TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #06-156

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PRETREATMENT STREAMLINING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 327 IAC 5-16 through 327 IAC 5-21 concerning pretreatment program permit requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 1, 2006, Indiana Register (29 IR 3121).

CITATIONS AFFECTED: 327 IAC 5-16 through 327 IAC 5-21.

AUTHORITY: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The proposed rule revises several provisions of the general pretreatment regulations that address requirements for, and oversight of, industrial users (IUs) who introduce pollutants into publicly owned treatment works (POTWs). This proposed rule includes changes to certain program requirements to be consistent with national pollutant discharge elimination system (NPDES) requirements for direct dischargers to surface waters. This action will reduce the regulatory burden on IUs and state and POTW control authorities (CAs) without adversely affecting environmental protection and will allow CAs to better focus oversight resources on IUs with the greatest potential for adversely affecting POTW operations or the environment.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This rulemaking incorporates by reference 40 CFR 437, an updated federal categorical pretreatment standard relating to the centralized waste treatment point source category. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

EPA has also identified 13 required rule changes that are more stringent than the previous federal requirements in 40 CFR 403 and therefore are considered required modifications for the state and the POTW. There is no anticipated state fiscal impact to these rule changes as they are requirements from federal regulations.

Additionally, EPA has identified 14 optional provisions that if adopted would be more streamlined and more efficient than current requirements to be considered for state adoption. There is no anticipated state fiscal impact to the optional provisions as they are voluntary.

Public Participation and Workgroup Information

This rulemaking implements several mandatory provisions of the general pretreatment program as required by federal regulation. Therefore, at this time, no workgroup is planned for the rulemaking. However, if you feel that a workgroup or other informal discussion on the optional rule changes is appropriate, please contact Lawrence Wu, Rules Development Section, Office of Water Quality at (317) 234-1805 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 1, 2006, through June 30, 2006, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#06-156(WPCB) [Pretreatment Streamlining]
Lawrence Wu, Chief

Rules Development Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality, Rules Development Section at (317) 234-1805.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by April 11, 2008.

Additional information regarding this action may be obtained from Lawrence Wu, Rules Development Section, Office of Water Quality, (317) 234-1805 or (800) 451-6027 (in Indiana) or technical information concerning industrial permit requirements may be obtained from Jay Hanko, Industrial Permits Section, Office of Water Quality, (317) 233-3555 or (800) 451-6027 (in Indiana) or technical information concerning pretreatment standards may be obtained from Natalie Maupin, State Pretreatment Coordinator, Compliance Evaluation Section, Office of Water Quality, (317) 232-8729 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 5-16-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-16-5 Reporting requirements for POTWs and industrial users

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4; IC 13-18-11

Sec. 5. (a) All POTWs and industrial users shall comply with the applicable reporting requirements of 40 CFR 403.12.

(b) The reporting requirements for an industrial user upon the effective date of a categorical pretreatment standard are as follows:

(1) An existing industrial user subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a baseline report that contains the information listed in subsection (c) within one hundred eighty (180) days after the:

(A) effective date of a categorical pretreatment standard; or

(B) final administrative decision is made upon a category determination submission under 40 CFR 403.6(a)(4);

whichever is later.

(2) A new source, and a source that becomes an industrial user subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the control authority a report that contains the information listed in subsection (c)(1) through (c)(5), at least ninety (90) days prior to commencement of discharge.

(3) A new source shall:

(A) also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards; and

(B) give estimates of the information requested in subsection (c)(4) and (c)(5).

(c) The baseline monitoring report submitted by the industrial user to the POTW must include the following information:

(1) The name and address of the facility, including the name of the operator and owners.

(2) A list of any environmental control permits held by or for the facility.

(3) A brief description of the operation, including:

(A) the nature;

(B) the average rate of production; and

(C) the standard industrial classification;

of the operation or operations carried out by the industrial user. This description must include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

(4) Measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(A) Regulated process streams.

(B) Other streams, as necessary, to allow use of the combined waste stream formula of subdivision (6)(C).

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) The pretreatment standards applicable to each regulated process.

(6) The results of sampling and analysis, identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. The following apply to sampling and analysis results:

(A) Both daily maximum and average concentration (or mass, where required) must be reported. The sample must be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard.

(B) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this subdivision.

(C) Samples should be taken immediately downstream from existing pretreatment facilities, or immediately downstream from the regulated process, if no pretreatment facilities exist. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit, along with supporting data, must be submitted to the control authority.

(D) Sampling and analysis must be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where:

(i) 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question; or

(ii) the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question;

sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(E) The control authority may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(F) The baseline report allowed under clause (E) must:

(i) indicate:

(AA) the time;

(BB) the date;

(CC) the place of sampling; and

(DD) the methods of analysis; and

(ii) certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(7) The industrial user shall submit a certification statement indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, is required for the industrial user to meet the pretreatment standards and requirements. The statement must be:

(A) reviewed by an authorized representative of the industrial user, as defined in section 5.3 of this rule; and

(B) certified by a qualified professional.

(8) The industrial user shall use the shortest compliance schedule by which additional pretreatment or O and M, or both, may be provided if required to meet the pretreatment standards. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(9) Where the industrial user's categorical pretreatment standard has been modified by a removal allowance under 40 CFR 403.7, the combined waste stream formula under 40 CFR 403.6(e), or a

fundamentally different factors variance under 40 CFR 403.13, at the time the industrial user submits the report required by subsection (b), the information required by subdivisions (7) and (8) shall apply to the modified limits.

(10) If the categorical pretreatment standard is modified by a removal allowance under 40 CFR 403.7, combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, after the industrial user submits the report required by subsection (b), any necessary amendments to the information required by subdivisions (7) and (8) must be submitted by the industrial user to the control authority within sixty (60) days after the modified limit is approved.

(d) The following conditions apply to the compliance schedule for meeting categorical pretreatment standards required by subsection (c)(8):

(1) The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards, for example, the following:

(A) Hiring an engineer.

(B) Completing preliminary plans.

(C) Completing final plans.

(D) Executing a contract for major components.

(E) Commencing construction.

(F) Completing construction.

(2) No increment established in subdivision (1) may exceed nine (9) months.

(3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the following:

(A) The date on which it expects to comply with this increment of progress.

(B) The reason for delay.

(C) The steps being taken by the industrial user to return the construction to the schedule established.

In no event may more than nine (9) months elapse between the progress reports to the control authority.

(e) Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following the introduction of wastewater into the POTW, an industrial user shall do the following:

(1) An industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (c)(4) through (c)(6).

(2) For an industrial user subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required under subdivision (1) must contain a reasonable measure of the industrial user's long-term production rate.

(3) For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required under subdivision (1) must include the industrial user's actual production during the appropriate sampling period.

(f) This subsection does not apply to nonsignificant categorical users as defined in 40 CFR 403.3(v)(2). An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit a periodic compliance monitoring report 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.

(1) The monitoring report must include the following:

(A) A report indicating the nature and concentration of pollutants in the effluent that are limited by the categorical pretreatment standards.

(B) A record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (c)(4), except that the control authority may require more detailed reporting of flows if necessary to determine the industrial user's compliance with applicable regulations.

(2) When a pretreatment standard requires compliance with a best management practice or pollution

prevention alternative, the industrial user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the industrial user. At the discretion of the control authority and in consideration of factors including local high or low flow rates, holidays, and budget cycles, the control authority may modify the months during which the above reports are to be submitted.

(3) The control authority may grant an industrial user subject to a categorical pretreatment standard a waiver from sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated thorough sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This waiver is subject to the following conditions:

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

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

(C) In making a demonstration that a pollutant is not present, the industrial user shall provide data from at least one (1) sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with section 5.3 of this rule and include the certification statement in 40 CFR 403.6(a)(2)(ii). Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136, with the lowest minimum detection level for that pollutant, was used in the analysis.

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

(E) Upon approval of the monitoring waiver and revision of the industrial user's control mechanism by the control authority, the industrial user shall certify on each report that there has been no increase in the pollutant in its waste stream due to activities of the industrial user. The statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).".

(F) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the industrial user's operations, the industrial user shall immediately notify the control authority and comply with:

(i) the monitoring requirements of subdivisions (1) and (2); or

(ii) other more frequent monitoring requirements imposed by the control authority.

(G) This subdivision does not supersede certification processes and requirements established in categorical pretreatment standards at 327 IAC 5-18-10, except as otherwise specified in the categorical pretreatment standard.

(4) Where the control authority has imposed mass limitations on industrial users as provided for by 40 CFR 403.6(d), the report required by this subsection must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(5) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by this subsection must contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report required by this subsection must include the industrial user's actual average production rate for the reporting period.

(g) All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 40 CFR 403.5(b).

(h) Industrial users shall continue monitoring and analysis to demonstrate continued compliance, including the following:

(1) Except for nonsignificant categorical users, the reports required in subsections (b), (c), (e), (f), and (i) must contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein that are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the industrial user will not be required to submit the compliance certification required under subsections (c)(7) and (e). In addition, where the POTW collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(2) If sampling performed by an industrial user indicates a violation, the industrial user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority shall perform the repeat sampling and analysis unless it notifies the industrial user of the violation and requires the industrial user to perform the repeat analysis. Resampling is not required if the control authority performs sampling at the industrial user:

(A) at a frequency of at least once per month; or

(B) between the time when the initial sampling was conducted and the time when the industrial user or the control authority receives the results of this sampling.

(3) The reports required in subsections (b) through (e) and (i) must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, twenty-four (24) hour composite samples must be obtained through flow proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the control authority. Where time proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols, including appropriate preservation, specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows:

(A) For cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field.

(B) For volatile organics and oil and grease, the samples may be composited in the laboratory.

(C) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

(4) For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in subsections (b) and (e), a minimum of four (4) grab samples must be used for:

(A) pH;

(B) cyanide;

(C) total phenols;

(D) oil and grease;

(E) sulfide; and

(F) volatile organic compounds;

for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by subsections (e) and (i), the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(5) All analyses must be performed in accordance with procedures established by the commissioner pursuant to 33 U.S.C. 1314(h) and contained in 40 CFR Part 136 or with any other test procedures approved by the commissioner. Sampling must be performed in accordance with the techniques approved by the commissioner. Where:

(A) 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in

question; or
(B) the commissioner determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question;
sampling and analyses must be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.
(6) If an industrial user subject to the reporting requirement in subsection (f) or (i) monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision (5), the results of this monitoring must be included in the report.

(i) The reporting requirements for industrial users not subject to categorical pretreatment standards are as follows:
(1) Significant noncategorical industrial users shall submit to the control authority, at least once every six (6) months, on dates specified by the control authority, a description of the:
(A) nature;
(B) concentration; and
(C) flow;
of the pollutants required to be reported by the control authority.
(2) In cases where a local limit requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority to determine the compliance status of the industrial user. These reports must be based on sampling and analysis performed in the period covered by the report and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto.
(3) This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

(j) Additionally, reporting of:
(1) spills into a POTW; or ~~of~~
(2) upsets in pretreatment facilities;
may be required of an industrial user by its control authority.

~~(b) The reports required by 40 CFR 403.12 or 327 IAC 5-21-10 must be signed by one (1) of the following:~~
~~(1) A responsible corporate officer. As used in this subdivision, "responsible corporate officer" means:~~
~~(A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or~~
~~(B) the manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000) (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~
~~(2) A general partner or proprietor or manager if the industrial user submitting the reports is a partnership or sole proprietorship, respectively.~~
~~(3) A duly authorized representative of the individual designated in either subdivision (1) or (2) if:~~
~~(A) the authorization is made in writing by the individual described in either subdivision (1) or (2);~~
~~(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and~~
~~(C) the written authorization is submitted to the control authority.~~
~~(4) If an authorization under subdivision (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (3) must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.~~

~~(c) An industrial user subject to the reporting requirements of this section shall maintain records of the monitoring activities in accordance with 327 IAC 5-2-14. These records shall be made available, upon request, to the commissioner, the regional administrator, and the POTW to which the industrial user discharges its wastewater.~~

~~(d) A POTW to which reports are submitted by an industrial user under this section shall retain such reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the commissioner and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user, the operation of the approved POTW pretreatment, or when requested by the commissioner or the regional administrator.~~

~~(e) A report required by this section that relates to the actual operation of or discharge from a pretreatment facility must be prepared by or under the direction of a wastewater treatment plant operator certified under IC 13-18-11.~~

~~(f) A report required of a POTW by 40 CFR 403.12 must be signed by a responsible corporate officer, ranking elected official, or other duly authorized employee if that employee is responsible for the overall operation of the POTW. If an employee is authorized to submit such reports, a copy of the written authorization designating the employee must be submitted to the commissioner.~~

~~(g) An industrial user who wishes to demonstrate the affirmative defense of upset for noncompliance with any pretreatment standard or requirement in 327 IAC 5-2 shall, as provided in 327 IAC 5-18-3, comply with the reporting requirements and conditions under section 6 of this rule.~~

~~(h) An industrial user must report incidents of bypass or intent to bypass in accordance with section 7 of this rule.~~

(Water Pollution Control Board; 327 IAC 5-16-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 291)

SECTION 2. 327 IAC 5-16-5.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-16-5.3 Additional reporting requirements for POTWs and industrial users

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4; IC 13-18-11

Sec. 5.3. (a) The reports required by 40 CFR 403.12 or 327 IAC 5-21-10 must be signed by one (1) of the following:
(1) A responsible corporate officer. As used in this section, "responsible corporate officer" means either of the following:
(A) A:
(i) president;
(ii) secretary;
(iii) treasurer; or
(iv) vice president;
of the corporation in charge of a principal business function or any other person who performs similar policymaking or decision making functions for the corporation.
(B) The manager of one (1) or more manufacturing, production, or operating facilities, provided the following:
(i) The manager is authorized to:
(AA) make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations; and
(BB) initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations.
(ii) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements.
(iii) Authority to sign has been assigned or delegated to the manager to sign documents in accordance with corporate procedures.
(2) A general partner or proprietor or manager, if the industrial user submitting the reports is a partnership or sole proprietorship, respectively.
(3) A duly authorized representative of the individual designated in either subdivision (1) or (2) if:
(A) the authorization:
(i) is made in writing by the individual described in either subdivision (1) or (2); and

(ii) specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(B) the written authorization is submitted to the control authority.

(4) If an authorization under subdivision (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (3) must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(b) An industrial user subject to the reporting requirements of section 5 of this rule and this section shall maintain records of the monitoring activities in accordance with 327 IAC 5-2-14, including documentation associated with best management practices. These records must be made available, upon request, to the:

(1) commissioner;

(2) regional administrator; and

(3) POTW to which the industrial user discharges its wastewater.

(c) A POTW to which reports are submitted by an industrial user under this section shall:

(1) retain the reports, including documentation associated with best management practices, for a minimum of three (3) years; and

(2) make the reports available for inspection and copying by the:

(A) commissioner; and

(B) regional administrator.

This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user, the operation of the approved POTW pretreatment, or when requested by the commissioner or the regional administrator.

(d) A report required by this section that relates to the actual operation of or discharge from a pretreatment facility must be prepared by or under the direction of a wastewater treatment plant operator certified under IC 13-18-11.

(e) A report required of a POTW by 40 CFR 403.12 must be signed by a responsible corporate officer, ranking elected official, or other duly authorized employee. The duly authorized employee shall be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be:

(1) made in writing by the principal executive officer or ranking elected official; and

(2) submitted to the approval authority prior to or together with the report being submitted.

If an employee is authorized to submit the reports, a copy of the written authorization designating the employee must be submitted to the commissioner.

(f) An industrial user who wishes to demonstrate the affirmative defense of upset for noncompliance with any pretreatment standard or requirement in 327 IAC 5-2 shall, as provided in 327 IAC 5-18-3, comply with the reporting requirements and conditions under section 6 of this rule.

(g) An industrial user shall report incidents of bypass or intent to bypass in accordance with section 7 of this rule.

(h) All industrial users shall promptly notify the:

(1) control authority; and

(2) POTW, if the POTW is not the control authority;

in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (j).

(i) A facility determined to be a nonsignificant categorical industrial user pursuant to 40 CFR

403.3(v)(2) shall annually submit a certification statement, signed in accordance with the signatory requirements in 40 CFR 403.12(l). This certification must accompany an alternative report required by the control authority. The certification statement should include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ (months, days, year):

(a) The facility described as _____ (facility name) met the definition of a nonsignificant categorical industrial user as described in 40 CFR 403.3(v)(2); (b) the facility complied with all applicable pretreatment standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.".

(j) An industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and the commissioner in writing of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge, for example, continuous, batch, or other. If the industrial user discharges more than one hundred (100) kilograms of the waste per calendar month to the POTW, the notification must also contain the following information to the extent the information is known and readily available to the industrial user:

(1) An identification of the hazardous constituents contained in the wastes.

(2) An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month.

(3) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

All notifications must occur not later than one hundred eighty (180) days after the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification not later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), 40 CFR 403.12(d), and 40 CFR 403.12(e).

(k) Dischargers are exempt from the requirements of this subsection and subsections (j) and (l) during a calendar month in which they discharge not more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e), requires a one (1) time notification.

(l) Subsequent months, during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(m) In the case of any notification made under subsections (j) through (l), the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(n) The control authority that chooses to receive electronic documents shall satisfy the requirements of 40 CFR Part 3, electronic reporting.

(Water Pollution Control Board; 327 IAC 5-16-5.3)

SECTION 3. 327 IAC 5-16-5.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-16-5.5 Annual POTW reports

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4; IC 13-18-11

Sec. 5.5. POTWs with approved pretreatment programs shall provide the approval authority with an annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one (1) jurisdiction is involved in the local program. The report required by this section must be submitted not later than one (1) year after approval of the POTW's pretreatment program, and at least annually thereafter, and must include, at a minimum, the following:

(1) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list must:

(A) identify which industrial users are subject to categorical pretreatment standards;

(B) specify which standards are applicable to each industrial user; and

(C) indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards.

The POTW shall also list the industrial users that are subject only to local requirements.

(2) A summary of the following:

(A) The status of industrial user compliance over the reporting period.

(B) Compliance and enforcement activities, including inspections, conducted by the POTW during the reporting period.

(C) Changes to the POTW's pretreatment program that have not been previously reported to the approval authority.

(3) Any other relevant information requested by the approval authority.

(Water Pollution Control Board; 327 IAC 5-16-5.5)

SECTION 4. 327 IAC 5-17-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-17-1.5 "Approval authority" defined

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4; IC 13-18-11

Sec. 1.5. "Approval authority" means the appropriate regional administrator in a NPDES state without an approved state pretreatment program.

(Water Pollution Control Board; 327 IAC 5-17-1.5)

SECTION 5. 327 IAC 5-17-2.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-17-2.5 "Best management practices" or "BMP" defined

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4; IC 13-18-11

Sec. 2.5. "Best management practices" or "BMP" means the following:

(1) Schedules of activities.

(2) Prohibitions of practices.

(3) Maintenance procedures and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and 40 CFR 403.5(b).

(4) Treatment requirements.

(5) Operating procedures.

(6) Practices to control any of the following:

(A) Plant site runoff.

(B) Spillage or leaks.

(C) Sludge or waste disposal.

(D) Drainage from raw materials storage.

(Water Pollution Control Board; 327 IAC 5-17-2.5)

SECTION 6. 327 IAC 5-17-23 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-17-23 "Significant industrial user" or "SIU" defined

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 23. (a) Except as provided in subsection (b), "significant industrial user" or "SIU" means the following:
(1) Industrial users subject to categorical pretreatment standards under 327 IAC 5-18-10.
(2) An industrial user that:
(A) discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater) to the POTW;
(B) contributes a process waste stream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
(C) is designated as a significant industrial user by the control authority on the basis that the industrial user has a reasonable potential to:
(i) adversely affect the POTW's operation; **or**
(ii) violate a:
(AA) pretreatment standard; or
~~(iii) violate a~~ **(BB)** requirement of 327 IAC 5-19-3.
(3) The control authority may determine that an industrial user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user if the industrial user never discharges more than one hundred (100) gallons per day (gpd) of total categorical wastewater, excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard and the following conditions are met:
(A) The industrial user, prior to the control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements.
(B) The industrial user annually submits the certification statement required in 40 CFR 403.12(q) together with any additional information necessary to support the certification statement.
(C) The industrial user never discharges any untreated concentrated wastewater.

(b) A control authority may:
(1) on its own initiative; or
(2) in response to a petition received from an industrial user or a POTW and in accordance with 327 IAC 5-19-3(6);
determine that an industrial user is not a significant industrial user if it does not meet subsection (a)(2)(C).

(Water Pollution Control Board; 327 IAC 5-17-23; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

SECTION 7. 327 IAC 5-17-24 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-17-24 "Significant noncompliance" defined

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 24. "Significant noncompliance" means the status of an industrial user that has caused or allowed a violation that meets one (1) or more of the following criteria:
(1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed, by any magnitude, ~~the daily maximum limit or the average limit for the same pollutant parameter.~~ **a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l).**
(2) Technical review criteria (TRC) violations, defined as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the ~~daily maximum limit or the average limit~~ **numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l),** multiplied by the applicable TRC (TRC equals one and four-tenths (1.4) for biochemical oxygen demand, total suspended solids, fats, oil, and grease and one and two-tenths (1.2) for all other pollutants except pH).

(3) Any other violation of a pretreatment ~~effluent limit~~ **standard or requirement as defined by 40 CFR 403.3(l), such as** daily maximum, ~~or longer term~~ **long-term** average, **instantaneous limit, or narrative standard** that the ~~control authority~~ **POTW** determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.

(4) Any discharge of a pollutant that has:

(A) caused imminent endangerment to human health, welfare, or ~~to~~ the environment; or ~~has~~

(B) resulted in the POTW's exercise of its emergency authority under 327 IAC 5-19-3(1)(G) to halt or prevent such a discharge.

(5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for:

(A) starting construction;

(B) completing construction; or

(C) attaining final compliance.

(6) Failure to provide, within ~~thirty (30)~~ **forty-five (45)** days after the due date, required reports, such as **the following:**

(A) Baseline monitoring reports.

(B) Ninety (90) day compliance reports.

(C) Periodic self-monitoring reports. ~~and~~

(D) Reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations, **which may include a violation of BMPs,** that the ~~control authority~~ **POTW** determines will adversely affect the operation or implementation of the approved POTW pretreatment program.

(Water Pollution Control Board; 327 IAC 5-17-24; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

SECTION 8. 327 IAC 5-18-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-2 Pretreatment standards for prohibited discharges

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 2. (a) A user of a POTW, whether or not the user is subject to national categorical standards or state, local, or any other national pretreatment standard or requirement, shall not allow the introduction of the following into the POTW:

(1) A pollutant from any source of nondomestic wastewaters that could pass through or cause interference with the operation or performance of the POTW.

(2) A pollutant that could create a fire or explosion hazard in the POTW, including waste streams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) using the test methods in 40 CFR 261.21.

(3) A pollutant that could cause corrosive structural damage to the POTW, including a discharge with pH lower than ~~five~~ 5.0, unless the POTW is specifically designed to accommodate such a discharge.

(4) A solid or viscous pollutant in an amount that could cause obstruction to the flow in a sewer or other interference with the operation of the POTW.

(5) A pollutant, including an oxygen demanding pollutant (such as biochemical oxygen demand) released in a discharge at a flow rate or pollutant concentration that could cause interference in the POTW.

(6) Heat in an amount that could:

(A) inhibit biological activity in the POTW and result in interference or damage to the POTW; or

(B) exceed forty (40) degrees Celsius or one hundred four (104) degrees Fahrenheit at the POTW treatment plant unless the commissioner, upon request of the POTW, approves alternate temperature limits.

(7) Petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in an amount that could cause interference or pass through.

(8) A pollutant that could result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(9) A trucked or hauled pollutant, except:

(A) with the permission of the POTW; and

(B) when introduced to the POTW at a discharge point designated by the POTW.

(b) Specific limits on the prohibited substances listed in subsection (a) must:
(1) be developed and effectively enforced by a POTW required to develop a POTW pretreatment program under 40 CFR 403.8 and 327 IAC 5-19;
(2) continue to be developed, as necessary, and effectively enforced by a POTW with an approved POTW pretreatment program; or
(3) be developed and enforced by a POTW, not included in subdivision (1) or (2), so as to limit:
(A) a pollutant contributed by an industrial user that has caused or is likely to cause interference or pass through at the receiving POTW; and
(B) the recurrence of the contributed pollutant's affect on the POTW.
A POTW affected by this subdivision shall make appropriate changes in the POTW treatment facilities or operation, as necessary, to prevent occurrences of interference or pass through.
Individual notice shall be made in writing to persons or groups who have requested to be notified and given an opportunity to comment about the development and enforcement of specific effluent limits as required by this subsection.

(c) POTWs may develop BMPs to implement subsection (b)(1) and (b)(2). Such BMPs shall be considered local limits and pretreatment standards for the purposes of Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)).

~~(c)~~ **(d)** When specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (b), the prohibitions or limits are pretreatment standards for the purposes of the pretreatment rules and Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)).

(Water Pollution Control Board; 327 IAC 5-18-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)

SECTION 9. 327 IAC 5-18-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-4 National categorical pretreatment standards

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 4-22-2; IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 4. (a) General provisions for the categorical pretreatment standards are as follows:
(1) Unless specifically noted otherwise, categorical pretreatment standards are:
(A) enforceable by the commissioner against an industrial user upon the incorporation by reference of ~~such~~ **the** standards in section 10 of this rule in accordance with IC 4-22-2; and
(B) in addition to all applicable pretreatment standards and requirements in the pretreatment rules.
(2) Irrespective of whether a particular categorical pretreatment standard has been incorporated by reference in section 10 of this rule, the commissioner may **do the following:**
(A) Make certifications regarding the applicability of that standard under subsection (b).
(B) Deny or recommend to EPA the approval of any request for a fundamentally different factors variance from that standard in accordance with section 5 of this rule. ~~and~~
(C) Recommend to the EPA the approval or disapproval of any application for calculation of that standard on a net basis in accordance with section 6 of this rule.

(b) The requirements concerning a request for a subcategory determination are as follows:
(1) Within sixty (60) days after the effective date of a categorical pretreatment standard for a subcategory under which an industrial user may be included, the existing industrial user or POTW may request that the regional administrator or the commissioner provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation that may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operations. A new source must request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of ~~such~~ **the** submission. The industrial user may provide written comments to the commissioner within thirty (30) days of receipt of notification from the POTW about the POTW's request for certification.
(2) A request for certification must contain the following:
(A) A description of the subcategories that may be applicable.

(B) A statement citing evidence and reasons why a particular subcategory applies and why others are not applicable. Any person signing the application statement submitted under this section shall make the signed certification, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.".

(3) A determination will be made on each request for certification in accordance with the procedures specified in 40 CFR 403.6(a)*.

(c) Compliance with new categorical standards shall be in accordance with the following:

(1) Except where an existing source meets the definition of a new source as defined under 327 IAC 5-17-13, an existing source with categorical pretreatment standards, including an existing source that:

(A) becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard; and

(B) is thenceforth considered an existing industrial user;

shall achieve compliance within three (3) years of the date the new standard is promulgated by EPA, unless a shorter compliance time is specified in the standard.

(2) A new source shall:

(A) install;

(B) have in operating condition; and

(C) start up;

all pollution control equipment required to comply with all pretreatment standards and requirements in this rule before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, a new source must meet all pretreatment standards and requirements in this rule.

(d) Concentration and mass limits are determined by the following:

(1) If the pollutant discharge limit for a categorical pretreatment standard is expressed as a concentration limit, the concentration limit shall apply only to the effluent of the process regulated by the standard or as otherwise specified by the standard. Wherever possible:

(A) an equivalent mass limit will be provided as an alternative to the standard; and

(B) it may be applied by the commissioner or a POTW with an approved POTW pretreatment program.

(2) If a pollutant discharge limit in a categorical pretreatment standard is expressed only as mass of pollutant per unit of production, the control authority may convert the limit to an equivalent limitation expressed either as mass of pollutant discharged per day or effluent concentration for the purpose of calculating the effluent limitation applicable to an individual industrial user.

(3) A control authority calculating an equivalent mass-per-day limitation according to subdivision (2) shall not calculate ~~such~~ **the** limitation by multiplying the limit in the standard by the industrial user's production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For a new source, actual production shall be estimated using projected production.

(4) A control authority calculating an equivalent concentration limitation according to subdivision (2) shall calculate ~~such~~ **the** limitation by dividing the mass limitation derived according to subdivision (3) by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate must be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during a representative year.

(e) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all of the following conditions:

(1) To be eligible for equivalent mass limits, the industrial user shall:

(A) employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard and not have used dilution as a substitute for treatment;

(C) provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
(D) not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
(E) have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.
(2) An industrial user subject to equivalent mass limits shall do the following:
(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits.
(B) Continue to do the following:
(i) Record the facility's:
(AA) flow rates through the use of a continuous effluent flow monitoring device; and
(BB) production rates and notify the control authority whenever production rates are expected to vary by more than twenty percent (20%) from its baseline production rates determined in subdivision (1)(C). Upon notification of a revised production rate, the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility.
(ii) Employ the same or comparable water conservation methods and technologies as those implemented under subdivision (1)(A) so long as it discharges under an equivalent mass limit.

(f) A control authority that chooses to establish equivalent mass limits under subsection (e):
(1) shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process or processes of the industrial user by the concentratio**n-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;**
(2) upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;
(3) may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment under this subsection. The industrial user shall also be in compliance with 40 CFR 403.17, regarding the prohibition of bypass; and
(4) may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

(g) The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions:
(1) When converting mass to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455.
(2) There must be documentation that dilution is not being substituted for treatment as prohibited by subsection (i).

~~(e)~~ **(h)** The application of a limitation for a categorical pretreatment standard shall be in accordance with the following:
(1) An equivalent limitation calculated in accordance with ~~subsection~~ **subsections** (d)(3), ~~and~~ (d)(4), ~~shall be~~ **and (e) is** deemed pretreatment standards for the purposes of Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)) and the pretreatment rules. **The control authority shall:**
(A) document how the equivalent limits were derived; and
(B) make this information publicly available.
Once incorporated into its control mechanism, the industrial ~~users are required to~~ **user shall** comply with an equivalent limitation in lieu of a promulgated categorical standard from which the equivalent limitation was derived.
(2) Many categorical pretreatment standards specify:
(A) one (1) limit for calculating a maximum daily discharge limitation; and
(B) a second limit for calculating a maximum monthly average or four (4) day average limitation.
If such a standard is being applied, the same production or flow figure shall be used in calculating both ~~types~~

~~of~~ **the average and the maximum** equivalent ~~limitations.~~ **limitation.**

(3) Any industrial user operating under a control mechanism incorporating an equivalent mass or concentration limit calculated from a production based standard shall notify the control authority within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limit in its control mechanism that was based on the original estimate of the long-term average production rate.

~~(f)~~ **(i)** Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any pretreatment standard or requirement. An unauthorized attempt by an industrial user to dilute a regulated discharge shall be cause for the control authority to impose the mass limits set forth in the categorical standard.

*40 CFR 403.6(a) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(Water Pollution Control Board; 327 IAC 5-18-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)

SECTION 10. 327 IAC 5-18-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-6 Intake water pollutant credits

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 6. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with the following provisions:

(1) An industrial user wishing to obtain a credit for intake pollutants must file an application with the control authority. Upon request of the industrial user, the applicable categorical standard shall be calculated on a net basis, meaning that it shall be adjusted to reflect credit for pollutants in the intake water if the: ~~requirements of this subdivision and subdivision (2) are met.~~

(A) applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(B) industrial user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

~~(2) To qualify for adjustments to an applicable standard to reflect credit for pollutants in the intake water, the applicant must demonstrate the following:~~

~~(A) The control system the industrial user proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.~~

~~(B)~~ **(2)** Credit for generic pollutants, such as:

~~(i)~~ **(A)** biochemical oxygen demand;

~~(ii)~~ **(B)** total suspended solids; and

~~(iii)~~ **(C)** oil and grease;

should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

~~(C)~~ **(3)** Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard adjusted under this section.

~~(D)~~ **(4)** Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

~~(3) The applicable categorical pretreatment standards contained in 40 CFR, Chapter I, Subchapter N~~

~~specifically provide that they shall be applied on a net basis.~~

~~(4)~~ **(5)** Adjustments under this section to categorical pretreatment standards otherwise applicable to pollutants in the discharger's effluent shall be calculated as follows:

(A) The amount of pollutants present in the intake water shall be reduced **to reflect:**

(i) ~~to reflect~~ removal of ~~such~~ **the** pollutants by any treatment of the intake water performed by or for the discharger; and

(ii) ~~to reflect~~ any further removal of ~~such~~ **the** pollutants by the wastewater treatment technology employed by the discharger.

(B) The amount of ~~such~~ **the** pollutants remaining after the reductions may be applied as an adjustment to the categorical standards otherwise applicable to ~~such~~ **the** pollutants.

(Water Pollution Control Board; 327 IAC 5-18-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 301)

SECTION 11. 327 IAC 5-18-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-10 Categorical pretreatment standards incorporated by reference

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 10. The following federal categorical pretreatment standards are incorporated by reference:

Category	Code of Federal Regulations or Federal Register Citation
~~Dairy products~~	~~40 CFR 405*~~
Grain mills	40 CFR 406*
~~Canned and preserved fruits and vegetables~~	~~40 CFR 407*~~
~~Sugar processing~~	~~40 CFR 409*~~
~~Textile mills~~	~~40 CFR 410*~~
~~Cement manufacturing~~	~~40 CFR 411*~~
Feedlots	40 CFR 412*
Electroplating	40 CFR 413*
Organic chemicals, plastics, and synthetic fibers	40 CFR 414*
Inorganic chemicals manufacturing	40 CFR 415*
Soap and detergent manufacturing	40 CFR 417*
Fertilizer manufacturing	40 CFR 418*
Petroleum refining	40 CFR 419*
Iron and steel manufacturing	40 CFR 420*
Nonferrous metals manufacturing	40 CFR 421*
Steam electric power	40 CFR 423*
~~Ferroalloy manufacturing~~	~~40 CFR 424*~~
Leather tanning and finishing	40 CFR 425*
Glass manufacturing	40 CFR 426*
~~Asbestos manufacturing~~	~~40 CFR 427*~~
Rubber manufacturing	40 CFR 428*
Timber products processing	40 CFR 429*
Pulp, paper, and paperboard	40 CFR 430*
~~Builder's paper and board mills~~	~~40 CFR 431*~~
Metal finishing	40 CFR 433*
Oil and gas extraction	**40 CFR 435***
Centralized waste treatment	**40 CFR 437***
Pharmaceutical manufacturing	40 CFR 439*
Transportation equipment cleaning	**40 CFR 442***
Paving and roofing	40 CFR 443*
Waste combustors	**40 CFR 444***
Paint formulating	40 CFR 446*
Ink formulating	40 CFR 447*
Pesticide chemicals manufacturing, formulating, and	40 CFR 455*

packaging	
Carbon black manufacturing	40 CFR 458*
Battery manufacturing	40 CFR 461*
~~Plastics molding and forming~~	~~40 CFR 463*~~
Metal molding and casting	40 CFR 464*
Coil coating	40 CFR 465*
Porcelain enameling	40 CFR 466*
Aluminum forming	40 CFR 467*
Copper forming	40 CFR 468*
Electrical and electronic components	40 CFR 469*
Nonferrous metals forming and metal powders	40 CFR 471*

*These federal categorical pretreatment standards are incorporated by reference. Copies of these publications may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(Water Pollution Control Board; 327 IAC 5-18-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)

SECTION 12. 327 IAC 5-19-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-19-3 POTW pretreatment program requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. An approved POTW pretreatment program shall fully and effectively exercise and implement the following requirements:

(1) The POTW must operate under legal authority, enforceable in federal or state court, that authorizes or enables the POTW to apply and enforce the requirements of Section 307(b) and 307(c) of the Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c)), including national pretreatment standards as well as applicable state pretreatment standards and requirements described in 327 IAC 5-18. Such authority may be contained in an ordinance, series of contracts, or joint power agreements, that the POTW is authorized to enact, enter into, or implement, and that are authorized by state law. At a minimum, this legal authority must enable the POTW to do the following:

(A) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where ~~such~~ **the** contributions do not meet applicable pretreatment standards and requirements.

(B) Require compliance with all applicable pretreatment standards and requirements by industrial users.

(C) Control, through permit, order, or similar means, the contribution of each industrial user to the POTW to ensure compliance with all applicable pretreatment standards and requirements. In the case of significant industrial users, this control must be achieved through **individual** permits or equivalent individual control mechanisms issued to each user, **except as follows:**

(i) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(AA) involve the same or substantially similar types of operations;

(BB) discharge the same types of wastes;

(CC) require the same effluent limitations;

(DD) require the same or similar monitoring; and

(EE) in the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

(ii) To be covered by the general control mechanism, the significant industrial user shall file a written request for coverage that identifies the following:

(AA) Its contact information.

(BB) Production processes.

(CC) The types of wastes generated.

(DD) The location for monitoring all wastes covered by the general control mechanism.

(EE) Any requests in accordance with 40 CFR 403.12(e)(2) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge.

(FF) Any other information the POTW deems appropriate.

(iii) A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 40 CFR 403.12(e)(2). The POTW must retain:

(AA) a copy of the general control mechanism;

(BB) documentation to support the POTW's determination that a specific significant industrial user meets the criteria in item (i)(AA) through (i)(EE); and

(CC) a copy of the industrial user's written request for coverage;

for three (3) years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the combined waste stream formula or net/gross calculations (40 CFR 403.6(e) and 40 CFR 403.15).

(D) **Both individual and general** control mechanisms, ~~described in clause (C)~~ must be enforceable and contain, at a minimum, the following:

(i) **A** statement of duration, that may not be more than five (5) years.

(ii) **A** statement of nontransferability that requires, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator.

(iii) Effluent limits, **including best management practices,** based on applicable general pretreatment standards in 327 IAC 5-18, categorical pretreatment standards, local limits, and state and local law.

(iv) Self-monitoring, sampling, reporting, notification, and record keeping requirements, including an identification of the pollutants to be monitored **including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 40 CFR 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism,** sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in 327 IAC 5-18, categorical pretreatment standards, local limits, and state and local law.

(v) Statement of applicable, potential civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. ~~Such~~ **The** schedules may not extend the compliance date beyond applicable federal deadlines.

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

(E) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user that is the location of an effluent source or treatment system that is subject to this article or to records ~~which~~ **that** are required to be kept under 40 CFR 403.12(o). Such authority shall be at least as extensive as the authority provided under Section 308 of the Clean Water Act (33 U.S.C. 1318).

(F) Secure remedies for noncompliance through the following means:

(i) Obtain remedies for noncompliance by an industrial user with any applicable pretreatment standard or requirement, including injunctive relief and civil penalties as appropriate. The POTW must also have authority to seek or assess civil or criminal penalties in an amount of not less than one thousand dollars ($1,000) per day for each violation by industrial users of pretreatment standards and requirements.

(ii) Pretreatment requirements, in addition to those specified in 327 IAC 5-18, that shall be enforceable through the remedies described in item (i) shall include **the following:**

(AA) The duty to allow or carry out inspections, entry, or monitoring activities.

(BB) Any ordinances, rules, or orders issued by the POTW.

(CC) Any requirements set forth in individual control mechanisms issued by the POTW or the pretreatment rules. ~~and~~

(DD) Any reporting requirements imposed by the POTW or the pretreatment rules.

The commissioner shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty that the commissioner believes to be insufficient.

(G) Have the authority and procedures to **give the following:**

(i) ~~give~~ Informal notice to the discharger and then immediately and effectively halt or prevent any discharge of pollutants to the POTW that may reasonably appear to present an imminent endangerment to the health or welfare of any person. ~~and~~

(ii) ~~give~~ Notice to the affected industrial users, with an opportunity to respond, and then halt or prevent any discharge to the POTW that:

(AA) threatens to interfere with the operation of the POTW; or ~~that~~
(BB) may present an endangerment to the environment.
(H) Comply with the confidentiality requirements set forth in 40 CFR 403.14.
(2) The POTW shall have procedures to ensure compliance with the requirements of an approved POTW pretreatment program. At a minimum, these procedures must enable the POTW to do the following:
(A) Identify and locate all possible industrial users that may be subject to the approved POTW pretreatment program. Any:
(i) compilation;
(ii) index; or
(iii) inventory;
of industrial users made under this rule must be made available to the commissioner upon request.
(B) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under clause (A). This information must be made available to the commissioner upon request.
(C) Notify industrial users identified under clause (A) of applicable pretreatment standards and any applicable requirements under Sections 204(b) and 405 of the Clean Water Act (33 U.S.C. 1284(b) and 33 U.S.C. 1345) and Subtitles C and D of RCRA (42 U.S.C. 6921 and 42 U.S.C. 6941).
(D) Notify each significant industrial user (SIU) of:
(i) its status as an SIU; and ~~of~~
(ii) the requirements that apply as such;
within thirty (30) days after the commissioner approves the list of SIUs as required by subdivision (6).
(E) Institute control measures to ensure compliance with all applicable pretreatment standards and requirements. Control measures include permits or administrative orders for the discharge of pollutants into a POTW by industrial users.
(F) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with self-monitoring requirements in 327 IAC 5-16-5.
(G) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards and requirements.
(H) Inspect and sample significant industrial users at least once a year **except as follows:**
(i) Where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forgo sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 40 CFR 403.12(e)(3), the POTW shall sample for the waived pollutant or pollutants at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the industrial user's operations, the POTW shall immediately begin at least annual effluent monitoring of the industrial user's discharge and inspection.
(ii) Where the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW shall evaluate, at least once per year, whether an industrial user continues to meet the criteria in 40 CFR 403.3(v)(2).
(iii) In the case of industrial users subject to reduced reporting requirements under 40 CFR 403.12(e)(3), the POTW shall randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two (2) years. If the industrial user no longer meets the conditions for reduced reporting in 40 CFR 403.12(e)(3), the POTW shall immediately begin sampling and inspecting the industrial user at least once a year.
(I) Evaluate and document, ~~at least once every two (2) years,~~ whether each significant industrial user needs a plan **or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006. Additional significant industrial users must be evaluated within one (1) year of being designated a significant industrial user.** As used in this clause, "slug discharge" means any discharge of a nonroutine, episodic nature, including, at a minimum, an accidental spill or noncustomary batch discharge, **which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits, or permit conditions.** The results of these activities shall be made available to the regional administrator or commissioner upon request. **Significant industrial users shall notify the POTW immediately of any changes at its facility affecting potential for a slug discharge.** If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following:
(i) A description of discharge practices, including nonroutine batch discharges.
(ii) A description of stored chemicals.
(iii) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 327 IAC 5-18, with procedures for follow-up written notification within five (5) days.

(iv) If necessary, procedures to prevent adverse impact from accidental spills, including, but not limited to, the following:
(AA) Inspection and maintenance of storage areas.
(BB) Handling and transfer of materials.
(CC) Loading and unloading operations.
(DD) Control of plant site runoff.
(EE) Worker training.
(FF) Building of containment structures or equipment.
(GG) Measures for containing toxic organic pollutants including solvents.
(HH) Measures and equipment necessary for response.

(J) Investigate instances of noncompliance with pretreatment standards and requirements as indicated:
(i) in the reports and notices required under 327 IAC 5-16-5; or
(ii) by analysis, inspection, and surveillance activities described in clause (F).

Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

(K) Initiate and effectively prosecute enforcement actions, where appropriate, against industrial users that are violating applicable pretreatment standards or other pretreatment requirements.

(L) Comply with the public participation requirements of 40 CFR 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annually providing public notification, in ~~the largest daily~~ **a** newspaper ~~published in the municipality in which~~ **or newspapers of general circulation that provides meaningful public notice within the jurisdiction or jurisdictions served by** the POTW ~~is located,~~ of industrial users that, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards or other pretreatment requirements.

(3) The POTW must have sufficient resources and qualified personnel to carry out the approved POTW pretreatment program as described in subdivisions (1) and (2). However, conditional approval of the POTW's pretreatment program may be requested under section 4(b) of this rule pending acquisition of the required funding.

(4) The POTW must:
(A) develop local limits as required in 327 IAC 5-18-2(b); or
(B) demonstrate that they are not necessary.

(5) The POTW must develop and implement an enforcement response plan. This plan must contain detailed procedures demonstrating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan must, at a minimum:
(A) describe how the POTW will investigate instances of noncompliance;
(B) describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
(C) identify, by title, the official responsible for each type of response; and
(D) adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment standards and requirements as detailed in subdivisions (1) and (2).

(6) The POTW shall prepare a list of its industrial users meeting the criteria in 327 IAC 5-17-22. The list must:
(A) identify the criteria in 327 IAC 5-17-22(a) applicable to each industrial user; and ~~for industrial users meeting the criteria in 327 IAC 5-17-22(a)(2), must also~~
(B) where applicable, indicate whether the POTW has made a determination under 327 IAC 5-17-22(b) that the industrial user should not be considered a significant industrial user.

This list, and any subsequent modifications thereto, must be submitted to the commissioner as a nonsubstantial modification of the approved POTW pretreatment program under 40 CFR 403.18(d).

(Water Pollution Control Board; 327 IAC 5-19-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 305)

Notice of Public Hearing

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