows the local pretreatment program to be tailored to individual circumstances while, at the same time, satisfying minimum Federal program requirements. When the Control Authority is a municipality, the basic implementation and enforcement requirements of its pretreatment program are detailed in a sewer use ordinance. Typically, this ordinance is part of city or county code. Regional Control Authorities frequently adopt similar provisions in the form of regulations. Likewise, State agencies implementing a State-wide program under 40 CFR § 403.10(e) set out pretreatment requirements as agency regulations, rather than as a sewer use ordinance. If State law does not confer adequate authority on the Control Authority to comply with minimum Federal

requirements, the Control Authority must request the State to enact or amend statutory provisions granting such authority [40 CFR § 403.8(f)(1)].

Sewer use ordinances and regulations "implement" the legal authority which State law confers on the Control Authority. The sewer use ordinance cannot give the Control Authority greater enforcement powers (such as higher penalty authority) than are allowed under State laws which created or empowered the Control Authority. Therefore, once the ordinance is adopted, it defines the Control Authority's legal authority. If an industry believes that the Control Authority has acted beyond or contrary to its ordinance when enforcing against that user, the user may challenge the action in court. If, in turn, the reviewing court finds that the Control Authority has indeed acted beyond its authority or in an arbitrary or capricious manner, the court may prevent or overturn the enforcement action. Thus, the Control Authority must ensure that its legal authority is both specific and comprehensive, particularly with regard to its enforcement provisions.

Control Authorities should enact sewer use ordinances which fulfill the legal authority requirements of 40 CFR § 403.8(f)(1). Although Federal regulations authorize Control Authorities to operate pursuant to legal authority conferred through State statutes, most statutes are not sufficiently detailed to be "self-implementing," and the broad grants of regulatory authority which statutes confer to Control Authorities must be detailed in specific ordinance provisions to be legally enforceable. For example, a State statute which provides that Control Authorities may enforce pretreatment program requirements through "Administrative Orders" does not set forth the specific types of Administrative Orders which a Control Authority may issue to its industrial users, or whether administrative fines may be assessed through the Administrative Orders. While Control Authorities may also operate pursuant to legal authority provided by contracts (with industries or with neighboring jurisdictions), or joint powers agreements (with the neighboring jurisdictions), these sources of legal authority are most effective in multijurisdictional situations (i.e., when a Control Authority must regulate industries located beyond its territorial jurisdiction).

A review of the sewer use ordinance should be performed to ensure it grants the Control Authority legal authority to implement the Federal requirements detailed below.

Definitions

Although the Federal pretreatment regulations do not require local sewer use ordinances or regulations to include a "definitions" section, EPA believes that definitions clarify and strengthen the substantive pretreatment provisions. Furthermore, to the extent that Control Authorities choose to use terms which are defined in the Federal regulations [40 CFR §§ 403.3 and 403.8(f)(2)(vii)], the definitions may not be less stringent or less inclusive than EPA's definitions.

Prohibited Discharges

- Discharges which cause interference [40 CFR § 403.5(a)(1)]
- Discharges which cause pass through [40 CFR § 403.5(a)(1)]
- Discharges which violate the specific prohibitions [40 CFR § 403.5(b)(1)-(8)]
- Discharges which violate local limits adopted by the Control Authority [40 CFR § 403.5(c) and (d)]
- Discharges which use dilution as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement [40 CFR § 403.6(d)]
- Discharges which violate National categorical pretreatment standards [40 CFR § 403.8(f)(1)(ii)]

Control Discharges to POTW Treatment Plant and Collection System

- Deny or condition new or increased contributions of pollutants or changes in the nature of pollutants to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the Control Authority to violate its National Pollutant Discharge Elimination System (NPDES) permit [40 CFR § 403.8(f)(1)(i)]
- Require industrial users to notify the Control Authority in advance of any substantial change in volume or characteristics of their discharge [40 CFR § 403.12(j)]
- Require compliance with applicable pretreatment standards (including National categorical pretreatment standards, local limits, and prohibited discharge standards) and requirements by industrial users [40 § 403.8(f)(1)(ii)]
- Control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. Control significant industrial user discharges through an individual control mechanism that contains five minimum conditions [40 CFR § 403.8(f)(1)(iii)].

Require Development of Compliance Schedules, Plans, and Reports

- Require each industrial user to develop a compliance schedule to install necessary pretreatment technology [40 CFR § 403.8(f)(1)(iv)]
- Require industrial users to submit to the Control Authority plans to control slug discharges which contain 4 minimum elements [40 CFR § 403.8(f)(2)(v)]
- Require each industrial user to submit all notices and self-monitoring reports necessary to assess and ensure compliance with pretreatment standards and requirements, including reports and applicable signatories and certifications required in 40 CFR § 403.12 [40 CFR § 403.8(f)(1)(iv)].

Inspection and Monitoring Procedures

- Authority to carry out all inspections, surveillance, and monitoring procedures necessary to determine (independent of information supplied by industrial users) compliance or noncompliance with applicable pretreatment standards and requirements at least once a year [40 CFR § 403.8(f)(1)(v)] including:
 - Right to enter at reasonable times
 - Right to inspect generally for compliance
 - Right to take independent samples
 - Right to require installation of monitoring equipment
 - Right to inspect and copy records [40 CFR § 403.12(o)(2)]
 - Require the use of 40 CFR Part 136 methods for self-monitoring and analysis [40 CFR § 403.12(b)(5)(vi), (g)(4), and (h)].

Enforcement

- Nonemergency Response - Authority to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements, and authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards and requirements [40 CFR 403.8(f)(vi)(A)]
- Emergency Response - Authority to immediately and effectively halt or prevent any discharge of pollutants to the POTW which threatens human health, the environment, or the POTW [40 CFR § 403.8(f)(1)(vi)(B)].

Confidentiality

- Authority to ensure that effluent data are made available to the public [40 CFR § 403.8(f)(1)(vii) and 40 CFR § 403.14].

Assessing Authority to Impose Pretreatment Requirements

The Control Authority should use the following five questions as a basis for its review of the sewer use ordinance:

- Are all industrial users discharging to the sewer collection system subject to regulation?
- Does the ordinance authorize it to implement program requirements under 40 CFR 403?
- Does the ordinance authorize it to enforce local limits to prevent pass through and interference?
- Does the ordinance incorporate all enforcement authorities allowable under State law?
- Does the ordinance contain any obstacles to effective enforcement?

These questions are discussed in greater detail in the following subsections.

Authority Over All Industrial Users

The Control Authority's sewer use ordinance must be applicable to all nondomestic (industrial) users of the Control Authority. The "Scope" or "Applicability" section of the ordinance should specify that all users are subject to regulation. The definitions of "person" and "user" should also be reviewed to see whether they encompass all dischargers. For example, definitions of these terms in a number of ordinances fail to include "government facilities" (that is, Federal, State, or local government facilities) as part of the regulated community. Since such governmental entities are subject to the pretreatment program, they must not be excluded from consideration as regulated dischargers. If the ordinance contains similar exclusions or does not explicitly address all industrial dischargers, the Control Authority must revise it. Many Control Authorities treat wastewater from industrial users located outside their political boundaries. These "multijurisdictional" arrangements require special legal/contractual mechanisms to ensure adequate authority to enforce program requirements. EPA has published guidance to assist Control Authorities in addressing multijurisdictional issues (1994 *Multijurisdictional Pretreatment Programs - Guidance Manual*).

Implementation of Federal Program Requirements

The General Pretreatment Regulations establish minimum Federal requirements for industrial users. While these requirements are Federally enforceable (which means that U.S. Attorneys can enforce them in Federal court), a Control Authority has the primary responsibility for implementing and enforcing pretreatment requirements. However, the Control Authority will not be able to fulfill its obligations unless these Federal requirements are specifically applied by its ordinance. In order for the Control Authority to successfully impose and enforce Federal pretreatment requirements in local courts, its ordinance must either include these requirements verbatim or incorporate them by reference. The Control Authority should examine its ordinance to determine whether Federal requirements are satisfied and in which manner they are satisfied. EPA recommends that incorporation by reference be used to require compliance with categorical pretreatment standards since reiteration of these standards could be cumbersome. Of course, the Control Authority should make sure that it follows proper State legal procedure when it incorporates Federal requirements by reference.

Generally, a proper incorporation by reference includes specific language evidencing the intent to incorporate the standards and includes a citation to where the standards are found (i.e., "the National categorical pretreatment standards, located in 40 CFR Chapter I, Subchapter N, Parts 405-471, are hereby incorporated"). However, State law may contain additional content and format requirements with which the Control Authority must comply.

The Control Authority should be aware that incorporation of future (as yet unpromulgated) Federal rules is usually considered invalid by reviewing courts. Generally, only regulations which are in existence on the date that the ordinance is adopted may be incorporated into the ordinance. For instance, an ordinance provision adopted in 1983, incorporating the Federal categorical pretreatment standards and requirements, will only effectively incorporate Federal regulations promulgated as of 1983. Therefore, the

Control Authority must periodically reincorporate new or revised Federal regulations in order to ensure its own authority to impose and enforce these requirements against local industrial users. It is recommended that the Control Authority evaluate the need to reincorporate Federal and State requirements within 6 to 9 months of the effective date of new or revised categorical standards or revisions to the General Pretreatment Regulations.

Local Limits

In addition to including Federal requirements, the Control Authority should examine its ordinance to make sure that it clearly authorizes enforcement of more stringent discharge requirements (local limits) adopted to prevent pass through and interference. Local limits become Federal pretreatment standards if properly adopted pursuant to 40 CFR § 403.5. These limits may be narrative discharge prohibitions, a set of pollutant-specific numeric limits, or a combination of both. EPA has published guidance to assist Control Authorities in establishing local limits (1987 *Guidance Manual for the Development and Implementation of Local Discharge Limitations*).

Identifying Obstacles To Enforcement

The Control Authority must be confident that its choice and implementation of enforcement responses are free from procedural obstacles which could delay their swift and effective use. The Control Authority should, therefore, closely scrutinize its sewer use ordinance to identify and eliminate requirements which restrict the selection and use of particular enforcement responses. In reviewing sewer use ordinances nationwide, EPA has identified numerous procedural obstacles to enforcement common to local programs. Too often, ordinances vest enforcement authority in a single public official, such as the Mayor or the Director of Utilities, which results in extensive delays in initiating enforcement actions. While city officials should be informed of enforcement activities, experience has shown that enforcement is most expeditious if it is taken by officials who fully understand the pretreatment program's goals and requirements. Therefore, it is suggested that the Control Authority make sure that its sewer use ordinance assigns enforcement authority to the "POTW Superintendent or his/her designee." In turn, the Superintendent should delegate the use of particular enforcement responses as appropriate.

Another common obstacle is defining the use of particular enforcement responses in too narrow a manner. For example, the ordinance should not require the use of a Notice of Violation (NOV) prior to initiation of a more stringent response. The Control Authority must be free to use whatever action it deems appropriate as an initial action. Similarly, it should not establish a show cause hearing as a precondition to the issuance of an Administrative Order. The Control Authority must be able to respond to emergency situations quickly and be authorized to issue a cease and desist order or to seek a court order without delaying to schedule a hearing for the industrial user. However, the Control Authority may build in an "appeals process" after the immediate danger has passed.

Other common obstacles include making the maximum duration of a compliance schedule so brief (e.g., no more than 10 days) that it is an unrealistic mechanism for effecting remedial action. The ordinance should not specify an automatic grace period between identification of the violation and issuance of the enforcement response (that is, language such as the following: "if the violation is not corrected within 15 days of being notified of the noncompliance by the Control Authority, the Control Authority may seek appropriate legal action"). Any violation by the industrial user should trigger immediate liability, and each day that a violation continues must count as a separate instance of noncompliance.

Sometimes a sewer use ordinance is written so that it restricts the Control Authority's access to information about the industrial user. For instance, it may limit the right of entry and inspection to only the pretreatment facility or monitoring areas. Control Authority personnel need access to all areas which are potentially relevant to the wastewater discharge, including areas where chemicals and raw materials are stored. Consequently, the sewer use ordinance (and discharge permit) should specify that original or duplicate monitoring records be kept by the industry and that the Control Authority may examine and copy those records.

A final obstacle commonly encountered involves provisions which operate to undermine the program or which are contrary to Federal or State law. Some examples are:

- Incorrectly designating analytical procedures to be conducted in accordance with Standard Methods, rather than 40 CFR Part 136 or equivalent method approved by EPA.
- Authorizing special agreements that waive ordinance (pretreatment) requirements. For example, this waiver should not be available for Federal standards and requirements or any local limits or other requirements designed to protect the POTW and its receiving stream from pass through or interference. Any waiver provision must also be in accordance with explicit procedures outlined in the ordinance.
- Failing to require significant industrial users to immediately report any noncompliance and repeat sampling for those parameters found to be in violation as required in 40 CFR § 403.12(g).
- Failing to specify authorized signatures for reports and applications submitted by industrial users. This omission may allow someone without proper authority to respond on behalf of the company and submit permit applications and reports to the Control Authority. The industry would then be allowed to disavow responsibility for violations or misrepresentations in these documents.
- Failing to require a certification statement as contained in 40 CFR 403.6(a)(2)(ii) for compliance reports submitted by industrial users.
- Authorizing enforcement actions for "willful" and "negligent" violations only (all violations must be actionable; under Federal law, "knowing" and/or "negligent" violations are criminal offenses).
- Excusing or absolving any noncompliance (e.g., accidental spills) from enforcement or limiting the enforcement response to a recovery of actual damages.

The Control Authority should identify any obstacles to enforcement which it uncovers while evaluating its ordinance. It should then eliminate these obstacles by adding, redrafting, or deleting ordinance provisions.

POTW Program Approval

Federal regulations at 40 CFR § 403.9 outline procedures for a POTW to obtain approval of their pretreatment program. A POTW requesting approval must submit a POTW pretreatment program to the Approval Authority for review and comment. Contents of the submission must include:

- a statement from the City Solicitor (or the like) that the POTW has adequate authority to carry out the program requirements described in 40 CFR § 403.8
- a copy of statutes, ordinances, regulations, agreements, or other authorities the POTW relies upon to administer the pretreatment program and a statement from the local board/body responsible for supervising and/or funding the POTW pretreatment program is approved
- a description of the program organization
- a description of funding levels and manpower available.

Upon receipt, the Approval Authority had 60 days to make a preliminary determination of whether the submission meets the requirements of 40 CFR § 403.9. Based on the Approval Authority review, the POTW may have to revise its submission, or the Approval Authority may commence the public notice process and (after addressing any comments) formally approve the program.

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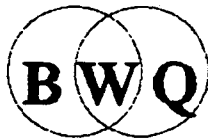


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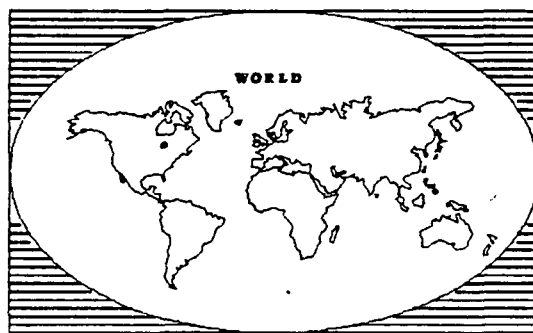
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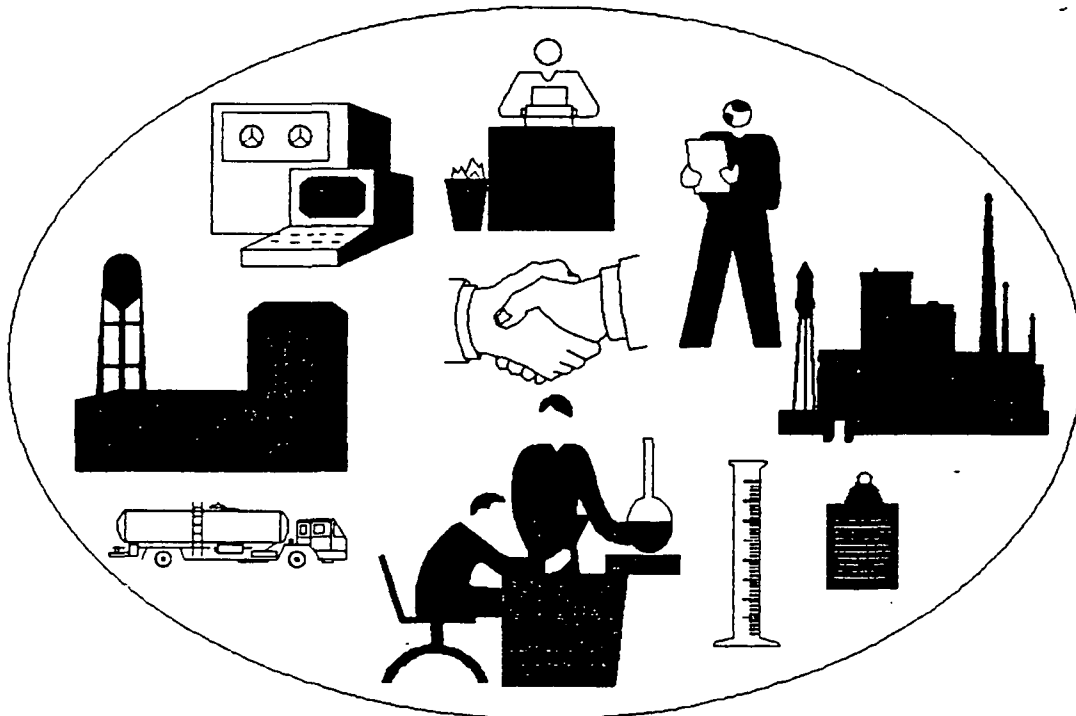
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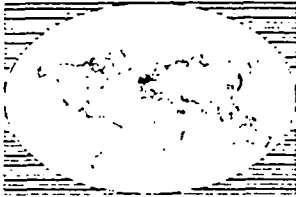
" LET'S ALL WORK FOR ITS PROTECTION "

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INDUSTRIAL PRETREATMENT
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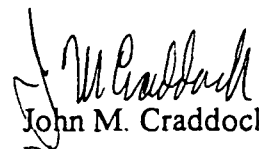
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INDUSTRIAL PRETREATMENT ORDINANCE

1995

The first local ordinance in Muncie, Indiana controlling the introduction of industrial wastewater to the POTW, was passed in 1958. The original 1958 ordinance was very general and only several pages in length. The Bureau of Water Quality was created on March 10, 1972 as a testing and enforcement agency, on the local level, that included, as part of it's responsibility, the control of industrial wastewater being discharged to the Muncie, Indiana POTW. The Bureau, in 1972 started holding, "Show Cause" hearings, requiring industrial pretreatment to be installed, making it one of the older, active, ongoing local programs in the USA. The Bureau, completely rewrote and updated, the pretreatment ordinance in 1976 and again in 1980. The 1980 update, contained many of the provisions that ended up in the Pretreatment Implementation Review Task Force (PIRT) revisions of October 1988, and the Domestic Sewage Study (DSS) rule of July 1990. Because of this, the ordinance was able to stand for fourteen years without change. The latest revision and update during 1993 and 1994 has fine tuned this ordinance, and incorporated the latest State and Federal legal requirements. These requirements are needed, necessary and required, to continue to carry out the provisions of 40 CFR 403 of the Clean Water Act, to protect our receiving stream, which is the west fork of the White River, for future generations to use and enjoy.


John M. Craddock
Director
Bureau of Water Quality





"LET'S ALL WORK
FOR ITS PROTECTION"

BUREAU OF WATER QUALITY

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INDUSTRIAL PRETREATMENT ORDINANCE

Chapter 53

Table of Contents

<u>Section</u>	<u>Page</u>
<u>53.01 General Provisions</u>	1
1.1 Purpose and Policy	1
1.2 Administration	2
1.3 Definitions	3
1.4 Abbreviations	9
<u>53.02 General Sewer User Requirements</u>	9
2.1 Prohibited Discharge Standards	9
2.2 Federal Categorical Pretreatment Standards	11
2.3 State Requirements	11
2.4 Specific Pollutant Limitations	11
2.5 Sanitary District Right of Revision	12
2.6 Special Agreement	12
2.7 Dilution	13
<u>53.03 Pretreatment of Wastewater</u>	13
3.1 Pretreatment Facilities	13
3.2 Accidental Discharge/Slug Control Plan	14
3.3 Tenant Responsibility	14
3.4 Hauled Wastewater	14
3.5 Underground Storage Tank Wastewater	15
3.6 Vandalism	15



<u>Section</u>	<u>Page</u>
<u>53.04 Wastewater Discharge Permit Eligibility</u>	15
4.1 Wastewater Survey	15
4.2 Wastewater Discharge Permit Requirement	15
4.3 Wastewater Discharge Permitting Existing Connections	16
4.4 Wastewater Discharge Permitting New Connections	16
4.5 Wastewater Discharge Permitting Extra Jurisdictional Industrial Users	16
4.6 Wastewater Discharge Permit Application Contents	16
4.7 Application Signatories and Certification	17
4.8 Wastewater Discharge Permit Decisions	18
<u>53.05 Wastewater Discharge Permit Issuance Process</u>	18
5.1 Wastewater Discharge Permit Duration	18
5.2 Wastewater Discharge Permit Contents	18
5.3 Wastewater Discharge Permit Appeals	20
5.4 Wastewater Discharge Permit Modification	20
5.5 Wastewater Discharge Permit Transfer	21
5.6 Wastewater Discharge Permit Revocation	21
5.7 Wastewater Discharge Permit Reissuance	22
<u>53.06 Reporting Requirements</u>	22
6.1 Baseline Monitoring Reports	22
6.2 Compliance Schedule Progress Report	24
6.3 Report on Compliance with Categorical Pretreatment Standard Deadline	24
6.4 Periodic Compliance Reports	25
6.5 Report of Changed Conditions	25
6.6 Reports of Potential Problems	26
6.7 Reports from Nonsignificant Industrial Users	27
6.8 Notice of Violation/Repeat Sampling and Reporting	27
6.9 Notification of the Discharge of Hazardous Waste	27
6.10 Analytical Requirements	28
6.11 Sample Collection	28
6.12 Determination of Noncompliance	29
6.13 Timing	29
6.14 Record Keeping	29

<u>Section</u>	<u>Page</u>
<u>53.07 Compliance Monitoring</u>	29
7.1 Inspection and Sampling	29
7.2 Search Warrants	30
<u>53.08 Confidential Information</u>	31
<u>53.09 Publication of Industrial Users In Significant Noncompliance</u>	31
<u>53.10 Administrative Enforcement Remedies</u>	32
10.1 Enforcement Response Guide (ERG)	32
10.2 Notification of Violation	33
10.3 Consent Orders	33
10.4 Show Cause Hearing	33
10.5 Compliance Orders	34
10.6 Cease and Desist Orders	34
10.7 Administrative Fines	35
10.8 Emergency Suspensions	35
10.9 Termination of Discharge	36
10.10 Appeals	36
<u>53.11 Judicial Enforcement Remedies</u>	37
11.1 Injunctive Relief	37
11.2 Civil Penalties	37
11.3 Remedies Nonexclusive	38
<u>53.12 Supplemental Enforcement Action</u>	38
12.1 Liability Insurance	38
<u>53.13 Affirmative Defenses To Discharge Violations</u>	38
13.1 Upset	38
13.2 General/Specific Prohibitions	39
13.3 Bypass	40

<u>Section</u>	<u>Page</u>
<u>53.14 Metered/Estimated Wastewater Volume</u>	41
14.1 Metered Water Supply	41
14.2 Metered Wastewater Volume and Metered Diversions	41
14.3 Estimated Wastewater Volume	41
<u>53.15 Surcharge Costs</u>	42
<u>53.16 Miscellaneous Provisions</u>	43
16.1 Damage to Facilities	43
16.2 Severability	43
16.3 Conflicts	43
<u>53.17 Effective Date</u>	43

Addendums

Environmental Protection Agency Approval letter - - - - - March 3, 1994

Indiana Departmental of Environmental Management Approval letter - March 21, 1994

BUREAU OF WATER QUALITY
INDUSTRIAL PRETREATMENT ORDINANCE

Chapter 53

Section

- 53.01 General Provisions
- 53.02 General Sewer User Requirements
- 53.03 Pretreatment of Wastewater
- 53.04 Wastewater Discharge Permit Eligibility
- 53.05 Wastewater Discharge Permit Issuance Process
- 53.06 Reporting Requirements
- 53.07 Compliance Monitoring
- 53.08 Confidential Information
- 53.09 Publication of Industrial User in Significant Noncompliance
- 53.10 Administrative Enforcement Remedies
- 53.11 Judicial Enforcement Remedies
- 53.12 Supplemental Effluent Action
- 53.13 Affirmative Defense to Discharge Violations
- 53.14 Metered/Estimated Wastewater Volume
- 53.15 Surcharge Cost
- 53.16 Miscellaneous Provisions
- 53.17 Effective date

53.01 - GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for users of the wastewater collection system and the Publicly Owned Treatment Works (POTW) for the Muncie Sanitary District, of Muncie Indiana and to comply with all applicable State and Federal laws including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General

Pretreatment Regulations (40 CFR Part 403). The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
- F. To provide for fees for excess strength of wastewater discharged to the Muncie POTW.
- G. To enable the Muncie Sanitary District to comply with its NPDES permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the POTW is subject.

This ordinance shall apply to all industrial and/or any significant users of the Muncie, Indiana POTW. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance and enforcement activities; establishes administrative review and enforcement procedures, requires industrial user reporting, and provides for fees for excess strength of waste discharged to the POTW.

1.2 Administration

Except as otherwise provided herein, the Director of the Bureau of Water Quality, Muncie Sanitary District shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director may be delegated by the Director to other Bureau personnel.

1.3 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

- A. Act or "the Act". The Federal Water Pollution Control act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
- B. Approval Authority. The State of Indiana and/or US EPA, Region V.
- C. Authorized Representative of the Industrial User.
 - 1. If the industrial user is a corporation, authorized representative shall mean:
 - a. the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;
 - b. the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - 2. If the industrial user is a partnership, or sole proprietorship, an authorized representative shall mean a general partner or proprietor, respectively;
 - 3. If the industrial user is a Federal, State or local governmental facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee;
 - 4. The individuals described in paragraphs 1-3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Director of the Bureau of Water Quality.
- D. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of mass and concentration (mg/l).

- E. Board of Sanitary Commissioners. The Board of Sanitary Commissioners of the Muncie Sanitary District.
- F. Bureau: The Bureau of Water Quality of the Muncie Sanitary District.
- G. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307 (b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I., Subchapter N, Parts 405-471.
- H. Color. The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.
- I. Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
- J. Director. The person hired by the Board of Sanitary Commissioners to supervise the operation of the Bureau of Water Quality, and who is charged with certain duties and responsibilities by this ordinance or his duly authorized representative.
- K. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.
- L. Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
- M. Grab Sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
- N. Indirect Discharge or Discharge. The introduction of (nondomestic) pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.
- O. Industrial User or User. A source of indirect discharge.

- P. Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- Q. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and 2) therefore is a cause of a violation of the Muncie Sanitary District's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.
- R. Monthly Average. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- S. New Source.
- (1) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307 (c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of

activity as the existing source, should be considered.

- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of Section (1) (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - (a) Begun, or caused to begin as part of a continuous onsite construction program
 - (I) Any placement, assembly, installation of facilities or equipment, or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

T. Noncontact Cooling Water. Water used for cooling which does not come into direct contact with any raw material intermediate product, waste product, or finished product.

U. Pass Through. A discharge which exits the POTW into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the Muncie Sanitary District's NPDES permit (including an increase in the magnitude or duration of a violation).

V. Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State or local governmental entities.

- W. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.
- X. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).
- Y. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- AA. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.
- BB. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, and local limits.
- CC. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.1 of this ordinance.
- DD. Publicly Owned Treatment Works or POTW. A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the State or municipality or Sanitary District. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works.
- EE. Sanitary District. The Muncie Sanitary District of Muncie, Indiana.
- FF. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- GG. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

- HH. Significant Industrial User. Shall apply to: a) industrial users subject to categorical pretreatment standards; and b) any other industrial user that i) discharges an average of 25,000 gpd or more of process wastewater, ii) contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant or, iii) is designated as significant by the Bureau on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- II. Slug Load. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 2.1 of this ordinance or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.
- JJ. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.
- KK. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting therefrom, including snowmelt.
- LL. Superintendent. The person hired by the Board of Sanitary Commissioners to supervise the operation of the POTW.
- MM. Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
- NN. Toxic Pollutant. One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.
- OO. Treatment Plant Effluent. Any discharge of pollutants from the Muncie POTW into waters of the State of Indiana.
- PP. Wastewater. Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- QQ. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW designed to provide treatment of sewage and industrial waste.

Shall is mandatory; may is permissive or discretionary. The use of the singular shall be

construed to include the plural and the plural shall include the singular as indicated by the context of its use.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

- BOD - Biochemical Oxygen Demand
- CFR - Code of Federal Regulations
- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- ERG - Enforcement Response Guide
- l - Liter
- mg - Milligrams
- mg/l - Milligrams per liter
- NPDES - National Pollutant Discharge Elimination System
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classifications
- SWDA - Solid Waste Disposal Act (42 U.S.C. 67901, et seq.)
- TSS - Total Suspended Solids
- USC - United States Code

53.02 - GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

No industrial user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State or local pretreatment standards or requirement.

Furthermore, no industrial user may contribute the following substances to the POTW:

- A. Pollutants which create a fire or explosive hazard in the municipal wastewater collection and POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.

- B. Any wastewater having a pH less than 5.0 or more than 10.0, unless authorized by the Director, or otherwise causing corrosive structural damage to the POTW or equipment, or endangering Sanitary District personnel. No wastewater having a pH of less than 5.0 shall be authorized and no wastewater having a pH of more than 12.5 shall be authorized, since this would be considered a hazardous waste under Section 40 CFR 261.22 of the Act.
- C. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference.
- D. Any wastewater containing pollutants, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either the POTW; or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.
- E. Any wastewater having a temperature greater than 150°F (65.5°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C).
- F. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- G. Any pollutants which results in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- H. Any trucked or hauled pollutants, except at discharge points designated by the Bureau in accordance with Section 3.4.
- I. Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.
- J. Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the Muncie Sanitary District's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than 10 percent from the seasonably established norm for aquatic life.

- K. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the Director in compliance with applicable State or Federal regulations.
- L. Subsurface drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Director.
- M. Any sludges, or other residues from the pretreatment of industrial wastes.
- N. Any wastewater causing the treatment plant's effluent to fail a toxicity test.
- O. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.
- P. Obstruction of flow in a sewer system or injury of the system, or a nuisance or prevention of the effective maintenance or operation of the sewer system.
- Q. Any discharge of fats, oils, or greases of animal or vegetable origin is limited to 200 mg/l.

Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

2.2 Federal Categorical Pretreatment Standards

The national categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

2.3 State Requirements

Indiana Industrial State Pretreatment Standards are also incorporated into this ordinance.

2.4 Specific Pollutant Limitations

The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following maximum allowable discharge limits and maximum monthly average limits.

Maximum for <u>Monthly Average</u>	Maximum for <u>any one day</u>
<u>.20</u> mg/l	<u>.60</u> mg/l cadmium
<u>2.0</u> mg/l	<u>6.0</u> mg/l chromium
<u>2.0</u> mg/l	<u>6.0</u> mg/l copper
<u>1.0</u> mg/l	<u>1.9</u> mg/l cyanide

<u>2.0</u> mg/l	<u>6.0</u> mg/l lead
<u>2.0</u> mg/l	<u>6.0</u> mg/l nickel
<u>NA</u> mg/l	<u>100</u> mg/l oil and grease (See Section 2.4(C))
<u>NA</u> mg/l	<u>.009</u> mg/l PCBs
<u>NA</u> mg/l	<u>2.5</u> mg/l silver
<u>4.0</u> mg/l	<u>12</u> mg/l zinc

- A. Total Toxic Organics (TTO's) - Limits for those parameters on the TTO list will be considered on an individual case by case basis, by the Director, for those not regulated in the 40 CFR Regulations of the Act for Categorical and/or Non-Categorical Industries, considering such factors including but not limited to: concentration, flow, lb. loading to the POTW and other considerations necessary to prevent pass through and protect the POTW as set forth by the Director.
- B. Any wastewater containing over 250 mg/l of BOD or Total Suspended Solids will be surcharged at the appropriate rate, by the methods listed in 53.15 or pretreated to levels so as not to cause obstruction to the sanitary sewer system or upsets or overloading at the POTW. The Surcharge is not to be used as a substitute for fines issued, for POTW upsets or overloading or sanitary sewer obstruction.
- C. The oil and grease listed in this section is petroleum or mineral oil products. Concentrations apply at the point where the industrial waste is discharged to the POTW. All concentrations for metallic substances are for "total" metal unless indicated otherwise. At his discretion, the Director may impose mass limitations in addition to or in place of the concentration based on limitations above.

2.5 Sanitary District Right of Revision

The Muncie Sanitary District reserves the right to establish, by industrial wastewater discharge permits issued through the Bureau of Water Quality, more stringent standards or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in Section 1.1 of this ordinance or the general and specific prohibitions in Section 2.1, 2.2, 2.3, and 2.4 of this ordinance and parameters not listed in 2.4.

2.6 Special Agreement

The District reserves the right to enter into special agreements with industrial users

setting out special terms under which they may discharge to the POTW through the Director of the Bureau of Water Quality. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

2.7 Dilution

No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

53.03 - PRETREATMENT OF WASTEWATER

3.1 PRETREATMENT FACILITIES

Industrial users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 2.1 above within the time limitations specified by the EPA, the State, or the Director -- whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the Bureau shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Director for review, and shall be acceptable to the Director before construction of the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the Bureau under the provisions of this ordinance. The Director shall be notified forty-eight (48) hours prior to start-up of new or modified wastewater pretreatment facilities. Any subsequent changes in the

wastewater pretreatment facilities or method of operation shall be reported to and be acceptable to the Director.

3.2 Accidental Discharge/Slug Control Plans

The Director may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two years the Director shall evaluate whether each significant industrial user needs such a plan. Any industrial user required to develop and implement an accidental discharge/control slug plan shall submit a plan which addresses, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges.
- B. Description of stored chemicals.
- C. Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in Section 2.1 of this ordinance.
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

3.3 Tenant Responsibility

Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this ordinance.

3.4 Hauled Wastewater

- A. Septic tank waste may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as are established by the Superintendent, provided such wastes do not violate Section 2 of this ordinance or any other requirements established or adopted by the Muncie Sanitary District.
- B. The discharge of hauled industrial wastes and/or wastewater as "industrial septage" requires prior approval and a wastewater discharge permit from the Bureau. The Director shall have authority to prohibit the disposal of such wastes,

if such disposal would interfere with the treatment plant operation or cause pass through of the POTW or adversely affect the quality of the POTW sludge. Waste haulers are subject to all other sections of this ordinance.

3.5 Underground Storage Tank Wastewater

Wastewater from contaminated underground storage tank sites within the legal boundaries of the Muncie Sanitary District may be discharged to the POTW only when and if a permit application, as prescribed by the Director is applied for and a special "Underground Storage Tank Wastewater Discharge Permit" as prescribed by the Director, is issued to the owner and or tenant of the property at which the contaminated wastewater is generated. All other aspects of this ordinance will be in force for these permits also.

3.6 Vandalism

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of Bureau property, i.e. (automatic samplers and other field equipment). Any person found in violation of this requirement shall be subject to the sanctions set out in Sections 10-12, below.

53.04 - WASTEWATER DISCHARGE PERMIT ELIGIBILITY

4.1 Wastewater Survey

When requested by the Director, all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Director is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of the ordinance.

4.2 Wastewater Discharge Permit Requirement

- A. It shall be unlawful for any significant industrial user to discharge wastewater into the Muncie Sanitary District's POTW without first obtaining a wastewater discharge permit from the Director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 10-12. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State and local law.

- B. The Director may require other industrial users, including liquid waste haulers, to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.

4.3 Wastewater Discharge Permitting Existing Connections

Any significant industrial user which discharges industrial waste into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Bureau for a wastewater discharge permit in accordance with Section 4.6 below, and shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Director, or in the case, a valid permit exists and does not violate any part of this ordinance, shall not have to re-apply until the permit expiration date.

4.4 Wastewater Discharge Permitting New Connections

Any significant industrial user proposing to begin or recommence discharging industrial wastes into the POTW must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit must be filed at least sixty (60) days prior to the date upon which any discharge will begin.

4.5 Wastewater Discharge Permitting Extra Jurisdictional Industrial Users

- A. Any existing significant industrial user located beyond the Muncie Sanitary District limits and discharging into the Muncie Sanitary sewer system shall submit a wastewater discharge permit application, in accordance with Section 4.6 below, within ninety (90) days of the effective date of this ordinance, or in the case, a valid permit exists and does not violate any part of this ordinance, shall not have to re-apply until the permit expiration date. New significant industrial users located beyond the Muncie Sanitary District limits shall submit such applications to the Director at least sixty (60) days prior to any proposed discharge into the POTW.
- B. Alternately, the Director may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements against said industrial user.

4.6 Wastewater Discharge Permit Application Contents

In order to be considered for a wastewater discharge permit, all industrial users required

to have a wastewater discharge permit must submit the information required by Section 6.1 (b) of this ordinance. The Director shall approve a form to be used as a permit application. In addition, the following information may be requested:

- A. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.
- B. Number and type of employees, hours of operation, and proposed or actual hours of operation of the industry.
- C. Each product produced by type, amount, process and processes, and rate of production.
- D. Type and amount of raw materials processed (average and maximum per day).
- E. The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
- F. Time and duration of the discharge.
- G. The amount, storage of, and disposal of any hazardous waste on site, or generated by the Industry.
- H. Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision.

4.7 Application Signatories and Certification

All wastewater discharge permit applications and industrial user reports, including the Quarterly Report to the Bureau, must contain the following certification statement and be signed by an authorized representative of the industrial user.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and

imprisonment for knowing violations."

4.8 Wastewater Discharge Permit Decisions

The Director will evaluate the data furnished by the industrial user and may require additional information. Within sixty (60) days of receipt of a completed wastewater discharge permit application, the Director will determine whether or not to issue a wastewater discharge permit. The Director may deny any application for a wastewater discharge permit.

53.05 - WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

5.1 Wastewater Discharge Permit Duration

Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Director. Each wastewater discharge permit will indicate a specific date upon which it will expire.

5.2 Wastewater Discharge Permit Contents

Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director to prevent pass through, interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the POTW.

A. Wastewater discharge permits must contain the following conditions:

1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.
2. A statement that the wastewater discharge permit is nontransferable without prior notification and approval from the Director, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
3. Effluent limits applicable to the user based on applicable standards in Federal, State, and local law.
4. Self monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

5. Statement of applicable civil and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.
 6. A copy of the Bureau of Water Quality's, "Enforcement Response Guide."
- B. Wastewater discharge permits may contain, but need not be limited to, the following:
1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 2. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 3. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
 4. Development and implementation of spill control plans, total toxic organics control plans, or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
 5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
 6. The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW.
 7. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 8. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit.
 9. Other conditions as deemed appropriate by the Director to ensure compliance with this ordinance, and State and Federal laws, rules, and

regulations.

5.3 Wastewater Discharge Permit Appeals

Any person, including the industrial user, may petition the Director to reconsider the terms of a wastewater discharge permit with thirty (30) days of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- D. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative action for purposes of judicial review.
- E. Aggrieved parties may seek an appeal under Section 10.10(B). Parties dissatisfied with the decision of the Board may seek judicial review, which shall be limited as provided in 1.C. 4-21.5-5-14(d)(1)-(5).

5.4 Wastewater Discharge Permit Modification

The Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.
- B. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- D. Information indicating that the permitted discharge poses a threat to the Muncie Sanitary District's POTW, District personnel, or the receiving waters.

- E. Violation of any terms or conditions of the wastewater discharge permit.
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.
- H. To correct typographical or other errors in the wastewater discharge permit.
- I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

5.5 Wastewater Discharge Permit Transfer

Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner and/or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes.
- B. Identifies the specific date on which the transfer is to occur.
- C. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable on the date of facility transfer.

5.6 Wastewater Discharge Permit Revocation

Wastewater discharge permits may be revoked for the following reasons:

- A. Failure to notify the Bureau of significant changes to the wastewater prior to the changed discharge.
- B. Failure to provide prior notification to the Bureau of changed condition pursuant to Section 6.5.
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater

discharge permit application.

- D. Falsifying self-monitoring reports.
- E. Tampering with Bureau of Water Quality monitoring equipment.
- F. Refusing to allow the Bureau timely access to the facility premises and records.
- G. Failure to meet effluent limitations.
- H. Failure to pay fines.
- I. Failure to pay sewer charges.
- J. Failure to meet compliance schedules.
- K. Failure to complete a wastewater survey or the wastewater discharge permit application.
- L. Failure to provide advance notice of the transfer of a permitted facility.
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or the ordinance.

Wastewater discharge permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All wastewater discharge permits are void upon the issuance of a new wastewater discharge permit.

5.7 Wastewater Discharge Permit Reissuance

A significant industrial user shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application in accordance with Section 4.6 a minimum of sixty (60) days period to the expiration of the industrial user's existing wastewater discharge permit.

53.06 - REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

- A. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6 (a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards, and currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the Bureau a

report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the Bureau a report which contains the information listed in paragraph B, below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

B. The industrial user shall submit the information required by this section including:

1. Identifying Information. The name and address of the facility including the name of the operator and owners.
2. Wastewater discharge permits. A list of any environmental control wastewater discharge permits held by or for the facility.
3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
4. Flow Measurement. Information showing the measured average, or estimated, if approved by the Director, daily and maximum flow, in gallons per day, to the POTW from regulated process streams and other stream, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
5. Measurement of Pollutants.
 - a. Identify the categorical pretreatment standards applicable to each regulated process.
 - b. Submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the Bureau, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.10.
 - c. Sampling must be performed in accordance with procedures set out

in Section 6.11.

6. Certification. A statement reviewed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis--and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standard; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this ordinance.
8. All baseline monitoring reports must be signed and certified in accordance with Section 4.7.

6.2 Compliance Schedule Progress Report

The following conditions shall apply to the schedule required by 6.1(B)(7). The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, beginning and conducting routine operation). No increment referred to above shall exceed nine (9) months. the industrial user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, (and, if appropriate) the steps being taken by the industrial user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Director.

6.3 Report on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of

the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in Section 6.1(B)(4-6). For industrial users subject to equivalent mass or concentration limits established in accordance with the procedure in 40 CFR 403.6(c), this report shall contain a reasonable measure of the industrial user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.7.

6.4 Periodic Compliance Reports

- A. Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the Director but in no case less than four (4) times per year (in April, in July, in October, in January) each covering the previous three (3) month period, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 4.7.
- B. All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
- C. If an industrial user subject to the reporting requirements in and of this Section monitors any pollutant more frequently than required by the POTW, using the procedures prescribed in Section 6.11 and analytical methods prescribed in Section 6.10 of this ordinance, the results of this monitoring shall be included in the report.
- D. Periodic Compliance Reports may be waived by the Director if the Bureau is at least monitoring the discharge quarterly, and no process wastewater is discharged to the Muncie POTW.

6.5 Report of Changed Conditions

Each industrial user is required to notify the Director of any planned significant changes

to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater at least sixty (60) days before the change.

- A. The Director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.6.
- B. The Director may issue a wastewater discharge permit under Section 4.8 or modify an existing wastewater discharge permit under Section 5.4.
- C. No industrial user shall implement the planned changed conditions(s) until and unless the Director has responded to the industrial user's notice.
- D. For purposes of this requirement flow increases of twenty-five percent (25%) or greater, and the discharge of any previously unreported pollutants, shall be deemed significant.

6.6 Reports of Potential Problems

- A. In the case of any discharge including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load which may cause potential problems for the POTW (including a violation of the prohibit discharge standards in Section 2.1 of this ordinance), it is the responsibility of the industrial user to immediately telephone and notify the Bureau of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the industrial user.
- B. Within five (5) days following such discharge, the industrial user shall, unless waived by the Director, submit a detailed written report describing the causes of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this ordinance.
- C. Failure to notify the Bureau of potential problem discharges shall be deemed a separate violation of this ordinance.
- D. A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the

emergency notification procedure.

6.7 Reports from Nonsignificant Industrial Users

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to the Bureau as the Director may require.

6.8 Notice of Violation/Repeat Sampling and Reporting

If sampling performed by an industrial user indicates a violation, the industrial user must notify the Director within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the report to the Director within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample if the Bureau performs monitoring at the industrial user at least once a month, or if the Bureau performs sampling between the industrial user's initial sampling and when the industrial user receives the results of this sampling, or if the industrial user's regular monitoring activity will result in samples being taken within thirty (30) days of the industry becoming aware of the violation, unless, directed by the Director of the Bureau of Water Quality to do so.

6.9 Notification of the Discharge of Hazardous Waste

- A. Any industrial user who commences the discharge of hazardous waste shall notify the Bureau, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than 100 kilograms (220 lbs.), of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under Section 6.5, above. The notification

requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of Sections 6.1, 6.3, and 6.4, above.

- B. Dischargers are exempt from the requirements of paragraph (1) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms (33 lbs) of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). A discharge of more than fifteen (15) kilograms (33 lbs.) of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

- C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the Bureau, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- D. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- E. All industries permitted by the Bureau, shall make a one time notification to the Director on the Bureau's "Hazardous Waste Notification Form" stating if the company is subject to the reporting conditions in section 6.9 (A)-(B).

6.10 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or reports shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

6.11 Sample Collection

- A. Except as indicated in Section B, below, the industrial user must collect

wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Director may authorize the use of time proportional sampling or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with daily maximum discharge limits.

- B. Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.
- C. Samples should be taken for Federal 40 CFR limits of the Act, for Categorical Industries immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated this adjusted limit along the supporting data shall be submitted to the Bureau.

6.12 Determination of Noncompliance

The Director may use a grab sample(s) to determine noncompliance with pretreatment standards.

6.13 Timing

Written reports will be deemed to have been submitted on the date post-marked. For reports which are not mailed, the date of receipt of the report shall govern.

6.14 Record Keeping

Industrial users shall retain, and make available for inspection and copying, all records and information required to be retained under this ordinance. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this ordinance, or where the industrial user has been specifically notified of a longer retention period by the Director.

53.07 - COMPLIANCE MONITORING

7.1 Inspection and Sampling

The Director shall have the right to enter the facilities of any industrial user to ascertain

whether the purpose of this ordinance, and any permit or order issued hereunder, is being met and whether the industrial user is complying with all requirements thereof. Industrial users shall allow the Director or his representatives ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where an industrial user has security measures in force which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the Bureau, will be permitted to enter without delay, for the purposes of performing their specific responsibilities.
- B. The Bureau shall have the right to set up on the industrial user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. The Director may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated periodically to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be born by the industrial user.
- E. Unreasonable delays in allowing Bureau personnel access to the industrial user's premises shall be a violation of this ordinance.

7.2 Search Warrants

If the Director and/or his representative has been refused access to a building, structure or property or any part thereof, and if the Director and/or his representative has demonstrated probable cause to believe that there may be a violation of this ordinance or that there is a need to inspect as part of a routine inspection program of the Bureau designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then upon application by the Sanitary District Attorney, to the Municipal Court, Superior Court or Circuit Court, the District may seek a search and/or seizure warrant describing therein the specific location subject to the warrant. The request by the

District shall specify what, if anything, may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Director in the company of a uniformed police officer. In the event of an extreme emergency affecting public health and safety, inspections shall be made without the issuance of a warrant.

53.08 - CONFIDENTIAL INFORMATION

Information and data on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from Bureau inspection and sampling activities, shall be available to the public without restriction-- unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

53.09 - PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE

The Bureau shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the industrial users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a 6-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
- B. Technical Review Criteria (TRC) violations, defined here as those in which

thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a 6-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH):

- C. Any other discharge violation that the Director believes has caused, along or in combination with other discharges, interference or pass through (including endangering the health of Bureau personnel or the general public);
- D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Bureau's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance;
- H. Any other violation(s) which the Bureau determines will adversely affect the operation or implementation of the local pretreatment program.

53.10 - ADMINISTRATIVE ENFORCEMENT REMEDIES

10.1 Enforcement Response Guide (ERG)

The Director of The Bureau of Water Quality of the Muncie Sanitary District shall prepare, for passage, by the Board of Sanitary Commissioners of the Muncie Sanitary District, an Enforcement Response Guide (ERG) to insure that the requirements of 40 CFR Part 403 of the Clean Water Act will be met. The ERG shall outline various Administrative Actions the Director may take for various pretreatment violations. The maximum fine shall be one-thousand (\$1,000.00) dollars per violation. The Director shall review and update, on an annual basis, for the Board of Sanitary Commissioners any changes needed to insure compliance with the Federal, State and Local Pretreatment Regulations as listed in the Act and this ordinance.

10.2 Notification of Violation

Whenever the Director finds that any user has violated or is violating this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirements, the Director or his agent may serve upon said user a written Notice of Violation. Within fifteen (15) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Bureau to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. Degrees of Violation are listed in the Muncie Sanitary District "Enforcement Response Guide." The Bureau Notice of Violation is in the form of a Letter of Violation (LOV) as listed in the (ERG).

10.3 Consent Orders

The Director is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 below and shall be judicially enforceable. The Bureau Consent Orders are in the form of Administrative Orders as listed in the Muncie Sanitary District Enforcement Response Guide.

10.4 Show Cause Hearing

The Director may order any user which causes or contributes to violation(s) of this ordinance, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirements, to appear before the Director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate

enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.

10.5 Compliance Orders

When the Director finds that a user has violated or continues to violate the ordinance, wastewater discharge permit or orders issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance with a specified time. If the user does not come into compliance within the time state, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharge to the sewer. A compliance order may not extend the deadline for compliance established for a Federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user. The Compliance Orders are in the form of Enforcement Compliance Schedules, issued by the Bureau, through the Muncie Sanitary District Enforcement Response Guide.

10.6 Cease and Desist Orders

When the Director finds that a user is violating this ordinance, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

10.7 Administrative Fines

- A. Notwithstanding any other section of this ordinance, any user that is found to have violated any provision of this ordinance, its wastewater discharge permit, and orders issued hereunder, or any other pretreatment standard or requirements may be fined in an amount not to exceed one thousand (\$1,000.00) dollars as set forth in the Enforcement Response Guide. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines may be assessed for each day during the period of violation.
- B. Assessments may be added to the user's next scheduled sewer service charge and the Director shall have such other collection remedies as may be available for other service charges and fees.
- C. Unpaid charges, fines, and penalties shall, after sixty (60) calendar days, be assessed an additional penalty of percent, ten (10) percent of the unpaid balance and interest shall accrue thereafter at a rate of five (5) percent per month. A lien against the individual user's property will be sought for unpaid charges, fines, and penalties.
- D. Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit the Director shall convene a hearing on the matter within fifteen (15) days of receiving the request from the industrial user. In the event the user's appeal is successful, the payment together with any interest accruing thereto shall be returned to the industrial user. The Director may add the costs of preparing administrative enforcement actions such as notices and orders to the fine.
- E. Issuance of an administrative fine shall not be a prerequisite for taking any other action against the user.

10.8 Emergency Suspensions

The Director may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately stop or

eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings set forth in Section 10.8 are initiated against the user.

- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Director, prior to the date of any show cause or termination hearing under Sections 10.3 and 10.8.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

10.9 Termination of Discharge

In addition to those provisions in section 5.6 of this ordinance, any user that violates the following conditions of this ordinance, wastewater discharge permits, or orders issued hereunder, is subject to discharge termination.

- A. Violation of wastewater discharge permit conditions.
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge.
- C. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.
- E. Violation of the pretreatment standards in Section 2 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.4 of this ordinance why the proposed action should not be taken.

10.10 Appeals

- A. Any user affected by any decision, action or determination, including cease and desist orders, made by the Director, interpreting or implementing the provisions

of this Ordinance, may file with the Director a written request for reconsideration within ten (10) days of such decision, action, or determination, setting forth in detail the facts supporting the user's request for reconsideration.

- B. If the ruling made by the Director is unsatisfactory to the person requesting reconsideration, he may, within ten (10) days after notification of Bureau action, file a written appeal to the Board of Sanitary Commissioners. The written appeal shall be heard by the board within thirty (30) days from the date of filing. The Board of Sanitary Commissioners shall make a final ruling on the appeal within thirty (30) days of the close of the meeting. The Director's decision, action, or determination shall remain in effect during such period of reconsideration.

53.11 - JUDICIAL ENFORCEMENT REMEDIES

11.1 INJUNCTIVE RELIEF

Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of this ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, the Director may petition the Circuit or Superior Court for Delaware County through the Muncie Sanitary District's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the Muncie Sanitary District. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.

11.2 Civil Penalties

- A. Any user which has violated or continues to violate this ordinance, any order or wastewater discharge permit hereunder, or any other pretreatment standard or requirement shall be liable to the Director for a maximum civil penalty of two thousand five hundred (\$2,500.00) per violation per day. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of the violation.
- B. The Director may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Muncie Sanitary District.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through

the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

- D. Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.

11.3 Remedies Nonexclusive

The provision in Sections 9-12 are not exclusive remedies. The Bureau reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the Muncie Sanitary District's Enforcement Response Guide (ERG). However, the Bureau reserves the right to take other action against any user when the circumstances warrant. Further, the Bureau is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

53.12 - SUPPLEMENTAL ENFORCEMENT ACTION

12.1 Liability Insurance

The Director may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this ordinance, any orders, or a previous wastewater discharge permit issued hereunder, unless the user first submit proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

53.13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

13.1 Upset

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c) are met.
- C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and the industrial user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;
 - (3) The industrial user has submitted the following information to the Bureau of Water Quality and/or POTW within twenty four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided with five (5) days):
 - (I) A description of the indirect discharge and cause of noncompliance
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue
 - (iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

13.2 General/Specific Prohibitions

An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Section 2.1 of this ordinance if it can prove that it did not know or have reason to know that its discharge, along or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the industrial user was in

compliance with each limit directly prior to , and during, the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Muncie Sanitary District POTW was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

13.3 Bypass

- A. (1) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonable be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C. (1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Bureau, at least ten (10) days before the date of the bypass if possible.

(2) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Bureau within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided with five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipate time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received with twenty-four (24) hours.
- D. (1) Bypass is prohibited, and the Director may take enforcement action against an industrial user for a bypass, unless;
 - (I) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (iii) The industrial user submitted notices as required under paragraph (c) of this section.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (D) (1) of this section.

53.14 - METERED/ESTIMATED WASTEWATER VOLUME

14.1 Metered Water Supply

User charges and fees shall be based upon the total amount of water used from all sources unless, in the opinion of the Director, significant portions of water received are not discharged to a sanitary sewer. The total amount of water used from public and private sources will be determined by means of public meters or private meters, installed and maintained at the expense of the user and approved by the Director.

14.2 Metered Wastewater volume and Metered Diversions

For users where, in the opinion of the Director, a significant portion of the water received from any metered source does not flow into the sanitary sewer because of the principal activity of the user or removal by other means, the user charges and fees will be applied against the volume of water discharged from such premises into the community sewer. Written notification and proof of the diversion of water must be provided by the user if the user is to avoid the application of the user charges and fees against the total amount of water used from all sources. The user may install a meter of a type and at a location approved by the Director and at the user's expense. Such meters may measure either the amount of sewage discharge or the amount of water diverted. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Director.

14.3 Estimated Wastewater Volume

- A. Users without source meters. For users where, in the opinion of the Director, if it

is unnecessary or impractical to install meters, the quantity of wastewater may be based upon an estimate prepared by the Director. This estimate shall be based upon a rational determination of the wastewater discharged and may consider such factors as the number of fixtures, seating capacity, population equivalent, annual production of goods and services or such other determinants of water use necessary to estimate the wastewater volume discharged.

- B. Users with source meters. For users who, in the opinion of the Director, divert a significant portion of their flow from a sanitary sewer, the user charges may be based upon an estimate of the volume prepared by the user, provided the user obtains wastewater discharge authorization and pays the applicable user charges and fees. The estimate must include the method and calculations used to determine the wastewater volume and may consider such factors as the number of fixtures, seating capacity, population equivalents, annual production of goods and services, or such other determinations of water use necessary to estimate the wastewater volume discharged.

53.15 - SURCHARGE COSTS

- A. Each person discharging wastewater into the sanitary district sewers shall be subject to a surcharge in addition to the regular sewage service charge based on the biochemical oxygen demand (BOD) and the suspended solids (SS) content of the wastes, if the wastes have a concentration higher than 250 mg/l of BOD and/or 250 mg/l of SS.

(1) Biochemical oxygen demand - 250 mg/l.

(2) Suspended solids - 250 mg/l.

- B. Sampling and testing for surcharges or use charges. The discharged wastewater will be sampled during each sewage billing period for minimum of a one-day period (24 continuous hours) by means of a composite sample. An extended sampling period of up to one week (7 continuous days) or reduction may be requested to enable the gathering of a sample representative of a companies wastewater. The extension or reduction of the sampling period beyond the initial one-day sampling period maybe requested by either the sewer user involved or the Bureau. If an extended sampling period is requested, the parameter values used to calculate the surcharge will be the arithmetical average of the individual values. In the event a company or industry has multiple discharges of wastewater, each discharge shall be sampled according to quality. The volume of each discharge shall be determined by actual measurement or by means of process usage. If significant process changes are made to affect quality of any discharge, resampling may be requested by either the sewer user involved or the Bureau.

- C. The wastewater sample shall be measured for the following parameters: Biochemical oxygen demand (BOD), and suspended matter or solids (SS). These tests shall be made in accordance with the latest editions of Standard Methods for the Examination of Water or by an approved EPA method.
- D. Computation of surcharge. The excess pounds of BOD and of suspended solids will each be computed by multiplying the sewage billing volume measured in units of 100 cubic feet for the current sewage billing period by the factor 0.006238, and then multiplying the differences between the concentration measured in milligrams per liter of the BOD and of the suspended solids, respectively, in the customer's wastewater and the allowed concentrations set out above, resulting in the pounds of each constituent. The surcharge of each constituent will then be determined by multiplying the excess pounds of each constituent by the appropriate rate of surcharge.

53.16 - MISCELLANEOUS PROVISIONS

16.1 Damage to Facilities

When a discharge of wastes causes an obstruction, damage, or any other impairment to the POTW, the Muncie Sanitary District may assess a charge against the user for the work required to clean and/or repair the sanitary sewer system and/or the POTW, and add such charge or charges to the user's charges and fees.

16.2 Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.

16.3 Conflicts

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance, are hereby repealed to the extent of the inconsistency or conflict.

53.17 - EFFECTIVE DATE

This ordinance shall be in full force and effect immediately following its passage, approval and publication, as provided by law.