

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 403

[OGC-FRL 2181-2]

### General Pretreatment Regulations for Existing and New Sources

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On January 28, 1981, the Environmental Protection Agency promulgated amendments to the General Pretreatment Regulations for Existing and New Sources (46 FR 9404-9460). On March 27, 1981, the effective date of these amendments was indefinitely postponed, in order to enable the Agency to conduct a Regulatory Impact Analysis under Executive Order 12291 (46 FR 19936, April 2, 1981). On January 31, 1982, pursuant to a rulemaking commenced by the Agency on October 13, 1981 (46 FR 50502-50503), all but four of the amendments were put into effect (47 FR 4518, February 1, 1982). On July 8, 1982, the United States Court of Appeals for the Third Circuit issued an opinion finding that the Agency's original indefinite deferral of the amendments to the general pretreatment regulations contravened the notice and comment provisions of the Administrative Procedure Act. To remedy this violation, the Court directed the Agency to retroactively reinstate all of the amendments, effective March 30, 1981. By today's notice, the Agency is complying with the Court's order and reinstating all of the amendments as of March 30, 1981.

**DATES:** The effective date of the amendments to the general pretreatment regulations originally promulgated on January 28, 1981, is March 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** Bill Diamond, Environmental Protection Agency, Permits Division (EN-336), 401 M Street, S.W., Washington, D.C. 20460, (202) 426-4793.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 26, 1978, the Environmental Protection Agency (EPA) promulgated the General Pretreatment Regulations establishing mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly-owned treatment works (POTWs) (43 FR 27736-27773). Following promulgation, several parties brought actions in Federal court challenging these regulations. On January 28, 1981,

pursuant to the terms of a settlement agreement entered into by some of the parties, EPA promulgated amendments to the 1978 regulations (46 FR 9404-9460). These amendments were originally scheduled to take effect on March 13, 1981. Their effective date was temporarily deferred until March 30, 1981 under the President's Memorandum of January 29, 1981 (46 FR 11972, February 12, 1981). On March 27, 1981, EPA indefinitely postponed the amendments' effective date to enable it to conduct a Regulatory Impact Analysis of the general pretreatment program under Executive Order 12291. EPA published a notice in the *Federal Register* to this effect on April 2, 1981 (46 FR 19936).

Subsequent to EPA's indefinite deferral of the effective date of the general pretreatment amendments, a suit was brought by the Natural Resources Defense Council (NRDC) in the United States Court of Appeals for the Third Circuit challenging EPA's deferral of the general pretreatment amendments without notice and comment (*NRDC v. EPA*, No. 81-2068). On October 13, 1981, while this suit was pending, EPA announced that it was terminating the indefinite deferral of the amendments, making them effective January 31, 1982 (46 FR 50502). In a separate action also taken on October 13, the Agency initiated a rulemaking and invited public comment on the issue of whether the effective date of all or specific portions of the amendments should be further postponed (46 FR 50503). After evaluating the comments received in response to the October 13 proposal, EPA, on February 1, 1982, announced that it was deferring the effective date of four of the amendments pending further analysis but that the remaining amendments would go into effect (47 FR 4518). The four amendments which continued to be deferred were the combined wastestream formula (§ 403.6(e)), the removal credits section (§ 403.7) and the definitions of "pass through" (§ 403(n)) and "interference" (§ 403.3(i)).

On July 8, 1982, the United States Court of Appeals issued its opinion in the NRDC suit, finding that EPA's March 27, 1981 deferral of the amendments to the general pretreatment regulations violated the notice and comment provisions of the Administrative Procedure Act. To remedy this procedural violation, the Court directed EPA to retroactively reinstate all of the amendments as of March 30, 1981, including the four amendments which EPA further deferred on February 1, 1982. At the same time, the court noted that its decision did not "forestall future

agency action with regard to the four amendments, provided such action is taken in compliance with the Administrative Procedure Act."

Pursuant to the Court's direction, EPA is hereby reinstating all of the amendments to the general pretreatment regulations, effective March 30, 1981. The Agency is continuing, however, to deliberate on what future steps might be appropriate with respect to these amendments.

One of the amendments which EPA continued to defer on February 1, 1982, but which is being put into effect by today's action is the combined wastestream formula. This formula triggers the three year compliance deadline for integrated facilities under the electroplating pretreatment standards (see, 40 CFR 413.01). As a result of today's action, these facilities will have three years from the combined wastestream formula's March 30, 1981 effective date, or until March 30, 1984, to comply with the electroplating pretreatment standards. Also as a result of today's action, the time allotted for integrated facilities to submit baseline reports (§ 403.12(b)), fundamentally different factors variance requests (§ 403.13) and category determination requests (§ 403.6) will begin to run. These facilities will have six months from today's date to submit baseline reports and fundamentally different factors variance requests and sixty days from today's date to submit category determination requests.

Today's reinstatement of the amendments to the general pretreatment regulations is being done to rectify past failure to provide notice and comment and is dictated by court order. Thus, there is "good cause" to dispense with notice and comment prior to the reinstatement. See *American Federation of Government Employees, AFL-CIO, v. Block*, 655 F.2d 1153 (D.C. Cir. 1981).

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection through contacting the person listed in the front of this notice. EPA is presently in the process of completing a regulatory impact analysis of the general pretreatment program, of which these amendments are part.

OMB has approved the following information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements have been assigned the following control numbers.

Citation	Title	OMB No. 2040-
40 CFR 122.61 .....	Report by Publicly Owned Treatment Works of New or Increased Pollutant Introduction.	0010
40 CFR 403.6.....	Category Determination Report...	0015
40 CFR 403.7.....	Removal Credit Approval Request.	0020
40 CFR 403.7.....	Removal Credit Self-Monitoring Report.	0025
40 CFR 403.9.....	POTW Pretreatment Program Approval Request.	0016
40 CFR 403.10 .....	State Pretreatment Program Approval Request.	0019
40 CFR 403.12 .....	Industrial Self-Monitoring Report.	0024
40 CFR 403.12 .....	POTW Compliance Schedule Work Plan.	0013
40 CFR 403.12 .....	Industrial Pretreaters Compliance Schedule Reports.	0014
40 CFR 403.12 .....	Baseline Monitoring Report .....	0012
40 CFR 403.12 .....	Industrial Pretreaters Slug Load Notification.	0023
40 CFR 403.12 .....	POTW Maintenance of Monitoring Records.	0022
40 CFR 403.12 .....	Industrial Pretreaters Compliance Attainment Report.	0011
40 CFR 403.13 .....	Fundamentally Different Factors Variance Requests.	0017
40 CFR 403.15 .....	Net/Gross Request Credit for Intake Water Pollution.	0018

**List of Subjects in 40 CFR 403**

Confidential business information, Reporting and recordkeeping requirement, Waste treatment and disposal, Water pollution control.

Dated: September 21, 1982.

Anne M. Gorsuch,  
Administrator.

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