

**Chapter 528. Pretreatment Program**

SUMMARY: This rule contains general standards and criteria for industrial sources which discharge pollutants into sewer systems which are served by publicly owned treatment works (POTW's). Additionally, the rule establishes administrative requirement for municipalities which must maintain pretreatment programs which oversee discharges to local sewer systems. Specific effluent and performance standards are described pursuant to Chapter 525. The content of this rule is largely taken from federal regulations, and most references and terms are in the context of the Code of Federal Regulations. To aid the reader, a citation to the appropriate federal regulation is shown in each section of this rule.

**Section 1. References to Federal Regulations and definitions.** Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 1998, as they appear in volume 40 of the Code of Federal Regulations (CFR). Definitions for terms used in this rule may be found Chapter 520.

**Section 2. Purpose and applicability.** [see 40 CFR 403.1]

- (a) This rule implements sections 204(b)(1)(C), 208(b)(2) (C)(iii), 301(b)(1)(A)(ii), 301(b)(2) (A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L.95-217) or "The Act". It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.
- (b) This regulation applies:
  - (1) To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in Section 4;
  - (2) To POTWs which receive wastewater from sources subject to National Pretreatment Standards;
  - (3) To States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and
  - (4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

**Section 3. Objectives of general pretreatment regulations.** [see 40 CFR 403.2]

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

- (a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

- (b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and
- (c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

**Section 4. Definitions.** [see 40 CFR 403.3]

For the purposes of this chapter:

- (a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in Chapter 525 shall apply to this regulation.
- (b) The term Act means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.
- (c) The term Approval Authority means the Department or the Regional Administrator.
- (d) The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in this regulation (Sections 9 and 10) and which has been approved by a Regional Administrator or Department in accordance with Section 11 of this regulation.
- (e) The term *Best Management Practices* or *BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in section 11 of this chapter.
- (f) The term Control Authority means the POTW if the POTW's Submission for its pretreatment program has been approved in accordance with the requirements of Section 11; or (2) the Approval Authority in the absence of an approved Submission.
- ~~(e)~~(g) The term Department means the Department of Environmental Protection, including the Board of Environmental Protection and the Commissioner.
- ~~(f)~~(h) The term Water Management Division Director means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.
- ~~(g)~~(i) The term Indirect Discharge or Discharge means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.
- ~~(h)~~(j) The term Industrial User or User means a source of Indirect Discharge.
- ~~(i)~~(k) The term Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
  - (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
  - (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the

prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

~~(j)~~(1) The term National Pretreatment Standard, Pretreatment Standard, or Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Section 6.

~~(k)~~(m)

- (1) The term New Source means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:
  - (i) The building, structure, facility or installation is constructed at a site at which no other source is located; or
  - (ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
  - (i) Begun, or caused to begin as part of a continuous onsite construction program:
    - (A) Any placement, assembly, or installation of facilities or equipment; or
    - (B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

- (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

~~(n)~~(n) The terms NPDES Permit, MEPDES Permit, or Permit means a permit issued to a POTW pursuant to section 402 of the Act.

~~(o)~~(o) The term NPDES State means a State (as defined in Chapter 520) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

~~(p)~~(p) The term Pass Through means a Discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's ~~NPDES~~MEPDES permit (including an increase in the magnitude or duration of a violation).

~~(q)~~(q) The term Publicly Owned Treatment Works or POTW means a treatment works as defined by ~~s~~Section 212 of the Act, which is owned by a State or municipality (as defined by ~~s~~Section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in ~~s~~Section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

~~(r)~~(r) The term POTW Treatment Plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

~~(s)~~(s) The term Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Section 7(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Section 7(e).

~~(t)~~(t) The term Pretreatment ~~R~~Requirements means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

~~(u)~~(u) The term Regional Administrator means the EPA Regional Administrator for Region I.

~~(v)~~(v) Significant Industrial User.

- (1) Except as provided in paragraph ~~(t)~~(2) of this section, the term Significant Industrial User means:
- (i) All industrial users subject to Categorical Pretreatment Standards under ~~S~~section 7 and Chapter 525; 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, non contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in Section 12(a) 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 Section 9(f)(6)).
- (2) Upon a finding that an industrial user meeting the criteria in paragraph ~~(t)~~(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority ~~(as defined in Section 12(a))~~ 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 Section 9(f)(6), determine that such industrial user is not a significant industrial user.

~~(t)~~(w)The term Submission means:

- (1) A request by a POTW for approval of a Pretreatment Program to the EPA or the Department;
- (2) A request by a POTW to the EPA or the Department for authority To revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or
- (3) A request to the EPA by an NPDES State for approval of its State pretreatment program.

**Section 5. State or local law.** [see 40 CFR 403.4] Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES (MEPDES) permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with 40 CFR 403.10.

**Section 6. National pretreatment standards: Prohibited discharges.** [see 40 CFR 403.5]

- (a)
- (1) General prohibitions. A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.
  - (2) Affirmative Defenses. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate that:
    - (i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and
    - (ii)
      - (A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or
      - (B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's ~~N~~MPEDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.
- (b) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:
- (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flash point of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.
  - (2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the work is specifically designed to accommodate such Discharges;
  - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;
  - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.
  - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW

Treatment Plant exceeds 40 deg. C (104 deg. F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

- (6) Petroleum oil, non biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
  - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
  - (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.
- (c) When specific limits must be developed by POTW.
- (1) Each POTW developing a POTW Pretreatment Program pursuant to Section 9 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.
  - (2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's ~~N~~MPEDES permit or sludge use or disposal practices.
  - (3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.
  - (4) POTWs may develop Best Management Practices (BMPs) to implement paragraphs (c)(1) and (c)(2) of this section. Such BMPs are considered local limits and Pretreatment Standards for the purposes of this Part and section 307(d) of the Act.
- (d) Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.
- (e) EPA enforcement actions under section 309(f) of the Clean Water Act. If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

**Section 7. National pretreatment standards: Categorical standards.** [see 40 CFR 403.6]

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate section of Chapter 525. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this chapter.

- (a) Category Determination Request--

- (1) **Application Deadline.** Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Department, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Department, as appropriate, within 30 days of notification.
- (2) **Contents of Application.** Each request shall contain a statement:
  - (i) Describing which subcategories might be applicable; and
  - (ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- (3) **Deficient requests.** The Water Management Division Director or Department will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Department that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Department, the request for a determination shall be denied.

## (4) Final decision.

- (i) When the Water Management Division Director or Department receives a submittal it will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Department will then make a written determination of the applicable subcategory and state The reasons for the determination.
- (ii) Where the request is submitted to the Department, the Department shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. The Water Management Division Director may waive receipt of these determinations. If the Water Management Division Director does not modify the Department's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Department's decision is final.
- (iii) Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Department's decision, the Water Management Division Director's decision will be final.
- (iv) The Water Management Division Director or Department, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Water Management Division Director, he or she shall send a copy of the determination to the Department.

## (5) Requests for hearing and/or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

- (b) Deadline for Compliance with Categorical Standards. Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate section of Chapter 525. Direct dischargers with ~~N~~MPEDES permits modified or reissued to provide a variance pursuant to ~~s~~Section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in Section 4(k). New Sources shall install and have in operating condition, and shall ``start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

## (c) Concentration and Mass Limits

- (1) Concentration and mass limits. Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.
- (2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.
- (3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.
- (4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.
- (5) When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits only if the Industrial User meets all of the following conditions in paragraph (c)(5)(i)(A) through (c)(5)(i)(E) of this section.

(i) To be eligible for equivalent mass limits, the Industrial User shall:

- (A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
- (B) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
- (C) Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(D) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass units are not appropriate to control the Discharge; and

(E) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(ii) An Industrial User subject to equivalent mass limits shall:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass units;

(B) Continue to record the facility's flow rates through the use of a continuous effluent flow measurement device;

(C) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph (c)(5)(i)(C) of this section. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraphs (c)(5)(i)(A) of this section so long as it discharges under an equivalent mass limit.

(iii) A Control Authority which chooses to establish equivalent mass limits:

(A) Shall calculate the equivalent mass limits by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;

(B) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(C) May retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as the result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to paragraph (d) of this section. The Industrial User shall also be in compliance with Section 17 (regarding the prohibition of bypass).

- (iv) The Control Authority may not express limits in terms of mass for pollutants such as pH temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.
- (6) The Control Authority may convert the mass limits of the categorical Pretreatment Standards at 40 CFR Parts 414 (Organic Chemicals, Plastics, and Synthetic Fibers), 419 (Petroleum Refining Point Source Category), and 455 (Pesticide Chemicals) to concentration limits for purposes of calculating limitations applicable to individual Industrial Users under the following conditions. When converting such limits to concentration limits, the Control Authority must use the concentration listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by paragraph (d) of this section.
- ~~(5)~~(7)Equivalent limitations calculated in accordance with paragraphs (c)(3) ~~and~~, (c)(4), (c)(5) and (c)(6) of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this chapter. ~~Industrial Users will be required to~~The Control Authority shall document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the Industrial User shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.
- ~~(6)~~(8)Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production ~~of~~ or flow figure shall be used in calculating both ~~types of equivalent limitations~~ the average and the maximum equivalent limitation.
- ~~(7)~~(9)Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.
- (d) Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority ~~(as defined in Section 12(a))~~ may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.
- (e) Combined waste stream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, ~~as defined in Section 12(a),~~ or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an

alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) Alternative concentration limit.

$$CT = \left( \frac{\sum_{i=1}^N C_i F_i}{N} \right) \times \left( \frac{F_T - F_D}{F_T} \right)$$

where

$C_T$  = the alternative concentration limit for the combined wastestream.

$C_i$  = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream  $i$ .

$F_i$  = the average daily flow (at least a 30-day average) of stream  $i$  to the extent that it is regulated for such pollutant.

$F_D$  = the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary waste streams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process waste streams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph

8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph(8)(a)(iii));
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator(paragraph (8)(a)(iii)); or
- (4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

$F_T$  = The average daily flow (at least a 30-day average) through the combined treatment facility (includes  $F_1$ ,  $F_D$  and unregulated streams).

$N$  = The total number of regulated streams.

(ii) Alternative mass limit.

$$M_T = \frac{\left( \frac{\sum_{i=1}^N M_i}{N} \right) \times \left( \frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)}$$

where

$M_T$  = the alternative mass limit for a pollutant in the combined wastestream.

$M_i$  = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream  $i$  (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

$F_i$  = the average flow (at least a 30-day average) of stream  $i$  to the extent that it is regulated for such pollutant.

$F_D$  = the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
  - (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph(8)(a)(iii));
  - (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator(paragraph (8)(a)(iii)); or
  - (4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).
- $F_T$  = The average flow (at least a 30-day average) through the combined treatment facility (includes  $F_i$ ,  $F_D$  and unregulated streams).
- $N$  = The total number of regulated streams.
- (2) Alternate limits below detection limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.
  - (3) Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of Section 12(g).
  - (4) Choice of monitoring location. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

**Section 8. Removal credits.** [see 40 CFR 403.7]

(a) Introduction--

- (1) Definitions. For the purpose of this section:
  - (i) Removal means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.
  - (ii) Sludge Requirements shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation Recovery Act (RCRA)and State regulations contained in any State

sludge management plan prepared pursuant to subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

- (2) General. Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical Pretreatment Standard(s). The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with paragraph (a)(4) of this section. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.
- (3) Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met:
  - (i) Application. The POTW applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (e) of this section.
  - (ii) Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with paragraph (b) of this section.
  - (iii) POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this Chapter; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (d) of this section.
  - (iv) Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants.
    - (A) For any pollutant listed in appendix G section I of this chapter for the use or disposal practice employed by the POTW, when the requirements in 40 CFR part 503 for that practice are met.
    - (B) For any pollutant listed in appendix G section II of this chapter for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in appendix G section I of this chapter in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in appendix G section II of this chapter.

(C) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR part 258.

(v) NMEPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NMEPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s), as modified by the removal credit provision.

(4) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where:

x = pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r = removal credit for that pollutant as established under paragraph (b) of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y = revised discharge limit for the specified pollutant (expressed in same units as x)

(b) Establishment of Removal Credits; Demonstration of Consistent Removal

(1) Definition of Consistent Removal. "Consistent Removal" shall mean the average of the lowest 50 percent of the removal measured according to paragraph (b)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(2) Consistent Removal Data. Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (b)(1) of this section, which demonstrates Consistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

- (i) Representative Data; Seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.
- (ii) Representative Data; Quality and Quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (b)(1) of this section.
- (iii) Sampling Procedures: Composite.
  - (A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.
  - (B)
    - (1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.
    - (2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.
  - (C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.
- (iv) Sampling Procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The

detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemically physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.

- (v) Analytical methods. The sampling referred to in paragraphs (b)(2) (i) through (iv) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.
  
- (vi) Calculation of removal. All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.
  
- (c) Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treat ability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (b) of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of paragraph (b) of this section, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.
  
- (d) Exception to POTW Pretreatment Program Requirement. A POTW required to develop a local pretreatment program by Section 9 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:
  - (1) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in Section 12(b)(1) through (7) (except new or modified

industrial users must only submit the information required by Sections 12(b)(1) through(6)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit;

- (2) The POTW must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of Section 9 and Section 10 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's ~~N~~MEPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;
  - (3) The POTW must:
    - (i) Compile and submit data demonstrating its consistent removal in accordance with paragraph (b) of this section;
    - (ii) Comply with the conditions specified in paragraph (a)(3) of this section; and
    - (iii) Submit a complete application for removal credit authority in accordance with paragraph (e) of this section;
  - (4) If a POTW receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (d)(2) and (3) of this section, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all ~~i~~Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.
  - (5) If a POTW grants conditional removal credits and the POTW or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in paragraph (d)(1) of this section, the conditional credit shall be terminated by the POTW or the Approval Authority for then on-complying Industrial User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.
  - (6) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of Section 11, but in no event later than the time of any pretreatment program approval or any ~~N~~MEPDES permit reissuance thereunder.
- (e) POTW application for authorization to give removal credits and Approval Authority review--

- (1) Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the Approval Authority.
  - (2) To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the Approval Authority.
  - (3) When to apply. A POTW may apply for authorization to give or modify removal credits at any time.
  - (4) Contents of the Application. An application for authorization to give removal credits must be supported by the following information:
    - (i) List of pollutants. A list of pollutants for which removal credits are proposed.
    - (ii) Consistent Removal Data. The data required pursuant to paragraph (b) of this section.
    - (iii) Calculation of revised discharge limits. Proposed revised discharge limits for each affected sub category of Industrial Users calculated in accordance with paragraph (a)(4) of this section.
    - (iv) Local Pretreatment Program Certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (d) of this section.
    - (v) Sludge Management Certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in paragraph (a)(3)(iv) of this section.
    - (vi) NPDES Permit Limit Certification. A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits and conditions as required in paragraph (a)(3)(v) of this section.
  - (5) Approval Authority Review. The Approval Authority shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of Section 11 and shall, in no event, have more that 180 days from public notice of an application to complete review.
  - (6) EPA review of State removal credit approvals. Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.
  - (7) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.
- (f) Continuation and withdrawal of authorization--
- (1) Effect of authorization. (i) Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in paragraph (a)(3)(iv) of this section or its NPDES permit limits and conditions as required by paragraph(a)(3)(v) of this section. If a POTW elects at a later time to extend removal credits to a certain

categorical Pretreatment Standard, industrial sub category or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.

- (2) Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's NPDES Permit as soon as possible and shall become an enforceable requirement of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions specified in paragraph (f)(4) of this section.
- (3) Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.
- (4) Modification or withdrawal of removal credits--
  - (i) Notice of POTW. The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:
    - (A) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or
    - (B) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's NPDES Permit.
  - (ii) Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.
  - (iii) Public notice of withdrawal or modification. The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority).
- (g) Removal credits in State-run pretreatment programs under 40 CFR 403.10(e). Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu or requiring the POTW to develop such a program (as provided in 40 CFR 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.

(h) Compensation for overflow. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1) ~~or~~ or (h)(2) ~~or~~ or of this section. However, ~~this subsection~~ paragraph (h) of this section shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

- (i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;
- (ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and
- (iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, Department or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2)

- (i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \left( \frac{(8760 - Z)}{(8760)} \right)$$

Where:

$r_m$  = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section

$r_c$  = removal corrected by the Overflow factor

Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

- (ii) ~~After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum 61" (same document) published on December 16, 1975, by EPA Office of Water Program Operations (WH-546). (See appendix A.) Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan. The POTW is complying with all NPDES (MEPDES) permit requirements and any additional requirements in any order or decree issued pursuant to the Clean Water Act affecting combined sewer overflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.~~
- (iii) ~~If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Approval Authority, may continue to be claimed according to the formula in paragraph (h)(2)(i) of this section as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should Federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Removal may, subject to the approval of the Approval Authority, continue to be claimed according to the formula in paragraph (h)(2)(i) of this section where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its NPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Approval Authority shall consider the availability of funds, cost-of-control measures, and seriousness of the water quality problem.)~~

**Section 9. Pretreatment Program Requirements: Development and Implementation by POTW.** [see 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 40 CFR 403.10(e). The Regional Administrator or Department may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.
- (b) **Deadline for Program Approval.** A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES (MEPDES) permits are modified under section 301(h) of the Act shall have a Pretreatment Program within three (3) years as provided for in 40 CFR part 125, subpart G. POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.
- (c) **Incorporation of approved programs in permits.** A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in paragraph (b) of this section. If the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with 40 CFR 403.10, or if the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit.
- (d) **Incorporation of compliance schedules in permits.** [Reserved].
- (e) **Cause for reissuance or modification of Permits.** Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:
- (1) Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;
  - (2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;
  - (3) Incorporate a modification of the permit approved under ~~s~~Section 301(h) or 301(i) of the Act;
  - (4) Incorporate an approved POTW Pretreatment Program in the POTW permit; or

- (5) Incorporate a compliance schedule for the development of a POTW Pretreatment program in the POTW permit.
  - (6) Incorporate the removal credits (established under Section 8) in the POTW permit.
- (f) POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.
- (1) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of ~~s~~Sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:
    - (i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its ~~N~~MPEDES permit;
    - (ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
    - (iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under Section 4(t), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:
      - (A) Statement of duration (in no case more than five years);
      - (B) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
      - (C) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in this chapter, categorical pretreatment standards, local limits, and State and local law;
      - (D) Self-monitoring, sampling, reporting, notification and record keeping requirements, including an identification of the pollutants to be monitored, (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 12(e)(2), or a specific waived pollutant in the case of an individual control mechanism, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this chapter, categorical pretreatment standards, local limits, and State and local law;
      - (E) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(F) Requirements to control slug discharges, if determined by the POTW to be necessary.

(iv) Require

(A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in Section 12.

(v) 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 by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under Section 12(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi)

(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTW's shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. the Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in Section 14.

- (2) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:
- (i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Department upon request;
  - (ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Department upon request;
  - (iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under Sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to Section 9(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.
  - (iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in Section 12;
  - (v) 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 Significant Industrial User at least once a year. Evaluate, ~~at least once every two years,~~ whether each such Significant Industrial User needs a plan or other action to control slug discharges. For Industrial Users identified as significant prior to November 14, 2005 this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within one year of being designated a Significant Industrial User. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge that has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits, or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at their facilities affecting the potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
    - (A) Description of discharge practices, including non-routine batch discharges;
    - (B) Description of stored chemicals;
    - (C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Section 6(b), with procedures for follow-up written notification within five days;
    - (D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off,

worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

- (vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under Section 12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and
- (vii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification; in the largest daily newspaper published in the municipality in which the POTW is located, of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, of industrial users which, at any time during the previous ~~twelve~~ 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, ~~a~~ Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(vii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:
  - (A) Chronic violations of wastewater discharge limits, defined here as those in which ~~sixty-six~~ 66 percent or more of all of the measurements taken during a ~~six-6~~ month period exceed (by any magnitude) ~~the daily maximum limit or the average limit for the same pollutant parameter;~~ a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by Chapter 528 Section(4)(j);
  - (B) Technical Review Criteria (TRC) violations, defined here as those in which ~~thirty-three~~ 33 percent or more of all of the measurements for each pollutant parameter taken during a ~~six-6~~ month period equal or exceed the product of the ~~daily maximum limit or the average limit~~ numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by Chapter 528 Section(4)(j), multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH.
  - (C) Any other violation of a ~~pPretreatment effluent limit (daily maximum or longer term average)~~ Standard or Requirement, as defined by Chapter 528 Section(4)(j) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the ~~Control Authority~~ POTW determines has caused, alone or in combination with other discharges, ~~iInterference or pPass~~ Through (including endangering the health of POTW personnel or the general public);
  - (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
  - (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

- (F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
  - (G) Failure to accurately report noncompliance;
  - (H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the ~~Control Authority~~ POTW determines will adversely affect the operation or implementation of the local pretreatment program.
- (3) Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f) (1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see Section 10(b)).
- (4) Local limits. The POTW shall develop local limits as required in Section 6(c)(1), or demonstrate that they are not necessary.
- (5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:
- (i) Describe how the POTW will investigate instances of noncompliance;
  - (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
  - (iii) Identify (by title) the official(s) responsible for each type of response;
  - (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).
- (6) The POTW shall prepare a list of its industrial users meeting the criteria in Section 4(t)(1). The list shall identify the criteria in Section 4(t)(1) applicable to each industrial user and, for industrial users meeting the criteria in Section 4(t)(1)(ii), shall also indicate whether the POTW has made a determination pursuant to Section 4(t)(2) that such industrial user should not be considered a significant industrial user. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a non substantial program modification pursuant to Section 18(b)(2). Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Approval Authority 90 days after submission of the list or modifications thereto, unless the Approval Authority determines that a modification is in fact a substantial modification.

**Section 10. POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.** [see 40 CFR 403.9]

- (a) Who approves Program. A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in Section 11.

- (b) Contents of POTW program submission. The program description must contain the following information:
- (1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carryout the programs described in Section 9. This statement shall:
    - (i) Identify the provision of the legal authority under Section 9(f)(1) which provides the basis for each procedure under Section 9(f)(2);
    - (ii) Identify the manner in which the POTW will implement the program requirements set forth in Section 9, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,
    - (iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;
  - (2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;
  - (3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and
  - (4) A description of the funding levels and full- and part-time manpower available to implement the Program;
- (c) Conditional POTW program approval. The POTW may request conditional approval of the Pretreatment Program pending the acquisition funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph(b) of this section, may be relaxed if the Submission demonstrates that:
- (1) A limited aspect of the Program does not need to be implemented immediately;
  - (2) The POTW had adequate legal authority and procedures to carryout those aspects of the Program which will not be implemented immediately; and
  - (3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

- (d) Content of removal allowance submission. The request for authority to revise categorical Pretreatment Standards must contain the information required in Section 8(d).
- (e) Approval authority action. Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, The Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate,(d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:
  - (1) Notify the POTW that the Submission has been received and is under review; and
  - (2) Commence the public notice and evaluation activities set forth in Section 11.
- (f) Notification where submission is defective. If, after review of the Submission as provided for in paragraph (e) of this section, The Approval Authority determines that the Submission does not comply with the requirements of paragraph (b) or (c) of this section, and, inappropriate, paragraph (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c) of this section, and, if appropriate, paragraph (d) of this section.
- (g) Consistency with water quality management plans.
  - (1) In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with Chapter 528. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208Planning Agency during the public comment period provided for in Section 11(b)(1)(ii) prior to approval or disapproval of the Program.
  - (2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, The Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

**Section 11. Approval procedures for POTW pretreatment programs and POTW granting of removal credits.** [see 40 CFR 403.11]

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

- (a) Deadline for review of submission. The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of Section 10(b) and, where removal credit authorization is sought with Section 8(e) and Section 10(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of Section 9(b) and (f), and, where removal credit authorization is sought, with Section 8. The Approval Authority may have up to an

- additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of Section 10(b) and, in the case of a removal credit application, Sections 8(e) and 10(b).
- (b) Public notice and opportunity for hearing. Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of Section 10(b) and, where removal allowance approval is sought, Sections 8(d) and 10(d), the Approval Authority shall:
- (1) Issue a public notice of request for approval of the Submission, consistent with procedures in Chapter 2 and 522;
    - (i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:
      - (A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and
      - (B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.
    - (ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.
    - (iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and
  - (2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.
    - (i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.
    - (ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.
    - (iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval

of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

- (c) Approval authority decision. At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow there requestor additional time to bring the Submission into compliance with applicable requirements.
- (d) EPA objection to Department's decision. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Department if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.
- (e) Notice of decision. The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with Section 8, for removal of pollutants subject to Pretreatment Standards.
- (f) Public access to submission. The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

**Section 12. Reporting requirements for POTW's and industrial users.** [see 40 CFR 403.12]

- (a) Definition. The term Control Authority as it is used in this section refers to: (1) The POTW if the POTW's Submission for its pretreatment program (Section 4(t)(1)) has been approved in accordance with the requirements of Section 11; or (2) the Approval Authority if the Submission has not been approved.
- (b) Reporting requirements for industrial users upon effective date of categorical pretreatment standard--baseline report. Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision

made upon a category determination submission under Section 7(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)-(7) of this section. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)-(5) of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

- (1) Identifying information. The User shall submit the name and address of the facility including the name of the operator and owners;
- (2) Permits. The User shall submit a list of any environmental control permits held by or for the facility;
- (3) Description of operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.
- (4) Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
  - (i) Regulated process streams; and
  - (ii) Other streams as necessary to allow use of the combined wastestream formula of Section 7(e). (See paragraph (b)(5)(v) of this section.)  
The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.
- (5) Measurement of pollutants.
  - (i) The user shall identify the Pretreatment Standards applicable to each regulated process;
  - (ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard;
  - (iii) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that

- flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.
- (iv) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
  - (v) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of Section 7(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with Section 7(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;
  - (vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;
  - (vii) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
  - (viii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;
- (6) Certification. A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (k) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and
- (7) Compliance schedule. If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.
- (i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (Section 8), the combined wastestream formula (Section 7(e)), and/or a Fundamentally Different Factors variance (Section 13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

- (ii) If the categorical Pretreatment Standard is modified by a removal allowance (Section 8), the combined wastestream formula(Section 7(e)), and/or a Fundamentally Different Factors variance(Section 13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.
- (c) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:
  - (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
  - (2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.
  - (3) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.
- (d) Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b) (4)-(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in Section 7(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.
- (e) Periodic reports on continued compliance.
  - (1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the

reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(2) The Control Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

(i) The Control Authority may authorize a waiver where the pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(ii) The monitoring waiver is valid only for the duration of the effective period of the Permit or other other equivalent individual control mechanism, but in no case longer than 5 years. The User shall submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

(iii) In making a demonstration that a pollutant is not present, the Industrial User shall provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with paragraph (1) of this Section, and include the certification statement in Section 7(a)(2)(ii). Non-detectable sampling results may be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(iv) Any grant of the monitoring waiver by the Control Authority must be included as a condition of the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after the expiration of the waiver.

(v) Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_\_\_ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 12(e)(1).

(vi) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must

immediately: Comply with the monitoring requirements of paragraph (e)(1) of this section or other more frequent monitoring requirements imposed by the Control Authority, and notify the Control Authority.

(vii) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

- (23) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by Section 7(d), the report required by paragraph (e)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.
- (34) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in Section 7(c), the report required by paragraph (e)(1) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph (e)(1) shall include the User's actual average production rate for the reporting period.
- (f) Notice of potential problems, including slug loading. All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by Section 6(b), by the Industrial User.
- (g) Monitoring and analysis to demonstrate continued compliance.
- (1) The reports required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under Section 12(b)(6) and Section 12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.
- (2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, ~~except the Industrial User is not required to resample if:~~ Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:
- (i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or
- (ii) The Control Authority performs sampling at the User between the time when the ~~User performs its initial sampling~~ initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

- (3) The reports required in paragraphs (b), (d), (e), and (h) of this section ~~shall~~ must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data ~~is~~ are representative of conditions occurring during the reporting period. the Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge, and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.
- (4) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (b) and (d) of this Section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historic sampling data do not exist; for facilities for which historic sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (e) and (h) of this Section, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and requirements.
- (45) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to sSection 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, Sees. Sections 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.
- (56) If an Industrial User subject to the reporting requirements in paragraphs (e) or (h) of this section monitors any regulated pollutant at the appropriate location more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(45) of this section, the results of this monitoring shall be included in the report.
- (h) Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority shall require appropriate reporting from those

Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Non categorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports ~~shall~~ must be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136 and amendments thereto. ~~Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator.~~ This sampling and analysis may be performed by the Control Authority in lieu of the significant non categorical industrial user. ~~Where the POTW itself collects all the information required for the report, the non categorical significant industrial user will not be required to submit the report.~~

- (i) Annual POTW reports. POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:
  - (1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements.
  - (2) A summary of the status of Industrial User compliance over the reporting period;
  - (3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and
  - (4) Any other relevant information requested by the Approval Authority.
- (j) Notification of changed discharge. All Industrial Users shall promptly notify the ~~POTW~~ Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under Section 12(p).
- (k) Compliance schedule for POTW's. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by Section 9.

- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);
  - (2) No increment referred to in paragraph (h)(1) of this section shall exceed nine months;
  - (3) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.
- (l) Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in Section 7(a)(2)(ii), and shall be signed as follows:
- (1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities ~~employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars)~~, if operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility. This authorization shall include having the explicit or implicit duty of making major capital investment recommendations, and the initiation and direction of other comprehensive measures to assure long-term compliance with environmental laws and regulations. Additionally, the manager shall ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; finally, authority to sign documents and thus bind the corporation has been assigned or delegated to the manager in accordance with corporate procedures.
  - (2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.
  - (3) By a duly authorized representative of the individual designated in paragraph (l)(1) or (l)(2) of this section if:
    - (i) The authorization is made in writing by the individual described in paragraph (l)(1) or (l)(2);
    - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
    - (iii) the written authorization is submitted to the Control Authority.

- (4) If an authorization under paragraph (1)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (1)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.
- (m) Signatory requirements for POTW reports. Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principle executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted. if such employee is responsible for overall operation of the POTW.
- (n) Provisions Governing Fraud and False Statements: The reports and other documents required to be submitted or maintained under this section shall:
- (1) be subject to the provisions of 38 MRSA §349 governing false statements, representation or certification;
  - (2) [reserved]; and
  - (3) for the purposes of this section, the term “person” means, in addition to the definition contained in Chapter 520, any responsible corporate officer.
- (o) Record-keeping requirements.
- (1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:
    - (i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
    - (ii) The dates analyses were performed;
    - (iii) Who performed the analyses;
    - (iv) The analytical techniques/methods use; and
    - (v) The results of such analyses.
  - (2) Any Industrial User or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years any records of monitoring activities and results(whether or not such monitoring activities are required by this section)and shall make such records available for inspection and copying by the Department and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Department or the Regional Administrator.
  - (3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), (e), and (h) of this section shall retain such reports for a minimum

of 3 years and shall make such reports available for inspection and copying by the Department and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Department or the Regional Administrator.

(p) Unless authorized by Maine Hazardous Waste Management Rules, Chapters 850 through 857, there shall be no discharge of hazardous wastes to any POTW.

- (1) The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance which is authorized for discharge to the POTW pursuant to the Hazardous Waste Management Rules, Chapters 850 through 857. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under Section 12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of Section 12(b),(d), and (e).
- (2) Dischargers authorized to discharge to the POTW pursuant to the Hazardous Waste Management Rules, Chapters 850 through 857 are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

- (3) In the case of any new regulations under ~~s~~Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of

hazardous wastes generated to the degree it has determined to be economically practical.

**Section 13. Variances from categorical pretreatment standards for fundamentally different factors.** [see 40 CFR 403.13]

- (a) Definition. The term Requester means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.
- (b) Purpose and scope. In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b) of the Act. In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.
- (c) Criteria--
  - (1) General criteria. A request for a variance based upon fundamentally different factors shall be approved only if:
    - (i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and
    - (ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and
    - (iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.
  - (2) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:
    - (i) The alternative limit requested is no less stringent than justified by the fundamental difference;
    - (ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under Section 6;
    - (iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

- (iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:
  - (A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or
  - (B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.
- (3) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:
  - (i) The alternative limit request is no more stringent than justified by the fundamental difference; and
  - (ii) Compliance with the alternative limit would not result in either:
    - (A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or
    - (B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.
- (d) Factors considered fundamentally different. Factors which may be considered fundamentally different are:
  - (1) The nature or quality of pollutants contained in the raw wasteload of the User's process wastewater;
  - (2) The volume of the User's process wastewater and effluent discharged;
  - (3) Non-water quality environmental impact of control and treatment of the User's raw waste load;
  - (4) Energy requirements of the application of control and treatment technology;
  - (5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;
  - (6) Cost of compliance with required control technology.
- (e) Factors which will not be considered fundamentally different. A variance request or portion of such a request under this section may not be granted on any of the following grounds:
  - (1) The feasibility of installing the required waste treatment equipment within the time the Act allows;
  - (2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;
  - (3) The User's ability to pay for the required waste treatment; or
  - (4) The impact of a Discharge on the quality of the POTW's receiving waters.

- (f) State or local law. Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.
- (g) Application deadline.
  - (1) Requests for a variance and supporting information must be submitted in writing to the Department or to the Administrator (or his or her delegate), as appropriate.
  - (2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the Federal Register.
  - (3) Where the User has requested a categorical determination pursuant to Section 7(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to Section 7 (a)(4).
- (h) Contents submission. Written submissions for variance requests, whether made to the Administrator (or his or her delegate) or the Department, must include:
  - (1) The name and address of the person making the request;
  - (2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;
  - (3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;
  - (4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;
  - (5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;
  - (6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in paragraph (h)(5) of this section;
  - (7) A description of the Industrial User's existing water pollution control facilities;
  - (8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and
  - (9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.
- (i) Deficient requests. The Administrator (or his or her delegate) or the Department will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his or her delegate) or the Department that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his or her delegate) or the Department, the request for a variance shall be denied.
- (j) Public notice. Upon receipt of a complete request, the Administrator (or his or her delegate) or the Department will provide notice of receipt, opportunity to review the

submission, and opportunity to comment, pursuant to the procedures in Chapters 2 and 522.

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

- (i) The POTW into which the Industrial User requesting the variance discharges;
- (ii) Adjoining States whose waters may be affected; and
- (iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Administrator (or his or her delegate) or the Department will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) Review of requests by state.

(1) Where the Department finds that fundamentally different factors do not exist, it may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the Department finds that fundamentally different factors do exist, it shall forward the request, with a recommendation that the request be approved, to the Administrator (or his or her delegate).

(l) Review of requests by EPA.

(1) Where the Administrator (or his or her delegate) finds that fundamentally different factors do not exist, he or she shall deny the request for a variance and send a copy of his or her determination to the Department, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his or her delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he or she will approve the variance. In approving the variance, the Administrator (or his or her delegate) will:

- (i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;
- (ii) Provide the following information in his or her written determination:

- (A) The recommended alternative discharge limits for the Industrial User concerned;
- (B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;
- (C) The supporting evidence submitted to the Administrator (or his or her delegate); and
- (D) Other information considered by the Administrator (or his or her delegate) in developing the recommended alternative discharge limits;

- (iii) Notify the Department and the POTW of his or her determination; and
- (iv) Send the information described in paragraphs (1)(2) (i) and (ii) of this section to the Requestor (and to the Industrial User where they are not the same).

(m) Request for hearing.

- (1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.
- (2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in 40 CFR 1.25) within 30 days of the Regional Administrator's decision.

**Section 14. Confidentiality.** [see 40 CFR 403.14]

- (a) EPA authorities. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).
- (b) Effluent data. Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.
- (c) State or POTW. All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.

**Section 15. Net/Gross calculation.** [see 40 CFR 403.15]

~~Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section.~~

- (a) Application. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraphs (b) ~~and (e)~~ of this section are met.
- (b) Criteria. (1) Either:
- (i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they must be applied on a net basis, or
- (ii) The Industrial User must demonstrate that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.
- (2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
- (3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.
- (4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.
- ~~(e) The applicable categorical pretreatment standards contained in Chapter 525 specifically provide that they shall be applied on a net basis.~~

**Section 16. Upset provision.** [see 40 CFR 403.16]

- (a) Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User and all the requirements of 38 MRSA §349(9) are met. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

- (c) Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
  - (3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):
    - (i) A description of the Indirect Discharge and cause of noncompliance;
    - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
    - (iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (d) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.
- (e) Review ability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.
- (f) User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

**Section 17. Bypass.** [see 40 CFR 403.17]

- (a) Definitions.
  - (1) Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
  - (2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure

efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) Notice.

- (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.
- (2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) Prohibition of bypass.

- (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless;
  - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (iii) The Industrial User submitted notices as required under paragraph (c) of this section.
- (2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

**Section 18. Modification of POTW Pretreatment Programs.** [see 40 CFR 403.18]

- (a) General. 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 Section 11.
- (b) Procedures. POTW Pretreatment Program modifications shall be accomplished as follows:

- (1) For substantial modifications, as defined in paragraph (c) of this section:
  - (i) The POTW shall submit to the Approval Authority a statement of the basis for the desired modification, a modified program description (see, Section 10(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.
  - (ii) The Approval Authority shall approve or disapprove the modification based on the requirements of Section 9(f), following the procedures in Section 11(b)-(f).
  - (iii) The modification shall be incorporated into the POTW's ~~N~~MEPDDES permit after approval.
  - (iv) The modification shall become effective upon approval by the Approval Authority. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under Section 11(b)(1)(i)(B).
  
- (2) The POTW shall notify the Approval Authority of any other (i.e., non-substantial) modifications to its Pretreatment Program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in paragraph (b)(1)(i) of this section. Such non-substantial program modifications shall be deemed to be approved by the Approval Authority, unless the Approval Authority determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Approval Authority, such modifications shall be incorporated into the POTW's permit. If the Approval Authority determines that a modification reported by a POTW in its statement is in fact a substantial modification, the Approval Authority shall notify the POTW and initiate the procedures in paragraph (b)(1) of this section.

(c) Substantial modifications.

- (1) The following are substantial modifications for purposes of this section:
  - (i) Changes to the POTW's legal authorities;
  - (ii) Changes to local limits, which result in less stringent local limits;
  - (iii) Changes to the POTW's control mechanism, as described in Section 9(f)(1)(iii);
  - (iv) Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.);
  - (v) A decrease in the frequency of self-monitoring or reporting required of industrial users;
  - (vi) A decrease in the frequency of industrial user inspections or sampling by the POTW;
  - (vii) Changes to the POTW's confidentiality procedures;
  - (viii) Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and
  - (ix) Changes in the POTW's sludge disposal and management practices.
  
- (2) The Approval Authority may designate other specific modifications, in addition to those listed in paragraph (c)(1) of this section, as substantial modifications.
  
- (3) A modification that is not included in paragraph (c)(1) of this section is nonetheless a substantial modification for purposes of this section if the modification:

- (i) Would have a significant impact on the operation of the POTW's Pretreatment Program;
  - (ii) Would result in an increase in pollutant loadings at the POTW; or
  - (iii) Would result in less stringent requirements being imposed on Industrial Users of the POTW.
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~~AUTHORITY: 38 M.R.S.A. §§ 341-D and 414-B~~

~~APA EFFECTIVE DATE: April 5, 1999~~

~~EFFECTIVE DATE: This rule became effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123. This approval was granted through a January 12, 2001 (the presumed effective date) letter from Mindy S. Lubber of the United States Environmental Protection Agency to Governor Angus S. King, Jr. The APA Office was notified of this action through a memo, which included a copy of the Lubber letter, from Dennis Merrill of the Department of Environmental Protection dated January 23, 2001.~~

## Appendix A --Program Guidance Memorandum

U.S. Environmental Protection Agency

December 16, 1975.

Program Guidance Memorandum--61

Subject: Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges.

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546).

To: Regional Administrators, Regions I-X.

This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

### I. Combined Sewer Overflows

#### A. Background

The costs and benefits of control of various portions of pollution due to combined sewer overflows and by-passes vary greatly with the characteristics of the sewer and treatment system, the duration, intensity, frequency and a real extent of precipitation, the type and extent of development in the service area, and the characteristics, use and water quality standards of the receiving waters. Decisions on grants for control of combined sewer overflows, therefore, must be made on a case-by-case basis after detailed planning at the local level.

Where detailed planning has been completed, treatment or control of pollution from wet-weather overflows and bypasses may be given priority for construction grant funds only after provision has been made for secondary treatment of dry-weather flows in the area. The detailed planning requirements and criteria for project approval follow.

#### B. Planning Requirements

Construction grants may be approved for control of pollution from combined sewer overflows only if planning for the project was thoroughly analyzed for the 20 year planning period:

1. Alternative control techniques which might be utilized to attain various levels of pollution control (related to alternative beneficial uses, if appropriate), including at least initial consideration of all the alternatives described in the section on combined sewer and stormwater control in "Alternative Waste Management Techniques and Best Practicable Waste Treatment" (Section C of Chapter III of the information proposed for comment in March 1974).
2. The costs of achieving the various levels of pollution control by each of the techniques appearing to be the most feasible and cost-effective after the preliminary analysis.

3. The benefits to the receiving waters of a range of levels of pollution control during wet-weather conditions. This analysis will normally be conducted as part of State water quality management planning, 208 area wide management planning, or other State, regional or local planning effort.

4. The costs and benefits of addition of advanced waste treatment processes to dry-weather flows in the area.

### C. Criteria for Project Approval

The final alternative selected shall meet the following criteria:

1. The analysis required above has demonstrated that the level of pollution control provided will be necessary to protect a beneficial use of the receiving water even after technology based standards required by Section 301 of Pub. L. 92-500 are achieved by industrial point sources and at least secondary treatment is achieved for dry-weather municipal flows in the area.

2. Provision has already been made for funding of secondary treatment of dry-weather flows in the area.

3. The pollution control technique proposed for combined sewer over flow is a more cost-effective means of protecting the beneficial use of the receiving waters than other combined sewer pollution control techniques and the addition of treatment higher than secondary treatment for dry-weather municipal flows in the area.

4. The marginal costs are not substantial compared to marginal benefits.

Marginal costs and benefits for each alternative may be displayed graphically to assist with determining a project's acceptability under this criterion. Dollar costs should be compared with quantified pollution reduction and water quality improvements. A descriptive narrative should also be included analyzing monetary, social and environmental costs compared to benefits, particularly the significance of the beneficial uses to be protected by the project.

## II. Stormwater Discharges

Approaches for reducing pollution from separate stormwater discharges are now in the early stages of development and evaluation. We anticipate, however, that in many cases the benefits obtained by construction of treatment works for this purpose will be small compared with the costs, and other techniques of control and prevention will be more cost-effective. The policy of the Agency is, therefore, that construction grants shall not be used for construction of treatment works to control pollution from separate discharges of stormwater except under unusual conditions where the project clearly has been demonstrated to meet the planning requirements and criteria described above for combined sewer overflows.

## III. Multi-purpose Projects

Projects with multiple purposes, such as flood control and recreation in addition to pollution control, may be eligible for an amount not to exceed the cost of the most cost-effective single purpose pollution abatement system. Normally the Separable Costs-Remaining Benefits (SCRB) method should be used to allocate costs between pollution control and other purposes, although in unusual cases another method may be appropriate. For such cost allocation, the cost of the least

cost pollution abatement alternative may be used as a substitute measure of the benefits for that purpose. The method is described in ``Proposed Practices for Economic Analysis of River Basin Projects, "GPO, Washington, D.C., 1958, and ``Efficiency in Government through Systems Analysis," by Roland N. McKean, John Wiley & Sons, Inc., 1958.

Enlargement of or otherwise adding to combined sewer conveyance systems is one means of reducing or eliminating flooding caused by wet-weather conditions. These additions may be designed so as to produce some benefits in terms of reduced discharge of pollutants to surrounding waterways. The pollution control benefits of such flood control measures, however, are likely to be small compared with the costs, and the measures therefore would normally be ineligible for funding under the construction grants program.

All multi-purpose projects where less than 100% of the costs are eligible for construction grants under this policy shall contain a special grant condition precluding EPA funding of non-pollution control elements. This condition should, as a minimum, contain a provision similar to the following:

``The grantee explicitly acknowledges and agrees that costs are allowable only to the extent they are incurred for the water pollution control elements of this project."``

Additional special conditions should be included as appropriate to state that the grantee clearly understands which elements of the project are eligible for construction grants under Pub. L. 92-500.

**Appendix B --[Reserved]****Appendix C --[Reserved]****Appendix D --Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula**

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR part 444)  
 Carpet and Upholstery Cleaning  
 Coin-Operated Laundries and Dry Cleaning  
 Diaper Services  
 Dry Cleaning Plants except Rug Cleaning  
 Industrial Laundries  
 Laundry and Garment Services, Not Elsewhere Classified  
 Linen Supply  
 Power Laundries, Family and Commercial  
 Electrical and Electronic Components \1\ (40 CFR part 469)  
 Capacitors (Fluid Fill)  
 Carbon and Graphite Products  
 Dry Transformers  
 Ferrite Electronic Devices  
 Fixed Capacitors  
 Fluorescent Lamps  
 Fuel Cells  
 Incandescent Lamps  
 Magnetic Coatings  
 Mica Paper Dielectric  
 Motors, Generators, Alternators  
 Receiving and Transmitting Tubes  
 Resistance Heaters  
 Resistors  
 Switch gear  
 Transformer (Fluid Fill)  
 Metal Molding and Casting (40 CFR part 464)  
 Nickel Casting  
 Tin Casting

Titanium Casting  
Gum and Wood Chemicals (40 CFR part 454)  
Char and Charcoal Briquettes  
Inorganic Chemicals Manufacturing (40 CFR part 415)  
Ammonium Chloride  
Ammonium Hydroxide  
Barium Carbonate  
Calcium Carbonate  
Carbon Dioxide  
Carbon Monoxide and Byproduct Hydrogen  
Hydrochloric Acid  
Hydrogen Peroxide (Organic Process)  
Nitric Acid  
Oxygen and Nitrogen  
Potassium Iodide  
Sodium Chloride (Brine Mining Process)  
Sodium Hydrosulfide  
Sodium Hydrosulfite  
Sodium Metal  
Sodium Silicate  
Sodium Thiosulfate  
Sulfur Dioxide  
Sulfuric Acid  
Leather (40 CFR part 425)  
Gloves  
Luggage  
Paving and Roofing (40 CFR part 443)  
Asphalt Concrete  
Asphalt Emulsion  
Linoleum  
Printed Asphalt Felt  
Roofing  
Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR parts 430 and 431)  
Groundwood-Chemi-Mechanical  
Rubber Manufacturing (40 CFR part 428)  
Tire and Inner Tube Plants  
Emulsion Crumb Rubber  
Solution Crumb Rubber  
Latex Rubber  
Small-sized General Molded, Extruded and Fabricated Rubber Plants\2\  
Medium-sized General Molded, Extruded and Fabricated Rubber Plants\2\  
Large-sized General Molded, Extruded and Fabricated Rubber Plants\2\  
Wet Digestion Reclaimed Rubber  
Pan, Dry Digestion, and Mechanical Reclaimed Rubber  
Latex Dipped, Latex-Extruded, and Latex-Molded Rubber \3\  
Latex Foam \4\  
Soap and Detergent Manufacturing (40 CFR part 417)  
Soap Manufacture by Batch Kettle  
Fatty Acid Manufacture by Fat Splitting  
Soap Manufacture by Fatty Acid Neutralization

Glycerine Concentration  
Glycerine Distillation  
Manufacture of Soap Flakes and Powders  
Manufacture of Bar Soaps  
Manufacture of Liquid Soaps  
Manufacture of Spray Dried Detergents  
Manufacture of Liquid Detergents  
Manufacture of Dry Blended Detergents  
Manufacture of Drum Dried Detergents  
Manufacture of Detergent Bars and Cakes  
Textile Mills (40 CFR part 410)  
Apparel manufacturing  
Cordage and Twine  
Padding and Upholstery Filling  
Timber Products Processing (40 CFR part 429)  
Barking Process  
Finishing Processes  
Hardboard--Dry Process

Footnotes:

- \1\ The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40CFR parts 413/433).
- \2\ Except for production attributed to lead-sheathed hose manufacturing operations.
- \3\ Except for production attributed to chromic acid form-cleaning operations.
- \4\ Except for production that generates zinc as a pollutant in discharge.

## **Appendix E --Sampling Procedures**

### **I. Composite Method**

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

### **II. Grab Method**

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

## **Appendix F--[Reserved]**

### Appendix G --Pollutants Eligible For A Removal Credit

#### I. Regulated Pollutants in Part 503 Eligible for a Removal Credit

Use or disposal practice

Pollutants	LA	SD	I
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium		X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons			X \1\

Key:

LA--land application. SD--surface disposal site without a liner and leachate collection system. I--firing of sewage sludge in a sewage sludge incinerator.

\1\ The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, Aldrin/Dieldrin (total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

II. Additional Pollutants Eligible for a Removal Credit  
[milligrams per kilogram--dry weight basis]

Pollutant	Use or disposal practice			
	LA	SD	Unlined \1\	Lined \2\
Arsenic			\3\ 100	
Aldrin/Dieldrin (Total)	2.7			
Benzene	\3\ 16	140	3400	
Benzo(a)pyrene	15	\3\ 100	\3\ 100	
Bis(2-ethylhexyl)phthalate		\3\ 100	\3\ 100	
Cadmium		\3\ 100	\3\ 100	
Chlordane	86	\3\ 100	\3\ 100	
Chromium	\4\		\3\ 100	
Copper		\3\ 46	\3\ 100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid			7	7
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadiene	600			
Iron	\3\ 78			
Lead		\3\ 100	\3\ 100	
Lindane	84	\3\ 28	\3\ 28	
Malathion		0.63	0.63	
Mercury			\3\ 100	\3\ 100
Molybdenum		40	40	
Nickel		\3\ 100		
N-Nitrosodimethylamine	2.1	0.088	0.088	
Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	\3\ 26	\3\ 26	
Trichloroethylene	\3\ 10	9500	\3\ 10	
Zinc		4500	4500	4500

Key: LA--land application. SD--surface disposal. I--incineration.

\1\ Sewage sludge unit without a liner and leachate collection system.

\2\ Sewage sludge unit with a liner and leachate collection system.

\3\ Value expressed in grams per kilogram--dry weight basis.

\4\ Value to be determined on a case-by-case basis.

**AUTHORITY:** 38 MRSA §§ 341-D and 414-B

APA EFFECTIVE DATE: April 5, 1999

EFFECTIVE DATE: This rule became effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123. This approval was granted through a January 12, 2001 (the presumed effective date) letter from Mindy S. Lubber of the United States Environmental Protection Agency to Governor Angus S. King, Jr. The APA Office was notified of this action through a memo, which included a copy of the Lubber letter, from Dennis Merrill of the Department of Environmental Protection dated January 23, 2001.

AMMENDED EFFECTIVE: