

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 403
[FRL 1327-7]
**General Pretreatment Regulations for
Existing and New Sources of Pollution**
AGENCY: Environmental Protection
Agency.

ACTION: Proposed amendments to final
rules.

SUMMARY: On June 26, 1978, the Environmental Protection Agency published a rule (43 FR 27736-27773) which established mechanisms and procedures for enforcing national pretreatment standards controlling the introduction of wastes from non-domestic sources into publicly owned treatment works (POTWs). Following the promulgation of the General Pretreatment regulations, several actions were brought in Federal court challenging various aspects of these regulations. These actions were subsequently consolidated in the District of Columbia Circuit Court of Appeals in the action *Natural Resources Defense Council, Inc. et al., v. EPA*, No. 78-1803.

On May 31, 1979, EPA entered into an agreement with the Manufacturing Chemists Association, the U.S. Brewers Association and others, which seeks to settle most of the issues raised by the industry parties in this litigation. The Settlement Agreement states that if the following proposed regulations are promulgated as final regulations, the petitioners will not litigate them.

EPA has also proposed other changes because the staff believes they will improve the regulations. A description of the more significant amendments follows.

DATES: Comments are due on or before November 28, 1979.

ADDRESSES: Comments should be addressed to: William Diamond, Esq., Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William Diamond, Esq., at the above address or telephone, (202) 755-2755.

SUPPLEMENTARY INFORMATION:
Background

On February 2, 1977, EPA proposed a rule which would establish mechanisms and procedures for enforcing national pretreatment standards controlling the introduction of wastes from non-domestic sources into publicly owned

treatment works (POTW). On June 26, 1978, after more than a year of consideration during which time 4 public hearings and 16 public meetings were held and more than 400 individual comments received, the Agency promulgated the final general pretreatment regulations, 40 CFR Part 43 (43 FR 27736-27773).

The effect of these regulations is essentially two-fold. First § 403.5 of the regulation sets forth general discharge prohibitions that apply to all non-domestic users of a POTW. The intent of these general limitations is to prevent: (1) interference with the operation of the treatment works, (2) pass-through of pollutants in violation of the POTW's NPDES permit limitations, and (3) municipal sludge contamination.

The second major effect of the regulation is to establish an administrative mechanism to ensure that these general discharge limitations as well as the Federally-developed pretreatment effluent limitations applicable to specific industrial categories are applied and enforced. The regulation envisions three levels of administrative control. Most major POTWs will be required to develop a locally-run pretreatment program to ensure that non-domestic users of the municipal system comply with applicable pretreatment requirements. The development of such programs is fundable through section 201 construction grants. Where POTWs are not required to develop a local program, NPDES States with approved pretreatment programs and EPA will enforce pretreatment requirements.

Following the promulgation of the general pretreatment regulations, several actions were brought in Federal court challenging various aspects of these regulations. These actions were subsequently consolidated in the District of Columbia Circuit Court of Appeals in the action *Natural Resources Defense Council, Inc. et al., v. EPA*. On May 31, 1979, EPA entered into an agreement with three of the Petitioners, the Manufacturing Chemists Association, the U. S. Brewers Association and the Pacific Legal Foundation, seeking to settle substantially all of the issues raised by the industry parties in this litigation. The greater part of the proposed changes to this regulation reflects the provisions of this settlement. The major proposed modifications arising out of the Settlement Agreement are discussed in section A below.

In addition, certain technical and conforming changes are proposed. A discussion of these changes will be found in Section B below.

**A. Proposed Modifications Arising out of
the Settlement Agreement**
1. § 403.3 Definitions

a. § 403.3(h) *Definition of interference.* § 403.3(h) of the existing regulation defines "interference" with the POTW. The amendments to this definition are three-fold. First, the language has been modified to include within the definition of interference only the introduction of those pollutants which "cause or significantly contribute" to a violation of the POTW's NPDES permit. The new language replaces the former provision requiring that a pollutant simply "contribute" to a violation of the NPDES permit to be considered to interfere with the POTW. Thus, this change serves to narrow the circumstances under which a pollutant is deemed to cause interference. It was felt that the "contributes to" language might be interpreted too broadly to include pollutants which did not contribute significantly to a violation of the NPDES permit.

The second sentence in the definition of interference has been amended to specify that a pollutant can be considered a source of interference when it causes or significantly contributes to a violation of regulatory requirements developed under section 405 of the Clean Water Act or pursuant to the provisions of the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or any more stringent State regulations. The previously published language established liability for interference when pollutants contributed to a POTW's failure to comply with criteria, guidelines or regulations developed under these authorities.

Finally, a new provision has been added at the end of the definition which exempts pollutants from being considered as interfering with the POTW when the discharge of such pollutants into the POTW is in compliance with Federal, State or local effluent limits. However, where such pollutants are nevertheless determined to cause or significantly contribute to a violation of the POTW's NPDES permit, the POTW is required to take appropriate action under § 403.5(c) to ensure renewed and continued compliance with its permit. In many instances this will mean a revision of the industrial discharge limits currently applicable to the pollutants in question. The POTW may also determine that corrective measures are better instituted at the treatment works itself or may elect to address non-point or domestic sources of the interfering pollutants.

b. § 403.3(n) *definition of POTW treatment plant.* A new provision, § 403.3(n), defining the term "POTW Treatment Plant" has been added to avoid an ambiguity that now exist whenever a reference is made to a POTW (publicly owned treatment works). § 403.3(m) in the existing regulation defines a POTW to include both the treatment plant and the sewer pipes and other conveyances leading to it. As a result, it is unclear whether a particular reference is to the pipes, the treatment plant, or both. The term "POTW treatment plant" will be used to designate that portion of the municipal system which is actually designed to provide treatment to the wastes received by the municipal system.

c. § 403.3(o) *Definition of pretreatment.* § 403.3(o) [formerly § 403.3(n)] which defines the term "pretreatment" has been modified by adding a comment. This comment identifies equalization tanks or facilities as appropriate pretreatment technologies for the purpose of protecting against surges of influent to the POTW which might interfere with the operation of the treatment works. The comment also recognizes that equalization tanks or other similar facilities have potential to be used as a means of achieving compliance through dilution. Where the use of equalization tanks or similar facilities results in dilution, it is suggested that the authority in charge of the local pretreatment program impose a mass limitation upon the source employing these tanks or facilities.

2. § 403.5 *General discharge limitations.*

a. § 403.5(b)(4) *Limitation on high volume or high concentration flows.* § 403.5(b) prohibits Industrial Users from introducing certain pollutants to a POTW. Subsection (4), has been revised to make clear that pollutants may not be released in a discharge at a flow rate and/or pollution concentration which the User knows or has reason to know will cause Interference in the POTW. Absent notification by the POTW, a User discharging at a normal flow rate and/or concentration will not ordinarily know, or have reason to know, that the discharge is causing Interference. If, however, a User discharges pollutants at an unusually heavy flow rate and/or high concentration, the User should know or have reason to know that Interference to the POTW will result.

b. § 403.5(b)(5) *Limitation on heat.* § 403.5(b)(5) prohibits the introduction of heat into POTWs in amounts which would inhibit biological activity at the POTW. In no case, according to this provision, is heat to be contributed in

such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F). An additional provision has been inserted which requires that the temperature of effluent entering the sewers, pipes or other conveyances leading to the treatment plant not exceed 65°C (150°F). Both temperature limits may be modified if the POTW has received explicit approval from EPA or the State, as appropriate, to apply alternate temperature limits to contributions from Industrial Users. It is anticipated that this new provision will provide Industrial Users with clearer notice of the maximum temperature that can be discharged safely into sewer lines.

c. § 403.5(c). EPA proposes to revise the second sentence of § 403.5(c) to give a POTW flexibility in complying with the terms of its NPDES permit. Where pollutants contributed by users cause of significantly contribute to a recurring violation of an NPDES permit, the POTW must ensure renewed and continued compliance with its permit by: (1) imposing specific effluent limits or Industrial Users and all other users, as appropriate; (2) making modifications to the treatment plant's facilities or operation; or (3) a combination of alternatives 1 or 2. If the POTW does not begin appropriate action to cure an NPDES violation within 30 days of being notified by EPA of the violation, EPA may take appropriate action.

3. § 403.6 *EPA determination of industrial subcategories.*

a. § 403.6(a)(5). § 403.6(a)(5) has been amended to delete the provision allowing for a hearing on EPA's determination as to a particular industry's subcategory classification. EPA does not believe that it is legally required to provide the opportunity for a hearing on such determinations. Industries wishing to challenge EPA's determination may submit a petition to reconsider the decision to the Regional Administrator and the Regional Administrator will be required to respond expeditiously in writing to this petition.

b. § 403.6(a)(6). In addition, subparagraph 403.6(a)(6) has been deleted. This paragraph had provided that Industrial Users failing to seek a determination as to the appropriate subcategory within the prescribed time would be bound by EPA's subsequent determination as to the subcategory. It has been determined that EPA could not legally bar an indirect discharger from raising as a defense to an enforcement action the allegation that its facility is not in the industrial category claimed.

4. § 403.7 *Removal allowances. Redefinition of "Consistent Removal"*

§ 403.7 of the regulation introduces the concept that a POTW must demonstrate "consistent removal" of a pollutant over a specified period of time in order to receive authority to grant a removal allowance to its industrial users. Only when the POTW has demonstrated that it has the capacity to maintain specified levels of removal for industrial pollutants can the approval authority be assured that the POTW can adhere to a consistent level of environmental control.

a. § 403.7(a). § 403.7(a) of the existing regulation defines "consistent removal" as that level of removal observed in 95% of the influent and effluent samples taken at the POTW. In response to concerns that this criterion for judging consistency is unnecessarily stringent, EPA is proposing to redefine "consistent removal." EPA is confident that the proposed language results in the same degree of assurance as to consistent removal while being less burdensome on the POTW. The new provision defines consistent removal as that removal demonstrated by averaging the lowest 50% of the removals measured by 12 or more samples. When between 8 and 11 samples are obtained the average of the lowest 6 samples is used to calculate consistent removal. When less than 8 samples are obtained, the POTW, with the consent of the approval authority, may use alternative means of demonstrating consistent removal. These alternative means might include, for example, the use of mass balance data. If in obtaining the samples the pollutants in question are not measurable in the effluent from the POTW, the limit of measurement may be considered to be the effluent level. Where the pollutant for which the removal allowance is sought is not detectable in the influent to the POTW treatment plant, the level of measurement may not be used to represent the influent concentration.

b. § 403.7(b)(2) *Conditional removal allowances.* § 403.7(b)(2) now provides that Industrial Users are not eligible for removal allowances until the POTW's pretreatment program has been approved. Such approval is not required in some instances until July 1, 1983. Concern has been expressed that this provision might force Industrial Users to make commitments to comply with categorical standards before removal allowances could be obtained, thus resulting in redundant treatment.

EPA therefore proposes to revise § 403.7(b)(2) to provide that, if certain conditions are met, a POTW may revise discharge limits on a conditional basis

prior to approval of its pretreatment program. Industrial Users who wish to obtain the conditionally revised discharge limits must compile and submit to the POTW the information required by § 403.12(b)(1)-(7), and must submit an application for pretreatment program approval in a timely manner. If either the POTW or an Industrial User fails to comply with its commitments, the conditionally revised limits will be withdrawn in accordance with the conditions of subsections (v) and (vi) of this section. If the revised standard is withdrawn due to the POTW's noncompliance, the affected Industrial Users will be given a reasonable time to install pollution control equipment to meet the categorical standards.

c. § 403.7(b)(3) *Removal allowances for POTWs that bypass.* § 403.7(b)(3) of the pretreatment regulation provides that removal allowances may not be authorized for POTWs that bypass untreated wastewater at least once annually unless such POTWs are implementing or have applied for a grant to implement a plan to minimize bypasses in conformance with the requirements of "PRM 75-34" (also known as Program Guidance Memorandum 61). This provision has been modified to allow authorization of removal allowances if POTWs meet one of two conditions. First, POTWs with bypasses may receive removal allowance authorization to revise discharge limits for Industrial Users that demonstrate that they can contain or cease discharges to the POTW during circumstances in which a bypass event reasonably can be expected to occur. Second, POTWs with more than one bypass annually may receive removal allowance authorization if they calculate consistent removal according to an equation which factors in hours of bypassing and, after July 1, 1983, are making an effort to implement a bypass control program in accordance with the requirements of "PRM 75-34."

d. § 403.7(b)(4) *Compliance with sludge disposal requirements as a condition to removal allowances.* EPA is proposing to modify § 403.7(b)(4) in three respects. First, the section will be amended to make clear that EPA will not prohibit revisions to categorical pretreatment standards where the particular pollutant(s) for which the revision is sought will not contribute to the POTW's inability to comply with applicable sludge use or disposal regulations. Secondly, a revision to a discharge limit will be prohibited where the revision will contribute to a violation of the POTW's NPDES permit. Finally, EPA has deleted references to

compliance with "guidelines" or "criteria" adopted under the Solid Waste Disposal Act, the Clean Air Act and the Toxic Substances Control Act, that are not subject to rulemaking procedures including notice and public comment. The deletion of the word "guidelines" is not meant to apply to regulations issued under section 405 of the Act which the Act refers to as guidelines.

e. § 403.7(c) *When removal allowance applications may be submitted.*

§ 403.7(c) has been modified to provide that application for removal allowance authorization may be requested once a year with respect to certain pollutants instead of only at the time of program approval or subsequent permit reissuance as provided for in the existing regulation. All such requests for removal allowance authorization submitted prior to program approval are considered to be "conditional" allowances, as described in § 403.7(b); if the approval authority does not review and make a decision on them. The approval authority may review and make a determination on the POTW's authority to revise discharge limits at any time after the submission of an application for removal allowance approval up until the time of pretreatment program approval. At the time of pretreatment program approval the approval authority is required to review and make a determination on any pending requests for removal allowance approval. Once the pretreatment program has been approved, the approval authority again may review requests for removal allowance approval at its discretion until the reissuance of the POTW's permit, at which time it is required to make a determination on all pending removal allowance requests.

f. § 403.7(c)(2) *(c)(2)(ii) and (c)(2)(iv).* Amendments have been made to these provisions giving the POTW flexibility in demonstrating consistent removal when influent and effluent data are unobtainable.

g. § 403.7(c)(2)(iii) *Sampling to obtain removal data.* § 403.7(c)(2)(iii) now provides that data demonstrating removal shall be obtained through a composited sample taken on each of three consecutive days during each season. EPA proposes to revise this section to spread the sampling period, thus rendering the data less sensitive to short term variations. A minimum of 12 composite samples taken at approximately equal intervals throughout the year will be required. Each effluent sample will be taken approximately one detention time later

than the corresponding influent sample in order to determine how much removal the POTW is achieving. If the prescribed sampling schedule is not representative of the operation of the POTW, as in treatment systems having long detention times, the Approval Authority may require a different schedule. The Approval Authority should use this authority to allow POTW's that began sampling programs to acquire removal data according to the existing requirements of § 403.7(c)(2)(iii) to modify their existing sampling schedules to conform with the new requirements.

h. § 403.7(c)(2)(v) *Provisional credits for new pollutants.* A new paragraph, § 403.7(c)(2)(v), has been proposed to enable the POTW to provisionally revise categorical standards for new pollutants discharged into its system in the same manner as it grants conditional revisions for existing discharges under § 403.7(b)(2). Under the present regulation, a new facility or an existing facility discharging a new pollutant would be required to install the full technology needed to meet applicable pretreatment standards before the pollutant in question could be discharged into the POTW. A removal allowance for these pollutants, with the resultant possible reduction in pollution control technology, could not be granted until a year of operating data demonstrated the removal claimed. The new provision allows the POTW to estimate, based on treatability studies for the pollutants in question or the levels of removal for those pollutants obtained by similar municipal treatment systems, the percentage of removal the POTW would achieve for these pollutants. A reduced discharge limit reflecting this estimated percentage of removal is then applied to the facility. Thus, before commencing discharge, the facility is required to install only that level of technology needed to meet the pretreatment standard as amended by this provisional allowance.

As § 403.7(c) indicates, POTW applications for approval of this estimated or provisional allowance can be requested only once a year and the Approval Authority is allowed to exercise its discretion to withhold official approval of the allowance pending pretreatment program approval, or, if a program has been approved, POTW permit reissuance. In order to obtain a provisional removal allowance, the POTW must comply with the requirements of § 403.7(b)(2) and submit to the Approval Authority the data on treatability or removal at similar POTW's accompanied by the required

certification that the data are true and accurate.

i. § 403.7(e)(4) *Revoking or modifying removal allowances.* § 403.7(e)(4) in the present regulation provides that removal allowances be terminated and technology needed to meet promulgated effluent limits be installed if the POTW fails to maintain the consistent removal demonstrated in the removal allowance application or if the approved allowance results in a violation of the POTW's NPDES permit. This section has been amended to provide that the removal allowance need not be terminated but may be modified where such modification will not result in a violation of the POTW's NPDES permit. No removal allowance shall be modified or withdrawn until there has been notice to the POTW and affected Industrial Users, and an opportunity for a hearing.

The comment to this section states that the provision is not intended to require pretreatment for compatible wastes as a substitute for "adequate" municipal treatment. The word "adequate" refers to efficient operation and maintenance of the existing POTW, not an upgraded or expanded facility. EPA does not contemplate that construction grants would be available to perform any cost-effective analyses of industrial pretreatment versus municipal treatment.

5. § 403.8 *Local pretreatment program requirements.*

a. § 403.8(f)(1)(i) *POTW authority to condition industrial contributions.* § 403.8(f)(1)(i) will be modified to clarify that a POTW must have legal authority to deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW only where such contributions do not meet applicable pretreatment standards or where such contributions would cause the POTW to violate its NPDES permit.

The comment to this section states that the provision is not intended to require pretreatment for compatible waste as a substitute for "adequate" municipal treatment. The word "adequate" refers to efficient operation and maintenance of the existing POTW, not an updated or expanded facility. EPA does not contemplate that construction grants would be available to perform any cost-effective analyses of industrial pretreatment versus municipal treatment.

b. 403.8(f)(1)(vi)(B) *POTW authority to immediately halt contributions from Industrial Users.* EPA proposes to amend § 403.8(f)(1)(vi)(B) to require that POTWs have authority, after informal notice to the discharger, to prevent or

halt discharges that appear to present an imminent danger to the health or welfare of persons. Notice is required so that the discharger will have an opportunity to take steps necessary to avoid or minimize damage to its equipment from the shutdown. If a discharge threatens the environment or the operation of the POTW, notice to affected Industrial Users and an opportunity to respond is required before the POTW halts the discharge.

c. § 403.8(f)(2)(vii) *Newspaper notice of pretreatment violations.* § 403.8(f)(2)(vii) of the present regulation provides for annual notice in the municipality's largest daily newspaper of Industrial Users that were not in compliance with pretreatment standards or other pretreatment requirements during the preceding 12 months. This provision inspired concern that the language might be too broadly interpreted to cover very minor instances of non-compliance, such as the delay of one day in submitting a status report. In response to this concern, the provision has been amended to provide for public notice of significant violations. The amended language establishes criteria for defining such a violation.

6. § 403.9 *POTW application for local pretreatment program approval.*

a. § 403.9(b)(3) *Conditional program approvals.* The existing provision requires that removal allowances be withdrawn if funding is not acquired to implement the delayed elements of a conditionally approved local program within the necessary time period. This provision has been amended to provide that allowances may be modified rather than withdrawn.

b. § 403.9(f) *Notice of insufficiency of local program application.* § 403.9(f) has been amended to provide for public notice by the EPA or State, as appropriate, in the event that it is determined that a submission for pretreatment program approval or removal allowance approval does not comply with the procedural application requirements set forth in the regulation. The present regulation already provides a similar public notice for the Approval Authority's determination on the substantive sufficiency of an application.

7. § 403.10(e) *Development and submission of NPDES State pretreatment programs.*

If a POTW chooses to develop a pretreatment program even though its State already has an approved pretreatment program and has elected to implement the program at the local

level, the POTW will not be eligible for a grant to develop said program. EPA invites comments on this proposed policy.

8. § 403.11 *Approval procedures for local pretreatment programs and removal allowances.*

§ 403.11 of the regulation has been modified so that the procedures set forth therein apply only to POTW pretreatment program approvals and approvals of removal allowances. The existing regulation included State program approval procedures within this section. Procedures for State program approvals will be governed by the procedural requirements found in § 123.61 of the NPDES regulations. § 403.11 has also been modified to include notice of key steps in the approval process to those persons requesting individual notice.

a. § 403.12(b). This section has been modified to clarify that these reports are required only from Industrial Users subject to categorical pretreatment standards—not users to whom other pretreatment requirements including prohibited discharge limits under § 403.5 are applied.

b. § 403.12(b)(4) *Reports required of Industrial Users within 180 days of categorical pretreatment standard promulgation.* § 403.12(b) of the regulation requires that Industrial Users subject to categorical pretreatment standards submit certain information to the control authority (the POTW, NPDES State or EPA, as appropriate) within 180 days after the promulgation of an applicable categorical pretreatment standard. Included among the information required is an indication of the average and maximum flow from the facility to the POTW [§ 403.12(b)(4)]. This provision has been amended to allow for the reporting of *estimated* flows rather than *measured* flows where the control authority approves of these estimates in recognition of cost or feasibility considerations. For example, where the installation of flow monitoring equipment, particularly in older buildings, would require extensive renovation of the facility and result in a disruption of operations for a significant period of time, the control authority could exercise its discretion to allow reporting of an estimate of the flow if this estimate is derived through verifiable techniques.

c. § 403.12(e)(1). § 403.12(e)(1) will be revised to reduce the amount of monitoring and reporting required of Industrial Users. Under the existing regulation, a User would have to provide continuous actual flow monitoring. Concern has been expressed that this

would be virtually impossible for some Users, and very costly for others. The revised section would require that the User report only its measured or estimated average and maximum daily flows (from water bills and other sources) for the reporting period. This will usually provide sufficient data to enable a POTW to make planning and operating decisions. The control authority may require more detailed reporting of flows if necessary, but in most cases this should be preserved for an Industrial User who is a major source of inflow to the POTW or is a significant contributor of pollutants.

B. Proposed Technical, Conforming and Clarifying Modifications

1. § 403.1. Purpose and Applicability.

Ambiguity in the original language of this section led to confusion over the types of pollutants subject to this regulation. The language has been amended to clarify that pollutants contributed to the POTWs by *non-domestic sources* are subject to the regulation, even if the pollutants in question are those traditionally considered to be domestic in nature. Obversely, a non-domestic pollutant introduced by a domestic source would not fall under the purview of this regulation.

2. § 403.3. Definitions.

a. § 403.3(c). § 403.3(c) has been amended to indicate that the EPA Regional Administrator rather than the EPA Administrator should be considered to be the "Approval Authority" in non-NPDES States or NPDES States without an approved State pretreatment program.

b. § 403.3(f). § 403.3(f) has been amended to clarify that pollutants contributed by non-domestic sources are subject to this regulation.

3. § 403.5 General Discharge Limitations.

Concern has been expressed that the provision of § 403.5(d) requiring that specific prohibitions developed by a POTW be incorporated into its NPDES permit would be resource-demanding because of the need to modify the permit each time a prohibition was changed. This section has accordingly been modified to delete the requirement that such prohibitions be incorporated in the permit. Instead, these POTW-developed limits will be deemed "prohibitions" for the purposes of section 307(d) of the Act. As such, a violation of these prohibitions is enforceable against both the applicable Industrial User and

against the POTW under section 309(f) of the Act.

4. § 403.6

a. § 403.6(a)(1). This section has been amended to clarify that an Industrial User may apply for certification as to his subcategory within 30 days after the promulgation date, rather than the effective date, of a candidate pretreatment standard. In addition, the authority to request such certification has been extended to the POTW.

b. § 403.6(a)(iii). This new section has been amended to allow the Enforcement Division Director to waive receipt and review of a State's determination on a particular Industrial User's subcategory.

c. § 403.6(e). This section has been added to establish a procedure for calculating an equivalent concentration limit for cases where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process. In most cases, the enforceable concentration limitation will be applied at the end of the regulated process. However, in cases where it is more cost-effective for the Industrial User to install treatment technology at a point where the process effluent has been mingled with other wastewater, a new concentration unit, reflecting the increased flow from the non-process wastewater, can be calculated. This equivalent concentration limit may not be used where the regulated pollutants, because of the increased dilution or other factors, are no longer detectable in the combined wastewaters.

5. § 403.7. Removal Allowances

a. The introductory paragraphs to §§ 403.7 and 403.7(b) and 403.7(b)(3) have incorporated language modifications which clarify that removal allowances may not be granted for "surrogate" or "indicator" pollutants regulated in categorical pretreatment standards. The use of a surrogate or indicator pollutant has a major import for monitoring activities. Once the technology needed to meet an effluent limitation for a toxic pollutant has been installed and is operating properly, by measuring the amount of surrogate or indicator pollutant in the effluent from the regulated process one should be able to assess the relative quantities of the regulated toxic pollutants in that same effluent. The correlation can be made because one can predict with some confidence that when the technology(s) appropriate for a particular industrial category is installed and resulting in the discharge of a certain amount of an indicator or surrogate pollutant, the appropriate level of removal is also

being achieved for the toxic pollutants in that waste stream. This correlation holds true only where the underlying assumption regarding the type of technology employed remains unaltered. The indicator/surrogate toxic correlation that can be drawn for a particular industrial subcategory presumes the use of a certain class of treatment technologies which are likely to be very different from the treatment technologies employed by the POTW. Therefore, one cannot equate the POTW's ability to remove a certain amount of these surrogate or indicator pollutants with its ability to remove a corresponding amount of the regulated toxic pollutants.

b. § 403.7(e). This section has been modified to change the reference to the "Regional Administrator" to "Approval Authority", thus clarifying that the State Director, where appropriate, should also exercise the authorities contained in this paragraph.

c. § 403.7(f). This new section has been added in order to clarify the requirements for obtaining a removal allowance where the State has elected to run a local pretreatment program in lieu of requiring a POTW to do so.

6. § 403.10. State Pretreatment Programs.

a. § 403.10(b)(1). This section has been amended in order to make it clear that an NPDES State will be required to exercise those authorities related to the operation of a State pretreatment program which it possesses even if the State has not yet obtained approval of its pretreatment program. In most cases these are authorities, such as the authority to apply and enforce requirements under section 307(b) and (c) of the Clean Water Act, which the State already attested to in its application for NPDES program approval.

b. § 403.10(h). The references in this provision to "Administrator" have been changed to "Regional Administrator" to reflect the delegation of the authority to review the initial State program submission from the Administrator to the Regional Administrators.

7. § 403.13. Fundamentally Different Factor Variances

a. This provision was modeled after § 125.31 of the National Pollutant Discharge Elimination System (NPDES) Regulations. A discussion of § 125.31 can be found in 44 F. R. 32893 (June 7, 1979). The primary differences between § 125.31 and the proposed regulation are:

(1) to conform NPDES terminology to pretreatment terminology the following

terms have been changed: "national limits" have been changed to "standards"; "alternative limits" has been changed to "variance"; and "discharger" has been changed to "User."

(2) Section (c)(2)(ii) of the proposed regulation provides that a variance may not be granted if it causes "interference" with a POTW. In the NPDES regulations, § 125.31(b)(2) states that variances may not be granted unless compliance with §§ 208(e) (dealing with areawide waster treatment) and 301(b)(1)(c) (dealing with water quality standards) of the Clean Water Act is ensured.

(3) That part of the comment under § 125.31(d)(1) of the NPDES regulations dealing with 402(a)(1) of the Clean Water Act has been deleted since it is not applicable to indirect discharges.

8. § 403.15 Net/Gross Provision.

The net gross provisions contained herein was modeled after §§ 122.16 (e) and (f) of the NPDES regulations. An explanation of §§ 122.16 (e) and (f) is contained in the preamble to the NPDES regulations, 44 F.R. 32865 (June 7, 1979). The primary difference between the two regulations is procedural: Industrial Users apply to EPA for net/gross credits within 60 days after the applicable categorical pretreatment standard is promulgated, whereas direct dischargers apply for credit at the time they apply for NPDES permits. For purposes of this provision, no net/gross credit shall be given for pollutants found in city water even if the water originates from the same source into which the User's POTW discharges.

9. § 403.16 Upset Provision.

The Upset Provision contained herein was modeled after § 122.14(1) of the National Pollutant Discharge Elimination System (NPDES) regulations. An explanation of § 122.14(1) is contained in the preamble to the NPDES regulations, 44 F.R. 32863 (June 7, 1979). The primary difference between the two regulations is that in the pretreatment regulation, an Industrial User must submit notice of an upset to its POTW whereas in the NPDES regulations, a direct discharger must notify the Regional EPA Administrator or the Director of the State water pollution control agency.

Executive Order 12044

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I

have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 16, 1979.

Douglas M. Costle,
Administrator.

40 CFR Part 403 is amended as follows:

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

§ 403.1 [Amended]

1. Section 403.1 is amended by revising the first sentence of paragraph (b) to read as follows:

* * * * *

(b) This regulation applies: (1) to pollutants from non-domestic sources covered by section 307(b) and (c) Pretreatment Standards 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 established pursuant to sections 307 (b) and (c) of the Act; (3) States which have 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 section 307 (b) and (c) Pretreatment Standards.

§ 403.3 [Amended]

2. Section 403.3 is amended by revising paragraph (c) to read as follows:

* * * * *

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

3. Section 403.3 is amended by revising paragraph (f) as follows:

* * * * *

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

4. Section 403.3 is amended by revising paragraph (h) as follows:

* * * * *

(h) the term "Interference" means inhibition or disruption of POTWs sewer system, treatment processes or

operations which causes or significantly contributes to a violation of any requirement of its NPDES Permit. The term also includes prevention of sewage sludge use or disposal by the POTW in accordance with published regulations providing guidelines under section 405 of the Act or any regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent State regulations (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW. Pollutants in the effluent from an Industrial User shall not be considered to cause Interference where the Industrial User is in compliance with specific prohibitions or standards developed by Federal, State or local governments. Where the Industrial User is in compliance with such specific prohibitions or standards, and pollutants in the effluent from the Industrial User's facility nevertheless are determined to have caused or significantly contributed to a violation of any requirement of the POTWs NPDES permit, and are likely to cause such a violation in the future, the POTW must take appropriate action under § 403.5(c).

* * * * *

5. Section 403.3 is amended by adding a new paragraph (n) which reads:

* * * * *

(n) 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.

* * * * *

6. Section 403.3 is amended by changing paragraph (n) to paragraph (o) and adding the following comment to the end of paragraph (o):

* * * * *

(o) * * *

[Comment: Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges that might interfere with or otherwise be incompatible with the POTW. Where there is reason to believe that the use of equalization tanks or other facilities which have potential for dilution is resulting in dilution, the Control Authority should impose mass limitations on an Industrial User employing such tanks or other facilities in accordance with § 403.12(e)(2).]

* * * * *

7. Section 403.3 is amended by changing paragraphs (o), (p), and (q) to (p), (q), and (r) respectively.

§ 403.5 [Amended]

8. Section 403.5 is amended by revising paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which a discharger knows or has reason to know will cause interference to the POTW.

9. Section 403.5 is amended by revising paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) Heat in amounts which will inhibit biological activity in the POTW Treatment Plant resulting in interference or causing damage, but in no case heat in such quantities that the temperature exceeds 65° C (150° F) at the POTW and 40° C (104° F) at the POTW Treatment Plant unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

10. Section 403.5 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) POTW's developing POTW Pretreatment Programs pursuant to § 403.8 shall be required to develop and enforce specific limits for discharges of the pollutants listed in § 403.5(b)(1)-(5). In addition, where pollutants

contributed by user(s) cause or significantly contribute to a violation of a POTW's NPDES permit, and such violation is likely to recur, the POTW should 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. If within 30 days after notice by EPA of a permit violation to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate action to correct the violation, EPA may take appropriate action. 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.

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When difficulties arise in meeting NPDES permit conditions, it is the responsibility of the POTW to come into compliance with its permit. The POTW

should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

* * * * *

11. Section 403.5 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Where specific prohibitions or limits on the pollutants or pollutant parameters listed in § 403.5(b)(1)-(5) are developed by a POTW, either as a requirement of an approved POTW Pretreatment Program pursuant to § 403.8 or an NPDES Permit, such limits shall be deemed prohibitions for the purposes of section 307(d) of the Act and shall be enforceable in lieu of the general prohibitions set forth in this section.

* * * * *

§ 403.6 [Amended]

12. Section 403.6 is amended by revising paragraph (a)(1) as follows:

* * * * *

(a) * * *

(1) Within 30 days after the promulgation date of a Pretreatment Standard for a subcategory under which an Industrial User believes itself to be included, the Industrial User or POTW may request that the EPA Regional Enforcement Division Director or Director, as appropriate, provide written certification to the effect that the Industrial User does or does not fall within that particular subcategory.

* * * * *

13. Section 403.6 is amended by revising paragraph (a)(4)(ii) as follows:

* * * * *

(a) * * *

(4) * * *

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

* * * * *

14. Section 403.6 is amended by revising paragraph (a)(4)(iii) as follows:

* * * * *

(a) * * *

(4) * * *

(iii) Where the request is submitted by the Industrial User to the Enforcement Division Director or where the Enforcement Division Director elects to modify the Director's decision, the

Enforcement Division Director's decision will be final.

* * * * *

15. Section 403.6 is amended by revising paragraph (a)(5) to read as follows:

(a) * * *

(5) *Requests for hearing and/or legal decision.* Within 30 days following the date of receipt of notice of the Enforcement Division Director's decision as to the Requester's subcategory, 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 determination in writing.

* * * * *

16. Section 403.6 is amended by deleting paragraph (a)(6).

17. Section 403.6 is amended by adding a new paragraph (e) as follows:

* * * * *

(e) Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, an equivalent concentration limit will be derived by the Control Authority as defined in § 403.12 (or by the discharger with the written concurrence of the Control Authority) and applied to the mixed effluent so as to account for the presence of flows not contributed by the regulated process. However, in no event may an equivalent pretreatment limit be used if the regulated pollutants would no longer be detectable by the equipment monitoring the combined wastewaters. The equivalent concentration limit for a specified pollutant would be derived by the use of the following formula:

$$Y = \frac{XF}{F1}$$

Where:

X = Pollutant limit specified in the applicable categorical Pretreatment standard for a process (expressed in mg/l).

Y = Equivalent pollutant limit to be applied to a mixed discharge which includes the wastewater of the regulated process (expressed in mg/l).

F = Wastewater flow generated solely by the regulated process (expressed as an average flow per day).

F1 = Total flow of the mixed discharge including the wastewater from the regulated process (expressed as an average flow per day).

* * * * *

§ 403.7 [Amended]

18. Section 403.7 is amended by revising the introductory text as follows:

* * * * *

This subpart provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical Pretreatment Standards to reflect removal of pollutants by the POTW:

The demonstration of removal shall consist of data which reflect the removal achieved by the POTW for those specific pollutants of concern included on the list developed pursuant to section 307(a) of the Act. A removal allowance shall not be calculated on the basis of a POTW's ability to remove any "indicator" or "surrogate" pollutants which may be limited in the applicable categorical pretreatment standard.

19. Section 403.7 is amended by revising paragraph (a)(1) as follows:

(1) * * *

(1) "Consistent POTW Removal" or "Pollutant Removal" or "Removal" shall mean reduction in the amount of a pollutant or alteration of the nature of a pollutant in the influent to a POTW to a less toxic or harmless state in the effluent. Consistent removal shall be the average of the lowest 50 percent of the removals measured according to § 403.7(c)(2). 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 in its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Provided, however, that 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, such as a mass balance, for demonstrating consistent removal.

[Comment: 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.]

The reduction of alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or it 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 or its sewer system. The inability of monitoring equipment to detect pollutants in the influent to the POTW Treatment Plant shall not, by itself, constitute removal. Provided, however,

that where the pollutant is shown to the Approval Authority to be removed (as defined in this section) during the time it is in the POTW removal may be based upon this showing pursuant to the requirements of this section.

20. Section 403.7 is amended by revising paragraph (b) as follows:

(b) *Revision of categorical Pretreatment Standards to reflect POTW Pollutant Removal.* Any POTW receiving wastes from an Industrial User to which a section 307 (b) or (c) categorical Pretreatment Standard applies may, subject to the conditions of this section, revise the discharge limits for a specific pollutant(s) covered in the categorical Pretreatment Standard, applicable to that user and contained on the list of pollutants developed pursuant to section 307(a) of the Act. Revised discharge limits shall be based upon the POTW's demonstrated capability to remove that (those) pollutant(s). Revision of pollutant discharge limits in categorical Pretreatment Standards by a POTW may be made provided that:

21. Section 403.7 is amended by revising paragraph (b)(2) as follows:

(b) * * *

(2) The POTW has a Pretreatment Program approved in accordance with §§ 403.8, 403.9 and 403.11; provided however, a POTW may conditionally revise the discharge limits for specific pollutants, even though a pretreatment program has not been approved, in accordance with the following terms and conditions. These provisions also govern the issuance of provisional authorizations as provided in § 403.7(c)(2)(v):

(i) All Industrial Users who wish to receive a conditional revision of categorical Pretreatment Standards must submit to the POTW the information required in § 403.12(b)(1)-(7). The submission shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standards as conditionally revised by the POTW.

(ii) The POTW must compile and submit data demonstrating removal in accordance with the requirements of § 403.7(c)(1)-(7). The POTW shall submit to the Approval Authority a removal report which comports with the requirements of § 403.12 (l) and (m). This report shall contain a certification by any of the persons specified in § 403.12(l) or by an independent engineer containing the following statement: "I have personally examined

and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of § 403.7(c). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(iii) The Industrial User must enter into a compliance schedule with the POTW to install technology needed to meet the conditionally revised standards within the time period provided by the applicable categorical Pretreatment Standard(s).

(iv) The POTW must submit to the Approval Authority an application for pretreatment program approval meeting the requirements of §§ 403.8 and 403.9 (a) or (b) 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.

(v) If a POTW grants conditional revision(s) and the Approval Authority subsequently makes a final determination after notice and an opportunity for a hearing that the POTW failed to comply with conditions (ii) or (iv) herein, or that its sludge use or disposal practices are not in compliance with the provisions of § 403.7(b)(4), the conditional revision 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 specified by the Approval Authority. Provided, however, that the conditional revision(s) shall not be terminated where the POTW has not made a timely application for program approval if the POTW has made demonstrable progress toward and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed 1 year, established by the Approval Authority."

(vi) If a POTW grants conditional revision(s) and the POTW or Approval Authority subsequently makes a final determination after notice and an opportunity for a hearing that the Industrial User(s) failed to comply with

conditions (i) or (iii) herein, or failed to meet the dates specified in the compliance schedule required by (iii) herein, the conditional revision shall be terminated by the POTW or the Approval Authority for the non-complying Industrial Users and all non-complying industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within the time period specified in such standard(s).

[Comment: The conditional revision(s) shall not be terminated where a violation of the provisions of this subparagraph results from causes entirely outside of the control of the Industrial User or the Industrial User has demonstrated substantial compliance.]

(vii) The POTW shall submit to the Approval Authority by December 31 of each year the name and address of each Industrial User that has received a conditionally revised discharge limit. If the conditionally revised discharge limit is revoked, the POTW must submit the information in (i) above to the Approval Authority.

* * * * *
22. Section 403.7 is amended by revising paragraph (b)(3) as follows:

(b) * * * * *
(3) The POTW provides consistent removal of each pollutant regulated directly or indirectly by a categorical pretreatment standard for which the discharge limit is to be revised at a level which justifies the amount of revision to the discharge limit. POTWs with combined sewers or systems which at least once annually, bypass untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either (i) or (ii) below:

(i) The Industrial User provides containment or otherwise ceases all discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which a bypass event can reasonably be expected to occur. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(A) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease, during circumstances in which a bypass event can reasonably be expected to occur, all discharges from the regulated processes which contain pollutants for which an allowance is requested.

(B) The POTW has identified circumstances in which a bypass 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 bypass in sufficient time to contain or cease discharging to prevent untreated bypasses from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (C) herein to insure that Industrial Users are containing or ceasing operations during POTW bypasses.

(C) 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 or otherwise ceased during all circumstances in which a bypass event was reasonably expected to occur; or

(ii)(A) The Consistent Removal claimed is reduced pursuant to the following equation:

$$Y = \frac{X}{1+r} \times \frac{8760-Z}{8760}$$

Where X, r, and Y are as specified in § 403.7(c)(4)(i) and where Z = hours per year that bypassing 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 is actually bypassed between the Industrial User and the POTW.

(B) 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's Office of Water Program Operations (WH-546). Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have been committed to by the POTW to minimize pollution from bypasses. 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. Provided, however, that this subsection shall not apply where Industrial User(s) can demonstrate that bypassing does not occur between the Industrial User(s) and the POTW Treatment Plant; in such cases the POTW may calculate discharge limits for such Industrial User(s) pursuant to § 403.7(c).

[Comment: 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 (ii)(A) above so long as: (1) 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 (2) has expressed its willingness to apply, after completing the analysis, for a Construction Grant necessary to implement any other cost effective bypass 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 (ii)(A) above 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 control 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.]

23. Section 403.7 is amended by revising paragraph (b)(4) to read as follows:

(b) * * * * *
(4) Such revision will not contribute to the POTW's inability to comply with its NPDES permit or with applicable sludge use or disposal regulations developed under section 405 of the Act; any regulation affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act; or more stringent State regulations (including those contained in any State sludge management plan prepared pursuant to Subtitle D of SWDA) applicable to the sludge management methods being used.

The POTW will be authorized to revise discharge limits only for those pollutants that do not contribute to the violation of its NPDES permit or any of the above regulations.

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When difficulties arise in meeting NPDES permit conditions, it is the responsibility of the POTW to come into compliance with its permit. The POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

* * * * *
24. Section 403.7 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) Application for: (1) authorization to revise discharge limits for Industrial Users who are or in the future may be subject to categorical Pretreatment Standards; or (2) approval of discharge limits conditionally revised for Industrial Users by the POTW pursuant to § 403.7(b)(2) shall be submitted by the POTW to the Approval Authority. Each POTW may submit such an application no more than once per year with respect to either: (1) any categorical Pretreatment Standard promulgated in the prior 18 months; (2) any new or modified facilities or production changes resulting in the discharge of pollutants which were not previously discharged and which are subject to promulgated categorical standards; and (3) any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures (such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW Treatment Plant). The Approval authority may, however, elect not to review such application(s) upon receipt where the POTW grants conditional revised discharge limits which 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 thereafter. If the Consistent Removal claimed is based on an analytical technique other than the technique specified by the applicable categorical pretreatment standard, the Approval Authority may require that the POTW perform additional analyses.

[Comment: The Approval Authority is encouraged to review applications promptly upon receipt where failure to do so might result in substantial economic hardship to affected Industrial User(s) if such User(s) were required subsequently to install significantly different or more expensive pretreatment equipment in the event the POTW's revision of National Pretreatment Standards is denied or reduced. Prompt review will enable Industrial Users to make plans with greater confidence and will protect the environment from pollution which might result from inappropriate conditional revised discharge limits.]

Requests for authorization to revise discharge limits in categorical Pretreatment Standards must be supported by the following information.

25. Section 403.7 is amended by revising paragraph (c)(2) to read as follows:

- * * * * *
- (c) * * * * *
- (2) Influent and effluent operational

data demonstrating Consistent Removal or other information, as provided for in § 403.7(a)(1) which demonstrate Consistent Removal of the pollutants for which a removal allowance is proposed. These data shall meet the following requirements:

26. Section 403.7 is amended by revising paragraph (c)(2)(i) to read as follows:

- * * * * *
- (c) * * * * *
- (2) * * * * *
- (i) The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a removal allowance is proposed.

27. Section 403.7 is amended by revising paragraph (c)(2)(ii) to read as follows:

- * * * * *
- (c) * * * * *
- (2) * * * * *
- (ii) 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 § 403.7(a)(1).

28. Section 403.7 is amended by revising paragraph (c)(2)(iii) to read as follows:

- * * * * *
- (c) * * * * *
- (2) * * * * *
- (iii) The influent and effluent operational data shall be obtained through composite samples. A minimum of 12 samples shall be taken at approximately equal intervals throughout the year. Each composite sample will consist of discrete flow-proportional samples taken at equal time intervals not to exceed 2 hours. The sampling period shall be a minimum of 24 hours and each effluent sample will be taken approximately one detention time later than the corresponding influent sample except that, if the the Approval Authority determines that such a sampling schedule will not be representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be required. The detention time shall be determined from the flow at the time sampling begins.

29. Section 403.7 is amended by revising paragraph (c)(2)(iv) to read as follows:

- * * * * *

(c) * * *

(2) * * *

(iv) Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. 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. The sampling referred to in paragraphs (c)(2)(i)-(iv) and (c)(5)(ii) 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.

[Comment: Where 40 CFR Part 136 does not contain 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 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.]

All data under (a) or (b) herein must be submitted to the Approval Authority (EPA or NPDES State). Removal for a specific pollutant shall be determined either: (a) 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 (b) 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 § 403.7(a)(1).

30. Section 403.7 is amended by adding a new paragraph-(c)(2)(v) as follows:

(v) For pollutants which are not currently being discharged (new or modified facilities, or production charges) application may be made for provisional authorization to revise the applicable categorical Pretreatment Standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. The procedures for provisional authorization shall be those set forth in § 403.7(b)(2). Once the pollutant is being discharged, Consistent

Removal must be demonstrated pursuant to the requirements of paragraphs (c)(2)(i)-(iv) of this section.

31. Section 403.7 is amended by revising the first sentence of paragraph (c)(5)(i) to read as follows:

(c) * * *
(5) * * *

(i) The data shall be obtained through a composite sample taken during each of the sampling periods selected to measure Consistent POTW Removals in accordance with the requirements of paragraph (c)(2)(iii) of this section. Each composite sample will contain a minimum of 12 discrete samples taken at equal time intervals over a 24 hour period. Where a composite sample is not an appropriate sampling technique, grab samples shall be taken.

32. Section 403.7 is amended by revising paragraph (c)(7) to read as follows:

(c) * * *

(7) The Certification statement required by § 403.7(b)(2)(ii) stating that the Pollutant Removals and associated revised discharge limits have been or will be calculated in accordance with this regulation and any guidelines issued by EPA under section 304(g) of the Act.

33. Section 403.7 is amended by deleting paragraph (d)(3).

34. Section 403.7 is amended by revising paragraph (d)(4) as follows:

(d) * * *

(4) The Approval Authority shall, at such time as it elects to review the Submission for conditional approval under § 403.7(c) or at the time of POTW Pretreatment Program approval or NPDES permit reissuance thereafter authorize the POTW to revise Industrial User discharge limits as submitted pursuant to paragraph (c)(4) of this section which comply with the provisions of this section.

35. Section 403.7 is amended by adding a new paragraph (d)(5) as follows:

(d) * * *

(5) Nothing in these regulations precludes an Industrial User, State, or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization to revise Categorical Pretreatment Standards.

36. Section 403.7 is amended by revising paragraph (e) as follows:

(e) Continuation and withdrawal of authorization.

(1) Following authorization to revise the discharge limits in National Pretreatment Standards, the POTW shall continue to monitor and report on (at such frequencies and over such intervals as may be specified by the Approval Authority, but in no case less than two times per year) the POTW's Removal capabilities for all pollutants for which authority to revise the Standards was granted. Such monitoring and reporting shall be in accordance with § 403.12 paragraphs (g) and (i) of this regulation. Approval of authority to revise Pretreatment Standards will be re-examined whenever the municipal NPDES Permit is reissued, unless the Approval Authority determines the need to re-evaluate the authority pursuant to § 403.7(e)(4). In addition where bypasses of untreated waste by the POTW continue to occur the Approval Authority may condition continued authorization to revise discharge limits upon the POTW performing additional analysis and/or implementing additional control measures as is consistent with EPA policy toward POTW bypass.

37. Section 403.7 is amended by revising paragraph (e)(3) as follows:

(e) * * *

(3) Where the NPDES State has an approved pretreatment program the Regional Administrator may agree, in the Memorandum of Agreement under 40 CFR Part 123.7, to waive the right to review and object to Submissions for authority to revise discharge limits under this section. 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 permitted under 40 CFR Part 123.7(b)(3)(i)(D).

38. Section 403.7 is amended by revising paragraph (e)(4) as follows:

(e) * * *

(4) If, on the basis of pollutant removal capability reports received pursuant to subparagraph (1) of this section or other information available to it, the Approval Authority determines: (i) that one or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of paragraph (b) of this section; or (ii) that such discharge limit revisions are causing or significantly

contributing to a violation of any conditions or limits contained in the POTW's NPDES Permit, the Approval Authority shall notify the POTW and, 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, either withdraw such discharge limits or require modifications in the revised discharge limits. 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 the time to be allowed for new compliance dates, 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.

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When difficulties arise in meeting NPDES permit conditions, it is the responsibility of the POTW to come into compliance with its permit. The POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

39. Section 403.7 is amended by adding a new paragraph (f) as follows:

(f) 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 [see § 403.10(e)] the POTW shall nevertheless be responsible for demonstrating removal as provided for in this section. The POTW will not, however, be required to develop a pretreatment program as a precondition to obtaining approval of the allowance as required by § 403.7(b)(2). Instead, before a removal allowance is approved, the State will be required to demonstrate that sufficient technical personnel and resources are available to ensure that modified discharge limits are correctly applied to affected Users,

and that a consistent level of Removal is maintained.

§ 403.8 [Amended]

40. Section 403.8 is amended by revising paragraph (a) as follows:

(a) *POTW's required to develop a Pretreatment Program.* Any POTW (or combination of POTW's 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 untreated or interfere with the operation of the POTW or are otherwise subject to section 307 (b) or (c) standards will be required to establish a POTW Pretreatment Program. The Regional Administrator or State Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he 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 of untreated pollutants. In addition, any POTW desiring to modify national Pretreatment Standards for pollutants removed by the POTW (as provided for by § 403.7) must have an approved POTW Pretreatment Program.

41. Section 403.8 is amended by revising paragraph (f)(1)(i) as follows:

(f) * * *
(1) * * *
(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.

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When difficulties arise in meeting NPDES permit conditions, it is the responsibility of the POTW to come into compliance with its permit. The POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

42. Section 403.8 is amended by adding a comment to paragraph (f)(1)(iv) as follows:

(d) * * *
(1) * * *

(iv) * * *

[Comment: POTWs and NPDES States are encouraged to develop procedures to ensure the protection of trade secrets and confidential business information. (See 40 CFR Part 2)]

43. Section 403.8 is amended by revising paragraph (f)(1)(vi)(B) as follows:

(f) * * *
(1) * * *
(iv) * * *
(B) Pretreatment Requirements which will be enforced through the remedies set forth in subparagraph (A) 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; 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 for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval Authority finds to be insufficient.

[Comment: The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision.]

44. Section 403.8 is amended by revising paragraph (f)(2)(vii) as follows:

(f) * * *
(2) * * *
(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 annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, during the previous 12 months, were significantly

violating applicable Pretreatment Standards or other pretreatment requirements. For the Purposes of this provision, a significant violation would be those violations which remain uncorrected 45 days after notification of noncompliance; which are part of a pattern of noncompliance over a twelve month period; or which involve a failure to accurately report noncompliance.

§ 403.9 [Amended]

45. Section 403.9 is amended by revising the comment following paragraph (b)(1) as follows:

(b) * * *
(1) * * *

[Comment: For example, where a compliance monitoring program for a source in a certain industrial category is not yet required because the Pretreatment Standard for that industrial category has not been promulgated and no other pretreatment requirements apply to that source.]

46. Section 403.9 is amended by revising the last sentence of paragraph (b)(3) as follows:

(b) * * *
(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.

47. Section 403.9 is amended by revising paragraph (f) to read as follows:

(f) 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 paragraphs (a), (b), (d), and/or (c) of this section, the Approval Authority shall so notify in writing the applying POTW and each person who has requested individual notice and shall publish a notice of noncompliance in the largest daily newspaper of the city or municipality in which the POTW is located. 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 (a), (b), (d), and/or (c) of this section.

§ 403.10 [Amended]

48. Section 403.10 is amended by adding the following sentence to the end of paragraph (b)(1):

- (b) ***
(1) ***

A State will be required to act upon those authorities which it currently possess before the approval of a State Pretreatment Program.

49. Section 403.10 is amended by revising paragraph (c) as follows:

(c) The EPA may exercise the authorities available to it to apply and enforce pretreatment standards and requirements until the necessary implementing action is taken by the State. Failure of a State to seek approval of a State Pretreatment Program as provided for in paragraph (a) or (b) 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.

50. Section 403.10 is amended by revising the first portion of paragraph (d)(1) to read as follows:

(d)(1) Before the Submission date for State Pretreatment Program's, set forth in § 403.10(b), any Permit issued to a POTW which meets the requirements of § 403.8(a) by an NPDES State without an approved State Pretreatment Program shall include a modification clause. This clause will require that such Permits be promptly modified or, alternatively, revoked and reissued after the Submission date for State Pretreatment Program's, set forth in § 403.10(b), to incorporate into the POTW's Permit an approved POTW Pretreatment Program or a compliance schedule for the development of a POTW Pretreatment Program according to the requirements of § 403.8(b) and (d) and § 403.12(h).

51. Section 403.10 is amended by revising paragraph (d)(3) as follows:

(d) ***
(3) Permits issued by an NPDES State after the Submission date for State Pretreatment Program's set forth in

§ 403.10(b) shall contain conditions of an approved Pretreatment Program or a compliance schedule for developing such a program in accordance with § 403.8(b) and (d) and § 403.12(h).

52. Section 403.10 is amended by revising paragraph (e) as follows:

(e) 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.

53. Section 403.10 is amended by revising paragraph (f)(2)(iii) as follows:

(f) ***
(2) ***
(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.

54. Section 403.10 is amended by revising paragraph (g)(1)(i)-(iii) to read as follows:

(g) ***
(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 and regulations which shall be in full force and effect before the time of approval of the State Pretreatment Program.
(ii) Copies of all State statutes and regulations cited in the above statement.

55. Section 403.10 is amended by revising paragraph (h) to read as follows:

(h) 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:

56. Section 403.10 is amended by revising paragraph (h)(2)(i) to read as follows:

(h) ***
(2) ***
(i) If, after review of the Submission as provided for in paragraph (h) of this section, the Administrator determines that the Submission does not comply with the requirements of this part the Administrator 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.

§ 403.11 [Amended]

57. Section 403.11 is amended by revising paragraph (a) to read as follows:

(a) The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of § 403.9 (e) and (f) and/or § 403.7 (b) and (c), as appropriate, to review the submission for compliance with the requirements of § 403.8(f) and/or § 403.7 (b) and (c), as appropriate. 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 (e) and (f) and/or § 403.7 (b) or (c), as appropriate.

58. Section 403.11 is amended by revising paragraph (b) to read as follows:

(b) Within 5 days of the receipt of a Submission which meets the requirements of § 403.8(f), and/or § 403.7 (b) and (c), as appropriate, or at such later time under § 403.7(c) that the Approval Authority elects to review the Submission, the Approval Authority shall:

59. Section 403.11 is amended by revising paragraph (b)(1)(i) to read as follows:

(b) ***
(1) ***

(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:

60. Section 403.11 is amended by deleting paragraph (b)(1)(i)(A), changing paragraph (b)(1)(i)(B) to paragraph (b)(1)(i)(A) and revising it to read as follows:

- (b) * * *
- (1) * * *
- (i) * * *

(A) Mailing notices of the request for approval of the Submission to 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; and

61. Section 403.11 is amended by changing paragraph (b)(1)(i)(C) to (b)(1)(i)(B) and revising this paragraph to read as follows:

- (b) * * *
- (1) * * *
- (i) * * *

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

62. Section 403.11 is amended by revising paragraph (b)(1)(ii) to read as follows:

- (b) * * *
- (1) * * *

(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.

63. Section 403.11 is amended by revising paragraph (b)(1)(iii) to read as follows:

- (b) * * *
- (1) * * *

(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.

64. Section 403.11 is amended by revising paragraph (b)(2)(i) to read as follows:

- (b) * * *
- (2) * * *

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

65. Section 403.11 is amended by revising paragraph (b)(2)(ii) to read as follows:

- (b) * * *
- (2) * * *

(ii) The Approval Authority shall hold a hearing if a 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.

66. Section 403.11 is amended by revising paragraph (b)(2)(iii) to read as follows:

- (b) * * *
- (1) * * *

(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.

67. Section 403.11 is amended by adding a new section (b)(3) as follows:

- (b) * * *

(3) Whenever the Approval Authority elects to defer review of a Submission which authorizes the POTW to grant conditional revised discharge limits under §§ 403.7(b)(2) and 403.7(c), the Approval Authority shall publish public notice of its election in accordance with subsection (b)(1) of this section.

[Comment: The Approval Authority may decide after the comment period provided in this public notice to review the Submission at once.]

68. Section 403.11 is amended by revising paragraph (c) to read as follows:

(c) 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.

69. Section 403.11 is amended by revising paragraph (d) to read as follows:

(d) No POTW pretreatment program 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 objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program 90 days after the date his objections are issued.

70. Section 403.11 is amended by revising paragraph (e) to read as follows:

(e) When, upon undertaking the determination referred to in paragraph (c) of this section, the Approval Authority determines that the Submission will not be approved, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and revisions necessary to bring the Program into compliance with applicable requirements.

71. Section 403.11 is amended by revising paragraph (f) to read as follows:

(f) 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.

§ 403.12 [Amended]

72. Section 403.12 is amended by revising the first part of paragraph (b) to read as follows:

(b) *Reporting Requirements for Industrial Users.* Within: (i) 180 days after the promulgation of a categorical Pretreatment Standard under section 307(b) or (c) of the Act; or (ii) 180 days of the effective date of 40 CFR Part 403 where 307(b) or (c) Categorical Pretreatment Standards are promulgated before the effective date of 40 CFR Part 403, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging in or scheduled to discharge into a POTW will be required to submit to the Control Authority a report which contains the information listed in subparagraphs (1)-(7) of this paragraph.

73. Section 403.12 is amended by revising paragraph (b)(4) to read as follows:

(b) The measured average and maximum flow of the discharge from such Industrial User to the POTW, in gallons per day, or, where approved by the Control Authority due to cost or feasibility considerations, the average and maximum flow of the discharge as estimated by verifiable techniques;

74. Section 403.12 is amended by revising paragraph (b)(5) to read as follows:

(b) (5) The nature and concentration of pollutants in the discharge from each regulated process from such Industrial User and identification of the applicable Pretreatment Standards and Requirements. The concentration shall be reported as a maximum or average level as provided for in the applicable Pretreatment Standard. If an equivalent

concentration limit has been calculated in accordance with § 403.6(e), this adjusted concentration limit shall also be submitted to the Control Authority for approval.

75. Section 403.12 is amended by revising paragraph (e) to read as follows:

(e)(1) Any Industrial User subject to a 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 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.

[Comment: Authority to require more detailed reporting of flow should, in most cases, be preserved for those cases where the Industrial User is a major source of inflow to the POTW Treatment Plant or is a significant contributor of pollutants.]

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) The Control Authority 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 are appropriate. In such cases, the report required by subparagraph (1) of this paragraph shall indicate the mass of pollutants regulated by Pretreatment Standards in the effluent of the Industrial User.

76. A new section, § 403.15, will be added as follows:

§ 403.15 Net/Gross Calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial Users' intake water in accordance with the provisions of paragraphs (a)-(d) below:

(a) Any industrial User wishing to obtain a credit for intake pollutants must make application therefore within 60 days after the effective date of the applicable Categorical Pretreatment Standard. Application shall be made to the EPA Regional Enforcement Office wherein the User is located. 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 User demonstrates:

(1) Its intake water is drawn from the same body of water into which the discharge from its publicly owned treatment works is made; provided, however, no net-gross credit shall be given for pollutants found in city water even if the water originates from the same source to which the the User's POTW discharges; and

(2) The pollutants present in the intake water will not be entirely removed by the treatment system operated by the User; and

(3) The pollutants in the intake water do not vary chemically or biologically from the pollutants limited by the applicable standard; and

(4) The User does not significantly increase concentrations of pollutants in the intake water, even if the total amount of pollutants remains the same.

(b) Standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited by this standard are not removed by the treatment technology employed by the User.

(c) The User shall notify the Regional Enforcement Office if there are any significant changes in the quantity of the pollutants in the intake water or in the level of treatment provided.

(d) The EPA Regional Enforcement Office shall require the User to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any adjustments. The EPA Regional Enforcement Office shall consider all timely applications for credits for intake pollutants plus any additional evidence that may have been submitted in response to the EPA's request. The EPA office shall then make a written determination of the applicable credit(s), if any, state the reasons for its determination, state what additional monitoring is necessary, and send a copy of said determination to the applicant and the applicant's PTOW.

The decision of the Regional Enforcement Office shall be final.

77. A new section, § 403.16, will be added as follows:

§ 403.16 Upset Provision.

(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) *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 specific 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 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) In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance 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) The Industrial User shall control production and all discharges 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 treatment facility is reduced, lost or fails.

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