

AGENDA

- Policy/Guidance regarding Oversight of SIUs
- Federal Regulations
- Key Terms
- Requirements for:
 - State Program Development and duties for *Approval Authorities*
 - POTW Program Development and duties for *Control Authorities*

LINDA BOORNAZIAN MEMO TO REGIONAL [WATER] DIVISION DIRECTORS MAY 18, 2007

[Oversight of SIUs Discharging to POTWs without Approved Pretreatment Programs \(pdf\) \(341.83 KB\)](#)

History:

Office of Inspector General Evaluation – September 2004
Recommended that Water Permits Division identify oversight standards for addressing SIUs where EPA or State are Control Authority



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 18 2007

OFFICE OF
WATER

MEMORANDUM

To: Regional Division Directors

From: Linda Boornazian *Linda Boornazian*
Director, Water Permits Division

Subject: Oversight of SIUs Discharging to POTWs without Approved Pretreatment Programs

States and Regions report that, nationwide, more than 1,300 known categorical industrial users (CIUs) discharge to publicly owned treatment works (POTWs) without approved Pretreatment Programs.¹ In addition, States and Regions report the existence of at least 60 non-categorical significant industrial users (SIUs)² discharging to POTWs without approved programs. In the absence of an approved POTW Pretreatment Program, approved States or EPA Regions serve as the Control Authority for these CIUs and non-categorical SIUs.

In September 2004, EPA's Office of the Inspector General (OIG) evaluated the oversight of SIUs that discharge to POTWs without approved Pretreatment Programs. The OIG recommended that the Water Permits Division define standards for the oversight of these SIUs by State and Regional Control Authorities. This memorandum identifies these requirements (e.g., regulatory frequency of inspections and sampling, and other activities) and describes the oversight options for State and Regional Control Authorities.

Regulatory Background

The General Pretreatment Regulations at 40 CFR 403.10(f) define the required program elements for an approved State Pretreatment Program. When the EPA Region serves as both the

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Appendix B: Notification Strategies for State and Regional Control Authority Oversight Roles

- Control Mechanisms (including permits and Administrative Orders)
- Letters
- Information packet

Appendix C: Opportunities for Program Efficiencies via Pretreatment Program Streamlining Rule Provisions:

- NSCIU designation
- Middle Tier designation
- General Permits
- “Mini – Programs” – example task assigned to POTWs :
 - Sampling of IUs, requirement in NPDES permit - see 40 CFR 122.44(i)(1)(iii) and 122.45(i) => note: POTW accepts full liability of IU discharge if IU discharge

PART 127—NPDES ELECTRONIC REPORTING

127.11(c) “Industrial users located in municipalities without approved local pretreatment programs must electronically submit the minimum set of NPDES data for the following self-monitoring reports (if such reporting requirements are applicable):

- (1) Periodic reports on continued compliance, as described in 40 CFR 403.12(e); and
- (2) Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards, as described in 40 CFR 403.12(h).

FEDERAL REGULATIONS

KEY TERMS – 40 CFR 403.3

- *Approved POTW Pretreatment Program or Program or POTW Pretreatment Program*
- *Control Authority*
- *Significant Industrial User*
- *Non-Significant Categorical Industrial User*
- *“De-listed” Significant Industrial User*

TERMS NOT IN FEDERAL REGULATIONS

- *Un-Approved POTW Pretreatment Program*
- *Un-Approved State Pretreatment Program*
- *Mini-Pretreatment Program [neither for State nor POTW]*

KEY TERMS & DEFINITIONS

Approval Authority – 40 CFR 403.3(c)

means the Director in an **NPDES State with an approved State pretreatment program** and the appropriate Regional Administrator in a **non-NPDES State or NPDES State without an approved State pretreatment program**

Approved POTW Pretreatment Program or Program or POTW Pretreatment Program - 40 CFR 403.3(d)

means a program administered by a POTW that meets the criteria established in this regulation (§§ 403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with § 403.11 of this regulation.

Control Authority - 40 CFR 403.3(f)

- (1) The POTW if the POTW's Pretreatment Program Submission **has been approved in accordance with the requirements of § 403.11**; or
- (2) The **Approval Authority if the Submission has not been approved**.

Significant Industrial User - 40 CFR 403.3(v)(1).

- (1) Except as provided in paragraphs (v)(2) and (v)(3) of this section, the term Significant Industrial User means: ...
 - (i) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and
 - (ii) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; ...

KEY TERMS & DEFINITIONS

DEPENDENT ON CONTROL AUTHORITY FINDING

Significant Industrial User: 40 CFR 403.3(v)(1)(ii)

(1)(ii)... **or is designated as such by the Control Authority** on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

Non-Significant Categorical Industrial User: 40 CFR 403.3(v)(2).

- (2) The **Control Authority may determine** that an Industrial User subject to categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:
 - (i) The Industrial User, prior to **the Control Authority's finding**, has consistently complied with all applicable categorical Pretreatment Standards and Requirements; ...

“De-listed” Significant Industrial User: 40 CFR 403.3(v)(3)

(3) Upon a finding that an Industrial User meeting the criteria in paragraph (v)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the **Control Authority may at any time**, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with 40 CFR 403.8(f)(6), **determine that** such Industrial User is not a Significant Industrial User.

STATE PRETREATMENT PROGRAM

“IN ORDER TO BE APPROVED, A REQUEST FOR STATE PRETREATMENT PROGRAM APPROVAL MUST DEMONSTRATE THAT THE STATE PRETREATMENT PROGRAM HAS THE FOLLOWING ELEMENTS:”

40 CFR 403.10(f)(1): *Legal authority:*

- (i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's and require IU compliance with standards;
- (ii) Ensure continued compliance by POTWs with permit conditions and Industrial Users with Pretreatment Standards by review of monitoring reports;
- (iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW and IUs.
- (iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW & IUs.
- (v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW.
- (vi) Deny and recommend approval of (but not approve) requests for FDF variances submitted by IU
- (vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§ 403.7, 403.9 and 403.11.

STATE PRETREATMENT PROGRAM

REQUIREMENTS FOR STATE AS APPROVAL AUTHORITY - CONTINUED

40 CFR 403.10(f)(2): Procedures

- (i) Identify POTW's required to develop Pretreatment Programs in accordance with § 403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. **In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in § 403.8(f)(2);**
- (ii) Provide technical and legal assistance...;
- (iv) Sample and analyze: (A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see § 403.7); and (B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;
- (v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed...
- (vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical Pretreatment Standards submitted by a POTW to the Director; and
- (vii) Deny and recommend (but not approve) requests for FDF variances submitted by Industrial Users ...
- (viii) Regularly notify all Control Authorities of electronic submission requirements of 40 CFR part 127.

40 CFR 403.10(f)(3): Funding. The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.

POTW PRETREATMENT PROGRAM

POTW AS CONTROL AUTHORITY - 40 CFR 403.8(f)(1)

- **Legal authority** - 40 CFR 403.8(f)(1)
 - Deny or condition new or increased or changes in contributions of pollutants
 - Require compliance with applicable Pretreatment Standards and Requirements by IUs
 - Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User
 - Require development of compliance schedules by IUs when appropriate
 - Require submission of all notices and self-monitoring reports from IUs
 - Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements
 - Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement.
 - Enforce all pretreatment requirements
 - Comply with the confidentiality requirements

POTW PRETREATMENT PROGRAM

POTW AS CONTROL AUTHORITY - 40 CFR 403.8(f)(2)

- **Procedures - 40 CFR 403.8(f)(2)**
 - Identify and locate all possible IUs which might be subject to the POTW Pretreatment Program. Make inventory available to Approval Authority upon request;
 - Identify the character and volume of pollutants contributed to the POTW by the Industrial Users
 - Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements
 - Receive and analyze self-monitoring reports and other notices submitted by IUs
 - Randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each SIU at least once a year,
 - Sample for waived pollutants (pollutants not present))once/permit term
 - Evaluate annually if NSCIU continues to meet the criteria
 - Randomly sample and analyze and inspect MTCIUs once every 2 years
 - Evaluate SIUs for need for Slug Discharge plans or other control action
 - Investigate instances of noncompliance
 - Comply with public participation requirements of 40 CFR part 25, including annual publication

POTW PRETREATMENT PROGRAM

POTW AS CONTROL AUTHORITY - - 40 CFR 403.8(f)(3)-(6)

- 40 CFR 403.8(f)(3): **Funding** - Maintain sufficient resources and qualified personnel
- 40 CFR 403.8(f)(4): **Local limits** - Develop or demonstrate not necessary
- 40 CFR 403.8(f)(5): **Develop and implement Enforcement Response Plan**
- 40 CFR 403.8(f)(6): **Prepare and maintain a list of its Industrial Users** meeting the criteria in § 403.3(v)(1), identifying the applicable criteria **Submit modifications to the list to the Approval Authority**

WHAT IS §403.10(e)??

40 CFR 403.10(e):

“State Program in lieu of POTW Program. Notwithstanding the provision of § 403.8(a), 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...”

Other references to 403.10(e) in 40 CFR 403:

40 CFR 403.7(g): *“Removal credits in State-run pretreatment programs under § 403.10(e).*

“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 (as provided in § 403.10(e)), the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of paragraph (a)(3) of this section.”

40 CFR 403.8(a): *“POTWs required to develop a pretreatment program.*

“Any POTW (or combination of POTWs 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 or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in § 403.10(e)...”

SUMMARY

“The General Pretreatment Regulations at **40 CFR 403.10(f)** define the required program elements for an approved State Pretreatment Program.”

Notification and Oversight Efficiencies are provided in the regulations –
Examples: General Permits, NSCIUs, MTCIUs

Electronic Reporting Rule – **40 CFR 127.22(c)** - requires electronic reporting of applicable reports where EPA or Approved Pretreatment states act as Control Authorities

“...the approved State or EPA Region is the ultimate Control Authority”