



November 28, 2005

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Water Docket
U.S. Environmental Protection Agency
Mail Code 4101T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attention Docket ID No. OW-2004-0032

Dear Sir or Madam:

Re: *Preliminary Effluent Guidelines Program Plan for 2006*

The National Association of Clean Water Agencies (NACWA)¹ is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA or the Agency) *Preliminary Effluent Guidelines Program Plan for 2006*. As the main regulatory stakeholder in the effluent limitations guidelines (ELG) program, NACWA members continue to implement and enforce EPA's categorical pretreatment standards nationally and therefore, must remain engaged in the dialogue concerning revision of existing guidelines, as well as potential development of new ones. At the same time, NACWA members, along with more than 1,000 other publicly owned treatment works (POTWs), continue to implement mature pretreatment programs tailored to meet the water quality needs of their communities. These local programs have successfully demonstrated their ability to protect water quality without the need for additional categorical pretreatment standards. Indeed, most regulated facilities in the United States are already subject to local limits. Although categorical standards were very important at the inception of the national pretreatment program, NACWA believes additional categorical standards will not be warranted in the future, due to the fact that the remaining quantity of pollutants to be removed will not justify the expense of implementation.

NACWA has a strong record of engagement at the national level on matters affecting the ELG program. Most recently, NACWA intervened on behalf of the Agency in a lawsuit brought by the activist group Our Children's Earth (OCE). The group alleged that EPA did not review all guidelines annually, review ELG limits every five years, or issue and adopt a proper ELG plan. The U.S. District Court for the Northern District of California relied on many of NACWA's arguments in dismissing the challenge, holding that EPA met all the requirements for the annual

¹ Founded in 1970, NACWA represents the interests of nearly 300 of the nation's publicly owned treatment works. NACWA members serve the majority of the sewered population in the United States and collectively treat and reclaim over 18 billion gallons of wastewater every day.

ELG review, the ELG biennial report, and five-year ELG reviews, and that EPA has broad discretion in how it conducts these reviews. NACWA filed another brief November 23 supporting EPA's position before the U.S. Court of Appeals for the Ninth Circuit where the case will soon be argued.

The Association, through its Pretreatment and Hazardous Waste Committee, also provided information to EPA to help it develop screener surveys and more detailed followup surveys used to determine the need for a new ELG for drinking water facilities. Early drafts of the surveys did not recognize that many water and wastewater agencies often work together to manage multiple wastestreams generated in the process of treating drinking water. NACWA appreciates the opportunity to assist the Agency in this very important aspect of data collection to ensure the most comprehensive and up-to-date information is available for making these important decisions. NACWA urges the Agency to continue to involve the Association and other POTWs at the earliest possible juncture in its planning and development process when considering new or revised ELGs and pretreatment standards. Moreover, given the documented success of local pretreatment programs, many of which having been in operation for 20 or more years, NACWA believes very strongly that EPA must focus a great part of its future efforts in revising and updating existing pretreatment standards that have become dated or no longer function as they were originally intended.

NACWA Encouraged by EPA Effort to Update 50 POTW Study

NACWA urges EPA to move forward in updating the "50 POTW Study" (*Fate of Priority Pollutants in Publicly Owned Treatment Works*, September 1982). The POTW pollutant removal data provides the basis for the "pass through determination" that is a critical part of deriving appropriate local limits, which are the "backbone" of a successful pretreatment program. Nearly all of these programs rely on this data, except in the rare situations where site specific criteria are developed. The current study is more than 20 years old, and the removal efficiencies, physical parameters, and process data are no longer valid. Treatment technologies at most POTWs have vastly improved since the last study was done. Because the study data no longer reflect the enhanced performance of these systems, inappropriate local limits may be developed. Since local limits are critical to the success of the local pretreatment program, the data from this study must be obtained from a number of POTWs that are chosen based on the relative percentage of size and technology utilized by the over 15,000 POTWs in existence today. To use any other metric for POTW selection in this proposed study will result in the development of inaccurate local limits. NACWA has had several meetings and calls with EPA, in an attempt to assist the Agency so that a new study would generate data that ensure all future local limits are appropriate for POTWs, as well as indirect dischargers. NACWA has pledged to provide as much sampling and analysis as it can, using appropriate methods and QA/QC requirements as determined by the Agency, and has further committed to find volunteer POTWs for the new study using the metric noted above. NACWA and EPA have already discussed how to proceed with updating the study, and NACWA encourages EPA to set aside the funds necessary to complete the effort as soon as possible.

Another problem with the existing study is that EPA uses it to conduct the required interference/pass-through analysis to determine whether categorical pretreatment standards for indirect dischargers should be developed for specific pollutants. A pollutant deemed to interfere with operations and/or pass-through POTWs is included in a categorical pretreatment standard. The data currently used by EPA to conduct this analysis were collected during the late 1970s. In the intervening 25 years, both industrial activities and POTW operations have changed significantly. Tremendous advances in the detection capabilities of analytical methods (e.g., mercury method 1631) since the original study was conducted could significantly change influent and effluent levels and, therefore, removal efficiencies. To ensure that future ELGs are based on the best available science, EPA should update the data it uses in the interference/pass-through analysis.

Stakeholder Involvement in Planning Process is Key

NACWA believes the biennial planning process for the ELG program provides an excellent opportunity to increase the amount of collaboration among the Agency's ELG office, pretreatment program staff, and the POTW community. To date, NACWA has been encouraged by the level of participation stakeholders have been provided in the process. Nevertheless, NACWA feels the level of involvement could be enhanced. Especially with pretreatment standards, it is critical for POTWs to be involved early in the decision-making process. POTWs are best positioned to provide EPA with information regarding existing pretreatment standards and the potential need for additional controls. As EPA continues its efforts to evaluate the need for new indirect discharge categories, NACWA encourages EPA to better engage the POTW community.

Specific Comments on Existing Effluent Guidelines and One New Sector

Pulp, Paper and Paperboard Category

Existing pretreatment standards for most of the subparts of this category include only pentachlorophenol and trichlorophenol with a few subparts also regulating zinc. NACWA commends EPA on its use of a certification statement in lieu of analysis which reduces the administrative, sampling, and analytical burden for POTWs and the regulated industries. For this particular rule, NACWA also recommends EPA consider allowing concentration limits in lieu of mass limitations in circumstances where concentration limits would better suit the needs of the facility and maintain compliance, thus, easing the administrative burden of violation determination.

Steam Electric Power Generating Point Source Category

NACWA requests that EPA consider allowing a certification statement similar to that available for the Metal Finishing point source category regarding total toxic organics. A certification statement in lieu of the currently required engineering calculations to demonstrate that the 126 priority pollutants are not detected in the final discharge would relieve some of the regulatory burden on POTWs and the affected facilities.

EPA seeks information on various types of wastewater discharges from the steam electric power plants. One NACWA member utility regulates indirect discharges from a steam electric power plant during the "air conditioning season." Industrial discharges from this facility have not changed significantly since the utility began regulating them under the pretreatment program requirements. The facility meets priority pollutant limits for cooling water blowdown under the 40 CFR part 423 pretreatment standards for existing sources by not using cooling tower additives containing priority pollutants. The facility demonstrates compliance by using the allowed engineering calculations, which assume no addition of priority pollutants, and has not discharged chemical metal cleaning wastes to the sanitary sewer system in at least the past 13 years. A boiler cleaning project planned for the fall of 2005 will generate metal cleaning wastes, but the discharge of these wastes to the POTW will not be allowed because of expected high metal content.

The POTW samples discharges to the sanitary sewer system from the power plant's bottom ash pond for compliance with local limits. The bottom ash pond discharge consists of cooling tower blowdown, ash sluicing water, fly ash pond overflow, low volume plant wastewater sources, and storm water runoff.

Mercury is not sampled in the indirect discharge from this steam electric plant. However, the power plant does report its mercury releases on its Toxic Release Inventory based on an analysis of the mercury content in the coal supply. The power plant's electrostatic precipitator had a low mercury removal efficiency prompting the POTW to conclude the majority of mercury releases are air emissions not discharges to the POTW.

At this point, NACWA does not believe revisions to the steam electric power generation point source category are necessary. If EPA decides to proceed with a revision, NACWA would recommend that the Agency consider that the prohibition on discharging polychlorinated biphenol compounds (PCBs) be changed to allow for an appropriate concentration limit, in light of the advances in analytical technology that have occurred (and may continue to occur).

Tobacco Products Industrial Sector

NACWA believes that indirect dischargers in this industrial category have been and will continue to be efficiently regulated by local pretreatment programs throughout the country. NACWA recognizes that EPA has collected wastewater samples from six of approximately 114 of these facilities and that these data will be made available for public comment. NACWA will review any additional information EPA makes available to determine whether it is consistent with what its members are experiencing and encourages the Agency to engage the POTW community if indirect standards are considered.

New Potential Categories for Indirect Dischargers

NACWA strongly believes that no new pretreatment standards are needed for indirect discharging facilities. POTWs throughout the country have approved pretreatment programs and either have adopted or evaluated the need for local limits. These local limits must by law be protective of their treatment plants in order to prevent interference, pass-through and contamination of biosolids, plus prevent the excessive discharge of toxic pollutants to the environment.

Local limits can be tailored for the needs of the local community and better protect water quality than national effluent guidelines.

The suggested grouping in the Health Services Industry does not appear to be logical. Hospitals are very large facilities with a medium amount of process wastewater while nursing homes and personal care facilities have very little process wastewater with a significant amount of domestic wastewater. Medical and dental labs, clinics and offices along with veterinary clinics are small facilities with a very low amount of process and domestic wastewater. Hospitals can very easily be regulated with local limits while the rest of the facilities can be controlled through the use of locally imposed Best Management Practices (BMPs). The amount of resources that would be necessary to implement a national effluent guideline for the proposed Health Services Industry would be unreasonable for the amount of toxic weighted pound equivalents (TWPE) that might be prevented from being discharged into the sewer system.

At the recent 2005 *Pretreatment and Pollution Prevention Workshop*, a representative from the Agency indicated that any national guideline for this category most likely would be based on BMPs. NACWA believes this approach is a step in the right direction but reiterates that any decisions regarding the control of indirect discharges from these types of facilities should be made at the local level.

Flow Normalized Mass-Based Permit Limits

NACWA strongly encourages EPA to allow for at least flow normalized mass-based permit limits for all indirect discharging categorical facilities to encourage water conservation measures. Facilities that employ mass-based categorical limits are penalized for trying to institute water conservation measures since their limitations are based on long term flows. In order to ensure that facilities do not abuse a system that might incorporate provisions for water conservation, these facilities could be required to submit production figures to the Control Authority at least semi-annually for verification purposes.

NACWA looks forward to being an active participant in the 304(m) Plan development process and appreciates the opportunity to comment on the 2006 *Effluent Guidelines Program Plan*.

EPA's 2002 Draft *Strategy for National Clean Water Industrial Regulations*

EPA has also solicited comment on its draft *Strategy for National Clean Water Industrial Regulations* published in November 2002 (67 Fed. Reg. 71,165). As stated in comments submitted in February 2003, the Association applauds EPA's efforts to develop a strategy for future ELGs that (1) reduces risk to human health and the environment and (2) provides a more transparent decision-making process.

While the achievements of the ELG program are recognized as one of the major accomplishments of the CWA, the ELG program, by its focus on approximately 50 specific industrial categories, does not address all sources of water pollution. As EPA attests to in the *Draft Strategy*, our national water quality goals have not been fully attained because significant sources of pollutants remain unregulated, such as agricultural runoff, urban stormwater and groundwater seepage.

The *Draft Strategy* proposes a process for establishing priorities based on the greatest potential risk reduction, as it evaluates the need to revise existing, or to develop new, ELGs. NACWA strongly supports EPA's desire to focus its ELG program activities on refining existing ELGs, many of which have become outdated over the last 10 to 20 years as new technologies and information have become available.

Moreover, NACWA believes the *Draft Strategy* provides an excellent opportunity for increased collaboration among staffs in EPA's ELG and pretreatment programs and the POTW community in revising and drafting ELGs.

Key Factors for Evaluating Existing ELGs and for Developing New ELGs

In the *Draft Strategy*, EPA identified four key factors that it plans to consider in identifying existing ELGs for review and revision and for considering industrial categories for ELG development:

- Aggregate health and environmental risks posed by the industrial category;
- New control technology, process changes or pollution prevention approaches that could substantially reduce remaining risk;
- Technology cost; and
- Implementation and efficiency considerations, including alternative approaches to risk reduction.

NACWA believes the four key factors identified by EPA for selecting existing ELGs for review and selecting industrial categories for new ELG development are all valid. The most critical of the four factors EPA has identified is the risk posed by the industrial category. If the industrial category is not discharging pollutants that pose a significant level of risk to human health or the environment, then revision or development of the ELG should not be considered regardless of the other three factors. Ultimately the risk and cost of controlling that risk will dictate whether an ELG is the most appropriate tool to address the problem. Before any of these factors can be considered, EPA must first identify the key threats to the environment, whether a particular pollutant or industrial process, to determine where ELG development or revision will have the most impact. To be sure, early involvement by the POTW community in this effort will help the Agency provide the most comprehensive assessment of these risks and help the Agency better determine whether local POTW limits are already addressing the issue.

Identifying and focusing on specific environmental problems will 1) allow EPA to direct resources towards issues with meaningful opportunities for environmental improvement, and 2) enable EPA to determine before proceeding with the screening process, if a revised ELG or new ELG can have a beneficial impact on the environment.

Multi-media Approach to Pollutant Reduction

Reducing releases of mercury and other metals and toxics to the environment, whether to the air or directly to aquatic ecosystems, requires a multi-media approach. NACWA believes that consideration of multi-media pollutant reduction opportunities is a worthy goal and believes EPA should look at the full (multi-media) effect of control technologies, process changes, and pollution prevention approaches, when screening industrial categories for ELG revision or development. Clearly, EPA should place more emphasis on developing or revising guidelines that have the most potential to benefit human health or the environment. The key to considering multi-media impacts is establishing a common metric by which this impact can be compared for different alternatives. For example, what degree of reduction of emissions of noxious odors and greenhouse gases would be equivalent, in terms of human health and environmental benefits, to reducing nutrient loadings by 20 million pounds of nutrients? To make that type of comparison, EPA would need to develop an "environmental impact equivalent" unit, similar to the toxic equivalent unit used to compare the toxicity of different toxic pollutants. If EPA is able to develop such a common metric, it should pursue a strategy that considers multi-media pollutant reduction opportunities when deciding which guidelines to develop or revise. Still, the ELG must ultimately make sense from a clean water perspective before rulemaking should be considered.

EPA may also want to consider the use of financial incentives in the form of tax breaks or grants, not only for the companies that develop innovative technologies, but also for companies that implement experimental or cutting edge technologies that go beyond the accepted best achievable technology.

Effluent Trading for Indirect Dischargers

EPA is already encouraging the exploration of effluent trading as a market-based approach to achieving pollutant discharge reductions. However, effluent trading is currently limited to direct discharges to waters and to conventional and non-conventional pollutants. EPA should allow and encourage POTWs to explore the use of effluent trading systems for indirect dischargers to their systems to achieve additional pollutant reductions, and allow indirect effluent trading programs to address toxic pollutants, provided that implementation of such trading programs do not result in a net increase in the discharge of toxic pollutants to POTWs.

If you have questions or wish to discuss our comments further, please contact me at (202)833-3280, Guy Aydlett, Director of Water Quality at the Hampton Roads Sanitation District in Hampton Roads, Va., and Chair of NACWA's Pretreatment and Hazardous Waste Committee, at (757)460-4220; or Ben Horenstein, Manager of Environmental Services at the East Bay Municipal Utility District in Oakland, Calif., and Vice-Chair of the committee, at (510)287-1846.

Sincerely,



Susan Bruninga
Manager, Regulatory Affairs