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November 19, 1999

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Comments Clerk for Pretreatment
Program Streamlining
Water Docket (MC-4101)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Secretary
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Narragansett Bay Water
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District Commission
Providence, RI

RE: DOCKET #W-97-09: JULY 22, 1999 NATIONAL PRETREATMENT PROGRAM
STREAMLINING PROPOSAL

Executive Director
Ken Kirk

Dear Sir/Madam:

Thank you for the opportunity to comment on EPA's July 22, 1999 proposal on "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution." The Association of Metropolitan Sewerage Agencies (AMSA) represents the interests of 238 of the country's publicly-owned wastewater treatment agencies, large and small, which collectively serve the majority of the sewered population in the United States, and treat and reclaim more than 19 billion gallons of wastewater each day. In addition to their primary responsibility for treating the Nation's domestic and industrial wastewater, AMSA member agencies play a major part in their local communities, often leading watershed management efforts, promoting industrial/household pollution prevention and water conservation, and developing urban stormwater management programs.

AMSA has had an opportunity to review the proposed regulatory modifications for pretreatment streamlining and is supportive of many of the proposed changes. However, we do have significant concerns with several proposed modifications addressing significant noncompliance, pH limits, de minimis CIUs, general permits, sampling for pollutants not present, and removal credits. To address these concerns, AMSA and the Water Environment Federation (WEF) have developed a Pretreatment Streamlining White Paper which recommends several additional changes to EPA's proposal to further reduce administrative burden while still providing adequate protection to achieve the goals of the National

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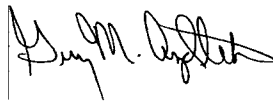
Pretreatment Program (see Attachment 1). Discussion and/or support of EPA's changes to other portions of the rule are also provided in supplemental AMSA comments in Attachment 2. The supplemental comments and the AMSA/WEF White Paper recommendations are intended to guide the Agency in providing POTWs additional latitude to divert resources from administrative tasks to additional field and compliance support activities.

Thank you for the opportunity to comment on the Agency's pretreatment streamlining proposal. We would be glad to meet with EPA to discuss our concerns and comments. In the interim, if you have any questions, please contact either one of us at 202/833-4653 or 757/460-4220, respectively.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk".

Ken Kirk
Executive Director

A handwritten signature in black ink, appearing to read "Guy M. Aydlett".

Guy Aydlett
Chair, AMSA Pretreatment and Hazardous Waste Committee

ATTACHMENT 1

**AMSA/WEF PRETREATMENT STREAMLINING WHITE PAPER
NOVEMBER 3, 1999**



PRETREATMENT STREAMLINING WHITE PAPER

**ASSOCIATION OF METROPOLITAN
SEWERAGE AGENCIES
AND
WATER ENVIRONMENT FEDERATION**

NOVEMBER 3, 1999

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EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA) is considering several simplifying changes to the pretreatment program that would reduce the current burden to POTWs and industrial users including: exclusions or variable requirements for smaller facilities that contribute insignificant amounts of pollutants; clarification of requirements for implementing pretreatment standards; and more flexible reporting, inspection and sampling requirements.

The Association of Metropolitan Sewerage Agencies (AMSA) and the Water Environment Federation (WEF) have played an integral part in the development of these proposed changes, working together with EPA in developing issue papers and hosting the 1996 AMSA-WEF Pretreatment Streamlining Workshop which involved representatives from EPA, states, municipalities, industry, and environmental organizations. Additionally, AMSA and WEF provided comment on EPA's May 1997 draft proposal. While supportive of many of the proposed changes, WEF and AMSA have significant concerns with some of EPA's proposed modifications addressing significant noncompliance (SNC) criteria, pH limits, de minimis CIUs, general permits, sampling for pollutants not present, and removal credits.

Significant non-compliance Criteria

Experience gained over the last 18 years has demonstrated that because of the way that the minimum SNC criteria are expressed, often an SNC publication is so large and un-targeted that the real IU "bad actors" get hidden among a long list of IUs, many of whom did nothing that threatened or caused pass through, interference or endangerment to workers. To address these concerns WEF and AMSA have made three major recommendations for EPA's July 1999 streamlining proposal for defining SNC including:

- 1) The 30-day late reporting requirement be extended to 45 days. If a report that is submitted late establishes compliance with all applicable pretreatment standards the late submittal will not be deemed SNC.
- 2) EPA should develop Technical Review Criteria that are germane to the objectives of the pretreatment program, developed in a manner that lends credence to the application of effluent guidelines and local limits, and are technically sound and defensible.
- 3) SNC determinations should be based on static six-month periods and not on rolling six-month quarters.

Specific Prohibition Regarding pH

While WEF and AMSA applaud EPA's clarification of the existing language so that allowing discharge of wastewater with pH below 5.0 is not limited to municipal facilities that, when originally constructed, were specifically designed to accept low pH discharges, WEF and AMSA have concerns as to the extent of justification and detail required for any POTW to be able to accept a discharge below 5.0 under the proposal. Instead, WEF and AMSA propose an

alternative approach that allows short-term discharges between 4.0 and 5.0 pH without requiring each individual POTW to make temporary site-specific demonstration.

De Minimis CIUs

To address Control Authorities' concerns that oversight resources are being directed towards IUs with minimal potential to adversely impact POTW operations, the EPA proposed flexibility to allow Control Authorities to exempt a newly defined class of "non-significant" categorical industrial users (NCIU) from the definition of SIU.

While the EPA's proposal provides some degree of oversight flexibility to Control Authorities regarding NCIUs, the proposed 100 gpd discharge ceiling is too low to allow meaningful application of the NCIU class distinction. In fact, EPA itself estimated that only 2 percent of CIUs nationally would qualify for the proposed NCIU class distinction. WEF and AMSA believe that the 100 gpd flow ceiling does not reflect the local conditions and/or concerns that prompted Control Authorities to seek oversight flexibility in the first place, nor will implementation of EPA's NCIU class distinction provide meaningful burden reduction for Control Authorities or small industries.

In recognition of this fact, WEF and AMSA are proposing an alternative approach to Control Authority oversight of CIUs that have little or no potential to impact the operation of their receiving POTWs. Specifically, WEF and AMSA are proposing a three tier classification system that incorporates both the current CIU classification and a modification of EPA's proposed NCIU classification and an additional class of facilities that contribute minimally to the receiving POTWs headworks which have a good compliance history. Finally, WEF and AMSA are proposing reduced oversight (both IU self-monitoring and Control Authority monitoring) for these NCIU classes.

Sampling for Pollutants not Present

WEF and AMSA strongly support providing Control Authorities with discretion to allow an industrial user subject to categorical pretreatment standards to not sample for a pollutant if the pollutant is not expected to be present in its waste-stream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. We strongly recommend that EPA not limit the appropriate discretion granted to the Control Authority by excluding OCPSF (or any other sources regulated by a categorical standard) facilities from this proposed change. POTWs have been regulating the OCPSF sector since 1990 and can make appropriate decisions as to whether it can safely allow a reduction in sampling burden.

General Permits

WEF and AMSA strongly support the use of general permits to regulate SIUs in certain circumstances. We strongly recommend that EPA not limit the discretion granted to the Control Authority as to how to issue any type of permit. Currently, the pretreatment regulations do not prescribe how to have SIUs apply for a permit or other individual control mechanism and it is not

necessary to prescribe application requirements for a general permit.

Removal Credits

WEF and AMSA support EPA's clarification that the restrictions on the availability of removal credit authority for POTWs with overflows applies to POTWs with collection systems subject to either CSOs or SSOs. However, it should be recognized that applying the standard to SSOs and CSOs increases the burden on POTWs applying for or implementing removal credits. WEF and AMSA specifically propose that industrial users that are upstream of CSO or SSO outfalls be deemed eligible for removal credits where it can be established that the IU discharges will be consistently treated or the POTW is in compliance with the NPDES permit. The POTW removal credit application must demonstrate that removal credits will not cause a violation of the POTW's permit limitations or conditions and include a NPDES Permit Limit Certification.

A. SIGNIFICANT NONCOMPLIANCE CRITERIA (40 CFR PART 403.8(f)(2)(vii))

1. Introduction

The federal Pretreatment rules attempt to use public pressure and the desire of most industry to avoid public notoriety as supplements to enforcement actions in the efforts to insure compliance with the Pretreatment Program's requirements. It does this by requiring Pretreatment Control Authorities to publish in newspapers the identity of those Industrial Users who, during the prior 12 months, were deemed to be in Significant Non-compliance (SNC) with their Pretreatment Requirements. We agree with publicizing the identity of those IUs whose discharge caused or had the potential to cause significant problems with either the POTW collection, treatment and biosolids management system, or compliance with the POTW NPDES Permit. Publication can provide a significant incentive to IUs to come into compliance. However, experience gained over the last 18 years has demonstrated that, because of the way that the minimum SNC criteria are expressed, often an SNC publication is so large or un-targeted that the real IU "bad actors" get hidden among a long list of IUs, many of whom did nothing that threatened or caused pass through, interference or endangerment to workers. Through this proposal, EPA has suggested a number of changes meant to address this problem. We agree with many of EPA's proposals. For others we agree with the intent, but feel that additional refinement will better serve the stated purpose and/or will continue to meet the stated purpose but will result in additional reductions in Control Authority administrative burdens.

2. Proposed SNC Criteria Changes:

We propose the following modifications to the proposed 40 CFR Part 403.8(f):

(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 Control Authority is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user 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 percent or more of all of the measurements taken during either the January through June or the July through December period during any calendar year ~~a period~~ exceed (by any magnitude) the numeric Pretreatment Standard for the same pollutant parameter. This criteria does not apply to parameters measured using continuous monitoring equipment.

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during either the

January through June or July through December a ~~sixth~~ month period equal or exceed the product of the numerical Pretreatment Standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, grease, and 1.2 for all pollutants except for pH). The criteria do not apply to parameters measured using continuous monitoring equipment.

(C) Any other violation of a Pretreatment Standard or Pretreatment Requirement that the Control Authority determines has caused, alone or in combination with other discharges, interference (including with biosolids management) or pass through.

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority'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~~ 45 days after the due date, ~~required reports such as baseline monitoring reports, 90-day compliance reports, and periodic self-monitoring reports, unless such reports, when received, showed compliance with the applicable pretreatment standards; and failure to provide within 45 days after the due date, other required report, such as baseline monitoring reports and reports on compliance with compliance schedules;~~

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations that the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

3. Discussion:

a. Publication

EPA is proposing to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the Control Authority that provides meaningful public notice. We support this change because it will allow for appropriate publication of Industrial Users who are in SNC at reduced cost for some municipalities. Based on the survey conducted by AMSA and WEF, Control Authorities estimate that this proposed change will result in savings of approximately \$100 to \$10,000 per year for those municipalities that have two or more major newspapers.

b. Applicability

EPA is proposing to amend the SNC criteria so that they must only be applied to significant industrial users. We support this change because it will allow the publication of Industrial Users who are in SNC to be focused on those dischargers who have the capability to cause collection or treatment system interference or pass through.

c. Interference and Pass Through SNC Criteria

The entire purpose of the federal Industrial Pretreatment Program is to prevent interference and pass through. (40 CFR 403.2 (a) and (b).) However, the current SNC criteria that addresses violations that resulted in interference or pass through is limited to *pretreatment effluent limits*. In this proposal, EPA is seeking to broaden its pass through and interference SNC criteria to all *Pretreatment Standards [and] Pretreatment Requirements*. We agree with, and support this expanded criterion.

d. Rolling 6 Month/Quarterly Periods

Currently the SNC regulatory definition of both chronic and TRC violations are based on rolling six month periods. In practice, however, most EPA regions require Control Authorities to apply EPA guidance, which call for doing SNC reviews using rolling quarters. While the use of rolling evaluation time periods allows more violations to be classified as significant, perhaps providing, in concept, a greater incentive to the non-compliant IU to come back into compliance sooner, in actuality, this incremental incentive is small. The use of rolling time periods however, does place significant human resource and/or software expense burdens on Control Authorities. In terms of the potential incremental benefit under Part 403.12(h), Significant Non-Categorical IUs must only sample/be sampled two times a year. Similarly, the minimum required sampling frequency for many categorical pretreatment standards is semi-annually. Thus, there may be little or no additional data to review during a rolling time period evaluation as compared to if the period was "fixed" (i.e. a calendar quarter or some portion of a calendar year).

However, a switch from a rolling period to a fixed period could provide a significant burden reduction to many Control Authorities. Today, and for the foreseeable future most Control Authorities use spreadsheet-based computer programs to track IU monitoring data. The data collected on these spreadsheets serves as the data set for SNC reviews. Automated SNC evaluations through rolling time periods, however, are difficult to program into such spreadsheets. Thus either more expensive computer programs must be used, and specialized to do these reviews, or they must be done manually. If fixed, calendar-based periods are used for SNC review, simple low cost, off the shelf, spreadsheet packages can be used. Most Control Authority pretreatment staffs would be able to input the relatively simple formulas needed to do the SNC evaluation.

Furthermore, using fixed time periods will allow greater national consistency, and will facilitate

EPA's goal of promoting data collection consistency and the longer term goal of making compliance related data available to the public through the World Wide Web or other electronic databases.

Finally, if an IU has been included in one annual publication and the same violation continues into the subsequent calendar year long enough so it meets the SNC criteria, but the IU has returned to compliance prior to the time of the next SNC publication, the Control Authority should not be required to include the IU in that year's list of SNC violators. Often, if the cause of a violation is serious enough so that it meets the SNC criteria, it may take an extended period to identify the cause and the solution to the problem, and then to implement the fix. It is not unusual for this to take 6 months to a year. However, if the IU knows that it can avoid having its name published a second time by returning to compliance before the Control Authority prepares its next SNC publication, it will serve as an added incentive to complete the correction in a timely manner.

e. Reporting Violations

The original premise for development of the definition of SNC for administrative violations was mirrored from the NPDES program where the monthly reporting requirement for submittal of discharge data (DMRs) is routine. In the pretreatment program, the minimum regulatory reporting frequency is semi-annually. Thus, a 30 day late requirement makes sense for the NPDES program to ensure that monthly reports are submitted in a timely manner and long gaps in time do not occur to evaluate results. The 30-day requirement is overly restrictive for the many reports submitted under the pretreatment program as discussed below.

Under the pretreatment program, industries are required to submit self-monitoring reports (SMRs), baseline monitoring reports (BMRs), 90-day compliance reports, and a wide variety of information related to permit conditions, process descriptions, compliance actions, etc. Tracking the submittal and responsiveness of these reporting requirements is a significant administrative effort for Control Authorities. Thus our goal in recommending changes to the SNC criteria is to alleviate some of this burden and focus enforcement activities, while still fulfilling the public notification requirements.

For self-monitoring reports (SMRs) and 90-day compliance reports, we recommend that the 30-day requirement be extended to 45 days, provided that SNC does not apply if the reports show that the industrial user is in compliance with all applicable pretreatment standards. While we agree that timely submittal of SMRs is critical to determining compliance with discharge standards, unlike the NPDES program, it should be noted that Control Authorities often rely on their own oversight monitoring to determine compliance with permit limits, while SMR data is used as supplemental information. As part of the regulatory development process, concerns were expressed by EPA and others that if the SMRs are not received within 30 days, either the sampling was not done or the industrial user was trying to hide or delay violation notice. The experience of many POTWs has shown this not to be true. The majority of reports are simply

late for a number of reasons (administrative error, contract laboratory delays, etc.). Therefore, extending the submittal deadline by 15 days would have no appreciable impact on compliance status, but would recognize that, sometimes, delays happen.

More importantly, our experience has shown that the majority of industrial users that submit late reports have, in fact, not only collected the data, but are in compliance with all applicable pretreatment requirements. In October 1999, AMSA and WEF surveyed approximately 75 POTWs implementing pretreatment programs on certain aspects of the streamlining rule. Information from 28 POTWs which range in size from 6 to 630 MGD, and administer pretreatment programs that range in size from 6 SIUs to 1358 SIUs, indicate that out of a total of 101 late SMRs which resulted in SNC determinations, 59 (58 percent) showed compliance with applicable pretreatment standards once these reports were submitted. Clearly, listing the names of these industries in SNC publication is extremely misleading to the public and does a disservice to the industry. Also, the additional work required developing that portion of the SNC notice and annual report discussion is an additional burden of Control Authority resources.

With regard to our proposal to extend the reporting deadline to 45 days for submittal of other reports, which typically do not contain analytical data, the extension would allow for a consistent time frame for report submittals and would eliminate potential confusion resulting from two different time frames for submittal of different kinds of reports. It should be emphasized that the 15-day extension would not preclude a Control Authority from being more restrictive or taking enforcement actions sooner. The only impact would be on SNC determination and publication.

f. Chronic Violations

While, on first reading, the proposed exemption from this criteria for those parameters which are being monitored through continuous monitoring, would create a large loophole, in reality it does not. Should there be a 66% or higher violation rate for any parameter which is of significant enough concern so that it is being continuously monitored, SNC criteria C (the pass through and interference criteria) and/or criteria H may apply. By leaving the SNC decision for parameters which are being continuously monitored to criteria C or H, Control Authorities will not have the additional burden of having to do the work necessary to do a defensible percentage calculation.

g. Technical Review Criteria

The existing Technical Review Criteria (TRC) used to determine SNC in accordance with 40 CFR 403.8 (f)(1), were directly taken from the quarterly non-compliance reporting requirement under the NPDES program. As a result, there was no attempt to relate the application of the criteria to the prevention of pass-through and interference, and improvement of opportunities to recycle and reclaim biosolids pursuant to the objectives of the general pretreatment regulations as specified in 40 CFR 403.2. We believe that, it is incumbent on EPA to develop TRC that are germane to the objectives of the pretreatment program, developed in a manner that lends credence to application of effluent guidelines and local limits, and are technically sound and

defensible.

Without this linkage to the objectives of the pretreatment program, the use of the TRC to determine SNC is misleading to the public as it mis-characterizes the severity and impacts of the violation. According to the information provided by the 28 POTWs for up to 5 years of data, 290 industrial users have been in SNC for exceedance of the TRC. However, only 5 of these cases have resulted in pass-through, interference, or degraded biosolids quality.

B. SPECIFIC PROHIBITION REGARDING pH (40 CFR 403.5(b)(2))

1. Introduction

WEF and AMSA generally support the EPA proposed approach of allowing POTWs to establish pH requirements below the 5.0 pH default value, otherwise established in 40 CFR Part 403.5(b)(2). The EPA proposal regarding pH, however, appears to be inconsistent with the philosophy of “streamlining” the regulations, providing greater flexibility, reducing burden and achieving greater environmental results at less cost. While the proposal allows POTWs to justify allowing discharges at pH less than 5.0, it imposes an excessive administrative burden for this justification if a POTW wishes to address minor pH fluctuations that do not pose a risk to the collection system.

2. Proposed Changes to the Specific Prohibition Regarding pH

As an alternative, WEF and AMSA believe there is adequate data to justify a short-term discharge between 4.0 and 5.0 pH on a national basis, without requiring each individual POTW to make a site-specific demonstration. We propose the following modifications to EPA’s proposed 403.5(b):

(b)(2)

(i) *Pollutants which will cause corrosive structural damage to the POTW; and*

(ii) *Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharge, except that a POTW with an Approved Pretreatment Program may allow temporary excursions below 5.0 for dischargers that continuously monitor pH provided it: authorized by the Control Authority in an individual control mechanism or other written authorization issued to the industrial user and the Discharge meets the requirements of subsection A, B, C, or D below:*

(A) Discharges with pH lower than 5.0 are authorized if the POTW is specifically designed to accommodate such Discharge.

(B) Discharges with pH lower than 5.0 are authorized if the pH of the industrial user discharge is continuously monitored provided the following limitations are met:

1. The total time during which the pH values are below 5.0 shall not exceed five hours in a calendar month.

2. The total time during which the pH values are below 5.0 shall not exceed sixty (60) minutes in a twenty-four (24) hour period, and

3. In no event shall the discharge be below 4.0 pH.

(C) Discharges with pH lower than 5.0 are authorized if the pH of the industrial user discharge is not continuously monitored provided the following limitations are met:

1. The total time during which the pH values are below 5.0 shall not exceed five hours in a calendar month.

2. The industrial user achieves a pH of 5.0 or greater within sixty (60) minutes of determination and

3. In no event shall the discharge be below 4.0 pH.

(D) Discharges with pH lower than 5.0 where the POTW:

- (A) (1) Maintains a publicly available written technical evaluation that supports the POTW's finding that the ~~temporary~~ pH excursions do not have the potential to cause corrosive structural damage to the POTW or other violations of paragraphs (a), ~~and~~ (b)(1), (b)(4), and (b)(7) of this section. The evaluation shall address the site-specific factors concerning pH and structural corrosion, including the characteristics of non-domestic wastewater and receiving flow, the design and materials of construction of the POTW, and the fate of pH in the discharge;
- (B) (2) Performs adequate oversight of the ~~temporary~~ pH excursions to prevent corrosive structural damage to the POTW and other violations of paragraphs (a), ~~and~~ (b)(1), (b)(4), and (b)(7) of this section; and
- (C) (3) Reports in its annual report under § 403.12(i) its oversight actions and findings regarding non-domestic dischargers with ~~temporary~~ pH excursions.
- (D) (4) Has legal authority to grant such ~~temporary~~ excursions in accordance with § 403.8(f)(1) and makes them effective through an Industrial User control mechanism

3. Discussion of Specific Prohibition Regarding pH

a. Specifically Designed POTWs

Notwithstanding the ambiguity associated with the "specifically designed" standard in the existing regulation, there are POTWs that currently meet such standard and, therefore, can

appropriately authorize industrial user discharge below 5.0 pH. These “specifically designed POTWs,” are not now subject to the extensive documentation and oversight contained in the proposed regulation nor should they be. WEF and AMSA have not identified any situation wherein the existing standard for the specifically designed POTWs has resulted in damage to the POTW or otherwise proven to be problematic. Accordingly, those POTWs that qualify under the existing standard should not be subject to more rigorous record-keeping, implementation and other requirements as contained in the proposed regulation. Instead, these facilities should be allowed to continue to seek a future reduction in the 5.0 pH limitation under the existing standard without any additional requirements.

Although the preamble does not appear to address this issue, the EPA proposed regulation maintains the existing standard for these POTWs. WEF and AMSA agree with such approach although we suggest that the preamble to the final regulation explain that EPA is maintaining the existing standard for the “specifically designed” POTWs. The regulatory language we suggest clarifies the intent by breaking the “specifically designed” POTWs into a separate subsection.

b. POTW Issuance of Individual Control Document or Authorization

We suggest that the regulation set forth language reflecting that an alternative pH standard can only be established if the POTW establishes an alternative limit in an individual control document or other written authorization. Under the current regulation, an industrial user discharging below 5.0 pH could argue that the plant was “specifically designed” to handle such low pH even if the POTW had never made such determination. A discharge below 5.0 pH should only be allowed if authorized by the POTW. Accordingly, the WEF and AMSA proposal would require any discharge below 5.0 to be reflected in an individual control document or other written authorization from the POTW (e.g., a letter or ordinance) specifically allowing a discharge below 5.0.

c. 4.0 pH As Federal Minimum Standard

Information from POTWs indicate that a substantial amount of time and resources are spent responding to short-term pH discharges between 4.0 and 5.0 which have not been shown to adversely impact the POTW. For example, one POTW reports that 28 of the 51 industrial user pH violations were between 4.0 and 5.0 and lasted less than fifteen (15) minutes. Moreover, an evaluation of the sewer system for corrosion by this POTW through video surveillance has indicated little difference between the sewers receiving industrial wastewater and those receiving only domestic wastewater. In fact, video surveillance of collection system lines to determine the corrosive effects of short-term low pH discharges has been conducted at two POTWs evaluating the condition of PVC, concrete, or cast iron pipes and transport facilities. Neither POTW reported any significant impacts from short-term low pH discharges. Furthermore, where pipe corrosion has occurred, it has usually been associated with residential neighborhoods, not industrial. Residential sewage is subject to wide fluctuations in flow during a day. Due to low

flow conditions and stagnation occurring during a good part of the day, residential areas may be subject to hydrogen sulfide generation and increased corrosion.

In addition, POTWs surveyed by WEF and AMSA and other pretreatment authorities have indicated that, upon review of industrial user pH violations between 4.0 and 5.0 pH, an inspection of the sewer system has identified no corrosion distinguishable from those parts of the sewer system which were subject to short-term low pH discharges as described in this proposal. If no problems have been identified, then it is apparent that POTWs and others should not be required to spend limited time and resources in responding to such exceedances. Moreover, liability should not be imposed upon industries when their discharge is benign.

The survey data from 16 POTWs who have had pH violations within the past five years and require continuous pH monitoring for at least one industry, indicates that 356 out of 1,001 (36 percent) industrial user pH violations were between 4.0 and 5.0, and lasted less than sixty minutes. Food processing/service facilities were most often associated with these periodic pH problems accounting for 55 percent of violations. Not only have municipal resources been expended in responding to these short-term pH violations, but, where EPA and States are the Control Authorities, they also should have been addressing industrial user pH discharges between 4.0 and 5.0. Accordingly, the change we propose today should also result in savings to the federal and state governments.

In addition to the data set forth in the WEF and AMSA survey of POTWs, the technical justification of allowing temporary discharges between 4.0 and 5.0 pH is expressly endorsed by EPA's own study of the issue. EPA had a study undertaken analyzing existing information pertaining to pH impacts on concrete sewer pipe ("*pH in Sanitary Sewer System*," - *unpublished report, Science Applications International Corporation, February 1997*). The EPA study identified that, whereas an extremely low pH discharge for a short period of time could reduce the service life of a concrete sewer, "the affects of periodic pH spikes of 4.0 over an extended period of time may not have a significant impact on the service life of the collection system as it relates to the industrial facility site life." The study concludes:

"[T]here does appear to be a technical justification for allowing periodic spikes in pH below 5 without major impacts on the life of the collection system as long as these spikes do not drop much below a pH of 4.0."

d. Concerns Regarding EPA's Proposed Approach

The alternative WEF and AMSA approach responds to concerns that the EPA proposal would not address practically the vast majority of the short-term, low pH fluctuations in industrial discharges. Although data indicate that temporary discharge of pH between 4.0 and 5.0 would not adversely impact the POTW, a requirement for each POTW to make such justification based upon the standard set forth in the proposed regulation, would be difficult to implement for the following reasons:

1. The technical evaluation, described in the preamble as a “site-specific technical study” sets forth the appearance of requiring an extensive study. The factors to be addressed include site-specific factors affecting pH and structural corrosion, including the characteristics of non-domestic wastewater and receiving flow, the design and materials of construction of the POTW, and the fate of the pH in the discharge. These factors appear to be extremely open-ended and subject to a multitude of follow-up requests for information based upon the individual preferences of the reviewer. The preamble to the proposed regulation further indicates that site-specific factors that may impact corrosion include other characteristics of the industrial discharge such as its chemical composition, temperature, volume, velocity, turbulence, the buffering capacity, and characteristics of the sewer pipe used in the collection system including its size, age, material of construction, formation of hydrogen sulfide gas, time since last cleaning, and other design parameters of the POTW. This is not an inexpensive or simple undertaking. Inasmuch as the conclusions are based upon professional judgment, the results of the study would not, with absolute certainty, lead to absolute agreement.
2. The study is to address all of the specific prohibitions in 403.5(b), but only three of the specific prohibitions appear to be relevant: fire or explosion hazard (403.5(b)(1); concentration or flow rate to cause interference (403.5(b)(4)) and toxic gases, vapors or fumes (403.5(b)(7)). For pH discharges below 4.0, such evaluation would be based upon best professional judgment – actual data would not be available until such discharges are allowed.
3. The oversight requirements appear to be resource intensive. Whereas it may be feasible in some instances to undertake a visible inspection or TV surveillance, such approach would be extremely resource intensive for a number of sewers, e.g., force mains. The degree of information available to confirm that the pH discharge has not had an adverse impact on the POTW may be the same information which is currently available from POTWs which have inspected sewers to determine whether there has been an impact from a short term discharge below 5.0 pH but no lower than 4.0 pH.
4. The extensive oversight requirements imposed upon POTWs fail to recognize the significant investments local governments have in their treatment plant and sewer systems. Especially in these times when federal and state grants are not available, a local government would be loath to allow a discharge that results in corrosion of the construction materials of the POTW. A POTW is not willingly going to incur the increased maintenance costs, increased sewer rates, and other adverse impacts associated with corrosion caused by industrial user discharge. Inasmuch as the POTWs are the experts regarding the inherent abilities and limitations of their respective systems, deference should be given to the POTWs’ professional judgment in making decisions associated with protection of the treatment system and allowing a discharge below 5.0 (but no less than 4.0) as outlined above.

In addition to the EPA approach of requiring an extensive study and justification on a POTW-by-POTW basis, we believe that an appropriate floor can be established based upon the data submitted by POTWs as set forth in the enclosed documentation. Several POTWs have already evaluated the potential impact on sewer systems of pH discharge between 4.0 and 5.0. To date, no evidence of additional corrosion other than those in residential areas was determined. Although this floor may, in fact, be overly protective of the POTW (and potentially penalize some industrial users with a low pH discharge wherein the discharge does not adversely impact the POTW), such approach would avoid the need (1) to make site-specific justifications and (2) for POTWs, EPA, states, and the regulated community to spend its resources evaluating and responding to a vast number of low pH discharges which, although benign in nature, are now deemed illegal.

e. Burden Reduction

The summary table of the overall burden changes in the Federal Register indicates EPA's estimate that only one (1) percent of the 1535 approved POTWs with pretreatment programs would choose to exercise the option provided in the proposed regulation. Given the concerns noted above, WEF and AMSA believe that the sixteen (16) hours per response is underestimated in light of the extensive information addressed by the EPA proposal. WEF and AMSA agree with EPA's estimate that very few, if any, POTWs would expend the time and resources to put together the site-specific technical justification required by the EPA proposed regulation. Such estimate of the number of respondents expected under the EPA proposed regulation evidences the fact that the EPA proposal does not address the problem of temporary pH excursions. Data provided by respondents to the WEF and AMSA survey indicated that they spend from 15 minutes to 25 hours on follow-up enforcement actions for short-term pH violations between 4.0 and 5.0 (median of 3 hours per response).

C. OVERSIGHT OF CATEGORICAL INDUSTRIAL USERS

1. Introduction

To address Control Authorities' concerns that oversight resources are being directed towards IUs with minimal potential to adversely impact POTW operations, the EPA is proposing flexibility to allow Control Authorities to exempt "non-significant" categorical industrial users (NCIU) from the definition of SIU. EPA's proposed language reads:

(u) Significant Industrial User.

(1) Except as provided in paragraph (u)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N; except that a Control Authority may determine that the following facilities are not significant:

(A) facilities that never discharge untreated concentrated wastes that are subject to the Categorical Pretreatment Standard as identified in the Development Document for the standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and

(B) industrial users subject only to certification requirements after having met Baseline Monitoring Report requirements.

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with §403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (u)(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 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

§403.8(f)(6), determine that such industrial user is not a Significant Industrial User."

EPA requested comment on several issues relative to the establishment of this NCIU class, specifically, (1) whether the 100 gallons per day cutoff is appropriate or would some other criteria be more appropriate, and (2) whether an IU's compliance history should be considered in determining NCIU status.

2. Discussion

a. Clarification of Proposed Language Needed

Firstly, WEF and AMSA wish to point out the need for clarification in EPA's proposed NCIU definition. As proposed by EPA, a CIU could be deemed an NCIU even if it contributed 100% of the flow to the receiving POTW, as long as it did not discharge "untreated concentrated wastes" subject to Categorical Pretreatment Standards and not more than 100 gpd of other process wastewater. It is unlikely that EPA intended to allow such unrestricted discharge of categorically regulated process wastewater. Therefore, WEF and AMSA are seeking clarification that EPA intended to limit NCIU status to facilities that never discharge more than 100 gpd of categorically regulated process wastewater rather than non-regulated process wastewater.

b. 100 Gallon Per Day Ceiling is Too Low

While the EPA's proposal does provide some degree of oversight flexibility to Control Authorities regarding NCIUs, the proposed 100 gpd discharge ceiling is too low to allow meaningful application of the NCIU class distinction. *In fact, EPA itself estimated that only 2 percent of CIUs nationally would qualify for the proposed NCIU class distinction.* WEF and AMSA believe that the 100 gpd flow ceiling does not reflect the local conditions and/or concerns that prompted Control Authorities to seek oversight flexibility in the first place, nor will implementation of the NCIU class distinction provide meaningful burden reduction for Control Authorities.

The ability of a single IU to detrimentally impact the operations of its receiving POTW is fundamentally impacted by the size of the POTW. Thus, an IU discharging to a POTW with a design capacity of 5 million gallons per day (GPD) will have a far greater potential to impact the POTW than an identical IU discharging to a POTW with a design capacity of 500 MGD.

c. Alternative Approach to Oversight of Categorical Industrial Users

WEF and AMSA are proposing an alternative approach to Control Authority oversight of CIUs that have little or no potential to impact the operation of their receiving POTWs. Specifically, WEF and AMSA are proposing a three tier classification system that incorporates both the current CIU classification and the EPA's proposed NCIU classification, albeit re-named "de

minimis CIU” (DCIU). In addition to the two classes proposed by EPA, WEF and AMSA suggest adding a new class identified as NCIU, under the following definition:

A non-significant CIU (NCIU) is defined as any industrial user subject to categorical pretreatment standards that meets all of the following conditions:

- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the design hydraulic capacity of the receiving POTW, nor does it exceed 10,000 gallons per day.
- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the design organic treatment capacity of the receiving POTW.
- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the maximum allowable headworks loading (MAHL) for the receiving POTW of any pollutant detected at the POTW headworks for which the CIU is subject to a Categorical Pretreatment Standard.
- The CIU has not been in significant noncompliance with applicable effluent discharge standards for the most recent four consecutive six-month periods.

Conformance with the conditions set forth in the NCIU definition would be reassessed at least annually by the POTW. If a facility no longer qualifies for NCIU status because of a change in the nature of its operations or if the facility is found in significant noncompliance, the facility’s status as a NCIU would be revoked and the facility would revert to full SIU status.

d. Proposed Oversight Flexibility for DCIUs and NCIUs

In conjunction with the three-tier CIU classification system discussed above, WEF and AMSA are proposing a three-tier approach to CIU self-monitoring, CIU period reporting and Control Authority monitoring.

The three-tier CIU classification envisioned by WEF and AMSA is depicted in the following table:

	De Minimis CIU	Non-Significant CIU	CIU
Qualification	No discharge of untreated categorical wastewater and <100 gpd other process wastewater discharge; or subject to certification requirements only	<0.01% of POTW design flow, 0.01% of POTW headworks organic load, 0.01% of headworks load of categorically regulated pollutants, no SNC for 4 consecutive six-month periods	Subject to categorical pretreatment standards and not qualified as DCIU or NCIU
Self-monitoring requirements	Control Authority discretion	Once/year	Twice/year
Reporting requirements	Annual DCIU certification	Annual Periodic Compliance Report	Twice annual Period Compliance Report
Control Authority monitoring	Control Authority discretion	Once every two years	Annually

As shown on the table, non-significant CIUs would be eligible for a 50% reduction in reporting and oversight requirements.

e. 25,000 Gallons Per Day Flow Designation

WEF and AMSA are also recommending that the 25,000 gpd flow designation for non-categorical SIUs be deleted from the existing regulation. If the SIU designation is to be based on flow criteria, the criteria should also be based upon the potential to impact the receiving POTW. The preamble to the General Pretreatment Regulations that were promulgated following the EPA's Domestic Sewage Study acknowledged that the current 25,000 gpd standard is based upon 5% of the receiving flow of a 0.5 million gallons per day (MGD) POTW. However, a 25,000 gpd contribution constitutes a much smaller contribution to a larger POTW than to smaller POTWs. For example, a 25,000 gpd flow would constitute only 0.05% of the flow received at a 50 MGD POTW. Accordingly, there seems to be limited technical justification for requiring all Control Authorities to regulate non-categorically regulated facilities (or go through the process of delisting SIUs) merely because 25,000 gpd could be a significant flow contribution for a smaller POTW. WEF and AMSA suggest that the 25,000 gpd standard be deleted. As a safeguard, the current 5 percent standard would continue to apply in all instances.

f. Burden Reduction

EPA's current proposal limits burden reduction opportunities to the 2 percent of the current CIU population that would qualify for EPA's proposed NCIU definition. The alternative three-tier approach will create substantially greater burden reduction opportunities, especially for Control Authorities. Respondents to WEF and AMSA's pretreatment questionnaire indicated that 342 of 1,844 CIUs (18.5 percent) would be classified under the AMSA/WEF proposed NCIU classification. Respondents to the survey indicated that they spend from 3 to 200 hours annually regulating each AMSA/WEF proposed NCIU (median of 29 hours per NCIU). The potential annual burden reductions realized through reduced Control Authority activities and industrial user self-monitoring and reporting range from \$200 to \$2,000 for smaller Control Authorities, \$25,000 to \$40,000 for medium-sized Control Authorities, up to \$275,000 for very large Control Authorities with several hundred CIUs. In addition sixteen out of 28 POTW respondents to WEF and AMSA's pretreatment questionnaire indicated that they would reclassify some SIUs if the 25,000 gpd threshold were dropped from the definition of SIU. This would affect 148 of the 3,425 SIUs reported (4 percent). Respondents to the survey have indicated that they spend from 3 to 118 hours annually regulating each of the SIUs that would be reclassified if this threshold were dropped (median of 10.5 hours per SIU).

3. Proposed Alternative 40 CFR 403.3

Specific regulatory language that would be needed to implement the three-tiered approach is outlined below:

(u) Significant Industrial User.

(1) Except as provided in paragraph (u)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N; except that a Control Authority may determine that the following facilities are not significant:

(A) facilities that never discharge untreated concentrated wastes that are subject to the Categorical Pretreatment Standard as identified in the Development Document for the standard, and never discharge more than 100 gallons per day (gpd) of ~~other~~ process wastewater subject to Categorical Pretreatment Standards, and ~~(B)~~ industrial users subject only to certification requirements after having met Baseline Monitoring Report requirements.

(B) Facilities that, on a long-term average basis:

(1) Do not exceed 0.01% of the design hydraulic capacity of the receiving POTW nor more than 10,000 gpd, and:

(2) Do not exceed 0.01% of the design organic treatment capacity of the receiving POTW, and:

(3) Do not exceed 0.01% of the maximum allowable headworks loading, determined from the Control Authority's most recent local limits evaluation, for the receiving POTW for any pollutant detected at the POTW headworks for which the CIU is subject to a Categorical Pretreatment Standards, and the:

(4) CIU has not been in SNC with applicable effluent discharge standards (including failure to report) for the most recent four (4) consecutive 6-month periods.

(5) Conformance with these condition must be re-assessed annually by the Control Authority. Changes to the non-significant CIU list must be reported annually to the Approval Authority.

~~(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with §403.8(f)(6)).~~

(2) Upon a finding that an industrial user meeting the criteria in paragraph (u)(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 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 §403.8(f)(6), determine that such industrial user is not a Significant Industrial User."

4. Additional Regulatory Changes Needed

Additional regulatory changes that would be needed to implement the three-tiered approach are outlined below:

a. 40 CFR 403.8(f)(1)(iii)

(f)(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 §403.3(u), and Industrial Users subject to Categorical Pretreatment Standards ~~identified as non-significant under §403.3(u)(1)(I)(B)~~, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user except as follows. At the discretion of the Control Authority, for facilities covered by concentration-based standards or best management practices, this control may include use of general permits if all of the facilities to be covered involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, and require the same or similar monitoring. Unless the POTW provides otherwise, to be covered by the general permit the Industrial User must file a Notice of Intent that identifies its production processes, the types of wastes generated, and the location for monitoring all wastes covered by the general permit. General permits may not be used for facilities subject to mass limits or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§403.6(e) and 403.15). Both individual control mechanisms and general permits must be enforceable and contain, at a minimum, the following conditions:

(A) Statement of duration (in no case more than five years) with the exception of general permits and permits issued to non-significant CIUs;....

b. 40 CFR Part 403.8(f)(2)(v)

(2)(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 except under the following circumstances. Where a Categorical Industrial User has demonstrated through sampling and other technical factors that pollutants regulated through categorical standards are not expected to be present in quantities greater than the background influent concentration to the industrial process, the Control Authority may reduce its sampling frequency to once during the term of the Categorical Industrial User's permit. The Control Authority shall inspect and sample the effluent from each non-significant CIU, as defined at 40 CFR 403.3(u)(1)(i)(B) at least once every two years.

c. 40 CFR Part 403.12(e)(1)

(e)(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. Where the Control Authority determines that a facility is a non-significant CIU pursuant to 40 CFR 403.3(u)(1)(i)(B), the Control Authority may reduce the reporting and monitoring frequency required under this Section to once annually. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period....

D. SAMPLING FOR POLLUTANTS NOT PRESENT (40 CFR 403.12(e))

1. Introduction

Virtually all of the respondents on EPA's draft issue paper stated that EPA should either reduce or eliminate sampling of pollutants not expected to be present in effluent from the categorical industrial user to the POTW. EPA's July 22, 1999 proposal would:

- Authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. (This flexibility is already available for non-categorical industrial users, via the local limits allocation method implemented by the Control Authority).
- Require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. (EPA is not proposing that a specific amount of sampling data be required but is interested in comment.)
- Potentially requiring influent and effluent sampling may be necessary for the initial determination to support the technical factors. (EPA is also soliciting comment on whether sampling of influent should be required.)
- Require that an industrial user submit, as part of its regular semi-annual monitoring reports, certifications that there has been no increase in the pollutant in its wastewater due to activities of the industrial user.
- Allow Control Authorities to waive sampling of indicator pollutants to the same extent as other pollutants.
- Not allow reduced monitoring for discharges subject to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guidelines. (EPA is requesting comment on whether Control Authorities should be able to waive sampling at OCPSF facilities of organic chemicals that are not expected to be present. EPA is also interested in comments on whether any restriction on relief from sampling for organic chemicals not expected to be present should apply to sources of organic chemicals other than OCPSF facilities.)
- Clarify that an industrial user that is allowed to not sample for a pollutant is still subject to the pollutant limits in the applicable national categorical Pretreatment Standard.

2. Recommendation to Modify EPA Proposal

WEF and AMSA strongly support providing Control Authorities with discretion to allow an industrial user subject to categorical pretreatment standards to not sample for a pollutant if the pollutant is not expected to be present in its waste-stream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. We strongly recommend that EPA not limit the appropriate discretion granted to the Control Authority by excluding OCPSF (or any other sources regulated by a categorical standard) facilities from this proposed change.

Since the OCPSF PSES became final in 1990, POTWs have gained sufficient expertise in monitoring and regulating such sources to make appropriate decisions as the Control Authority to safely allow for a reduction in sampling burden. Therefore, the following strikeout is recommended in the proposed language of Section 403.12(e):

(e) Periodic reports on continued compliance. (1) ... The Control Authority may also authorize the Industrial User subject to a categorical Pretreatment Standard, ~~with the exception of 40 CFR Part 414,~~ to forego sampling of a pollutant if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Industrial User certifies 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 ...”

3. Discussion

EPA is requesting comment on whether Control Authorities should be able to waive sampling at OCPSF facilities of organic chemicals that are not expected to be present. WEF and AMSA recommend that EPA not exclude OCPSF facilities from the burden relief provided in proposed 40 CFR 403.12(e). The Control Authority should be provided with the option to allow an industrial user subject to any categorical pretreatment standard to not sample for a pollutant if the pollutant is not expected to be present in the wastestream. Elsewhere in EPA’s proposal, the requirement for notification by industrial users of changed discharge (40 CFR 42.12(j)) is strengthened and is supported by WEF and AMSA. OCPSF (and all other categorical industrial users) facilities must report any change in discharge. This section is most useful for the POTW to control the possibility of discharge of additional regulated pollutants at some point in the future. After the Control Authority makes and documents a decision in the industrial user’s individual control mechanism file to allow an OCPSF facility to not sample for a pollutant if the pollutant is not expected to be present, any change in discharge from that basis of decision must be promptly reported by the OCPSF facility. Failure to report will risk enforcement action.

The experience of some POTWs which regulate OCPSF facilities is counter to EPA’s claim that “...the constituents in the effluent from organic chemical manufacturers may vary significantly over time, past information may not be reliable as evidence of whether the pollutant will be present in the future.” POTW monitoring data for priority pollutants from OCPSF facilities has

demonstrated the same pollutants are present year after year. As the preamble states: "EPA imposed on OCPSF facilities standards for a wide range of pollutants because of the diversity of sources that could introduce pollutants into the wastewater, such as raw materials, contaminants in raw materials, process changes, and byproducts. Many of the organic toxic pollutants are directly manufactured by OCPSF facilities as well as used as raw materials or generated as byproducts in industry processes. It would be difficult to guarantee that a plant will not discharge any of the regulated pollutants." WEF and AMSA concur that any guarantee is difficult. However, since the OCPSF PSES became final in 1990, POTWs have gained sufficient expertise in monitoring and regulating such sources to make appropriate decisions as the Control Authority to safely allow for a reduction in sampling burden.

4. Discussion of Other Concerns on Sampling

EPA is not proposing that a specific amount of sampling data be required but is interested in comment. WEF and AMSA recommend that EPA not prescribe the amount of sampling data required and leave this determination to the discretion of the Control Authority (as documented in the industrial user's individual control mechanism file).

EPA is also soliciting comment on whether sampling of influent should be required. WEF and AMSA recommend that EPA not prescribe sampling of influent to the industrial process and that the Control Authority be given the discretion how to determine that a pollutant is "... not expected to be present in quantities greater than the back ground influent concentration to the industrial process ...". This determination will be documented in the industrial user's individual control mechanism file.

EPA is also interested in comments on whether any restriction on relief from sampling for organic chemicals not expected to be present should apply to sources of organic chemicals other than OCPSF facilities. For the reasons stated above in paragraph 3., WEF and AMSA recommend that EPA not exclude any sources regulated by a categorical standard.

E. REMOVAL CREDITS (40 CFR 403.7)

1. Introduction

As EPA points out, few POTWs have expressed interest in removal credits. Application for and granting of removal credits is an arduous process. However, removal credits are national policy, specifically allowed by section 307(b) of the Clean Water Act, and must be implemented through a well-crafted regulation. In the proposal, EPA is clarifying that the existing restrictions on removal credit authority for POTWs subject to overflows apply to combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). EPA is not proposing to amend Part 403 to make removal credits available for those pollutants that are not now listed in Appendix G as eligible for removal credits (concept discussed in a May 1997 letter to stakeholders). EPA is soliciting comment on whether to continue to allow removal credits for industrial users upstream of SSO and CSO outfalls regardless of whether any treatment occurs at the outfalls. EPA also seeks comment on other approaches such as allowing removal credits for industrial users whose discharges would be expected to exit the collection system via SSOs or CSOs no more than one percent of the time.

2. Proposed Removal Credits Changes

WEF and AMSA specifically propose that industrial users that are upstream of CSO or SSO outfalls be eligible for removal credits where it can be established that the IU discharges will be consistently treated or the POTW is in compliance with the NPDES permit. Therefore, we recommend the following language be added to the end of section 403.7(h)(2) and that a new 403.7(h)(3) be proposed:

(h) Compensation for overflow. "Overflow" means the intentional or unintentional discharge of flow from the collection system before the POTW treatment plant. POTWs which Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1), ~~or~~ (h)(2), or (h)(3) of this section. However, this paragraph (h) 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*
- (2) The Consistent Removal claimed is limited to the percentage of the pollutant consistently removed at the applicable Overflow point, or*
- (3) The POTW is in compliance with NPDES permit conditions to control Overflow.*

We also have a technical correction to point out to EPA in footnote (1) to existing Appendix G, Table I. A POTW can demonstrate compliance with subpart E by using either total hydrocarbon *or carbon monoxide*.

3. Discussion

We support EPA's clarification that the restrictions on the availability of removal credit authority for POTWs with overflows applies to POTWs with collection systems subject to either CSOs or SSOs. However, EPA should recognize that applying the standard to SSOs and CSOs increases the burden on POTWs applying for or implementing removal credits (the overall burden change table at page 39599 indicates that the impact of the removal credit proposal as "no change in burden").

We recommend that industrial users that are upstream of a CSO or SSO be eligible for removal credits where it can be established that: 1) the IU discharges will be consistently treated or 2) the POTW is in compliance with the NPDES permit.

EPA is soliciting comment on other approaches such as allowing removal credits for industrial users whose discharges would be expected to exit the collection system via SSOs or CSOs no more than 1% of the time (5,256 minutes or 87.6 hours per year for example). We do not believe that time is the proper performance measure for this issue. The performance should be the impact of the CSO and SSO (untreated or receiving preliminary treatment or disinfection) on the receiving waters. A POTW applying for removal credits must not degrade water quality through the voluntary action to increase the categorical standards for an IU. EPA and the states must place appropriate controls on CSOs and SSOs in the POTW NPDES permit to control the impact on the receiving waters. POTWs must control CSOs and SSOs and comply with their NPDES permit to be able to grant removal credits for IUs upstream of identified CSO and SSO points. The POTW removal credit application must demonstrate that removal credits will not cause a violation of the POTW's permit limitations or conditions (403.7(a)(3)(vi)) and include a NPDES Permit Limit Certification (403.7(e)(4)(vi)). All of these factors combine to provide the best assurance that the environment will be protected if removal credits are granted for IUs upstream of CSO or SSO points in the POTW. As noted above, specific language is proposed to amend 403.7(h)(2) and (3).

F. GENERAL PERMITS AND OTHER CONTROL MECHANISMS

1. Introduction

Most POTWs believe it would be beneficial to be able to issue general permits to similar industries. The majority of commenters to the draft issue paper supported the proposal to allow Control Authorities to use general permits. EPA's July 22, 1999 proposal would:

- Allow the use of general permits to regulate significant industrial users (SIUs) in certain circumstances, but only for SIUs that are covered by concentration-based standards or best management practices. All SIUs covered by a general permit must:
 - employ the same or substantially similar types of industrial processes;
 - discharge the same types of wastes;
 - require the same effluent limitations; and
 - require the same or similar monitoring.
 - file a Notice of Intent to be covered by the general permit unless the POTW has established another mechanism that serves this function.

EPA is requesting comment on whether there are situations where the restriction to not use general permits for SIUs subject to mass limits or whose limits are based on the CWF or Net/Gross calculations or other calculated equivalents might limit the use of general permits inappropriately.

In addition, EPA is requesting comment concerning the mechanism POTWs should use for industrial users to request coverage under a general permit. This proposal would not relieve the SIU that is subject to the general permit from any reporting or compliance obligations under Part 403.

2. Proposed General Permits Changes

WEF and AMSA specifically propose that EPA revise the proposed regulation to delete references to the type of general permit application required to be submitted by the IU. We recommend the following language be deleted in section 403.8(f)(1)(iii).

(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 403.3(u), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user except as follows. At the discretion of the Control Authority, for facilities covered by sliding scale concentration-based standards or enforceable best management practices, this control may include use of general permits if all of the facilities to be covered involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, and require the same or similar monitoring. ~~Unless the POTW provides otherwise, to be covered by the general permit the Industrial User must file a Notice of Intent that identifies its production processes, the types of wastes generated,~~

and the location for monitoring all wastes covered by the general permit. General permits may not be used for facilities subject to mass limits or industrial users whose limits based on the Combined Wastestream Formula or Net/Gross calculations (Secs. 403.6(e) and 403.15). Such alternate Both individual control mechanisms including general permits must be enforceable and contain, at a minimum, the following conditions....

3. Discussion

EPA is requesting comment concerning the mechanism POTWs should use for industrial users to request coverage under a general permit. As stated in the preamble, the pretreatment program is different than the NPDES permit program. A Notice of Intent may not be the most appropriate for pretreatment general permits. The proposed language at 403.8(f)(1)(iii) states in part: "... Unless the POTW provides otherwise, to be covered by the general permit the Industrial User must file a Notice of Intent that identifies its production processes, the types of wastes generated, and the location for monitoring all wastes covered by the general permit ...". Currently, 403.8(f)(1)(iii) does not prescribe to the Control Authority how to apply for an individual control mechanism. Thus it is not necessary for EPA to prescribe how an SIU should apply for a general permit. Guidance should be provided in the preamble that it is at the discretion of the Control Authority to decide how an SIU will apply for a general permit (either by NOI or a full permit application) and include the restrictions to qualify for a general permit in the regulation.

EPA is also requesting comment on whether there are situations where the restriction to not use general permits for SIUs subject to mass limits or whose limits are based on the CWF or Net/Gross calculations or other calculated equivalents might limit the use of general permits inappropriately. The regulation restricts general permits from mass limits or calculations from 403.6(e) and 403.15 only, not "other calculated equivalents". For example, if a POTW desires to issue general permits to 3 SIUs in the Steam Electric Power Generating Point Source Category, Part 423. The PSES for cooling tower blow-down is a concentration based limit (423.16(d)(1)) except that compliance with the 126 priority pollutants may be determined by engineering calculations (423.16(d)(2)). Performing engineering calculations is preferable to sampling and analyses. From the proposed regulation it is clear that general permits will be allowed. However, the preamble should be clarified to state that the regulation does not prohibit the POTW from issuing a general permit because the SIUs used "other calculated equivalents."

4. Burden Reduction

In the AMSA and WEF survey, POTWs were asked if the ability to issue general permits instead of individual control strategies would result in time and resources savings. Most POTWs did indicate a savings if general permits were used. One POTW estimated a total savings of \$1,800,000. The POTW stated that "there are a total of 1,538 permits issued to commercial facilities and zero dischargers. If each permit were issued as a full-blown permit, it would take 46 hours per permit. Approximately 1,000 hours per year are not spent in implementing these permits."

G. OTHER ISSUES

WEF and AMSA have also reviewed other proposed regulatory pretreatment streamlining issues and support in concept EPA's changes for the following issues.

- Equivalent Mass Limits for Concentration Limits (40 CFR 403.6(c))
- Equivalent Concentration Limits for Flow-Based Standards (40 CFR 403.6(c))
- Categorical Industrial User Monitoring (40 CFR Part 403.12)
- Slug Control Plans (40 CFR Part 403.8(f)(2)(v))
- Use of Grab and Composite Samples (40 CFR 403.12(b),(d),(e),(g), & (h))
- Electronic Filing and Storage of Reports
- Best Management Practices (40 CFR Part 402.5, 403.8(f), and 403.12(b),(e), & (h))

ATTACHMENT 2

SUPPLEMENTAL AMSA COMMENTS

ATTACHMENT 2

Supplemental AMSA Comments on July 22, 1999 proposal on "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution."

B. Equivalent Mass Limits for Concentration Limits

AMSA supports the proposed changes that allow Control Authorities flexibility in determining compliance with categorical parameters. The added flexibility provided under this proposal would assist Control Authorities in encouraging industrial user water conservation practices. Water conservation may reduce hydraulic loading on the POTW and result in a cost savings benefit to the community. The Control Authority should determine if an industry qualifies for equivalent mass limits on a case-by-case basis and demonstrate that they were able to maintain compliance with BAT, prior to water conservation. AMSA does not believe that the public nor Approval Authority review should be required to implement this option.

EPA also requests comment on whether this option should be limited to situations in which the IU is employing water conservation methods, or would it also be appropriate in other situations. AMSA has previously commented that the opportunity for conversion to mass-based limits should not be just limited to situations where water conservation applies.

C. Equivalent Concentration Limits for Flow-Based Standards

AMSA agrees with the proposal to allow Control Authorities to set limits by applying the concentration numbers in a flow-based standard directly as equivalent concentration limits in cases where a facility's flow is too variable for development of practical mass limits. Twenty percent of the long term average flow appears to be a reasonable definition of variable flow. However, the Control Authority should have the flexibility to apply this option to IUs that do not strictly meet this definition, if the reasoning behind the decision is fully documented. AMSA does not believe it is appropriate to require the public nor the Approval Authority to review an industrial users proposed concentration limit prior to Control Authority approval. The Approval Authority has adequate opportunity to review limits during annual pretreatment compliance inspections and/or reviewing annual reports.

F. Slug Control Plans

AMSA agrees that POTWs should be allowed to review the need for slug control plans as part of its ongoing oversight of industrial users instead of every two years.

H. Use of Grab and Composite Samples

AMSA appreciates the greater flexibility provided in this proposed rulemaking, compared to EPA's draft proposal, in allowing the Control Authority to specify appropriate sampling protocols.

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The WEF/AMSA Workshop Report recommended that references to sample types be dropped and that EPA instead define what would constitute a “representative sample.” EPA requests comments on how “representative sample” could be more specifically defined. One approach could be to provide a general definition of “representative sample” and supplement it with guidance. For example, “representative sample” is defined in “Industrial User Inspection and Sampling Manual for POTWs,” EPA 831/B-94-001, April 1994, as “A sample from a wastestream that is as nearly identical in composition to that in the larger volume of wastewater being discharged.” This Manual provides guidance on appropriate sampling locations and sample collection techniques for collecting representative samples.

An example regulatory definition of “representative sample” can be found in the RCRA regulations at 40 CFR 260.10, which defines “representative sample” as “a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.” Part 261, Appendix I, addresses representative sampling methods, referencing ASTM Standards and other documents. EPA could use similar approach in the General Pretreatment Regulations by referencing Part 136 and appropriate guidance documents and policy memoranda.

J. Electronic Filing and Storage of Reports

AMSA strongly encourages EPA to provide immediate provisions for the submittal of electronic reports. The ability to submit and store data in an electronic format would drastically reduce data management costs for POTWs.

However, electronic submittal should not be a mandatory requirement. Many AMSA members have concerns over electronic filing regarding the ability to handle data qualifiers, multiple samples, etc., and its appropriateness to be used in legal actions and quality assurance review. The electronic filing system should have a mechanism in place to ensure that extraction of the data without qualifiers or important comments is prohibited and that any potential misuses of an electronic signature is safeguarded.

In addition, Control Authorities use a wide array of software, including custom-designed programs, for pretreatment program data management and preparation of annual reports. POTWs should not be required to convert to a new software program to facilitate electronic reporting.

N. Miscellaneous Changes - Signatory Requirements

EPA is proposing to revise the signatory requirements for POTW reports at §403.12(m) to be more consistent with the signatory requirements in the current §122.22(a). EPA is not requesting comments on this revision. The existing rule requires POTW reports submitted to the Approval

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Authority to be signed by a "principal executive officer, ranking elected official or duly authorized employee if such employee is responsible for overall operation of the POTW." The proposed change would allow the "duly authorized employee" to be "an individual or position having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager."

We appreciate the ability for the Pretreatment Program Manager, etc., to sign reports when duly authorized. However, a new requirement that would be imposed under the proposed rule creates an ironic situation. The proposed amendment would require authorization to be made in writing by the principal executive officer or ranking elected official and submitted to the Approval Authority prior to the report being submitted by a "duly authorized employee." This implies that an employee responsible for overall operation of the POTW who has previously been delegated responsibility by the principle executive officer or ranking elected official to sign POTW pretreatment reports (but without such authorization submitted in writing to the Approval Authority, since written submittal was not required), who may have been signing pretreatment reports for fifteen years, will now be required to obtain written authorization and submit it to the Approval Authority in order to be allowed to continue to sign annual reports. We suggest that some sort of grandfather provision be added to address this type of situation.