

**POSTAL SERVICE****39 CFR Part 111****Mail Disputes****AGENCY:** Postal Service.**ACTION:** Proposed rule.

**SUMMARY:** This proposal deals with the situation in which two or more parties claims delivery of the same mail. Present regulations provide that when the parties cannot agree about who should receive the mail or who should act as a receiver, the postmaster may resolve the dispute based on evidence supplied by the parties. When doubtful, the postmaster may submit the case to the regional counsel for a ruling. The postmaster or the regional counsel resolve most such cases on an informal basis. Some cases, however, require a trial-type hearing to resolve the issues.

The Postal Service now proposes to amend postal regulations to refer disputed cases to the Judicial Officer Department if no informal resolution of a dispute is achieved by the regional counsel within 5 working days. The rules of procedure of the Judicial Officer Department would also reflect these changes.

**DATE:** Comments must be received on or before July 22, 1987.**ADDRESS:** Written comments on the proposal should be mailed or delivered to the Associate General Counsel, Office of Field Legal Services, Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-1125. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6015, at the above address.**FOR FURTHER INFORMATION CONTACT:** William P. Bennett, (202) 268-2966.

**SUPPLEMENTARY INFORMATION:** In 1983 a court criticized the lack of due process in the ruling of a regional counsel on who was entitled to delivery of certain mail items. *Congess of Racial Equality v. Boger*, Civil No. 83-0387 (D.D.C., filed March 11, 1983, modified by order filed Jan. 24, 1984). Rather than adding procedural rules and contemplating possible time-consuming hearings at the regional counsel level, it is proposed that mail disputes that cannot be resolved informally by the regional counsel within 5 working days would be forwarded to the Judicial Officer Department for decision in accordance with its rules of procedure.

To carry out the above purpose, 153.72 of the Domestic Mail Manual would be

amended to provide that the regional counsel would have 5 working days within which to reach an informal resolution of a dispute. If resolution cannot be accomplished, the case would be forwarded to the Judicial Officer Department for decision.

Although exempt by 39 U.S.C 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553(b), (c), the Postal Service invites public comments on the following proposed revisions of Part 153 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 2301-3219, 3403-3406, 3621, 5001.

**PART 153—CONDITIONS OF DELIVERY**

2. In 153.7, revise .72 to read as follows:

*153.7 Conflicting Orders By Two or More Parties for Delivery of Same Mail.*

\* \* \* \* \*

.72 Reference to Regional Counsel of Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish the postmaster all available evidence on which they rely to exercise control over the disputed mail. If after receipt of such evidence the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after 5 working days no informal resolution is achieved, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 87-14103 Filed 6-19-87; 8:45 am]

BILLING CODE 7710-12-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Ch. I****[EN-FRL-3218-7]****Approaches to Implementing the Recommendations of the Domestic Sewage Study****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Response to comments on advance notice of proposed rulemaking.

**SUMMARY:** On August 22, 1986, EPA published an Advance Notice of Proposed Rulemaking (ANPR) which outlined the Agency's preliminary approaches to fulfilling the recommendations of the Domestic Sewage Study (51 FR 30166). In that notice, the Agency suggested ways to improve the control of hazardous wastes discharged through sewers to publicly owned treatment works (POTWs) and solicited comments and alternative suggestions from the public.

The Domestic Sewage Study (hereafter referred to as "the Study") was submitted to Congress by EPA in response to section 3018(a) of the Resource Conservation and Recovery Act (RCRA). That provision directed the Agency to prepare a report for Congress on wastes discharged through sewer systems to POTWs that are exempt from regulation under RCRA as a result of the Domestic Sewage Exclusion. The Study examined the nature and sources of hazardous wastes discharged to POTWs, measured the effectiveness of EPA's programs in dealing with such discharges, and recommended ways to improve the programs to achieve better control of hazardous wastes entering POTWs.

To implement the recommendations of the Study, section 3018(b) of RCRA directs the Administrator to revise existing regulations and promulgate such additional regulations as are necessary to assure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment. The regulations must be revised or promulgated by August 1987. The ANPR was the first step towards this goal.

EPA received about seventy written comments from POTWs, industry, and environmental groups on the methods discussed in the ANPR for improving the control of hazardous wastes discharged to sewers. In addition, numerous comments were provided at the public meetings held in September 1986. The Agency will soon prepare proposed

changes to the general pretreatment regulations and take other specific steps in response to the recommendations of the Study and the comments received on the ANPR. Today's notice summarizes the principal comments on all of the issues discussed in the ANPR, including those not directly related to the general pretreatment regulations. This notice also discusses the program and research activities which the Agency has under way to carry out the recommendations of the Study.

**ADDRESS:** Comments may be addressed to Ms. Marilyn Goode, Permits Division, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9534. Although EPA welcomes the views of any member of the public on the issues discussed below, the Agency is not formally soliciting comments in today's notice. EPA will solicit public comments when it proposes regulatory amendments to the general pretreatment regulations and other regulations in response to the recommendations of the Study and the comments already received on the ANPR.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marilyn Goode, Permits Division, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9534. For copies of the Domestic Sewage Study, contact Ms. Carol Swann, Industrial Technology Division, (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 382-7137.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Study and the ANPR arose from the Domestic Sewage Exclusion of RCRA. This exclusion, established by Congress in section 1004(27) of RCRA, provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material also cannot be considered a hazardous waste for purposes of RCRA.

The regulatory exclusion (see 40 CFR 261.4(a)(1)) applies to domestic sewage as well as mixtures of domestic sewage and other wastes that pass through a sewer system to a POTW. The exclusion thus covers industrial wastes discharged to POTW sewers containing domestic sewage even if the industrial wastes would be considered hazardous if disposed of by other means.

The effect of the exclusion is that industrial facilities which discharge such wastes to sewers containing domestic sewage are not subject to certain RCRA generator and transporter requirements, such as manifesting, for

the excluded wastes (although RCRA requirements for other non-excluded hazardous wastes would still apply). In addition, POTWs receiving such wastes mixed with domestic sewage are not deemed to have received hazardous wastes and therefore need not comply with certain RCRA requirements for treating, storing, and disposing of these wastes. However, hazardous wastes delivered to a POTW by truck, rail, or dedicated pipe are not covered by the Domestic Sewage Exclusion. POTWs receiving these wastes are subject to regulation under the RCRA permit-by-rule (see 40 CFR 270.60(c)).

In addition, the Exclusion does not apply to sludge produced by a POTW. While sewage sludge will normally not be a hazardous waste under RCRA, such sludge could be a hazardous waste (and subject to RCRA requirements for generators, transporters, treaters, storers, and disposers) if, for example, it is found to be a RCRA characteristic waste under 40 CFR Part 261 Subpart C, or if it is generated by a POTW which is receiving hazardous waste under 40 CFR Part 261 Subpart D.

The legislative history of RCRA demonstrates that Congress established the Domestic Sewage Exclusion because it assumed that the programs of the Clean Water Act (CWA) can adequately control industrial discharges to sewers. The national pretreatment program, mandated by section 307(b) of the CWA and implemented in 40 CFR Part 403, requires that industrial facilities pretreat pollutants discharged to POTWs to the extent that these pollutants interfere with, pass through, or are otherwise incompatible with the operations of POTWs. The Exclusion avoids the redundancy of subjecting hazardous wastes mixed with domestic sewage to RCRA management requirements when these wastes are already subject to requirements under the CWA, including the pretreatment program.

In 1984, Congress enacted the Hazardous and Solid Waste Amendments to RCRA. The legislative history of these amendments shows that Congress wanted EPA to investigate the effects of the Domestic Sewage Exclusion. To this end, section 3018(a) of the Hazardous and Solid Waste Amendments to RCRA required EPA to prepare:

... a report to Congress concerning those substances identified or listed under section 3001 which are not regulated under this subtitle by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size, and number of generators which dispose of substances in

this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner insufficient to protect human health and the environment.

EPA submitted this report (the Study) to Congress on February 7, 1986 (for a summary of the Study, see 51 FR 30167, August 22, 1986).

Section 3018(b) then requires the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to ensure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment. These regulations are to be promulgated under RCRA, section 307 of the CWA, or any other appropriate authority possessed by EPA. The regulations must be promulgated by August 1987.

As a first step towards promulgating the regulations called for by section 3018(b), the Agency published an ANPR in the *Federal Register* on August 22, 1986 (51 FR 30166). The ANPR presented ideas intended as starting points for regulatory proposals, which, when implemented, would improve the control of hazardous wastes discharged to POTWs. To obtain wider public participation, the Agency also held three public meetings in Washington, DC, Chicago, and San Francisco to solicit additional comments on the ANPR. In addition, EPA held meetings with several interested groups and organizations to obtain the benefit of their advice and expertise.

The comments received on the ANPR represent a diversity of points of view, and reveal that the public has given serious thought to controlling hazardous wastes entering POTWs. EPA intends to use these suggestions and its own accumulated experience to implement the recommendations of the Study.

Following is a summary of the most important comments received on the ANPR and a discussion of the activities which EPA has begun to fulfill the recommendations of the Study.

**II. Issues**

**A. The Domestic Sewage Exclusion**

The commenters expressed almost unanimous support for keeping the Domestic Sewage Exclusion. They generally believed that CWA programs are most appropriate to control hazardous wastes discharged through sewers to POTWs. Most commenters agreed with the conclusion of the Study that regulating these wastes under RCRA would be unnecessary. They believed that treatment by industrial

users and POTWs under the pretreatment and National Pollutant Discharge Elimination System (NPDES) programs was sufficient to protect the environment from the effects of hazardous pollutants discharged to municipal wastewater treatment plants.

However, many commenters also expressed concern about various parts of the pretreatment program which they believed needed to be improved or which they believed had been poorly implemented. Two commenters said that the current state of the pretreatment program did not warrant whole-hearted support of the Domestic Sewage Exclusion. Although these commenters did not specifically advocate repeal of the Exclusion at the present time, they asserted that the Agency must carry out the pretreatment program more effectively before it could continue to recommend keeping the Exclusion. In addition, even those commenters who expressed skepticism about the need for significant changes to the pretreatment program usually had some suggestions for ways to make the program more effective.

EPA agrees that the Domestic Sewage Exclusion should be continued at the present time. The Agency believes that CWA programs, if fully implemented, are adequate to control the effects of hazardous wastes discharged through sewers to the nation's POTWs. However, the conclusions of the Study and the comments received on the ANPR and at the public meetings demonstrate that improving CWA programs is imperative if these programs are expected to continue the burden of justifying the Exclusion. Accordingly, the Agency is prepared to give high priority to those activities which are best calculated to achieve this goal.

A few commenters expressed concern about possible technical and administrative burdens imposed on small POTWs as a result of EPA's follow-up activities.

The Agency is aware that many POTWs are hard pressed for resources to carry out the pretreatment program as effectively as they might wish. EPA intends to consider the impact on smaller municipalities of any regulatory or program changes being evaluated. Many POTWs made suggestions about various ways to accomplish the ends discussed in the Study, and some submitted copies of their own local requirements and ordinances designed to address such problems as spill control, illegal discharges, and trucked-in wastes. The Agency is considering all of these suggestions to determine the maximum degree of flexibility and

autonomy that is consistent with a high quality national program.

#### *B. General Pretreatment Program*

##### **1. Specific Discharge Prohibitions**

As part of its review of the national pretreatment program, the Study recommended modifying the prohibited discharge standards of the general pretreatment regulations to improve control of characteristic hazardous wastes and solvents.

The specific prohibitions forbid discharging certain types of materials which harm POTW collection and treatment systems by creating a fire hazard, causing corrosion or obstruction to flow, or creating heat which inhibits biological activity (see 40 CFR 403.5(b)). The Study and the ANPR discussed expanding these prohibitions to include certain characteristics of hazardous wastes under RCRA (i.e., wastes that are deemed hazardous if they possess certain characteristics). These characteristics of hazardous wastes are ignitability, corrosivity, reactivity, and toxicity measured by the Extraction Procedure (EP) or Toxicity Characteristic Leaching Procedure (TCLP).

The majority of commenters who discussed this issue said that adding the RCRA characteristics as blanket prohibitions to the specific discharge standards would be inappropriate. These commenters stated that materials exhibiting these characteristics often lose their hazardous qualities when they are mixed with domestic sewage in a sewer or treated at a POTW. Whether a particular substance manifested a RCRA characteristic did not indicate the likelihood of pass through or interference, these commenters believed, especially in the case of toxicity (EP or TCLP).

However, some commenters supported adding these characteristics to the specific discharge prohibitions. These commenters often advocated modifying the characteristics to make them more relevant to conditions in POTW collection and treatment systems. A few commenters stated that the characteristics should be measured after discharge into a sewer, rather than at the point of discharge. One commenter, although agreeing that the RCRA toxicity characteristic was not necessarily the most suitable test for pass through or interference, suggested that EPA consider requiring some sort of leaching procedure to test industrial wastewaters because these wastewaters can leak from sewer systems and cause groundwater contamination.

After considering this issue, the Agency has concluded that adding all the RCRA characteristics to the specific discharge prohibitions would not be practical, since these characteristics are often not correlated with the potential for pass through or interference. However, EPA agrees with the commenters who stated that the prohibitions might be improved by modifying these characteristics to take into account such factors as treatment by the POTW. The Agency is accordingly evaluating various adaptations of the RCRA characteristics to make them more relevant to the pretreatment program.

Another recommendation of the Study was that EPA consider amending the specific discharge prohibitions by banning the discharge to sewers of some or all of the RCRA Appendix VIII hazardous constituents. In responding to the discussion of such a ban in the ANPR, the commenters generally disapproved this measure because they believed that POTWs were often the most efficient treaters of such wastes. Several commenters stated that such a ban would inevitably lead to illegal disposal or disposal at already overburdened solid waste disposal sites. In general, the commenters believed that local limits and categorical pretreatment standards were better ways to control these wastes, since these limits or standards may be set whenever pass through or interference is a real concern for a particular constituent. It should be noted, however, that while the commenters did not support a total ban on constituents simply because they were "hazardous", the commenters also did not rule out the possibility of national prohibitions on selected constituents if future available data indicates that these measures are warranted.

One commenter supported prohibiting the discharge of hazardous wastes into sewers because treating them elsewhere might be easier than the other methods suggested by the Study for their control (i.e., conducting research on pollutant fate and effects and developing the appropriate local limits). This commenter also stated that such a ban would be justified to protect worker health and safety.

EPA believes that a national prohibition against discharging some or all Appendix VIII hazardous constituents to sewers would be premature at this time. When more is learned about the fate and effects of these substances in POTW systems and in the environment, the Agency will reconsider the possibility of prohibitions

for selected constituents. Until more data are available, EPA agrees with the majority of commenters who stated that properly developed local limits and categorical standards are at present the most effective way to handle these wastes. The Agency believes that conducting research on pollutant fate and effects and setting appropriate local limits and categorical standards will lead to better control of hazardous wastes.

EPA will solicit comments on all of the possible modifications to the specific discharge prohibitions discussed above when the Agency proposes changes to the general pretreatment regulations to implement the recommendations of the Study.

## 2. General Discharge Prohibitions

The Study and the ANPR discussed three principal ways to implement the general discharge prohibitions against pass through and interference (40 CFR 403.5(a)). These three ways were: (1) Requiring that water quality-based permit limits for additional constituents of hazardous wastes be incorporated into NPDES permits issued to POTWs; (2) moving aggressively to set toxicity-based limits in NPDES permits issued to POTWs; (3) requiring POTWs to develop local limits for problem pollutants even if no POTW permit violation occurs or is threatened.

The Agency received many comments about the relative virtues and drawbacks of these three ways to control pass through and interference. The most favored method was incorporating more water quality-based limits in permits issued to POTWs. POTWs could then use these permit limits to back-calculate local limits to prevent pass through or interference which could lead to a violation of their own permit limits. Several commenters urged prompt issuance of water quality criteria for organic pollutants, especially RCRA hazardous constituents, so that States could establish water quality standards to use in developing additional NPDES permit limits for POTWs (for a discussion of the Agency's efforts in this area, see Part II-C below).

With respect to the use of toxicity-based limits in NPDES permits issued to POTWs, many commenters also supported increasing the use of such limits. However, some commenters expressed concern about the technical difficulties involved in setting permit limits through such testing.

The most commonly expressed concern was the difficulty of linking the toxicity of a POTW effluent to particular influents from a large and varied group

of industrial and domestic contributors. Another concern voiced by some commenters was the desire for a uniform, preferably simple procedure (such as the Microtox Toxicity Testing System) for biomonitoring. Other commenters said that EPA or the States should certify commercial laboratories which perform testing on the effluent from POTWs. A few commenters raised the question of whether toxicity-based limits should be a substitute for, rather than a supplement to, chemically based permit limits, or whether toxicity testing should be conducted on discharges from industrial users.

EPA is currently working to enhance the control of toxics and toxicity in the treatment of municipal wastewater. Improved methods for this control, including suggested toxicity reduction evaluation procedures, will be prepared to help carry out the Agency's "Policy for the Development of Water Quality-Based Permit Limitations" and to carry out section 308 of the new Water Quality Act of 1987 which requires expedited control of toxic pollutants discharged to waters not achieving water quality standards. To help permit writers set limits for toxics, confirmation data on toxics treatability from existing municipal treatment systems will be provided. In addition, EPA will provide case-by-case assistance to Regions, States, and municipalities on identifying and controlling toxics and toxicity in municipal wastewater.

With respect to requiring POTWs to develop local limits in the absence of actual or potential violations of their own NPDES permits, the commenters' reactions were mixed. POTWs must currently develop local limits as needed to prevent pass through and interference. Pass through and interference are defined at 40 CFR 403.3 (i) and (n), recently promulgated on January 14, 1987 (52 FR 5186). Under these definitions, interference occurs when an industrial user (alone or together with other sources) causes a violation of the POTW's NPDES permit or prevents sewage sludge use or disposal by the POTW in accordance with applicable laws. Similarly, pass through occurs when pollutants discharged by an industrial user (alone or together with other sources) pass through the POTW into navigable waters in quantities that, alone or together with other sources, cause a violation of the POTW's NPDES permit.

Several commenters pointed out the disadvantages of the current definitions of these terms. These commenters stated that the definitions would not cover cases where plant efficiency, worker health and safety, or water quality had

been impaired even if no violation of the POTW's NPDES permit had taken place. A few commenters urged EPA to revise the definitions of pass through and interference to include concerns based on worker health and safety, air emissions, and groundwater contamination caused by leaking sewers. For example, one commenter urged EPA to clarify that causing or contributing to worker health and safety problems constituted interference with the POTW's operations. The same commenter urged the Agency to consider interpreting air emissions and groundwater contamination as pass through.

However, other commenters said that requiring local limits in the absence of actual or threatened violation of the POTW's NPDES permit was "regulation for regulation's sake" and would lead to local limits that were neither technically sound nor legally defensible.

One commenter suggested that EPA use two sets of criteria for local limits development (one mandatory and one optional). The first (mandatory) set of criteria would consist of NPDES permit limits, water quality standards, and sludge disposal criteria. Since these already exist for conventional pollutants and many metals, the commenter stated that EPA should now develop these criteria for organic priority and non-priority pollutants, so that POTWs could then be required to derive local limits from these criteria. The second (optional) set of criteria would be based on avoiding impairment of treatment plant efficiency. The commenter suggested that EPA develop guidance for implementing the second set of criteria, so that POTWs could develop local limits for these criteria at their discretion.

EPA is aware of the difficulties involved in requiring local limits for pollutants other than those limited in POTWs' NPDES permits. Nevertheless, the Agency is continuing to evaluate whether such limits may be needed in certain circumstances to protect worker health and safety and the quality of surface water, groundwater, or air. EPA will solicit comments on any suggested modifications to the current requirements when it proposes changes to the general pretreatment regulations to implement the recommendations of the Study.

## 3. Improving Controls on Spills and Batch Discharges, Illegal Discharges, and Discharges by Liquid Waste Haulers

Spills and batch discharges, as well as illegal discharges and discharges by

liquid waste haulers, present special control and operational challenges to POTWs. The Study and the ANPR discussed several ways to strengthen the pretreatment program to handle these problems.

Many commenters strongly supported requiring POTWs and industrial users to have spill prevention and control plans. Several POTWs submitted their own plans for use in developing such requirements. At the same time, POTWs wanted to be allowed maximum flexibility to establish plans for their industrial users, so that conditions peculiar to their localities could be adequately addressed. One commenter urged the Agency to impose control requirements directly on industrial users. Accordingly, the Agency is currently investigating which spill and batch control features (if any) might be suitable for uniform application, including plans for solvent management.

With respect to illegal discharges, several commenters urged the importance of a strong enforcement effort, rather than more regulatory requirements. They stressed the importance of taking vigorous, well-publicized action against the perpetrators of illegal activities and imposing the maximum penalties allowable under the law. It should be noted that since the ANPR was published, the Clean Water Act has been amended to provide heavy civil and criminal penalties for negligent or knowing introduction into a sewer of any substance which could cause personal injury or property damage or (other than in compliance with federal, state, or local requirements or permits) causes the POTW to violate the effluent limitations or conditions of its NPDES permit (see section 312 of the Water Quality Act of 1987).

Concerning trucked-in wastes, the commenters strongly supported the suggestion in the ANPR that such wastes be banned except at discharge points designated by the POTW. Many POTWs stated that they already had such a requirement in their local programs. Some POTWs banned all trucked-in wastes except at designated discharge points, others banned only non-septic wastes. Many commenters also supported monitoring, sampling, and manifesting requirements for trucked-in wastes.

EPA will solicit comments on any modifications to the current requirements on spills and batch discharges and trucked-in wastes when it proposes changes to the general pretreatment regulations to implement the recommendations of the Study.

#### 4. Notification Requirements (RCRA 3018(d))

Notifying POTWs of hazardous waste discharges is essential to the control of such wastes. Without workable notification requirements, any further attempt to regulate hazardous constituents discharged is difficult if not impossible.

Section 3010(a) of RCRA requires that any person who generates or transports a RCRA hazardous waste, or who owns or operates a facility for the treatment, storage, or disposal of such waste, must file a notification with EPA or with a State with an authorized hazardous waste permit program. Section 3018(d) clarifies that wastes mixed with domestic sewage are also subject to this requirement.

The Study recommended, and the ANPR discussed, using CWA authorities to require that industrial users notify POTWs (rather than EPA and the States) of any hazardous wastes discharged to sewers. The commenters expressed very strong support for such notification requirements. Many POTWs stated that such notification was essential to give owners and operators of treatment plants sufficient control of hazardous wastes entering their treatment and collection systems. Some commenters urged notification of State permitting authorities as well. One commenter stated that industrial users should be required to notify EPA of such discharges, because section 3018(d) required it and because such notification would give the Agency more information about the sources and quantities of hazardous wastes entering POTWs and improve EPA oversight of POTWs.

In response to these concerns, EPA is considering proposing an amendment to the general pretreatment regulations to require that industrial users discharging hazardous wastes to sewers notify their POTWs of such discharges. The Agency believes that such notification will give POTWs much needed help in identifying all the substances entering their systems which could be a cause of pass through or interference. The information would also be a useful adjunct to the POTWs' industrial user surveys. EPA will solicit comments on these and other suggested modifications to current notification requirements when it proposes changes to the general pretreatment regulations to implement the recommendations of the Study.

#### 5. Local Limits

The Study recommended that local limits be improved and fully implemented at POTWs to control discharges of organic pollutants and

other hazardous wastes. In the ANPR, the Agency stated that it would issue guidance to POTWs to help them set local limits for hazardous constituents, especially organic solvents and other organic constituents.

In responding to this discussion, many commenters strongly indicated the need for such assistance and urged that EPA issue this guidance as soon as possible. These commenters believed that effective and enforceable local limits were the best way to control hazardous discharges to POTWs.

EPA is planning to issue guidance this summer on limit-setting methodologies that emphasize pass through and interference concerns, including sludge quality and worker health and safety. The guidance will also discuss the use of best professional judgment and the use of toxicity testing to help POTWs set priorities for local limits by identifying discharges of particular concern.

One commenter suggested that when preparing local limits guidance, EPA should concentrate on a subset of Appendix VIII constituents specifically aimed at CWA objectives.

In response, the Agency points out that it has developed a preliminary list of various chemicals, including many Appendix VIII constituents, which the Office of Water plans to evaluate over the next several years. Besides issuing water quality criteria or advisories for many of these constituents (see discussion in Part II-C below) EPA is also considering whether any of these constituents would be appropriate to include in local limits guidance.

Another commenter suggested that EPA develop a list of "priority hazardous chemicals" for wastes that are believed to be toxic but for which little information exists upon which to base a discharge prohibition. The discharge of these chemicals would be temporarily limited, during which time EPA could fund research and prepare recommendations for developing local limits for these chemicals.

The Agency agrees that more research and guidance is needed to help POTWs develop local limits, and has initiated research and begun to prepare guidance accordingly. However, legal constraints may limit EPA's authority to impose temporary or conditional effluent limits before technical bases for such limits are prepared. EPA plans to give high priority to preparing its local limits guidance and amending categorical standards so that limits for additional pollutants can be imposed as soon as is consistent with a sound technical rationale.

Several commenters urged the use of aggregate limits for organic pollutants, instead of individual local limits. These limits would be similar to the Total Toxic Organics (TTO) limits now in effect for the metal finishing industrial category. The commenters believed that such limits would provide more national uniformity and would be easier to develop than individual local limits. EPA is currently evaluating the feasibility of aggregate limits for organics, and will solicit comments on such limits if new requirements are proposed.

One commenter urged prompt reissuance of POTW's NPDES permits as required by 40 CFR 403.8(e) to incorporate the POTW's approved pretreatment program. A violation of local limits, if unenforced, would then also constitute a violation of the POTW's NPDES permit (it was not made clear by the commenter whether the consequence of this unenforced violation should be an enforcement action by EPA against the POTW, or direct federal or State enforcement of local limits).

As another way to carry out local limits more effectively, the Agency also discussed in the ANPR the possibility of requiring POTWs to use a permit system as the basis of their pretreatment programs. Some commenters opposed such a requirement, stating that the quality of local controls for industrial users should be evaluated on a case-by-case basis. Other commenters believed that such a system was essential for consistent and enforceable program requirements. A few industry commenters believed that a permit system would result in better notice of the duties required of industrial users.

Accordingly, the Agency is considering whether to propose amending the general pretreatment regulations to require POTWs to have permit systems as the basis of their pretreatment programs. Although such systems may not be necessary in the case of POTWs with a small number of industrial users, it is possible that better environmental control could be achieved at POTWs through individual agreements with dischargers to ensure that categorical standards, local limits, and monitoring and reporting requirements are uniformly applied and enforced.

As mentioned above, the Agency is also considering whether to modify the general pretreatment regulations to require that local limits be established for hazardous wastes in the absence of NPDES permit limits for these pollutants (for a further discussion of this issue, see Part II-B-2 above). EPA will solicit

comments on any suggested modifications when it proposes changes to the general pretreatment regulations to implement recommendations of the Study.

#### 6. Enforcement of Categorical Standards

The Study recommended stringent enforcement of categorical pretreatment standards. Such enforcement would bring about a significant reduction of pollutant loadings to POTWs, particularly of heavy metals. The ANPR discussed several of EPA's initiatives designed to improve local enforcement, including guidance, audits and inspections of approved pretreatment programs, expanded self-monitoring requirements, and enforcement actions against POTWs with unimplemented programs.

The commenters showed general support for these means of improving the enforcement of categorical pretreatment standards. One commenter urged the Agency to be more stringent with POTWs and States which were lax in their enforcement efforts, possibly by withdrawing approval for State or local pretreatment programs or State NPDES programs if this measure seemed justified.

In response to these comments, EPA will continue to emphasize all activities designed to improve POTWs' ability to enforce compliance with the categorical standards. The Agency has already issued (in July 1986) its *Pretreatment Compliance Monitoring and Enforcement Guidance*. This document gives guidelines for setting monitoring requirements for industrial users, sampling and inspecting industrial users, reviewing industrial user reports, determining industrial user compliance status, setting priorities for enforcement actions, and reporting progress to States or EPA. The guidance also establishes a definition of Significant Industrial User (SIU) for use by POTWs or States in targeting primary implementation activities and recommends a definition of Significant Noncompliance (SNC) for evaluating industrial user performance. EPA expects that this guidance will help POTWs and States to translate regulatory requirements into a workable pretreatment program.

The Agency is also emphasizing audits of approved pretreatment programs and compliance inspections at POTWs. Audits of local programs were originally scheduled to take place once every five years, but EPA's increased emphasis upon audits has resulted in a faster rate, about once every three and one-half years. In addition, EPA is considering developing guidance (including enforcement guidance) on

what constitutes proper implementation of a local program. To this end, the Agency is also considering a regulatory change to specify that certain types of violations of the local program requirements established in the POTW's NPDES permit must be reported in the Quarterly Noncompliance Reports. In the meantime, however, the Agency intends to complete existing enforcement cases against any POTWs with unapproved local programs and will initiate new enforcement actions against POTWs that fail to implement approved programs.

Certain EPA Regions are also compiling inventories of categorical users in areas where there is no approved local program. When these inventories are completed, EPA will consider which control mechanisms are appropriate for such users and will initiate enforcement actions where necessary.

Concerning the proposed amendments to the general pretreatment regulations which would clarify and expand the self-monitoring requirements applicable to industrial users (see 51 FR 21454, June 12, 1986), EPA is currently evaluating the many comments received in response to these proposals. The Agency extended the public comment period on the proposals to allow sufficient time to consider and respond to questions raised about centralized waste treatment facilities. EPA plans to promulgate a final rule in early 1988.

#### C. Categorical Pretreatment Standards

One of the primary recommendations of the Study was that the Agency review and amend categorical pretreatment standards to achieve better control of hazardous wastes. The Study recommended that the Agency modify existing standards to improve control of organic priority pollutants and non-priority pollutants, and that EPA promulgate categorical standards for industrial categories not included in the Natural Resources Defense Council consent decree (*NRDC v. Train*, 8 ERC 2120, D.C.C. 1976). As part of this task, the Study also recommended that the Agency evaluate sources of solvents listed as hazardous wastes under RCRA that are discharged to POTWs and develop sampling and analytical protocols for non-priority pollutants. In addition, the Study recommended that EPA consider including selected RCRA constituents on the CWA priority pollutant list, or adopting an equivalent means of regulating these constituents.

In response to these recommendations, the ANPR listed twelve regulated and unregulated

industries as potential candidates for amended or new categorical standards, and discussed data collection activities already under way for these industries. The unregulated industries are hazardous waste treaters (including centralized waste treaters now covered by the combined wastestream formula), solvent reclaimers, barrel reclaimers, waste oil reclaimers, equipment manufacturers and rebuilders, paint manufacturers, transportation, industrial laundries, and hospitals. The regulated industries are textiles, timber, and pharmaceuticals.

Many commenters agreed that amended or new categorical standards were needed to better control hazardous wastes, especially organic and non-priority pollutants. EPA has already completed work plans for all of the industries mentioned above, and sampling has been completed at several sites in all these categories except textiles and timber. Eight POTWs have been sampled as well. EPA is analyzing wastewaters and sludges for over 350 organics (solvents, pesticides, dioxins, etc.), metals, and the RCRA characteristics including the TCLP.

When all sampling is completed, the Agency plans to publish decision documents for each industrial category. These documents will include a rationale for the Agency's decision to either continue or discontinue further work to establish categorical standards. They can also be used by permit writers and POTWs to control discharges from these industrial sources. They will contain information on the numbers and types of facilities, their operations, treatment systems employed, and wastewater and sludge characterization. Three decision documents will be published in FY 1987 (for hazardous waste treaters, solvent and barrel reclaimers, and pharmaceuticals). Data from the remaining industries sampled will also be available in summary form at the same time.

One commenter suggested that EPA develop "secondary categorical standards" for certain industries, with less stringent requirements than those imposed under most categorical pretreatment standards.

The Agency agrees that discharges from all the industries mentioned above may not warrant the effluent limitations, monitoring, and reporting requirements imposed under categorical pretreatment standards. For this reason, EPA is conducting an extensive evaluation of each industry and will prepare the above-mentioned decision documents before deciding whether to propose new or amended categorical standards for that industry. If no new or amended

standards seem warranted, the Agency may issue guidance in the decision documents to POTWs and permitting authorities to help them control discharges from that industry. EPA believes that this approach is just as effective as promulgating a new "secondary" type of categorical standard.

Another commenter suggested that the Agency promulgate generic rather than categorical standards (i.e., a standard for a particular pollutant applicable to all users). These standards would cover non-categorical users and total pollutant loadings would therefore be reduced.

In response, EPA points out that section 307(a)(5) of the CWA provides that when proposing or promulgating any effluent standard under that section, the Administrator shall designate the *category* or *categories* (emphasis added) of sources to which the effluent standard shall apply. The CWA therefore generally envisions the use of categorical rather than generic standards. Although the Agency could theoretically promulgate a standard and apply it to all users, EPA believes POTWs are better placed to determine which pollutants present sufficient problems for their particular treatment and collection system to justify local limits for these pollutants applicable to all users of the system (at least until further research demonstrates the need for national regulation).

Two industry commenters from the textile and industrial laundry categories stated that categorical standards for their industries were not needed because these industries did not discharge significant amounts of hazardous wastes. Another commenter stated that data presented in the Study justified prompt repeal of Paragraph Eight exemptions for several industries, starting with printing and publishing, industrial and commercial laundries, and equipment manufacturing and assembly.

In response to these comments, EPA emphasizes that the Agency has not yet decided whether to promulgate new or amended standards for any industrial category. As discussed above, the Agency will conduct a thorough sampling and analysis of the wastes discharged from all industries involved before deciding whether such new or amended standards are appropriate. Only after data collection is complete will EPA have the necessary technical basis to make an informed decision about which discharges warrant further national regulation, or whether any Paragraph 8 exemptions should be repealed.

One commenter stated that the best way to control hazardous wastes discharged to sewers was to subject indirect dischargers to the same limitations as direct dischargers, except where it could be shown that the pollutant in question is biodegraded at the POTW.

In response, EPA points out that the Agency has historically applied the CWA section 304(b) factors in developing categorical pretreatment standards, which often result in standards which are equal to best available technology economically achievable (BAT) for toxic pollutants from direct dischargers. The legislative history of the CWA shows that Congress intended categorical standards to be analogous to BAT. In addition, the Agency is presently considering whether to require individual permits of certain industrial users as described in Part II-B-4 above.

Concerning the evaluation of RCRA solvents and the development of sampling and analytical protocols for non-priority pollutants, the ANPR discussed EPA's efforts to develop analytical techniques to evaluate industrial wastewaters for the presence of heretofore unmeasured pollutants, including non-priority pollutants. The commenters expressed broad support for these initiatives and generally indicated that such techniques were much needed to improve the measurement and control of hazardous wastes.

The new analytical methods developed by the Agency are currently being used by EPA laboratories to "measure field samples. The pollutants for which the Agency has analytical methods have been published in a document entitled *The 1986 Industrial Technology Division List of Analytes*. This document covers over 350 organic chemicals (including dioxin, pesticides, solvents) and 75 metals. In addition, EPA is currently engaged in analyzing wastewater sludges using the new TCLP test. The Agency is also developing a computer scan process that will allow samples taken since 1985 to be matched against an existing library of GC/MS standards. EPA will continue to further develop and refine its sampling and analytical programs.

#### *D. Water Quality Issues and Sludge Control*

The Study recommended that EPA develop additional water quality criteria for constituents of RCRA hazardous wastes, particularly pollutants that are not listed as priority pollutants under the CWA. The Study further

recommended that the Agency expand the use of biomonitoring techniques and water quality-based permitting to improve protection of receiving waters. The ANPR discussed activities under way or planned by the Agency to publish additional water quality criteria and to improve receiving water quality.

The commenters expressed strong support for the issuance of water quality criteria which could be used in developing State water quality standards. Many commenters urged that such criteria should be issued as soon as possible, so that these standards could be incorporated into NPDES permits issued to POTWS and used to calculate local limits.

The Agency plans to develop criteria documents at the rate of up to ten a year. In addition, EPA will issue water quality advisories at a faster rate: about fifteen such advisories will be issued in the first quarter of FY 1987. Many RCRA constituents and chemicals evaluated in the Study have been included in the list of chemicals which the Agency plans to address each year. During FY 1987, criteria development will concentrate on a number of the section 307(a) priority pollutants. The RCRA constituents will be handled primarily as water quality advisories. Most advisories will deal with chemicals evaluated in the Study.

The chemicals for which criteria or advisories will be issued are selected according to the new screening methodology discussed in the ANPR. This methodology ranks chemicals according to human toxicity, carcinogenicity, toxicity to aquatic organisms, persistence, exposure potential, presence in domestic sewage sludge, and treatability. EPA expects to rank approximately 150 chemicals this year (most of which are not on the priority pollutant list) as well as further refine the screening system.

The Agency is also continuing to encourage the use of toxicity testing, water quality-based permitting, and biomonitoring techniques. Expanded use of these tools in permits issued to POTWS will go far towards carrying out the recommendations of the Study to improve the quality of receiving waters and implement the prohibitions against pass through and interference. In connection with this effort, the Agency is working with the States to develop a list of waters for which technology-based requirements alone are not sufficient to protect water quality standards. EPA's target, in accordance with the 1987 amendments to the CWA (section 308(a) of the Water Quality Act of 1987) is for States to develop the list of waters and control strategies for these waters within two years of the

amendments. The strategies must include water quality-based controls which will allow achievement of water quality standards within three years after the strategies are established. The Agency also plans to issue guidance in 1987 for developing water quality-based permit limits for toxic pollutants.

Another primary recommendation of the Study was that EPA issue numeric sludge criteria for RCRA hazardous constituents, as well as criteria for the use and disposal of sewage sludge. In response, the ANPR discussed EPA's planned comprehensive sludge management regulations under section 405 of the CWA. Many commenters urged EPA to promulgate technical sludge criteria as soon as possible, so that POTWS could set local limits to prevent interference with their sludge disposal options.

Recently enacted amendments to section 405 of the CWA (section 406 of the Water Quality Act of 1987) have established tight deadlines for promulgating technical criteria for sludge and require that NPDES permits contain limits for sludge. Under these amendments, EPA must promulgate final regulations which identify toxic pollutants of concern in sewage sludge and which set numerical limits and/or management practices for each pollutant identified. The Agency must also propose regulations which identify other toxic pollutants that may be present in sewage sludge in concentrations that may harm human health or the environment, and must propose numerical limits for these pollutants. The limits must be included in any NPDES permit issued to a POTW or any other treatment works treating sewage sludge, unless the limits have been included in a federal permit program, or under a State permit program approved by the Administrator.

EPA is presently developing regulations for each of the principal methods for using and disposing of sewage sludge, including land application to food chain and non-food chain crops, distribution and marketing, land filling, incineration and ocean disposal. EPA also plans to incorporate certain requirements into these regulations so that they will be consistent with other relevant statutes such as the Clean Air Act, the HSWA amendments to RCRA, and the Marine Protection, Research, and Sanctuaries Act. The requirements will be expressed as either numeric criteria for sludge constituents, reuse and disposal rates, or management practices.

The amendments to the CWA also require that, before promulgating technical criteria, the Administrator

must impose conditions in NPDES permits issued to POTWS or take such other measures as deemed appropriate to protect human health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. This means that permit limits for sludge must be set on a case-by-case basis until the technical criteria are promulgated. The Agency plans to publish draft guidance on setting case-by-case permit limits for sludge in the fall of 1987. In addition, the Agency will propose regulations for developing State sludge management programs.

These regulations and guidance will give States and municipalities a sound basis for making sludge management decisions that are appropriate and cost-effective. EPA will continue to promote those municipal sludge management practices that provide beneficial uses for sludge while improving environmental quality and protecting human health.

#### *E. Research and Data Collection*

In addition to recommending regulatory and program changes to improve control of hazardous constituents, the Study recommended certain research and data collection efforts to fill information gaps on the sources and quantities of hazardous wastes and their fates and effects in POTW systems and the environment. These efforts included research on pollutant fate and effects in POTW collection and treatment systems (including examination of the effect of biological acclimation on POTW removal efficiencies and pollutant fate), research on air emissions at POTWS, and research on the possible sources of groundwater contamination from POTWS (especially exfiltration from sewers). If the recommended research discovered problems, RCRA, the Clean Air Act, and the Comprehensive Response, Compensation, and Liability Act (CERCLA) could be considered along with the CWA to control hazardous discharges to POTWS.

The ANPR discussed several research activities under way at the Agency in response to these recommendations. The commenters supported these activities and generally indicated that more research was needed before the Agency proposed extensive new regulations to control hazardous wastes discharged to sewers.

Two of the research efforts recommended by the Study and discussed in the ANPR (development of sampling and analytical protocols and evaluation of RCRA solvents discharged to POTWS) are part of the development



of new or amended categorical standards as discussed in Part II-B above. With respect to research on pollutant fate and effects in POTW systems and the environment, EPA is currently conducting pilot studies which involve spiking a POTW influent with 25 RCRA compounds to determine their fates in acclimated and unacclimated POTW systems. Partitioning of pollutants to sludge, atmosphere, or effluent through adsorption, volatilization, and biodegradation will be examined under acclimated conditions (in which chemicals are added steadily so that the biological system has time to acclimate) and under unacclimated conditions (in which chemicals are added once a month so that there is no chance for the biological system to acclimate).

The results of these studies will be used to develop predictive models for the probable fate of pollutants. Fate mechanisms for up to forty compounds will be evaluated. At the same time, detailed laboratory studies of biodegradation will be conducted to enable construction of predictive models using biodegradation kinetic rate constants. Preliminary results of these studies should be available around October 1987. In addition, the Agency will use laboratory reactors to study inhibition levels for about twenty compounds under both acclimated and unacclimated conditions (acclimated biomass will be obtained from the pilot studies described above). Concentrations of individual compounds will be gradually increased in the reactor until inhibition is observed. Results will be available about January 1988.

EPA also plans to develop a protocol to assess the bioaccumulation of NPDES effluents. Laboratory procedures will be drafted and tested on selected effluents, and the Agency plans to issue a guidance document on the protocol in September 1987. At approximately the same time, EPA will issue a health effects bioassay methods manual for determining whether receiving streams meet water quality standards. The methods discussed will be used to evaluate and predict genotoxicity, mutagenicity, and carcinogenicity associated with waters receiving complex chemical effluents.

EPA is also evaluating air emissions from POTWs for potentially hazardous air pollutants and volatile organic compounds. The initial emphasis will be on emissions from the organic chemicals, plastics, and synthetic fibers industrial category but the scope could

be expanded to cover other industries such as pesticides, pharmaceuticals, and pulp mills. EPA is using data from this assessment to evaluate air emissions formed from the treatment of wastewaters (by such means as air stripping) and on possible emission controls.

The result of this project will be an EPA memorandum in 1987 recommending whether or not to regulate air emissions from industrial wastewater treatment and recommending which additional data are needed to prepare regulations.

In addition, the Agency plans to conduct investigations on the emissions of certain chlorinated compounds from POTWs and chemical plants. The results of this work will lead to a decision on whether further standards are necessary for the control of chlorinated hydrocarbon emissions or acrylonitrile from these sources.

The Agency also plans to conduct research on groundwater contamination caused by exfiltration from sewers. EPA will first develop an empirical model expressing the relationship between infiltration and exfiltration. The model will then be validated with field data so that the actual effect of sewer exfiltration on groundwater quality can be determined (this determination is currently expected in 1988). EPA may then conduct a further modeling study on selected major drinking water aquifers (if this study is conducted, it should be completed in 1989).

### III. Summary of Domestic Sewage Study Follow-up Activities

Below is a list of the activities discussed in this notice which the Agency has under way to carry out the recommendations of the Study. For each activity, a lead person is named who may be contacted for further information about that activity.

Changes to the general pretreatment regulations—Marilyn Goode (202-475-9534), Office of Water Enforcement and Permits (EN-336)

Proposed changes to general pretreatment regulations on industrial user self-monitoring (PIRT recommendations)—George Young (202-475-9539), Office of Water Enforcement and Permits (EN-336)

Local limits guidance—Leanne Hammer (202-475-95-28), Office of Water Enforcement and Permits (EN-336)

Audits of approved pretreatment programs—Tom Laverty (202-475-7054), Office of Water Enforcement and Permits (EN-336)

Inventories of industrial users not covered by pretreatment programs—Anne Lassiter (202-475-8307), Office of Water Enforcement and Permits (EN-338)

Changes to categorical pretreatment standards—Tom O'Farrell (202-475-7137), Office of Water Regulations and Standards (WH-552)

State sludge management programs and guidance—Martha Kirkpatrick (202-475-9517), Office of Water Enforcement and Permits (EN-336)

Sampling and analytical protocols—Bill Telliard (202-382-7131), Office of Water Regulations and Standards (WH-552)

Water criteria and advisories—Dave Sabock (202-475-7318), Office of Water Regulations and Standards (WH-585)

Screening methodology for ranking chemicals—Frank Gostomski (202-475-7321), Office of Water Regulations and Standards (WH-585)

List of State waters needing water quality controls—Tim Stuart (202-382-7074), Office of Water Regulations and Standards (WH-553)

Sewage sludge criteria—Alan Rubin (202-475-7311), Office of Water Regulations and Standards (WH-585)

Pilot studies on fate of pollutants in POTW systems—Dollof Bishop (513-684-7629), Office of Research and Development (WERL—Cincinnati)

Evaluation of air emissions from wastewater treatment—Vivian Thomson (202-475-7360), Office of Air Policy (ANR-443)

Research on emissions of hydrochlorinated compounds—Vivian Thomson (202-475-7360), Office of Air Policy (ANR-443)

Research on groundwater contamination—Walt Gilbert (202-382-7370), Office of Water Regulations and Standards (WH-595)

Dated: June 5, 1987.

Lawrence J. Jensen,  
Assistant Administrator for Water.

[FR Doc. 87-13924 Filed 6-19-87; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR PART 52

[A-3-FRL-3220-7]

### Approval and Promulgation of Implementation Plans; Approval of a Revision to the Pennsylvania SIP

AGENCY: Environmental Protection Agency.