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December 13, 2005

Water Docket
Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Via E-mail: OW-Docket@epa.gov

Attn Docket ID No. OW-2005-0024

Dear Sir or Madam:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA or Agency) *Advance Notice of Proposed Rulemaking on the Availability of and Procedures for Removal Credits* (October 14, 2005; 70 Fed. Reg. 60,199). In the ANPRM, EPA seeks comments on whether to amend the list of pollutants for which removal credits are available and on options for amending the "consistent removal" provision in the removal credits regulations. Most of NACWA's publicly owned wastewater treatment (POTW) agency members operate approved pretreatment programs, and, therefore, are ultimately responsible for deciding when to use a removal credit and for seeking approval to issue such a credit as appropriate to an industrial user.

NACWA's members generally have found no compelling reason to assume the additional liability associated with implementation of the removal credit provisions in 40 CFR Part 403. One of the major concerns for wastewater treatment agencies is that the removal of toxics that occurs in the treatment processes utilized at a POTW is incidental. Because this removal is not purposeful, the POTW has no control over actual removal efficiencies during anything less than optimal treatment plant conditions. Any number of possible upset variables (i.e., solids bulking, biota changes, temperatures, heavy rain, etc.) will most likely limit incidental removal, presenting another problem for any POTW that has granted a removal credit, in addition to the 'upset' itself. These types of impacts can only be anticipated and addressed at the local level by POTWs, and not simply through the implementation of national regulations.

Additionally, issues associated with the beneficial reuse of biosolids and the pollution prevention goals of most NACWA members further complicate the consideration of removal credits. NACWA offers the following comments on the Agency's ANPRM.

Application of Removal Credit Provisions Limited

NACWA understands that EPA's ANPRM is responding to requests to provide additional opportunities for removal credits. The removal credit provisions in 40 CFR Part 403 were crafted in such a way as to limit their use to only those extremely rare instances when it might be deemed appropriate. Furthermore, it provides the wastewater treatment agency with the ultimate discretion on whether to grant a removal credit. The liability that a wastewater treatment agency assumes in approving a removal credit has all but eliminated the application of this provision except in those instances where the POTW, the industrial user, and the state or EPA Regional office agree that such an arrangement is appropriate. NACWA does not believe that the lack of pollutants eligible for removal credits or the complexity of the 'consistent removal' demonstration are hindering the approval of removal credits. Rather, the system is working as it was originally designed – removal credits are only being used in limited circumstances.

Given the burden associated with approving a credit and the ongoing monitoring and reporting to demonstrate a treatment plant's removal capabilities, NACWA believes that the decision to grant a removal credit must be made carefully and only in those limited circumstances where it is deemed appropriate (e.g., the wastewater treatment plant has specific technology designed to remove a particular pollutant) and protective of the environment. Even then, the evaluation of a removal credit should fully factor in the potential liability for the wastewater treatment agency and any associated costs to the municipality that would otherwise be borne by the industry through pretreatment.

Biosolids and Pollution Reduction Considerations

Though NACWA understands the reasoning behind the Agency's possible amendments to the list of pollutants eligible for removal credits, the Association is concerned about the potential misinterpretation of EPA's actions. Specifically, NACWA is already aware of several biosolids activist groups that are describing this ANPRM as an 'industry allowance to discharge more pollutants' resulting in lower quality biosolids that will be land-applied or otherwise beneficially reused.

Given the extensive risk assessment performed on these pollutants by EPA's biosolids team and the 'upper concentrations' that would be developed for each pollutant added to Table II in Appendix G of 40 CFR Part 403, NACWA knows that the resultant levels of these pollutants in biosolids would be safe for human health and the environment. However, the reality is that removal credits would likely increase the amounts of these pollutants in biosolids and the perceived impacts associated with this increase could be detrimental to the beneficial reuse of those biosolids. These are considerations that POTWs must evaluate before granting a removal credit.

Conclusion

NACWA does not believe that the granting of removal credits should be guided solely by a national, one-size-fits-all approach. The provisions in 40 CFR Part 403 lay out important requirements and considerations, but POTWs must also consider more locally-driven impacts. Simply adding pollutants to the eligibility list based on a pollutant-specific human health risk assessment for possible impacts in biosolids does not factor in the

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myriad variables and other impacts (i.e., inhibition, pass through and biosolids quality) that must be considered by POTWs. The granting of a removal credit for any pollutant must be evaluated at the local level by the appropriate stakeholders, using only locally-relevant data to determine whether the criteria in 40 CFR Part 403 can be met.

Regardless of how EPA decides to proceed on its proposed revisions to the removal credit provisions, any wastewater treatment agency considering the approval of a removal credit must seriously consider the implications for every aspect of their operation. NACWA is committed to ensuring that its members and other wastewater treatment agencies are well aware of the issues surrounding removal credits.

Thank you again for the opportunity to comment on this ANPRM. If you have any questions, please contact me at 202/833-9106 or chornback@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback". The signature is fluid and cursive, with a large initial "C" and "H".

Chris Hornback
Director, Regulatory Affairs