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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

LSA Document #00-112(F)

DIGEST

Adds 327 IAC 5-16, 327 IAC 5-17, 327 IAC 5-18, 327 IAC 5-19, 327 IAC 5-20, and 327 IAC 5-21 concerning industrial wastewater pretreatment in order to comply with the federal regulations and to acquire federal delegation of the state's pretreatment program. Repeals 327 IAC 5-11, 327 IAC 5-12, 327 IAC 5-13, 327 IAC 5-14, and 327 IAC 5-15. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #96-3(WPCB) July 1, 1996, Indiana Register (19 IR 2969).

Second Notice of Comment Period and Notice of First Hearing: February 1, 2000, Indiana Register (23 IR 1236).

Date of First Hearing: April 12, 2000.

Proposed Rule and Notice of Second Hearing: June 1, 2000, Indiana Register (23 IR 2265).

Date of Second Hearing and Final Adoption: July 12, 2000.

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

Rule 16. General Provisions

327 IAC 5-16-1 Purpose and objectives

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. 1. (a) The pretreatment rules establish a state program to control the discharge of industrial pollutants into publicly owned treatment works (POTWs), as defined in 327 IAC 5-1.5-48, to implement 40 CFR 403 and related provisions of the federal Clean Water Act, 33 U.S.C. §1251.

(b) The state pretreatment program has the following three (3) objectives:

(1) To prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with the use or disposal of municipal sludge.

(2) To prevent the introduction of pollutants into a POTW that will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works.

(3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

(c) The pretreatment rules apply to:

(1) new or existing industries that discharge by direct connection or indirectly by truck, rail, or other means, nondomestic wastes into POTWs; and

(2) POTWs that receive or may receive discharges of nondomestic wastes from those industries.

(d) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations in the pretreatment rules refers to the July 1, 1999, revision. *(Water Pollution Control Board; 327 IAC 5-16-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-2 Local authority

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. Nothing in the pretreatment rules is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local ordinance of any political subdivision of the state as long as the local requirements are not less stringent than any set forth in national pretreatment standards or any other requirements or prohibitions established under the Clean Water Act or the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-16-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-3 Public access to information and confidentiality claims

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 5-14-3-8; IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) The following shall be available to the public for inspection and copying without restriction during normal hours of operation and the fee assessed for copying costs shall be in accordance with the uniform copying fee authorized under IC 5-14-3-8(c):

- (1) Applications for IWP permits.**
- (2) Permits (draft and final).**
- (3) Statements of basis.**
- (4) Effluent data from industrial users.**
- (5) Submissions from POTWs transmitted to the department under this article.**
- (6) Public comments on requests for POTW pretreatment program approval or for authority to revise discharge limits for pollutants consistently removed by the POTW.**

(b) Public access to other information, including information submitted to the department under claim of confidentiality, shall be governed by 327 IAC 12.1. *(Water Pollution Control Board; 327 IAC 5-16-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-4 Enforcement

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 13-14-10; IC 13-18-4; IC 13-30-3; IC 13-30-4

Sec. 4. (a) A violation of the pretreatment rules may:

- (1) subject a person causing or contributing to the violation to administrative or judicial enforcement proceedings, under IC 13-30-3, and the penalties provided under IC 13-30-4;**
- (2) be cause for:**
 - (A) modification;**
 - (B) revocation and reissuance; or**
 - (C) termination;****of an industrial waste pretreatment permit or an NPDES permit; and**
- (3) warrant the invocation of emergency procedures under IC 13-14-10.**

(b) The initiation of any action in response to a violation of the pretreatment rules does not preclude initiation of any other response.

(c) As used in this section, a violation of the pretreatment rules includes the following:

- (1) The indirect discharge of pollutants in contravention of an applicable pretreatment standard or other applicable discharge limitation.**
- (2) The indirect discharge of pollutants without a permit from a significant industrial discharger as determined by the control authority.**
- (3) A violation of discharge limitations or other terms and conditions of the permit where an IWP permit is required under the pretreatment rules.**

- (4) Failure to comply with any other applicable pretreatment requirement.
- (5) Failure of a POTW subject to 327 IAC 5-19 to develop a POTW pretreatment program or implement and enforce an approved POTW pretreatment program in compliance with the terms and conditions of its NPDES permit.
- (6) Failure to:
 - (A) allow entry, inspection, and monitoring by representatives of the commissioner when requested in accordance with applicable law; or
 - (B) carry out monitoring, recording, and reporting required under this article.

(d) With respect to an industrial user of a POTW with an approved POTW pretreatment program, initiation of enforcement proceedings by the POTW against the industrial user shall not preclude the commissioner from independently taking appropriate enforcement measures against the industrial user for a violation of the pretreatment rules. (*Water Pollution Control Board; 327 IAC 5-16-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290*)

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. Additionally, reporting of spills into a POTW or of 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*)

327 IAC 5-16-6 Upset

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. (a) As used in this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with any pretreatment standards or requirements in 327 IAC 5-2 because of factors beyond the reasonable control of the industrial user. An upset does not include:

- (1) noncompliance to the extent caused by operational error;
- (2) improperly designed treatment facilities;
- (3) inadequate treatment facilities;
- (4) lack of preventive maintenance; or
- (5) careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with the pretreatment standards or requirements if the requirements of subsection (c) are met.

(c) In order to establish an affirmative defense of upset, an industrial user must provide properly signed, contemporaneous operating logs, or other relevant evidence of the following facts:

- (1) An upset occurred and the industrial user can identify the cause of the upset.
- (2) The facility was being operated at the time in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
- (3) The industrial user submitted a report, to the POTW and control authority, within twenty-four (24) hours of becoming aware of the upset or within five (5) days, if an initial verbal report of the information is given to the required authority, and the report contained the following information:
 - (A) A description of the indirect discharge and cause of noncompliance.
 - (B) The period of noncompliance, including exact dates and times or the anticipated time the noncompliance is expected to continue if it is not corrected.
 - (C) Steps being taken or planned for reducing, eliminating, and preventing recurrence of the noncompliance.

(d) In any enforcement proceeding, an industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) In the usual exercise of prosecutorial discretion, the control authority may review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute the commissioner’s final action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with the pretreatment standards or requirements.

(f) An industrial user shall control production or all discharges to the extent necessary to maintain compliance with the pretreatment standards or requirements upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies when, among other things, the primary source of power of the treatment facility is reduced, is lost, or has failed. (*Water Pollution Control Board; 327 IAC 5-16-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 292*)

327 IAC 5-16-7 Bypass

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. 7. (a) The following definitions apply throughout this section:

(1) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.
(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) An industrial user may allow a bypass to occur if:

(1) it does not cause a violation of any pretreatment standard or requirement under 327 IAC 5-2; and
(2) it is for essential maintenance to assure efficient operation.

These bypasses are not subject to the provisions of subsections (c) and (d).

(c) The reporting requirements for a bypass are as follows:

(1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible, at least ten (10) days before the date of the bypass.

(2) If an unanticipated bypass exceeds a pretreatment standard or requirement under 327 IAC 5-2, the industrial user shall give oral notice to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided to the control authority within five (5) days of the time the industrial user becomes aware of the bypass. The written submission must contain the following:

(A) A description of the bypass and its cause.

(B) The duration of the bypass, including exact dates and times and the anticipated time it is expected to continue if the bypass has not been corrected.

(C) The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

(d) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass unless the following are demonstrated:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(2) There were no feasible alternatives to the bypass, such as any of the following:

(A) The use of auxiliary treatment facilities.

(B) Retention of untreated wastes.

(C) Maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance.

(3) The industrial user submitted notices as required under subsection (c).

(4) A planned bypass is approved in advance by the control authority after determining that the bypass will not violate subdivisions (1) through (3).

(Water Pollution Control Board; 327 IAC 5-16-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 292)

SECTION 2. 327 IAC 5-17 IS ADDED TO READ AS FOLLOWS:

Rule 17. Definitions

327 IAC 5-17-1 Applicability

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. 1. In addition to the applicable definitions contained in 327 IAC 5-1.5 and 327 IAC 5-2-11(a), the definitions in this rule apply to the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-17-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-2 "Approved POTW pretreatment program" 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. 2. “Approved POTW pretreatment program” means a program administered by a publicly owned treatment works that meets the criteria established in 327 IAC 5-19-3 and that has been approved by the regional administrator or the commissioner in accordance with 327 IAC 5-19-5. *(Water Pollution Control Board; 327 IAC 5-17-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-3 “Categorical pretreatment standards” 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. 3. “Categorical pretreatment standards” means national pretreatment standards, specifying quantities or concentrations of pollutants or pollutant properties that may be discharged or introduced to a POTW by an existing or new industrial user in a specific industrial subcategory, that are established by EPA, under Section 307(b) or 307(c) of the Clean Water Act (33 U.S.C. 1317(b) or 33 U.S.C. 1317(c)) as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. *(Water Pollution Control Board; 327 IAC 5-17-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-4 “Commissioner” 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. 4. “Commissioner” means the commissioner of the Indiana department of environmental management. *(Water Pollution Control Board; 327 IAC 5-17-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-5 “Control 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

Sec. 5. “Control authority” means the commissioner or, in the case of a POTW with an approved POTW pretreatment program, the POTW. *(Water Pollution Control Board; 327 IAC 5-17-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-6 “Discharge” 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. 6. “Discharge” means the introduction of pollutants into a POTW from any nondomestic source regulated under Section 307(b), 307(c), or 307(d) of the Clean Water Act (33 U.S.C. 1317(b), 33 U.S.C. 1317(c), or 33 U.S.C. 1317(d)). *(Water Pollution Control Board; 327 IAC 5-17-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-7 “Existing source” 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. 7. “Existing source” means an industrial user that is not a new source. *(Water Pollution Control Board; 327 IAC 5-17-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-8 “Four (4) day average discharge” 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. 8. “Four (4) day average discharge” means the calculated result of totaling the mass or average concentration of all daily discharges sampled or measured during four (4) consecutive sampling days, though not necessarily consecutive calendar days, divided by the number of daily discharges sampled or measured. *(Water Pollution Control Board; 327 IAC 5-17-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-9 “Industrial user” 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. 9. “Industrial user” means an indirect discharger pursuant to 327 IAC 5-1.5-25. (*Water Pollution Control Board; 327 IAC 5-17-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294*)

327 IAC 5-17-10 “Industrial wastewater pretreatment permit” or “IWP permit” 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. 10. “Industrial wastewater pretreatment permit” or “IWP permit” means a permit issued directly by the commissioner to an industrial user. An IWP permit is not a permit issued by a POTW to an industrial user. (*Water Pollution Control Board; 327 IAC 5-17-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294*)

327 IAC 5-17-11 “Interference” 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. 11. “Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, does one (1) of the following:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, its sludge processes, or its selected sludge use or disposal methods.

(2) Causes a violation of any requirement of the POTW’s NPDES permit, including an increase in the magnitude or duration of a violation.

(3) Prevents the use of the POTW’s sewage sludge or its sludge disposal method selected in compliance with the following statutory provisions, regulations, or permits issued thereunder or more stringent state or local regulations:

(A) Section 405 of the Clean Water Act (33 U.S.C. 1345).

(B) The Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901), including:

(i) Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA); and

(ii) the rules contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA (42 U.S.C. 6941).

(C) The Clean Air Act (42 U.S.C. 7401).

(D) The Toxic Substances Control Act (15 U.S.C. 2601).

(Water Pollution Control Board; 327 IAC 5-17-11; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)

327 IAC 5-17-12 “National pretreatment standard” 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. 12. “National pretreatment standard” means any regulation that applies to industrial users and contains pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and 307(c) of the federal Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c))*.

***33 U.S.C. 1317(b) and 33 U.S.C. 1317(c) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.** (*Water Pollution Control Board; 327 IAC 5-17-12; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294*)

327 IAC 5-17-13 “New source” 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. 13. (a) “New source” means any building, structure, facility, or installation that is discharging or may discharge pollutants, and its construction commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act (33 U.S.C. 1317(c)) that will be applicable to the source, if those standards are thereafter promulgated

in accordance with Section 307(c) of the Clean Water Act, provided one (1) of the following conditions is met:

- (1) The building, structure, facility, or installation is constructed at a site where no other source is located.
- (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.
- (3) The production of wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the following factors will be considered:
 - (A) The extent to which the new facility is integrated with the existing plant.
 - (B) The extent to which the new facility is engaged in the same general type of activity as the existing source.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (a)(2) or (a)(3) but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a new source as defined in this section has commenced if the owner or operator has:

- (1) begun, or caused to begin, as part of a continuous on-site construction program:
 - (A) any placement, assembly, or installation of facilities or equipment; or
 - (B) significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (2) entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time.

Options to purchase, contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section. (*Water Pollution Control Board; 327 IAC 5-17-13; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294*)

327 IAC 5-17-14 “Overflow” 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. 14. “Overflow” means the intentional or unintentional diversion of wastewater flow from a POTW prior to the wastewater entering the POTW treatment plant. (*Water Pollution Control Board; 327 IAC 5-17-14; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295*)

327 IAC 5-17-15 “Pass through” 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. 15. “Pass through” means a discharge proceeding through a POTW into waters of the state in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, are a cause of a violation of any requirement of the POTW’s NPDES permit, including an increase in the magnitude or duration of a violation. (*Water Pollution Control Board; 327 IAC 5-17-15; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295*)

327 IAC 5-17-16 “Pollutant removal” 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. 16. “Pollutant removal” means, with respect to a pollutant in the influent to a POTW, reduction in the amount of the pollutant or alteration in the nature of the pollutant to a less toxic or a more harmless state in the effluent. The reduction or alteration can be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or it may be incidental to the operation of the treatment system. Removal shall not mean dilution or volatilization of a pollutant in the POTW or its sewer system. (*Water Pollution Control Board; 327 IAC 5-17-16; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295*)

327 IAC 5-17-17 “POTW” or “publicly owned treatment works” 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. 17. “POTW” or “publicly owned treatment works” means a treatment works as defined by Section 212(2) of the Clean Water Act owned by the state or a municipality (as defined by Section 502(4) of the Clean Water Act), except that it does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. The term includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or compatible industrial wastes. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works. (Water Pollution Control Board; 327 IAC 5-17-17; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295)

327 IAC 5-17-18 “Pretreatment” 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. 18. “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, process changes, or by other means, except dilution, as prohibited by 327 IAC 5-18-4(f). (Water Pollution Control Board; 327 IAC 5-17-18; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-19 “Pretreatment requirements” 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. 19. “Pretreatment requirements” means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user. (Water Pollution Control Board; 327 IAC 5-17-19; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-20 “Pretreatment rules” 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. 20. “Pretreatment rules” means the rules contained in 327 IAC 5-16, this rule, and 327 IAC 5-18 through 327 IAC 5-21. (Water Pollution Control Board; 327 IAC 5-17-20; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-21 “Pretreatment standards” 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. 21. “Pretreatment standards” means:

- (1) state pretreatment standards as established in 327 IAC 5-18-8;**
- (2) pretreatment standards for prohibited discharges, as established in 327 IAC 5-18-2; and**
- (3) national categorical pretreatment standards incorporated by reference in 327 IAC 5-18-10.**

(Water Pollution Control Board; 327 IAC 5-17-21; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-22 “Removal credit” 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. 22. “Removal credit” means a revision in a discharge limit from a categorical standard to reflect consistent removal of a pollutant under the pretreatment rules. (Water Pollution Control Board; 327 IAC 5-17-22; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

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 wastestream 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;

(ii) violate a pretreatment standard; or

(iii) violate a requirement of 327 IAC 5-19-3.

(b) A control authority may, on its own initiative or 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*)

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.

(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 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 (daily maximum or longer-term average) that the control authority 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 caused imminent endangerment to human health, welfare, or to the environment or has 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 starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within thirty (30) days after the due date, required reports such as:

(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 that the control authority 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*)

327 IAC 5-17-25 “Sludge requirements” 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. 25. "Sludge requirements" means statutory provisions, regulations, or permits issued under the following (or more stringent state or local) regulations:

- (1) Section 405 of the Clean Water Act (33 U.S.C. 1345).
 - (2) Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901), including Title II, also known as the Resource Conservation Recovery Act.
 - (3) Rules contained in a state sludge management plan prepared pursuant to subtitle D of SWDA (42 U.S.C. 6941).
 - (4) Clean Air Act (42 U.S.C. 7401).
 - (5) Toxic Substances Control Act (15 U.S.C. 2601).
 - (6) Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1431 and 33 U.S.C. 1401).
- (Water Pollution Control Board; 327 IAC 5-17-25; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)*

SECTION 3. 327 IAC 5-18 IS ADDED TO READ AS FOLLOWS:

Rule 18. Applicable Pretreatment Standards and Other Pretreatment Requirements

327 IAC 5-18-1 Purpose

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. 1. This rule establishes the pretreatment requirements that apply to discharges of pollutants from industrial users to POTWs, including the following:

- (1) Pretreatment standards for prohibited discharges.
- (2) National pretreatment standards for specific industrial subcategories, established by 40 CFR 403.6.
- (3) State pretreatment standards.
- (4) More stringent limitations where necessary to protect a POTW from interference or to protect applicable water quality standards.

(Water Pollution Control Board; 327 IAC 5-18-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)

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) 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*)

327 IAC 5-18-3 Affirmative defense

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 industrial user shall have an affirmative defense in any action brought against the industrial user alleging a violation of the prohibitions established in section 2 of this rule if the industrial user can demonstrate that:

(1) it did not know or have reason to know that its discharge, alone or in conjunction with a discharge from another source, would cause pass through or interference; and

(2) a local limit designed to prevent pass through or interference in accordance with section 2 of this rule:

(A) was developed for each pollutant in the industrial user's discharge that caused pass through or interference, and the industrial user was in compliance with each such local limit directly prior to and during the pass-through or interference; or

(B) was not developed for the pollutant that caused the pass through or interference, and the industrial user's discharge, directly prior to and during the pass through or interference, had not changed substantially in nature or constituents from its usual discharge condition when the POTW was regularly in compliance with the applicable:

(i) NPDES permit requirements; and

(ii) requirements for sewage sludge use or disposal, in the case of interference.

(*Water Pollution Control Board; 327 IAC 5-18-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298*)

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 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:

(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 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 becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard and 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, an equivalent mass limit will be provided as an alternative to the standard and 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 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 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) 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 (d)(3) and (d)(4) shall be 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. Industrial users are required to 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 one (1) limit for calculating a maximum daily discharge limitation and 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 equivalent limitations.

(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) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 5-18-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298*)

327 IAC 5-18-5 Variance from a categorical pretreatment standard for fundamentally different factors

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. 5. (a) The requirements for requesting a variance from a categorical pretreatment standard for fundamentally different factors are as follows:

(1) Any interested person may request a fundamentally different factors variance under this section for the following reasons:

(A) Factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user.

(B) The existence of the differing factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard.

(2) Requests for a variance and supporting evidence must be submitted in writing to the commissioner within one hundred eighty (180) days after the date when a categorical pretreatment standard is published in the Federal Register. If an industrial user has requested a categorical determination under section 4(b) of this rule, the industrial user may defer submission of a variance request under this section until no later than thirty (30) days after a final decision has been made on the categorical determination under 40 CFR 403.6(a)(4).

(3) A written request for a fundamentally different factors variance (FDFV) must include the following:

(A) The name and address of the person making the request.

(B) Identification of the interest of the requester, which is affected by the categorical pretreatment standard, for which the variance is requested.

(C) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested.

(D) Identification of the categorical pretreatment standards that are applicable to the industrial user.

(E) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought.

(F) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in clause (E).

(G) A description of the industrial user's existing water pollution control facilities.

(H) A schematic flow representation of the industrial user's water system, including water supply, process wastewater systems, and points of discharge.

(I) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.

(b) The commissioner shall act upon a FDFV request according to the following:

(1) A decision on a FDFV request according to subsection (a) shall be made in accordance with the criteria and standards set forth in 40 CFR 403.13*. A variance shall not be granted if a proposed alternative discharge limit would result in a violation of prohibitive discharge standards in section 2 of this rule.

(2) When the commissioner makes a tentative decision on a FDFV request the commissioner shall provide a public notice of receipt of the request, opportunity to review the submission, and opportunity to comment. The public notice shall meet the following:

(A) Be circulated in a manner designed to inform interested and potentially interested persons of the request. Public notice shall include mailing notices to the following:

(i) The POTW that will receive the discharge from the industrial user requesting the variance.

(ii) Adjoining states whose waters may be affected.

(iii) Planning agencies, federal and state fish agencies, and shellfish and wildlife resource agencies designated in Section 208 of the Clean Water Act (33 U.S.C. 1288).

(iv) Any other person or group that has requested individual notice.

(B) Provide for a comment period of not less than thirty (30) days duration following the date of the public notice during which time interested persons may review the request and submit written comments on the request.

(3) The commissioner shall make a determination on the request for a FDFV taking into consideration any comments received during the comment period. If the commissioner denies the request, the commissioner's decision shall be final and notice thereof shall be provided to the following:

(A) The requester.

(B) The industrial user for which the variance was requested, if different from the requester of clause (A).

(C) The POTW intended to receive the industrial user's discharge that was the subject of the FDFV request.

(D) All persons who submitted comments on the request.

(4) If the commissioner concludes that fundamentally different factors do exist, the commissioner shall forward the request and a recommendation that a variance be approved to the EPA water management division director for a final determination pursuant to 40 CFR 403.13.

(5) The commissioner will act only on variances that contain all of the information required. The commissioner shall notify a person who has made an incomplete submission that the request is deficient and, unless the time period is extended, the person will be given a maximum of thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the commissioner, the request for variance shall be denied.

*40 CFR 403.13 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 5-18-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 300*)

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.

(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) Credit for generic pollutants, such as:

- (i) biochemical oxygen demand;
- (ii) total suspended solids; and
- (iii) 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) 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) 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) 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:

- (i) to reflect removal of such pollutants by any treatment of the intake water performed by or for the discharger; and
- (ii) to reflect any further removal of such pollutants by the wastewater treatment technology employed by the discharger.

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

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

327 IAC 5-18-7 Combined wastestreams

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. 7. The combined wastestream formula is derived as follows:

(1) Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, alternative discharge limits may be derived by the control authority or by the industrial user with the written concurrence of the control authority and applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum value specified in the appropriate categorical pretreatment standard and an alternative consecutive sampling day average value using the long term average value specified in the appropriate categorical pretreatment standard. The industrial user shall comply with the alternative daily maximum and long term average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(2) As used in this section, "average daily flow" means a reasonable measure of the average daily flow for a thirty (30) day period. For new sources, flows shall be estimated using projected values. The alternative discharge limit for a specific pollutant shall be calculated by either of the following formulas:

(A) Alternative concentration limits:

$$C_T = \frac{\left[\sum_{i=1}^N C_i F_i \right]}{\left[\sum_{i=1}^N F_i \right]} \cdot \left[\frac{F_T - F_D}{F_T} \right]$$

Where: C_T = The alternative concentration limit for the combined wastestreams.
 C_i = The categorical pretreatment standard concentration limit for a pollutant in the regulated stream i.
 F_i = The average daily flow (at least a thirty (30) day average) of stream i to the extent that it is regulated for such pollutant.
 F_D = The average daily flow (at least a thirty (30) day average) from any of the following:

(i) Boiler blowdown streams, noncontact cooling streams, storm water streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestream will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such stream should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis, and such other information so that the control authority can make its determination.

(ii) Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard.

(iii) Any process wastestreams that were or could have been entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one (1) or more of the following reasons:

(AA) The pollutants of concern are not detectable in the effluent from the industrial user.

(BB) The pollutants of concern are present only in trace amounts and are neither causing or likely to cause toxic effects.

(CC) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator.

(DD) The wastestream contains only pollutants that are compatible with the POTW.

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

N = The total number of regulated streams.

(B) Alternative mass limits:

$$M_T = \left[\sum_{i=1}^N M_i \right] \cdot \left[\frac{F_T - F_D}{\sum_{i=1}^N F_i} \right]$$

Where: M_T = The alternative mass limit for a pollutant in the combined wastestream.
 M_i = The categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i , F_D , F_T , and N are defined in clause (A).

(3) An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(4) Self-monitoring required to assure compliance with the alternative categorical limit shall be as follows:

(A) The type and frequency of sampling, analysis, and flow measurement must be determined by reference to the self-monitoring requirements of the appropriate categorical pretreatment standard or 40 CFR 403.12(e) and 40 CFR 403.12(h).

(B) Where the self-monitoring schedules as determined by the control authority for the appropriate standards differ, monitoring must be done according to the most frequent schedule.

(C) Where flow determines the frequency of self-monitoring in a categorical pretreatment standard, the sum of all regulated flows (F_i) is the flow that shall be used by the control authority to determine self-monitoring frequency.

(Water Pollution Control Board; 327 IAC 5-18-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 301)

327 IAC 5-18-8 State 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 13-11-2; IC 13-13-5-1; IC 13-14-8-7; IC 13-18-4

Sec. 8. (a) An industrial user shall comply with applicable pretreatment standards and requirements adopted by the board under IC 13-14-8-7(a)(8). If state pretreatment standards and national pretreatment standards are applicable to an industrial

user, the industrial user shall comply with the more stringent standards.

(b) Compliance with a state pretreatment standard that does not expressly state a final date for compliance must be attained no later than three (3) years from the effective date of the standard. (*Water Pollution Control Board; 327 IAC 5-18-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303*)

327 IAC 5-18-9 Other pretreatment 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. 9. In addition to applicable pretreatment standards, an industrial user shall comply with the following:

(1) An effluent limitation more stringent than the applicable pretreatment standard that is necessary to prevent:

(A) interference in the POTW receiving the discharge; or

(B) violation of a provision of section 2(a) of this rule or a state or federal water quality standard that is applicable to the state waters ultimately receiving the discharge from the industrial user after discharge from the POTW.

(2) Any requirement by the commissioner to implement appropriate best management practices (BMPs) and to develop a BMP plan in accordance with 327 IAC 5-9 if the industrial user uses, manufactures, stores, handles, or discharges any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act (33 U.S.C. 1317(a)(1)) or any pollutant listed as hazardous under Section 311 of the Clean Water Act (33 U.S.C. 1321) that may cause or allow significant amounts of that pollutant to reach waters of the state, whether directly or after discharge from the POTW, from certain ancillary manufacturing operations, including:

(A) materials storage areas;

(B) in-plant transfer;

(C) process and materials handling areas;

(D) loading and unloading operations;

(E) plant site run-off; and

(F) sludge and waste disposal areas.

(*Water Pollution Control Board; 327 IAC 5-18-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303*)

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:

| <u>Category</u> | <u>Code of Federal Regulations or Federal Register Citation</u> |
|---|---|
| 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* |

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|--|-------------|
| 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* |
| Pharmaceutical manufacturing | 40 CFR 439* |
| Paving and roofing | 40 CFR 443* |
| Paint formulating | 40 CFR 446* |
| Ink formulating | 40 CFR 447* |
| Pesticide chemicals manufacturing, formulating, and packaging | 40 CFR 455* |
| 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 5-18-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303*)

SECTION 4. 327 IAC 5-19 IS ADDED TO READ AS FOLLOWS:

Rule 19. POTW Pretreatment Programs

327 IAC 5-19-1 POTWs required to have a pretreatment program

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. 1. (a) A POTW, or a combination of POTWs operated by the same authority, that meets at least one (1) of the following

conditions must establish a POTW pretreatment program:

- (1) Has a total design flow greater than five (5) million gallons per day (mgd) and receives pollutants, from one (1) or more industrial users, that may pass through or interfere with the operation of the POTW.
- (2) Receives flow subject to pretreatment standards or requirements under 327 IAC 5-18.

(b) A POTW with a design flow of five (5) mgd or less may also be required to develop a POTW pretreatment program if the commissioner determines that a pretreatment program to prevent interference or pass through at the POTW is warranted due to the nature or volume of one (1) or more of the following:

- (1) Industrial influent.
- (2) Treatment process upset.
- (3) Violations of POTW effluent limitations.
- (4) Contamination of municipal sludge.
- (5) Other circumstances.

(c) A POTW desiring to modify categorical pretreatment standards under 327 IAC 5-20 must have an approved POTW pretreatment program. (*Water Pollution Control Board; 327 IAC 5-19-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 304*)

327 IAC 5-19-2 Development of a POTW pretreatment program

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) The purpose of a POTW pretreatment program is to provide the POTW with the administrative and technical capability to ensure that industrial users of the POTW comply with applicable pretreatment standards and requirements specified in 327 IAC 5-18.

(b) For a POTW required to develop a POTW pretreatment program under section 1 of this rule, a compliance schedule specifying the program development will be incorporated into the POTW's NPDES permit. The compliance schedule shall not extend more than twelve (12) months after notification of the requirement to the POTW.

(c) In addition to any other provisions of this article, any of the following circumstances shall be considered adequate cause to modify or revoke and reissue a POTW's NPDES permit to incorporate a compliance schedule for development of a POTW pretreatment program as described in subsection (b):

- (1) The addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment.
- (2) The permit must be reissued or modified to coordinate the issuance of a construction grant under Section 201 of the Clean Water Act (33 U.S.C. 1281) with the incorporation into the NPDES permit of a compliance schedule for a POTW pretreatment program.
- (3) A modification of the NPDES permit is approved under Section 301(i)(1) of the Clean Water Act (33 U.S.C. 1311(i)(1)).

(d) Upon the approval by the commissioner of a POTW pretreatment program, the NPDES permit of the POTW must be modified or revoked and reissued to incorporate conditions of the approved POTW pretreatment program, including a requirement that the POTW implement and enforce the approved POTW pretreatment program with respect to the industrial users of the POTW. (*Water Pollution Control Board; 327 IAC 5-19-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 304*)

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 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 permits or equivalent individual control mechanisms issued to each user.

(D) Control mechanisms described in clause (C) must be enforceable and contain, at a minimum, the following:

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

(ii) 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 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, 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 schedules may not extend the compliance date beyond applicable federal deadlines.

(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 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:

(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:

(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 threatens to interfere with the operation of the POTW or that 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 compilation, index or 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 its status as an SIU and of 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.

(I) Evaluate and document, at least once every two (2) years, whether each significant industrial user needs a plan to control slug discharges. 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. The results of these activities shall be made available to the regional administrator or commissioner upon request; 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 run-off.

(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 newspaper published in the municipality in which 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 develop local limits as required in 327 IAC 5-18-2(b) or 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 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 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)

327 IAC 5-19-4 Requests for approval of POTW pretreatment programs

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. 4. (a) A POTW requesting approval of a POTW pretreatment program shall develop and submit to the commissioner three (3) copies of the POTW pretreatment program description, including the following:

(1) A statement from the municipal attorney or the attorney for those POTW's that have independent legal counsel providing the following:

(A) Proof that the POTW has authority adequate to carry out the approved POTW pretreatment program described in section 3 of this rule, including identification of the legal authority that provides the basis for each procedure specified in subdivision (2).

(B) A copy of any ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the approved POTW pretreatment program.

(2) A description of the manner in which the POTW will implement the approved POTW pretreatment program requirements, including:

(A) whether pretreatment standards will be applied to individual industrial users by order or permit; and

(B) how the POTW intends to ensure compliance with pretreatment standards and requirements, for example, an industrial monitoring plan to:

(i) enable the POTW to monitor discharges from its industrial users, including necessary monitoring and analytical equipment; and

(ii) enforce them in the event of noncompliance by industrial users.

This submission must include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and funding the POTW pretreatment program if the POTW pretreatment program is approved.

(3) A brief description, including organizational charts, of the POTW organization that will administer the approved POTW pretreatment program. If more than one (1) agency is responsible for the administration of the approved POTW pretreatment program, this description must include:

(A) identification of the responsible agencies;

(B) delineation of the responsibilities for each agency; and

(C) the procedures for coordination among the agencies.

(4) The information specified in section 3(2)(A) and 3(2)(B) of this rule concerning:

(A) the identity of industrial users subject to the approved POTW pretreatment program; and

(B) the identity and quantity of pollutants discharged to the POTW by each identified industrial user.

This information shall also be made available to the regional administrator upon request.

(5) A description of the funding levels and the full-time and part-time manpower available to implement the approved POTW pretreatment program.

(b) A POTW may request conditional approval of a POTW pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval must meet the requirements set forth in subsection (a), except that the submission must demonstrate the following:

(1) A limited aspect of the POTW pretreatment program does not need to be implemented immediately.

(2) The POTW has adequate legal authority and procedures to carry out those aspects of the POTW pretreatment program that will not be implemented immediately.

(3) Funding and personnel for the POTW pretreatment program aspects to be implemented at a later date will be available when needed. The POTW must describe the mechanism by which this funding will be acquired.

Upon receipt of a request for conditional approval, the commissioner shall establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program, and any removal allowances granted to the POTW, may be modified or withdrawn.

(c) The requirements for consistency with water quality management plans shall be as follows:

(1) In order to be approved, a POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR 130 and 40 CFR 131, where the water quality management plan, pursuant to Section 208 of the Clean Water Act (33 U.S.C. 1288), includes management agency designations and addresses pretreatment in a manner consistent with 40 CFR 403. In order to assure such consistency, the commissioner, upon receipt of a request for approval of a POTW pretreatment program, shall solicit the review and comment of the appropriate planning agency prior to approval or disapproval of the POTW pretreatment program.

(2) Where no Section 208 plan has been approved or where a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with 40 CFR 403, the commissioner shall nevertheless solicit the review and comment of the appropriate planning agency.

(Water Pollution Control Board; 327 IAC 5-19-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 307)

327 IAC 5-19-5 Approval procedures for POTW pretreatment programs or requests for authority to revise categorical pretreatment standards due to POTW consistent removal

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. 5. (a) The commissioner shall review each submission for a POTW pretreatment program approval or request to revise a categorical pretreatment standard to preliminarily determine whether the submission complies with the requirements of section 3, 4(a), or 4(b) of this rule or this section. After preliminary review, the commissioner shall act according to the following:

(1) If the submission meets the applicable requirements, the commissioner shall notify the POTW and commence permit procedures set forth in 327 IAC 5-3.

(2) If the submission does not comply with applicable requirements, the commissioner shall provide written notice to the POTW and to each person who has requested individual notice. This notification shall identify any defects in the submission and advise the POTW how it can comply with the applicable requirements.

(b) A POTW with an approved POTW pretreatment program shall promptly inform the commissioner of any change in legal authority, staffing, or funding that may significantly affect the ability of the POTW to operate its approved POTW pretreatment program. Whenever this information is submitted and whenever the POTW's NPDES permit is under consideration for reissuance, the commissioner shall review the POTW's ongoing capability to operate its approved POTW pretreatment program. If the commissioner determines that the POTW no longer possesses the capability to adequately run its approved POTW pretreatment program, the commissioner shall promptly notify the POTW of the deficiencies identified.

(Water Pollution Control Board; 327 IAC 5-19-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308)

327 IAC 5-19-6 Revision of an existing approved POTW pretreatment program

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. The criteria and procedures in 40 CFR 403.18* shall govern the revisions to an existing approved POTW pretreatment program.

*40 CFR 403.18 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 5-19-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308)*

327 IAC 5-19-7 POTWs not required to have an approved POTW pretreatment program

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. 7. A POTW not required to develop an approved POTW pretreatment program shall be required to meet the following:

(1) Comply with a decision of the commissioner who has the responsibility of implementing a POTW pretreatment program that will achieve the objectives stated in 327 IAC 5-16-1(b) if the commissioner determines that a need exists for such a POTW pretreatment program. Generally, such a state pretreatment program will be implemented at the local POTW through the use of procedures comparable to those described under section 3(2) of this rule and, ultimately, the issuance of appropriate industrial wastewater pretreatment permits under 327 IAC 5-21.

(2) Develop, adopt, and enforce a sewer use ordinance that implements the standards for prohibited discharges in accordance with 327 IAC 5-18-2.

(3) Comply with any requirements of the commissioner specified in the POTW's NPDES permit to perform certain elements of an approved POTW pretreatment program, such as monitoring for industrial pollutants in the discharges from the POTW's industrial users.

(Water Pollution Control Board; 327 IAC 5-19-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308)

SECTION 5. 327 IAC 5-20 IS ADDED TO READ AS FOLLOWS:

Rule 20. Removal Credits

327 IAC 5-20-1 Prerequisites for revision of categorical pretreatment standards by a POTW

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. 1. (a) Any POTW receiving wastewater from an industrial user that is required to meet a categorical pretreatment standard may revise the discharge limits specified by the standard for any specific pollutant or pollutants so long as the POTW has:

(1) applied for and received authorization from the commissioner to revise the discharge limits for a specific pollutant in accordance with this rule and 327 IAC 5-19-5; and

(2) a POTW pretreatment program approved under 327 IAC 5-19.

(b) The revised discharge limit for a specific pollutant must be:

(1) based upon the POTW's capability to consistently remove that pollutant, as demonstrated in accordance with section 2(b) of this rule; and

(2) calculated as provided in section 2(b)(4) of this rule.

A discharge limit revision for a toxic pollutant, that is listed pursuant to Section 307(a) of the Clean Water Act (33 U.S.C. 1317(a)), must be based on the POTW's ability to remove that toxic pollutant and not the ability to remove indicator or surrogate pollutants.

(c) A POTW with a combined sewer overflow or systems that overflow untreated wastewater into a receiving water at least once annually shall not be able to claim consistent removal of a pollutant unless achieving compliance with one (1) of the following:

(1) The industrial user provides containment, reduction, or otherwise ceases all discharges from the regulated processes of a pollutant for which a removal allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur. Discharges must cease or be reduced or pretreatment must be increased to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this rule will not be granted unless the POTW submits to the commissioner evidence of the following:

(A) All industrial users to which the POTW proposes to apply this rule have demonstrated the ability to contain, reduce, or otherwise cease, during circumstances in which an overflow event can reasonably be expected to occur, all discharges from the regulated processes that contain pollutants for which a removal allowance is requested.

(B) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur and has a notification procedure or other viable plan to ensure that industrial users will learn of an impending bypass in sufficient time to contain, reduce, or cease its discharge to prevent untreated overflow from occurring. The POTW must also demonstrate that it will monitor and verify the data required in clause (C) to ensure that industrial users are containing, reducing, or ceasing operations during POTW overflows.

(C) All industrial users to which the POTW proposes to apply this rule have demonstrated the ability and commitment to collect and make available upon request by the POTW, commissioner, or EPA regional administrator daily flow

reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the removal allowance is requested were contained, reduced, or otherwise terminated during all circumstances in which a overflow event was reasonably expected to occur.

(2) The proposed revised discharge limit for a specific pollutant is calculated under section 2(b)(4)(B) of this rule to account for the reduction in POTW removal due to overflows, except as follows:

(A) If an industrial user can demonstrate that overflows do not occur in the POTW's system between the industrial user's discharge and the treatment plant, the POTW may calculate revised discharge limits for the industrial user under section 2(b)(4)(A) of this rule.

(B) After April 19, 1994, consistent removal may be claimed only if efforts to correct the conditions resulting in untreated discharges by a POTW are underway in accordance with the policy and procedures set forth in the EPA Combined Sewer Overflow (CSO) Control Policy (FRL-4732-7)*, published in the Federal Register on April 19, 1994. Revision to discharge limits in categorical pretreatment standards may not be made if a POTW has not committed to efforts to minimize pollution from combined sewer overflows. At a minimum, a POTW must have completed an analysis of combined sewer overflow alternatives in accordance with the requirements of the CSO Control Policy and be making a good faith effort to implement the plan.

(d) A discharge limit revision shall not cause or contribute to a violation of the following:

(1) Applicable water quality standards in the state waters receiving the POTW's effluent.

(2) The POTW's ability to comply with its NPDES permit limitations and conditions.

(3) Any sludge requirements that apply to the sludge management method chosen by the POTW.

Alternatively, the POTW can demonstrate to the commissioner that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its categorical pretreatment standard as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance.

(e) If a POTW has received a construction grant under Section 201(g) of the Clean Water Act (33 U.S.C. 1281(g)) from funds authorized for any fiscal year beginning after September 30, 1978, the POTW shall have completed the analysis required by Section 201(g)(5) of the Clean Water Act (33 U.S.C. 1281(g)(5))** and demonstrated that the revised discharge limits will not preclude the use of innovative or alternative technology otherwise available to the POTW.

(f) An industrial user that wishes to receive a removal allowance shall:

(1) submit to the POTW the information required in 40 CFR 403.12(b)***, including the specification of what additional treatment or process facilities, if any, will be needed to comply with applicable categorical pretreatment standards as approved for revision under this rule;

(2) enter into a compliance schedule agreement with the POTW to install the needed facilities within the time period provided by the applicable categorical standards; and

(3) have the POTW submit to the commissioner, within sixty (60) days of the effective date of revision of discharge limits for a particular industrial user, the name and address of the industrial user and the specific discharge limits that were revised.

*The Combined Sewer Overflow (CSO) Control Policy (FRL-4732-7) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

**Section 201(g)(5) of the Clean Water Act (33 U.S.C. 1281(g)(5)) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

***40 CFR 403.12(b) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 5-20-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 309*)

327 IAC 5-20-2 Application for authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 2. (a) An application to revise discharge limits for specific pollutants for an industrial user that is, or in the future may be, subject to categorical pretreatment standards must be submitted to the commissioner by a POTW pursuant to this section. The initial application must be submitted after or concurrently with the POTW's request for approval of its POTW pretreatment program. Subsequent applications, if needed, may be submitted by a POTW no more than once every six (6) months upon the occurrence of one (1) or more of the following:

- (1) Promulgation of a categorical pretreatment standard since the previous application.**
- (2) An industrial user with new or modified facilities or production changes results in the discharge of a pollutant to the POTW that was not previously discharged and is subject to a categorical standard.**
- (3) Any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures, such as:**
 - (A) improvements in operation and maintenance practices;**
 - (B) new treatment or treatment capacity; or**
 - (C) a significant change in the influent to the POTW treatment plant.**

(b) An application for authorization to revise discharge limits must include the following information:

- (1) A list of pollutants proposed for discharge limit revisions.**
- (2) Influent and effluent operational data demonstrating consistent removal or other information, as permitted by the commissioner, that demonstrates consistent removal of the pollutants for which a removal allowance is proposed. These data must meet the following requirements:**
 - (A) The data must be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant proposed for a discharge limit revision.**
 - (B) The data must be representative of the quality and quantity of normal effluent and influent flow of the system if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal.**
 - (C) The influent and effluent operational data must be obtained through a minimum of twelve (12) composite samples taken at approximately equal intervals throughout one (1) calendar year and meeting the following requirements:**
 - (i) Each composite sample must consist of discrete flow-proportional samples taken at equal time intervals not to exceed two (2) hours.**
 - (ii) The sampling period must be a minimum of twenty-four (24) hours and each effluent sample must be taken approximately one (1) detention time later than the corresponding influent sample except that, if the commissioner determines that such a sampling schedule will not be representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be required. The detention time shall be determined from the flow at the time sampling begins.**
 - (iii) If a particular pollutant is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of quantitation, and those data may be used by the POTW in its discretion subject to approval by the commissioner.**
 - (iv) If the pollutant is not measurable in the influent, the data must not be used.**
 - (v) If there are less than eight (8) samples with influent concentrations equal to or above the limit of quantitation, the commissioner may approve alternate means, such as a mass balance, for demonstrating consistent removal. The samples must be evenly distributed over the days of the week so as to include nonworkdays as well as workdays. If the commissioner determines that this schedule will not be most representative of the actual operation of the POTW, an alternative sampling schedule will be approved.**
 - (vi) In addition, upon the commissioner's approval, a POTW may utilize an historical data base amassed prior to the effective date of this rule provided that the data meets the requirements of this subdivision. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.**
 - (D) Where composite sampling is not an appropriate sampling technique, a grab sample shall be taken to obtain influent and effluent operational data and shall meet the following requirements:**
 - (i) A grab sample shall be required, for example, where the parameters being evaluated are those that may not be held for any extended period because of biological, chemical, or physical interactions that take place after sample collection and affect the results.**

- (ii) A grab sample is an individual sample collected over a period of time not exceeding fifteen (15) minutes.
- (iii) Collection of influent grab samples should precede collection of effluent samples by approximately one (1) detention period.

(E) The sampling and analysis required by clause (C) and this clause must be performed in accordance with the following:

- (i) Techniques prescribed in one (1) of the following:
 - (AA) 40 CFR 136 and its amendments.
 - (BB) Applicable categorical standards.
- (ii) Applicable sampling and analytical procedures approved by EPA if one (1) of the following situations exists to make the techniques listed in item (i) inapplicable:
 - (AA) There is no sampling or analytical technique for the pollutant in question.
 - (BB) The administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question.

(F) Consistent removal for a specific pollutant shall be determined as follows:

- (i) For each sample, the difference between the pollutant concentrations in the influent and effluent must be calculated and expressed as a percentage of the influent concentration.
- (ii) Removal for the pollutant shall be calculated as the average of the lowest fifty percent (50%) of the individual sample removal results. If the number of samples with quantifiable results is between eight (8) and twelve (12), the removal shall be calculated as the average of the lowest six (6) sample results.
- (iii) All sample data obtained for the measured pollutant according to clause (C) must be reported and used in calculating consistent removal.
- (iv) If an alternate means is approved by the commissioner under clause (C) for demonstrating consistent removal, then removal shall be calculated as specifically provided by the commissioner.

(3) A list of the industrial subcategories for which discharge limits in categorical pretreatment standards would be revised, including the number of industrial users in each subcategory and an identification of which of the pollutants on the list prepared under subdivision (1) are discharged by each subcategory.

(4) The proposed revised discharge limits for each of the subcategories of industrial users identified in subdivision (3) calculated in the following manner:

(A) The proposed revised discharge limit for the specified pollutant must be calculated using the following formula:

$$Y = \frac{X}{1 - r}$$

- Where:
- X = Pollutant discharge limit specified in the applicable categorical pretreatment standard (expressed in milligrams per liter).
 - r = POTW's consistent removal rate for that pollutant as established under this rule (percentage expressed as a decimal).
 - Y = Revised discharge limit for the specified pollutant (expressed in milligrams per liter).

(B) In the case of a POTW that either has combined sewers or has bypassed untreated wastewater into the receiving water at least once annually and that claims consistent removal of a pollutant under section 1(c)(1) of this rule, the proposed revised discharge limits for the specific pollutant must be calculated using the following formula:

$$r_c = r_m \frac{8760 - Z}{8760}$$

- Where:
- r_m = POTW's consistent removal rate for a specific pollutant.
 - r_c = Removal corrected by the overflow factor.
 - Z = Hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

(5) Data showing the concentrations and amounts in a POTW's sludge of the pollutants proposed for discharge limit revisions and for which sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal have been published by EPA or the department. This data must meet the following requirements:

(A) The data must be obtained through a composite sample taken during each of the sampling periods selected to measure

consistent removal in accordance with the requirements of subdivision (2)(C). Each composite sample must contain a minimum of twelve (12) discrete samples taken at equal time intervals over a twenty-four (24) hour period. Where a composite sample is not an appropriate sampling technique, grab samples must be taken.

(B) Sampling and analysis of the samples referred to in clause (A) must be performed in accordance with the sampling and analytical techniques described in subdivision (2)(E).

(6) A specific description of the following:

(A) The POTW's current method of use or disposal of its sludge.

(B) Data certifying that the current sludge use or disposal methods comply and will continue to comply with section 1(d) of this rule.

(7) A certification that the POTW has an approved POTW pretreatment program or qualifies for the exception to this requirement found at section 1(c) of this rule.

(8) A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits or conditions.

(c) The application to revise categorical standards must contain the following:

(1) Signature of one (1) of the following:

(A) A principal executive officer.

(B) A ranking elected official.

(C) A duly authorized employee of the POTW, if the employee is responsible for overall operation of the POTW.

(2) A certification by the signatory or an independent consulting engineer, if retained by the POTW to prepare the application, stating, "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of 327 IAC 5-20-2(b). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate, and complete."

(d) An application to revise categorical standards, upon its submittal by a POTW, will be reviewed, approved, or denied by the commissioner in accordance with the procedures of 327 IAC 5-19-5. Approval of an application shall empower the POTW to revise only the specific discharge limits proposed under subsection (b)(4).

(e) If the state has an approved pretreatment program, the regional administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d)* to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the regional administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(f) Nothing in this rule precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

*40 CFR 123.24(d) 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 5-20-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 310*)

327 IAC 5-20-3 Conditional and provisional authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) The requirements for conditional and provisional authorization to revise categorical standards are as follows:

(1) A POTW may submit an application to the commissioner for conditional authority to revise discharge limits contained in categorical pretreatment standards prior to approval of its POTW pretreatment program. The application must conform to the requirements of section 2 of this rule.

(2) The commissioner may approve an application for conditional authority to revise discharge limits if the commissioner determines that consistent removal has been adequately demonstrated for the specific pollutant proposed for discharge limit revision. The public notice and comment procedures of 327 IAC 5-19-5 may be omitted by the commissioner in approving an application under this section. However, at the time the commissioner gives public notice of the POTW's request for approval of its POTW pretreatment program, the commissioner shall also give public notice of the intent to

ratify or not ratify the conditional authorization to revise discharge limits.

(3) If the commissioner approves the application for conditional authorization, the POTW may proceed to revise the discharge limits for the specific pollutants identified in the application subject to the following conditions:

(A) Except for section 1(a)(2) of this rule, the conditions specified by section 1 of this rule.

(B) The POTW must submit to the commissioner an application for a POTW pretreatment program approval meeting the requirements of 327 IAC 5-19-2, 327 IAC 5-19-3, and 327 IAC 5-19-4 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a POTW pretreatment program included in the POTW's NPDES permit.

(C) If a POTW grants a conditional revision and the commissioner subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions stated in this section, the following shall occur:

(i) The conditional revision shall be terminated by the commissioner.

(ii) An industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, though not in excess of the time period prescribed in the applicable categorical pretreatment standard, as specified by the commissioner.

(b) For pollutants that are not currently being discharged, including pollutants expected from new or modified facilities or production changes, application may be made for provisional authorization to revise discharge limits in the applicable categorical pretreatment standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other comparable treatment facilities where the quality and quantity of influent are similar. The procedures and conditions for provisional authorization shall be those set forth in subsection (a), except as follows:

(1) The information required for the application under section 2(b)(2) and 2(b)(5) of this rule shall be temporarily waived and the treatability data or other alternate basis for projecting removal submitted instead.

(2) Within eighteen (18) months after discharge of the pollutants granted for provisional authorization, the data specified in section 2(b)(2) and 2(b)(5) of this rule shall be gathered and submitted to the commissioner. If the data fail to demonstrate consistent removal of the pollutant, the following shall occur:

(A) The provisional revision shall be terminated by the commissioner.

(B) An industrial user that had been given revised discharge limits shall achieve compliance with the applicable categorical standards within a reasonable time, though not in excess of the time period prescribed in the applicable standards, as specified by the commissioner.

Conversely, if the data confirm consistent removal of the pollutants in question, the commissioner shall ratify the provisional authorization.

(Water Pollution Control Board; 327 IAC 5-20-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 312)

327 IAC 5-20-4 Continuation or withdrawal of authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 4. (a) After a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard, it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate its sludge requirements or its NPDES permit limits and conditions. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory, or one (1) or more industrial users that initially were not granted removal credits, it must notify the control authority.

(b) Following authorization to revise discharge limits from categorical pretreatment standards, the POTW shall continue to monitor and report on the POTW's removal capabilities for all pollutants for which authority to revise limits has been granted. The report shall contain the information required by section 2(b)(2)(A), 2(b)(2)(B), 2(b)(5), and 2(b)(6) of this rule. The data obtained for purposes of this report must be obtained through a composite sample taken on three (3) consecutive days during the reporting period and meet the requirements of section 2(b)(2)(C) of this rule. If no categorical pretreatment standards are yet promulgated relative to the industrial users of a POTW receiving authorization to revise discharge limits or if the POTW has received provisional authorization to revise limits under section 3(b) of this rule, the initial report shall be submitted to the commissioner within sixty (60) days after the earliest date of promulgation of an applicable categorical standard or the date the discharge of pollutants for which provisional authorization was granted commences. In all other

cases, the initial report shall be submitted within six (6) months after the date authorization to revise limits was granted. Subsequent reports shall be submitted at six (6) month intervals unless required more frequently by the commissioner.

(c) Approval of authority to revise categorical pretreatment standards will be reexamined whenever the POTW's NPDES permit is reissued or whenever the categorical pretreatment standard is revised by EPA unless the commissioner determines the need to reevaluate the authority earlier as required by subsection (e). In addition, where overflows of untreated waste by the POTW continue to occur, the commissioner may condition continued authorization to revise discharge limits upon the POTW performing additional analysis or implementing additional control measures as is consistent with departmental policy toward POTW bypasses.

(d) After authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for industrial users of the POTW's system, as well as the consistent removal documented by the POTW for that pollutant, and the other conditions of section 1 of this rule shall be included in the POTW's NPDES permit upon the earliest reissuance or modification (at or following the POTW pretreatment program approval) and shall become enforceable requirements of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions of this rule.

(e) If, on the basis of pollutant removal capability reports received as required by subsection (b) or other information available to it, the commissioner determines that:

(1) one (1) or more of the discharge limit revisions made by the POTW or the POTW itself no longer meets the requirements of section 1 of this rule; or

(2) such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's NPDES permit;

then the commissioner shall notify the POTW and, if appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days (unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action), either withdraw or require modifications in the revised discharge limits.

(f) The commissioner shall not withdraw or modify revised discharge limits according to subsection (e) without doing the following:

(1) Notifying the POTW and all industrial users to whom revised discharge limits have been applied of the information required by subdivision (2).

(2) Giving written notice of the following:

(A) The reasons for such withdrawal or modification.

(B) The time to be allowed for new compliance dates.

(3) Providing an opportunity for a hearing.

(g) After receiving notice of withdrawal or modification from the commissioner according to subsections (e) and (f), all industrial users to whom revised discharge limits had been applied shall be subject to the modified limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time, though not in excess of the time period prescribed in the applicable categorical pretreatment standard, as may be specified by the commissioner. (*Water Pollution Control Board; 327 IAC 5-20-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 313*)

SECTION 6. 327 IAC 5-21 IS ADDED TO READ AS FOLLOWS:

Rule 21. Industrial Wastewater Pretreatment Permit Program

327 IAC 5-21-1 Purpose

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. 1. The purpose of this rule is to establish an administrative program for the issuance of a permit that specifies a minimum acceptable degree of pretreatment required for the discharge of certain industrial wastewater into a POTW. The applicability of these permits and the procedures for their issuance are defined. (*Water Pollution Control Board; 327 IAC 5-21-*

1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 314)

327 IAC 5-21-2 Applicability of industrial wastewater pretreatment permits

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) An industrial user shall be required to obtain an IWP permit for a discharge of wastewater into a POTW if one (1) of the following situations exists:

- (1) The discharge is from a significant industrial user as defined in 327 IAC 5-17-22 and is discharged into a POTW that is not required to have an approved POTW pretreatment program under 327 IAC 5-19-1.**
- (2) The commissioner determines that an IWP permit is needed for effective control of an industrial discharge.**

(b) An industrial user subject to the terms of subsection (a) shall submit an application for an IWP permit to the commissioner prior to commencing the discharge of industrial wastewater to a POTW.

(c) An existing industrial user that intends to add a pollutant not limited by the valid IWP permit or increase discharge of a pollutant limited by the IWP permit must apply for an IWP permit modification from the commissioner prior to commencing discharge containing the additional pollutant. (*Water Pollution Control Board; 327 IAC 5-21-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 314*)

327 IAC 5-21-3 Permit application submission 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 application for an IWP permit must conform to the following:

- (1) Be completed on a form prescribed by the commissioner.**
- (2) Be signed in accordance with 327 IAC 5-2-22(a).**
- (3) Be submitted to the commissioner according to the following time requirements:**
 - (A) No later than one hundred eighty (180) days prior to the expiration date of an existing permit if the industrial user intends to continue discharging to the POTW.**
 - (B) No later than one hundred eighty (180) days prior to the date when a new industrial discharger intends to commence discharging to a POTW.**
 - (C) In the case of an initial issuance of an IWP permit to a significant industrial user or to an industrial user determined by the commissioner to be subject to the IWP permit requirements, no later than one hundred twenty (120) days after the latter of:
 - (i) the promulgation of an applicable categorical pretreatment standard; or**
 - (ii) the date of notification by the commissioner of a determination made according to section 2(a)(2) of this rule.****
 - (D) No later than one hundred twenty (120) days prior to a planned expansion or modification of production or treatment facilities or processes that are likely to cause a significant increase in quantity of pollutants or a change in the nature of pollutants discharged to the POTW by an industrial user with an existing IWP permit.**

(Water Pollution Control Board; 327 IAC 5-21-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)

327 IAC 5-21-4 Effect of permit issuance

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. 4. An IWP permit holder shall comply with the requirements of the following:

- (1) The IWP permit as issued or modified.**
- (2) The POTW receiving the permitted industrial discharge.**
- (3) The local government having jurisdiction over the industrial discharge or the construction or operation of the discharging facility.**

(Water Pollution Control Board; 327 IAC 5-21-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)

327 IAC 5-21-5 Duration and transferability of an IWP permit

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. 5. The provisions of 327 IAC 5-2-6 concerning the duration, continuation, and transferability of NPDES permits also apply to IWP permits issued under this rule. (*Water Pollution Control Board; 327 IAC 5-21-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315*)

327 IAC 5-21-6 Conditions applicable to all permits

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. (a) The following conditions apply to all IWP permits and must be expressly incorporated into the permit or incorporated by reference:

- (1) Permit conditions specified in 327 IAC 5-2-8(1) through 327 IAC 5-2-8(3), 327 IAC 5-2-8(7) through 327 IAC 5-2-8(9), and 327 IAC 5-2-8(13).**
- (2) The upset provision according to 327 IAC 5-16-6.**
- (3) The bypass provision according to 327 IAC 5-16-7.**
- (4) The enforcement provision according to 327 IAC 5-16-4.**

(b) An IWP permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause in accordance with the pertinent provisions of 327 IAC 5-2-16. An IWP permittee must:

- (1) report to the commissioner plans for or information about any activity that has occurred or will occur that would constitute cause for modification or revocation and reissuance under this section;**
- (2) comply with the existing IWP permit until it is modified or reissued; and**
- (3) abide by the commissioner's decision:**
 - (A) to modify or revoke and reissue the permit; and**
 - (B) require submission of a new application as required by section 3 of this rule.**

(c) If the permittee does not or will not be able to comply for any reason with any discharge limitation specified in the IWP permit, the permittee shall provide the commissioner with the following information within twenty-four (24) hours of an event of permit noncompliance:

- (1) A description of the discharge and cause of noncompliance.**
- (2) The period of noncompliance, including exact dates and times of the noncomplying event and the anticipated time when the discharge will return to compliance.**
- (3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.**

(d) The permittee shall take all reasonable steps to minimize any adverse impact to the POTW or to waters of the state resulting from noncompliance with the IWP permit. (*Water Pollution Control Board; 327 IAC 5-21-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315*)

327 IAC 5-21-7 Applicable discharge limitations and related conditions

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. 7. Permits issued under this rule must ensure compliance with the following as applicable:

- (1) The most stringent pretreatment standards and requirements specified in 327 IAC 5-18 that are applicable to a particular discharge. For purposes of this section, a pretreatment standard or requirement is applicable if it applies by its terms to the discharge and becomes effective prior to final issuance of an IWP permit.**
- (2) With respect to an IWP permit to be issued to an industrial user within one (1) of the industrial categories or subcategories listed in 327 IAC 5-18-10, if an applicable categorical pretreatment standard has not yet been promulgated under Section 307(b) or 307(c) of the Clean Water Act (33 U.S.C. 1317(b) or 33 U.S.C. 1317(c)), the permit shall include a condition stating that if such a categorical pretreatment standard is subsequently promulgated that is more stringent than any discharge limit in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued in accordance with such categorical pretreatment standard.**
- (3) The alternative discharge limitations or standards where warranted by fundamentally different factors under 327 IAC 5-18-5(a).**

- (4) The best management practices to control or abate the discharge of pollutants where:
- (A) numeric effluent limitations are infeasible; or
 - (B) the practices are reasonably necessary to achieve discharge limitations and standards or to carry out the purposes of the Clean Water Act (33 U.S.C. 1251).
- (5) No permit shall be issued for the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste.
- (6) If the promulgated pretreatment standards, listed in 327 IAC 5-18-10, are based on production or equivalent concentration limitations, then equivalent mass limitations may be applied in place of the standard where appropriate in the permit. If equivalent limitations are applied, the permit limitations shall be calculated in accordance with 327 IAC 5-18-4(d).
- (7) Discharges that are not continuous shall be particularly described and limited, considering the following factors, as appropriate:
- (A) Frequency.
 - (B) Total mass.
 - (C) Maximum rate of discharge of pollutants during the discharge.
 - (D) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.
- (8) If permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, then effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams with the following requirements applied:
- (A) The monitoring required by section 9 of this rule shall also be applied to the internal waste streams.
 - (B) The effluent limitations on internal waste streams shall be developed in accordance with the provisions of 327 IAC 5-2-11(h).

(Water Pollution Control Board; 327 IAC 5-21-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)

327 IAC 5-21-8 Schedules of compliance

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. 8. If necessary, an IWP permit shall contain a schedule of compliance established in accordance with 327 IAC 5-2-12(a), 327 IAC 5-2-12(b), 327 IAC 5-2-12(d), 327 IAC 5-2-12.1, 327 IAC 5-18-4(c), and 327 IAC 5-18-8. *(Water Pollution Control Board; 327 IAC 5-21-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)*

327 IAC 5-21-9 Monitoring

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. 9. Monitoring requirements shall be specified in an IWP permit:

- (1) to assure compliance with discharge limitations and other terms and conditions of the permit;
- (2) in accordance with the provisions of 327 IAC 5-2-13(c) through 327 IAC 5-2-13(e); and
- (3) may include monitoring for one (1) or more of the following:

- (A) Pollutant mass.

- (B) Pollutant concentration.

- (C) Other appropriate measurement for each pollutant as well as other parameters and conditions specified in the permit.

(Water Pollution Control Board; 327 IAC 5-21-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)

327 IAC 5-21-10 Recording and reporting of monitoring results

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. An IWP permittee shall record and report the results of monitoring required under section 9 of this rule according to the requirements:

- (1) specified in the IWP permit; and

- (2) of 327 IAC 5-2-14 and 327 IAC 5-2-15.

(Water Pollution Control Board; 327 IAC 5-21-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

327 IAC 5-21-11 Public notice procedures for IWP permit issuance

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. 11. An IWP permit shall be issued by the commissioner in accordance with the following:

(1) Prior to permit issuance, a public notice containing the information specified in 327 IAC 5-3-12(a) through 327 IAC 5-3-12(c) and a copy of the briefing memo shall be provided to the following:

(A) The permit applicant.

(B) The POTW receiving the discharge.

(C) Any interested person who has:

(i) specifically requested the notice and statement of basis for a particular draft permit; or

(ii) requested to be placed on a mailing list for receipt of such information on all IWP permits proposed for issuance.

(2) A thirty (30) day comment period on the draft permit shall be opened by the commissioner who shall duly consider comments received during this period in the final determination on the issuance of the permit.

(3) 327 IAC 5-3-14 concerning permit issuance and effective date of the permit.

(4) 327 IAC 5-3-15 concerning response to comments received pursuant to subdivision (1).

(5) 327 IAC 5-3-16 concerning judicial review of a IWP permit issued pursuant to this rule.

(Water Pollution Control Board; 327 IAC 5-21-11; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

SECTION 7. THE FOLLOWING ARE REPEALED: 327 IAC 5-11; 327 IAC 5-12; 327 IAC 5-13; 327 IAC 5-14; 327 IAC 5-15.

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