

DOCUMENT C

Explanation of Procedural/Funding Requirements for State Pretreatment Programs

1. Procedures/Funding to Identify POTWs Which Will be Required to Develop POTW Pretreatment Programs

The State must have the ability to determine which of its municipal permittees will be required to develop a POTW pretreatment program. As section 403.8(a) of the pretreatment regulation explains, POTWs required to develop a program will include those POTWs with a design flow over 5 mgd receiving from industrial users wastes which:

- o pass through the POTW untreated
- o interfere with the operation of the treatment works
- o are subject to pretreatment standards developed under the authority of section 307(b) or (c) of the CWA.

In determining which POTWs are above 5 mgd, the State should look at average design flow. In addition, if one permittee controls several treatment works, the cumulative flow of the treatment works should be considered in calculating average design flow. For example, one Regional Authority controlling 3 treatment works with average design flows of 3, 2 and 2 mgd respectively would be viewed, for the purposes of the pretreatment regulation, as a single operation with an average design flow greater than 5 mgd.

A recommended first step in determining which POTWs over 5 mgd should be required to develop a pretreatment program would be to determine which POTWs receive wastes from one or more industries within the 21 industrial categories listed in the NRDC Consent Decree (for reprinting of Consent Decree see The Environmental Reporter-Cases, 8 ERC 2120). EPA anticipates that categorical pretreatment standards under section 307(b) and (c) will be developed for almost all industrial subcategories within the 21 industrial categories listed in the NRDC Consent Decree. A possible approach to detecting these sources would be to examine industrial inventories such as the Dunn and Bradstreet Market Indicator and the Directory of Chemical Producers, published by the Stanford Research Institute, to determine which of the listed sources are within the State and discharging into POTWs.

A second step in identifying POTWs required to develop a POTW pretreatment program might be to look at those POTWs which are not meeting their permit conditions. Such permittees would be likely candidates for a pretreatment program aimed at controlling pollutants which interfere with the operation of the POTW.

Section 403.8(a) of the pretreatment regulations also gives the State authority to require the development of a pretreatment program by POTWs with average design flows of 5 mgd or less. It is recommended that the State require the development of a program wherever the POTW receives industrial wastes from sources in one or more of the 21 industrial categories listed in the NRDC Consent Decree, is not meeting its permit conditions or where municipal sludge is not meeting applicable requirements. The State is strongly urged to exercise its option to extend the requirement to develop pretreatment program as broadly as possible. The burden of proof for demonstrating that a program is not needed should rest on the POTW. Where there is some doubt that a certain POTW has industrial influent subject to pretreatment requirements, the POTW can be allowed to show that it need not develop a program. In such cases, a clause can be inserted in the municipal permit along with the compliance schedule for the development of a pretreatment program. This clause would state that if the industrial waste inventory required by the compliance schedule demonstrates that the POTW has no significant contribution of industrial wastes which would be subject to pretreatment requirements, the POTW would not be required to continue development of the program.

In brief narrative form, the State should explain those procedures it has currently developed for identifying POTWs above and below 5 mgd required to develop a pretreatment program. The narrative should be accompanied by a statement of the resources currently devoted to this undertaking. If a program to identify appropriate POTWs is planned for the future, the State should indicate what approaches to identifying POTWS will be used and what criteria will be applied in identifying the pollutants and industries subject to pretreatment requirements. The State should also describe briefly its planned procedures for providing technical and legal assistance to POTWs where help is needed in developing a POTW pretreatment program.

2. Procedures/Funding to Notify POTWs of Pretreatment Requirements

The State should indicate those procedures it has developed to notify POTWs of applicable pretreatment requirements as set forth in 40 CFR 403.8(2)(iii). This may consist of a mailing system for distributing information such as copies of the pretreatment regulation and any guidance on developing a POTW pretreatment program prepared by the State or EPA. Any such distribution system should be coordinated with similar information networks employed by State personnel in charge of EPA construction grants.

3. Procedures/Funding to Incorporate Pretreatment Requirements in Municipal Permits

Where States currently have the authority to revoke and reissue or modify municipal permits to incorporate an approved pretreatment program or a compliance schedule for developing such a program, (see Attorney General's Pretreatment statement section 2) they will be required to exercise this authority. Otherwise, a State must include a modification clause in appropriate POTW permits which calls for the incorporation of pretreatment requirements at a later date. The State should indicate to EPA the priorities it will use for incorporating pretreatment requirements into POTW permits and an estimate of the additional resources, if any, which will be required to carry out this task. For example, the State should indicate to the best of its ability:

- o the number of municipal permits which will incorporate pretreatment requirements at the same time as they are revoked and reissued or modified for the purpose of meeting the provisions of 301(i) or 301(h) of the Clean Water Act;
- o the number of expiring municipal permits not receiving 301(i) or 301(h) modifications which will incorporate pretreatment conditions upon reissuance
- o the number of municipal permits to be revoked and reissued or modified to include an approved pretreatment program or a compliance schedule for developing such a program

4. Procedures/Funding to Make Determinations on Requests for POTW Pretreatment Program Approval and Removal Allowances

The State must have the procedures and funding to receive and make determinations on requests for POTW pretreatment program and removal allowance approval. In general this responsibility will require that the State have procedures and funding to:

- o comply with the public notice provisions of section 403.11(b)(1) of the regulation which requires the State to:
 - 1. mail notices of the request for approval to adjoining States whose waters may be affected;
 - 2. mail notices of the request to appropriate area-wide planning agencies (Section 208 of the CWA) and other persons or organizations with an interest in the request for program approval or removal allowance;

3. publish a notice of the request in the largest daily newspapers of the municipality in which the POTW requesting program or removal allowance approval is located. These notices shall indicate that a comment period will be provided for interested parties to express their views on the request for program approval or removal allowance.
 - o Provide a public hearing if requested by any affected or interested party as provided for in section 403.11(b)(2). Notice of such a hearing will be published in the same newspapers where the original notice of request for program or removal credit approval appeared.
 - o Make a final determination on the request if EPA has not objected in writing to the approval of the request during the comment period. In making the final determination, the State should take into consideration views expressed by interested parties during the comment period and hearing, if held.
 - o Issue a public notice of the final determination on the request. This notice shall be sent to all persons who submitted comments and/or participated in the public hearing. In addition, the notice will be published in the same newspapers as the original notice of request for approval was published.

The State should indicate to EPA by October 10, its current ability to carry out these responsibilities, focusing primarily on staffing and funding availability. This assessment should be based on an estimate of the number of POTWs which will be scheduled to receive POTW pretreatment program and removal allowance approval during the remainder of the State's budget year. The State should then indicate the projected resource levels for POTW pretreatment program and removal allowance approval in each of the budget years 1979-1983 based on the estimated number of POTWs requesting program and removal allowance approval during each of these years. Finally, the State should explain how it can insure, to the best of its ability, that the funding required to carry out this activity will be available each year.

5. Procedures/Funding for Identifying and Notifying Industrial Users Subject to Pretreatment Requirements

The pretreatment regulations provide that where a POTW is not required to develop a POTW pretreatment program, the State will assume responsibility for identifying industrial users of the POTW which might be subject to pretreatment standards. The State may

devise its own methods for obtaining this information, including requiring the POTW to identify the industrial users in question. Reference to the Dunn and Bradstreet and Directory of Chemical Producers listings, as mentioned earlier, may provide a convenient first step. In many cases this information may already have been provided by the POTW through part 4 of the municipal permit application form. Through whatever means it chooses, the State should insure that all industrial users which fall within one or more of the 21 industrial categories listed in the NRDC Consent Decree are identified. In addition, the State should identify as subject to pretreatment standards all industrial users which contribute pollutants which interfere with the operation of the treatment works or pass through the POTW untreated.

Once the appropriate industrial users have been identified, the State must ensure that they are notified of all applicable existing pretreatment standards and of applicable pretreatment standards which might be forthcoming. Acceptable procedures would include a mailing list for industrial users or an arrangement with the POTW requiring it to provide the requisite notice.

The State should indicate by October 10, whether it has presently in operation effective procedures for identifying and notifying industrial users currently or potentially subject to pretreatment standards. If such procedures are not currently on line, if for example, information supplied by part 4 of the municipal application form is not sufficiently detailed to provide the required information, the State should indicate how it plans to develop the ability to identify and notify appropriate industrial users. The description of these procedures should be accompanied by an assessment of resources needed to implement them, the current availability of resources to meet this need and plans for obtaining additional resources if required.

6. Procedures/Funding for Identifying the Character and Volume of Pollutants Contributed by Industrial Users to POTWs

Section 403.10(f)(2)(i) of the pretreatment regulation provides that where a POTW is not required to develop a POTW pretreatment program, the State will be required to carry out those procedures which would otherwise have been the responsibility of the POTW. One of these responsibilities is the identification of the character and volume of pollutants being contributed to the POTW by sources subject to pretreatment requirements (see 403.8(f)(2)(ii)). Industrial users subject to pretreatment requirements include those which are subject to pretreatment standards promulgated under section 307(b) and (c) and/or, contribute pollutants which interfere with the operation of the POTW or which pass through the POTW untreated. This responsibility is complicated by the fact that

analytical and monitoring techniques are not yet available to provide a quantitative analysis of the presence of many of the pollutants in question. In recognition of this problem, EPA recommends that States follow the procedures outlined below in developing their inventory of industrial waste contribution.

- o The first step in the waste inventory should be a qualitative analysis of pollutants being contributed by all industrial sources within the system. The individual industrial users should be asked to provide information on the type and approximate quantity of pollutants discharged by the facility. This information should be derived entirely from knowledge of the facility's process and should not require any sampling at the source.
- o Second, the State should review this qualitative information on the pollutants being discharged into the system and remove from further consideration those pollutants which are not within the 129 pollutants to be regulated with national pretreatment standards and/or which are known not to interfere with the operation of the POTW or pass through the POTW untreated.
- o Third, the State (or POTW if the State so directs) will then sample the influent to the POTW to determine which of the pollutants remaining after step two appear in significant concentrations in the influent to the POTW. In carrying out this sampling, the State should use those sampling and analytical techniques set forth in 40 CFR part 136. If a pollutant appears at such a low concentration that it is highly unlikely that it would have an adverse effect on the operation of the POTW, pass through untreated, or if the pollutant does not appear at all in the influent to the POTW, it should be excluded from further consideration.
- o Fourth, the analysis in preceding steps has resulted in a list of those pollutants contributed to the system which may affect the operation of the POTW or pass through the POTW untreated. The next step is to determine which industrial users have such pollutants in their effluent.
- o Fifth, those industrial users identified in step four will be required to do sampling and analysis to quantify the amounts of those pollutants being discharged by that source into the POTW. If necessary, the State may then impose upon that industrial user an effluent limitation which will ensure that such pollutants are discharged at levels which will not interfere with the operation of the treatment works or pass through in unacceptable amounts.

- o Finally, as Federal pretreatment standards for industrial subcategories are promulgated, the State will require that industrial users belonging to those subcategories sample and analyze their effluent to quantify the amount of pollutants regulated by the standard being discharged by that industrial user.

The above procedures can be characterized as a 2-part program. Initially, prior to the development of sampling and analytical techniques for many of the complex pollutants regulated within the 21 industrial categories (and approximately 400 industrial subcategories) set forth in the NRDC Consent Decree, the State will focus on identifying and quantifying only those pollutants which interfere with the operation of the treatment works. Then, as Federal pretreatment standards for the 129 pollutants in the 21 industrial categories emerge, along with recommended sampling and analytical techniques for such pollutants, the State will be required to elicit specific quantitative information on the character and volume of pollutants discharged by industrial users regulated by Federal standards.

POTWs which are required to develop a POTW pretreatment program are responsible for carrying out the industrial waste inventory in lieu of the State (see 403.8(f)(ii) and step 2 of the municipal pretreatment compliance schedule). The State should recommend that this 2-step program be used by such POTWs.

The State should indicate to EPA by October 10 its current ability to carry out the industrial waste characterization program described above. Particular attention should be paid to the availability of resources to implement this survey, the technical ability of the State to sample influent to POTWs as required by step 3 above, and the State's technical ability to develop effluent limitations for industrial users where necessary to control the introduction of pollutants which interfere with the operation of the POTW. The State should discuss those resources and technical abilities which it will need to acquire to fully implement the components of the industrial waste inventory described above.

Procedures/Funding to Make Determinations on Requests for Fundamentally Different Factor Variances

Section 403.13 of the pretreatment regulation provides that States will be responsible for considering requests for fundamentally different factors variances. Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during the development of a categorical pretreatment standard applicable to that user may apply for a fundamentally different factors variance allowing a modification of the discharge limit specified in that standard.

The State must have procedures to review such requests, and make a determination to deny the request or recommend to EPA that the request be approved. In making this determination, the State must consider the factors outlined in 403.13(c) and (d). The State should submit to EPA by October 10, 1978, a discussion of its current ability to consider requests for fundamentally different factor variances. Emphasis should be placed on current funding availability and projected funding needs. In addition, the State should identify the existing or required technical expertise it will need to evaluate the various factors listed in 403.13(c) and (d).

8. Procedures/Funding to Ensure Compliance with Pretreatment Standards and Permit Conditions

Where a POTW is not required to develop a POTW pretreatment program, the State will be required to ensure that industrial users of that POTW subject to pretreatment standards comply with those standards. In order to do so, the State must develop procedures which include the following:

- o Where State law provides adequate authority, the State should have the technical ability to review the technology which the industry proposes to install in order to meet State or Federally imposed pretreatment standards.
- o Once the compliance date for a pretreatment standard has passed, the State must have procedures to receive and analyze the report submitted by the industry, in compliance with the requirements of 403.12(d), indicating whether or not the industry has complied with applicable effluent limitations.

- o The State must develop the administrative and technical ability to receive and analyze the periodic reports submitted by industrial users indicating continued compliance with pretreatment standards (see 403.12(e)).
- o The State must ensure that it has adequate resources and technical expertise to determine, independent of reports submitted by the industrial user, that the user is in compliance with applicable pretreatment standards. For example, the State should have procedures for scheduling periodic checks on industrial users to spot-check compliance, sampling the effluent at the industrial sources and analyzing this effluent to ensure compliance with applicable limitations.

Where a POTW pretreatment program has been developed and the POTW has been granted a removal allowance for certain pollutants, the State must have procedures to:

- o receive and analyze periodic reports from the POTW indicating continued removal at the rate allowed by the POTW's permit and continued compliance with sludge requirements;
- o sample and analyze the influent to and effluent from the POTW to determine, independent of reports submitted by the POTW, that the POTW is maintaining the approved level of removal and is in compliance with all applicable sludge requirements.

It is recognized that the sampling and analytical requirements explained in this section may impose a substantial resource burden on the State. While it is preferred that the State develop its own technical expertise, an acceptable alternative would be for the State to contract with private consultants, universities or other groups with sufficient technical expertise to carry out the sampling and analytical requirements described in this section.