



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

Mr. Robert F. Babcock  
Michigan Department of Natural Resources  
Pretreatment Field Support Unit  
Surface Water Quality Division  
Lansing, Michigan 48909

Dear Mr. Babcock:

Thank you for your letter of December 16, 1991. Your letter requests guidance concerning the applicability of categorical pretreatment standards and when an industrial user (IU) may be deemed a significant industrial user (SIU) as defined by 40 CFR Part 403.3(t). This letter first addresses the broad question of when an industry is subject to categorical pretreatment standards, since that is one of the criteria for an IU to be defined as a SIU. If an IU does not meet this criterion, it may be considered a SIU based on one of the other three criteria provided in the definition of SIU under 40 CFR Part 403.3(t)(1)(ii). Once defined a SIU, minimum requirements are established for the control authority (e.g., issuance of an individual control mechanism).

A SIU includes "All industrial users subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N" (40 CFR Part 403.3(t)(1)). For this purpose, an IU is deemed to be a categorical industrial user (CIU) when it meets the applicability requirements for a specific category and is subject to pretreatment standards for existing sources (PSES) or pretreatment standards for new sources (PSNS).

While there are many industrial categories with promulgated effluent guidelines and standards, not all contain PSES or PSNS requirements. Where an IU falls within a promulgated industrial category that only provides reference to 40 CFR Part 403 or Part 128 (e.g., the prohibited discharge standards), this alone would not be considered PSES or PSNS requirements, and therefore, it would not be considered an IU subject to categorical pretreatment standards. This position has been articulated in Pretreatment Bulletin #3 (November 6, 1987) and in a memorandum entitled "Non-Consent Decree Categorical Pretreatment Standards" from James Elder, Director, Office of Enforcement and Permits, dated August 24, 1988 (attached).

The following restates the issues of concern to you, as we understand them, and provides our response. In some cases, we have reworded your questions to apply to broader situations that

are encountered throughout the Regions and States.

1. Should the Sugar Processing (40 CFR Part 409) and Feedlot (40 CFR Part 412) categories be considered industrial categories with categorical pretreatment standards?

Answer: Yes. Any promulgated industrial category with at least one subpart containing either PSES or PSNS requirements would be considered an industrial category with categorical pretreatment standards. In short, Subpart A of the Sugar Processing category and Subparts A & B of the Feedlots category are considered to have PSES or PSNS requirements. Therefore, an industrial user subject to one of these subparts would be considered a CIU, and thus automatically a SIU. This position has been articulated in a memorandum entitled "Conventional Pollutants Regulated by Categorical Pretreatment Standards", from James Elder, Director, Office of Enforcement and Permits, dated February 16, 1989 (attached).

2. Michigan DNR has prepared a list of all industrial categories with categorical pretreatment standards and found in Title 40 Chapter I, Subchapter N of the Code of Federal Regulations. Does EPA concur with this list?

Answer: We have reviewed this list and find that it is missing two categories, Sugar Processing (40 CFR Part 409) and Feedlots (40 CFR Part 412). A comprehensive list of industrial categories with categorical pretreatment standards (PSES or PSNS) has been enclosed for your reference. This list was excerpted from EPA's "National Pretreatment Program Report to Congress" on pg. 5-5.

- 3a. Where an industrial user operates a categorical process, but no regulated process wastewater is discharged or has the potential to be discharged to the publicly owned treatment works (POTW), should the IU be considered a categorical industrial user, and therefore a SIU even if they discharge other unregulated process or sanitary wastes?

Answer: No. If the only wastestream that an industrial user discharges or could potentially discharge to the POTW is not subject to PSES or PSNS requirements, it is not a categorical industrial user for purposes of that discharge or for purposes of 40 CFR Part 403. An example of this situation would be a metal finisher that discharges its sanitary wastes to

the POTW and all of its regulated process wastewater to a receiving water under a NPDES permit. This facility would not be considered a categorical industry for purposes of the SIU definition since no PSES or PSNS requirements would apply.

Of course, noncategorical IUs are still subject to the General Pretreatment Regulations and local limits, and may still warrant periodic inspection and monitoring by the control authority.

- 3b. If a categorical pretreatment standard requires testing or a certification statement (i.e., certification that a particular pollutant or process is not used, as in the case of paper and pharmaceutical standards) and a categorical industry certifies that it does not use the pollutant of concern, is it still a categorical industrial user?

Answer: Yes. If the IU meets the applicability requirements of the categorical standard, and is subject to specific PSES and PSNS requirements, then it would be considered a CIU and thus a SIU.

Is the certification a one-time statement, or is it required as part of the categorical industry's continued compliance report?

Answer: Should the categorical pretreatment standard require a testing or certification statement, the CIU must report and certify that they are not using the pollutant of concern, and this must be done semiannually as required by 40 CFR Part 403.12<sup>1</sup>, unless specified otherwise by the categorical pretreatment standard.

- 3c. If an IU is subject to a categorical pretreatment standard which provides a requirement of "no discharge of pollutants", or similar requirement, is the IU considered a CIU?

Answer: Yes. There are a number of categorical pretreatment standards which have PSES or PSNS requirements that contain such language. An IU subject

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<sup>1</sup>This certification provision only applies where prescribed by a categorical pretreatment standard. Any IU that is subject to categorical pretreatment standards (PSES or PSNS) that does not contain a certification requirement must sample and report on all regulated pollutants at least twice per year even if it is not using the pollutant of concern.

to this particular PSES or PSNS requirement is considered a CIU, and thus a SIU. However, if the only wastestream that an IU discharges or could potentially discharge to the POTW is not subject to PSES or PSNS (i.e., sanitary wastes), then the analysis would be as set forth in question 3a above and the facility would not be considered a CIU.

This further develops the position articulated in the memoranda from James Elder, dated August 24, 1988 and February 16, 1989, referred to above.

- 3d. If a facility has a regulated process wastestream and employs a treatment system that results in 100% recycle, is it considered a CIU?

Answer: The situation here is essentially the same as in question 3a. If the IU uses a 100% recycle of regulated process wastewater and at no time has or will discharge regulated process wastewater to the POTW and does not have the potential to discharge regulated process wastewater to the POTW, the IU would not be considered a CIU<sup>2</sup>.

However, CIUs that employ a 100% recycle or claim no discharge of regulated process wastewater should be thoroughly evaluated through an on-site inspection to determine if there is any reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, for example, due to accidental spills, operational problems, or other causes. If the control authority concludes that no regulated process wastewater can reach the POTW, and therefore, the IU has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the IU need not be designated a CIU and thus a SIU, as provided by 403.3(t).

As a precaution, however, even if the control

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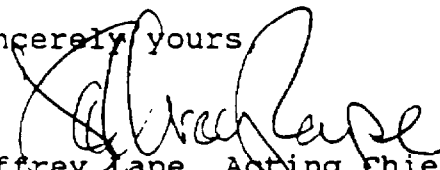
<sup>2</sup>An important example to consider here would be a metal finisher that performs any one of the six primary qualifying operations for which there is no discharge at any time but also performs one of the 40 ancillary process operations for which there is a corresponding indirect discharge. This facility would be considered a categorical industry because PSES or PSNS requirements would apply to the regulated wastestream from the ancillary process. This same position has been articulated in letter to Grace Scott, Michigan Department of Natural Resources, dated April 28, 1992, from Baldwin Jarrett, U.S. EPA.

authority determines that a facility employing a 100% recycle is not a CIU, it is suggested the control authority issue a permit (or equivalent individual control mechanism) to the facility containing at least the following conditions:

- a) "no discharge of process wastewater is permitted"
- b) requirements to notify the POTW of any changes in operation resulting in a potential for discharge.
- c) requirements to certify semi-annually that no discharge has occurred.
- d) notice that the POTW may inspect the facility as necessary to assess and assure compliance with the "no discharge requirement"
- e) requirements to comply with RCRA and state hazardous waste regulations regarding the proper disposal of hazardous waste.

I trust these responses answer all the questions contained in your letter. If you have any further questions or clarification is necessary concerning the answers provided here please let me know. My phone number is (202) 260-9525.

Sincerely yours



Jeffrey Lape, Acting Chief  
Pretreatment and Multimedia Branch

Enclosures

cc: Permits and Enforcement Branch Chiefs  
David Sandalow, OGC  
Peter Swenson, EPA Region V  
Mark Charles, Enforcement Division  
Regional Pretreatment Coordinators, Regions I-X  
State Pretreatment Coordinators