

Modifying Pretreatment Programs

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OUTLINE

- Drivers for Program Modifications
- Types of Program Modifications
 - Substantial & Minor
- Rules for Substantial Program Mods.
 - AA Review Process
 - Public Involvement
 - Documentation & Finishing Up
- Rules for Non-Substantial Prog Mods



Before we get started:

- This presentation is my best understanding of the applicable rules.
- Interpretations of rules can vary.
- There should be time to discuss any alternative interpretations at the end of presentation.
- (If my interpretation is different than Rebecca's – best go with hers).





Why Modify Programs

What are Drivers for Program Modifications

- **External Triggers** – PCI or PCA finds that program is deficient.
- **Things Change** – Laws, rules, guidance, loading capacity, and technology
- **Need to use new tools** – FOG, MIU's, Hauled Waste, general permits, high strength waste programs.
- Need changes to the program to be defensible.





Rules and Regulations

History of Rules for Program Mods

- EPA promulgated 40 CFR 128 on 11/8/1973
- EPA promulgated 40 CFR 403 on 6/26/1978
- EPA promulgated program mod. procedures on **October 17, 1988**. 53 FR 40577-40583 (PIRT)
 - Created **40 CFR 122.63(g)** minor mod to NPDES permit
 - Created **40 CFR 403.18** (pretreatment program mods)
- Modified w/ 62 FR 38414, **July 17, 1997**.
- **Several mod's were no longer "substantial"**:
 - More prescriptive POTW legal authorities;
 - Changes to merely reflect changes to Federal Rules;
 - Changes to local limits for pH (whether up or down);
 - Reallocations of local limits w/i established MAIL's.
- **The AA no longer needs to issue a second public notice** of its final approval if it received no comments on its proposed approval.



Who Can Modify A Program?

- **§ 403.18(a)** Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions **at the POTW**.
Program modification is necessary whenever there is a **significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission**, as approved under § 403.11. (*P.S. for mods to State programs see 403.10(e)-(i).*)



Substantial Program Mods:

- **Relax POTW's legal authorities**, except to reflect pretreatment rule changes.
- **Relax local limits** other than pH or re-allocation of MAILs.
- **Change a POTW's control mechanism.**
- **Decrease IU monitoring or reporting.**
- **Decrease IU inspection and sampling.**
- **Change confidentiality procedures.**
- **AA believes likely impacts program, possibly increases loadings to POTW, or imposing less stringent controls on IU's.**



Rules for Approving Substantial Program Modifications:

403.18(c)(1): POTW gives statement of basis for desired changes to AA incl:

- A modified program description &
- Other documents the AA asks for. (*e.g. an Updated Program Manual*)
- AA shall use procedures of **403.11(b-f)**
- Per 403.11(b), AA first determines whether submission meets **403.9(b)** – Contents of a POTW Prog. Submission



Contents of POTW Program Submission per 403.9(b)

- (1) Legal Sufficiency Statement which:
- (i) Identifies the **legal authority** under **§403.8(f)(1)** that forms the basis for each procedure under **§403.8(f)(2)**;
 - (ii) Describes **how the POTW will carry out each requirement of §403.8** and apply Pretreatment Standards to IUs, and
 - (iii) Describes how the POTW will **apply & enforce Pretreatment Standards & Requirements, & respond to non-compliance** by IU's;
 - (attach cited policies, procedures, forms)



Content of Program Description per 403.9(b)

- (2) The statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW to administer the Program. & **The endorsement of the boards or bodies responsible** for overseeing and/or funding the POTW Pretreatment Program if approved;
- (3) A description (& organization charts) of the POTW organization which will carry out the Program. Where more than one agency has responsibilities, all agencies and their respective responsibilities must be delineated, and procedures for coordination set forth; and
- (4) A description of the funding levels and staffing available to implement the Program;



403.11(b) Public Notice

- After AA determines a submission meets 403.9(b) content, the **AA publishes, within 20 days, a notice of request to approve** the submission.
- **AA circulates the public notice** by: Mailing to 208 planning agencies, resource agencies, and those asking to be provided such notice.
- **Publish notice in newspaper** (of general circulation in service area).



403.11(b)(1) (cont)

- Public notice shall **provide at least 30 days** for interested persons to submit written views on the submission.
- The **AA must keep and consider all written comments** submitted.
- The **AA may extend the public notice period.**



403.11(b)(2) Hearings

- AA notice must provide persons the **chance to request** a public hearing.
- AA will hold a hearing **if POTW requests** or **AA decides** there is public interest.
- AA publishes **public notice of a hearing** and public right to participate in the same newspaper & sends to persons requesting notice.



Approval Authority Decision

- § 403.11(c) Approval Authority Decides to approve or deny per § 403.11(a) - meets content requirement of §403.8(f)
- If denying, AA **must** suggest changes and may give requestor time to make them.



EPA Director Decision

- **§403.11(d)** EPA Regional Administrator has the right to object (to delegation).
- Unless retracted, the Regional Administrator's objections (to program delegation or removal credits) **shall constitute a final ruling**.
- (Section is the procedure for program approval and doesn't specifically mention program modifications).



403.11(e) & (f) Decision

- **§403.11(e)** Decision: AA notifies all participants and commenters of decision & **publishes notice of approval or disapproval in same newspaper.** Must ID any removal credits provisions.
- **§403.11(f)** AA must ensure submission & comments are available to public for inspection and copying. (redundant)



Rules for Processing Mod's

- **§403.18(c)(2)** The modification shall be effective “**upon approval by the AA**”.
- **§403.18(c)(3)** The AA need not publish the decision of **§403.11(e)** if the public notice states that the request will be approved if no substantive comments are received by the closure date & the request is approved without change.



Rules for Processing Mod's

- **§403.18(c)(4)**: Notices required by §403.11 **may be performed by the POTW** if the AA finds that it otherwise satisfies the requirements of §403.11



Example Program Mod. Notice:

"The [**CA**] is requesting approval by the [**AA**] of substantial changes to their industrial wastewater pretreatment program per 40 CFR §403.18(b).

The changes would [**SUMMARIZE MAJOR CHANGES**].

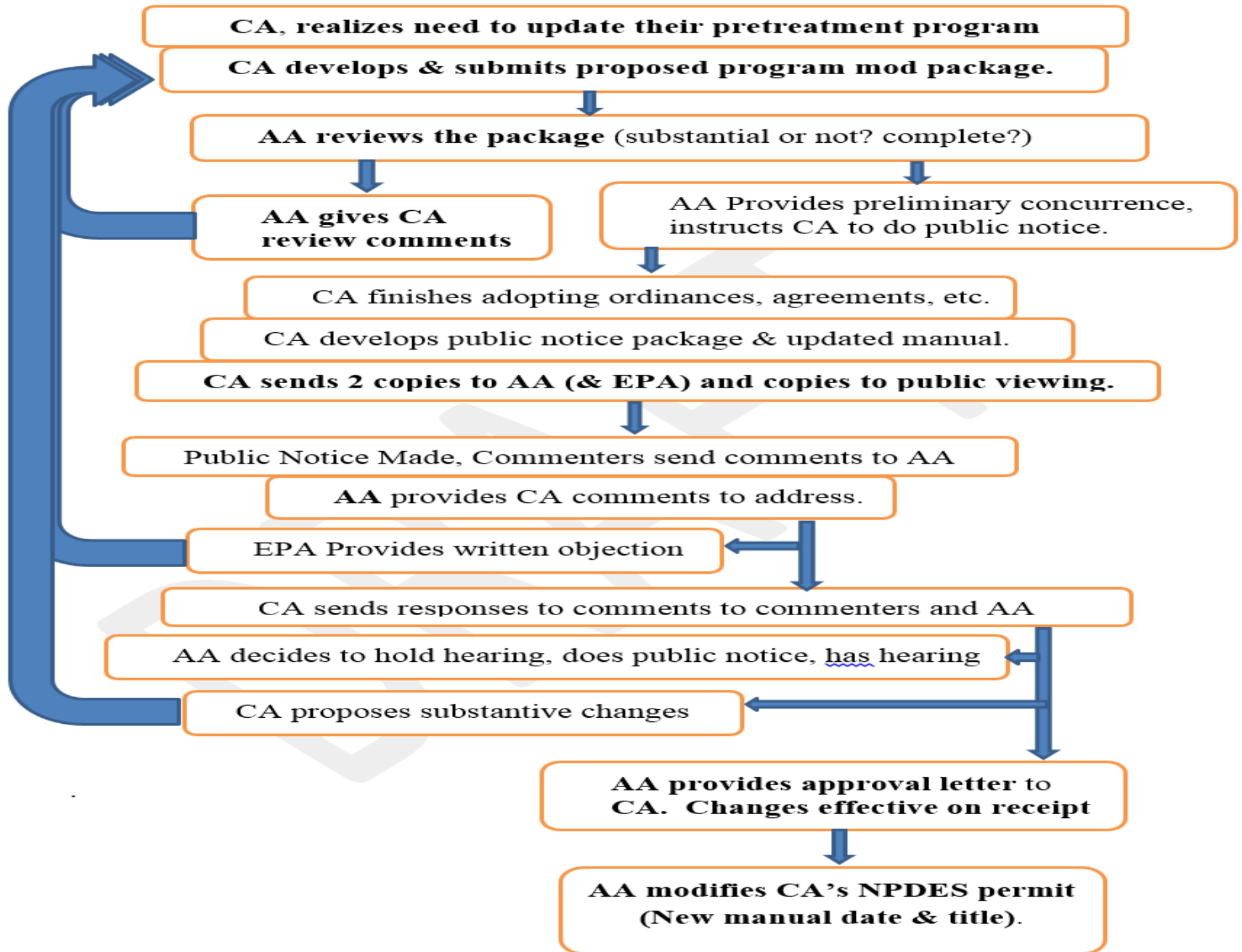
A summary of the changes and supporting information may be viewed at [**LOCATION & HOURS FOR PUBLIC VIEWING OF REQUEST**].

Please submit your comments on this proposal and/or request for a public hearing to [**AA address**] within 30 days.

If there is enough interest in a hearing, commenters will be informed and a notice will describe its time and location.

The proposed modification(s) may be approved without further public involvement if no substantive comments are received, and it is approved by [**AA**]."





§403.18(d) Approval procedures for non-substantial modifications

- (1) **POTW** shall notify the AA of any non-substantial mods 45 days or more prior to implementation by the POTW in a statement of basis for the mods.
- (2) **AA** shall notify the POTW within 45 days after receiving POTW's statement of its decision to approve the mod. or not.



§403.18(d) Approval procedures for Non-substantial modifications

- (3) If the AA fails to notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under 403.18(b)(7), the POTW may implement the modification.



Non-Substantial Mods 403.18(d)

1) CA Decides to Update Program

2) CA Develop Prog Mod – incl. Statement of Basis & modified program description (like substantial mod)

3) Submits as Non-Substantial

4) AA Reviews - for completeness, conformance w/ rules w/i 45 days

5) AA “shall notify” CA of concurrence or not (go to step 7 or 2 respectively).

6) If AA fails to take action, CA **may** implement.

7) AA Modifies CA’s NPDES Permit (403.18(e))

8) CA obliged to implement new program

9) AA keeps documents on file.



§403.18(e) Incorporation in Permit

- *“All modifications **shall be** incorporated into the POTW's NPDES permit upon approval. The permit **will be** modified to incorporate the approved modification in accordance with **40 CFR 122.63(g)**”*
- **Translation:** The AA must modify the CA's NPDES permit after approval of either substantial or non-substantial program mods, but both are processed as a minor NPDES mods.



Sewer Explosion

Taiwan's Second
Largest City
Kaohsiung has
Sewage System
Explode after gas
leak. Kills 25
people. Story at
www.DailyMail.co.uk/news
August 1, 2014.





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Questions and discussion



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