



# National Pretreatment Program

(40 CFR 403)



## Pretreatment Streamlining Rule Fact Sheet 6.0: Optional Sampling Waiver for Pollutants Not Present

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### Summary

In the Pretreatment Streamlining Rule of October 14, 2005, EPA finalized changes to the General Pretreatment Regulations that allow approved publicly owned treatment works (POTW) pretreatment programs, or Control Authorities (CAs), to reduce or waive certain monitoring requirements that apply to Industrial User (IU) discharges subject to categorical Pretreatment Standards. Such IUs are often referred to as *Categorical Industrial Users* or CIUs. Under EPA's revised regulations (see specifically 40 CFR 403.8(f)(2)(v) & 403.12(e)), in States that have adopted these provisions, the CA has the discretion to waive sampling of a pollutant if the CIU demonstrates to the CA's satisfaction that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water without any increase in the pollutant due to the CIU's activities. For this fact sheet, EPA abbreviates the phrase "pollutants neither present nor expected to be present" by using "pollutants not present" instead.

### Who is affected by this provision?

These sampling waiver provisions apply to CAs that choose to implement this provision, as well as CIUs regulated by those CAs that are subject to semiannual reporting requirements and that comply with the requirements to demonstrate that a particular pollutant is neither present nor expected to be present in its discharge.

### What is meant by "pollutants not present"?

When a pollutant is "neither present nor expected to be present," this means that the pollutant is neither present nor expected to be present in the discharge above background levels. A pollutant can still be "neither present nor expected to be present" if it is present solely because of inputs from the intake water and not due to any addition or increase of the pollutant from the CIU's activities. In addition, the pollutant can be considered to be not present if it is added solely to

the sanitary wastewater from domestic-type activities and is present only at levels that are typical of domestic wastewater in the CA's service area. The waiver is not allowed for pollutants that are added only in negligible amounts, nor for pollutants that are added but not reasonably expected to violate the applicable Pretreatment Standard.

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**What process is used to request a sampling waiver?**

Each CA that chooses to implement this provision will most likely establish its own process for CIUs to follow in seeking approval for a sampling waiver. The CIU should first check with its CA to determine how to request the waiver.

At a minimum, however, the National Pretreatment Regulations require the CIU to submit the following information with its request for a sampling waiver:

1. Sampling data and other technical factors demonstrating that the pollutant is not present in the discharge;
2. Data from at least one sampling of the facility's process wastewater prior to any treatment; and
3. The signed certification statement in 40 CFR 403.6(a)(2)(ii).

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**What monitoring requirements may be waived?**

The CA is authorized to waive the monitoring requirements for semiannual reports required under 40 CFR 403.12(e) for any individual pollutant for which the CA is satisfied that the CIU has demonstrated that a particular pollutant (including indicator or surrogate pollutants) is not present. The CIU is required to continue monitoring at least twice per year until the CA grants the waiver and incorporates it into the IU's control mechanism.

Even if the CA decides to grant the CIU's waiver request for a given pollutant, the CA can still require the CIU to conduct some continued monitoring despite having demonstrated that a particular pollutant is not present. Where the CA elects to require such monitoring, it may determine the appropriate frequency of monitoring, including frequencies that are less than twice per year. In addition, if the CIU elects to monitor on its own, even though the requirement to do so has been waived, the CIU must submit the results of these samples to the CA in accordance with 40 CFR 403.12(g)(6).

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**What monitoring requirements may not be waived?**

The waiver is not available for monitoring required for the baseline monitoring report required under 40 CFR 403.12(b) or the 90-day compliance report required under 40 CFR 403.12(d). In addition, the waiver for pollutants not present cannot be used in place of any certification process established in a categorical Pretreatment Standard, such as the certification process for total toxic organic pollutants under the metal finishing regulations. Nor does the waiver supersede requirements that are specific to the categorical Pretreatment Standard—for example, monitoring requirements for the pharmaceutical industry can be reduced only by the waiver procedures to a frequency of once per year and cannot be waived entirely (40 CFR 439.2(a)).

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**How does a CIU demonstrate that a pollutant is not present?**

To be eligible for the waiver, the CIU requesting the waiver must demonstrate through a technical evaluation of the facility and wastewater sampling that a given pollutant is not present. The CA must have a high degree of certainty that the pollutant will not show up in the discharge to the POTW. If the CIU cannot demonstrate this to the satisfaction of the CA, the waiver cannot be granted.

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**What should the technical evaluation include?**

*Technical Evaluation:* The CIU's technical evaluation should include a facility-wide accounting of raw materials, products, by-products, and other chemicals with the potential to be discharged. The CIU should either conduct its own analysis of each raw material or chemical used on-site, or obtain a certificate of analysis from the manufacturer of the material demonstrating the absence of the pollutant. The evaluation must include materials not necessarily used in the manufacturing operation, such as chemicals used in equipment cleaning, cooling towers, boilers, and wastewater treatment. Although wastewater treatment chemicals are used to reduce the levels of pollutants in the CIU's discharge, analysis of the chemicals can show significant levels of contaminants that can be added to the wastewater stream. Additional information, such as intermediate products, final products, and by-products generated in the process must be considered as well; therefore, the CIU must have a detailed knowledge of chemicals used or generated in its facility and perform a detailed evaluation of its operations.

The CIU may submit material safety data sheets (MSDSs) as evidence that a particular pollutant is not present in the raw materials or other chemicals it uses at its facility. However, while MSDSs are a valuable tool in this demonstration, they do not identify all the pollutants present in a given material. Therefore, the MSDS cannot be relied on exclusively to determine whether a pollutant is present or not.

Note that determining whether a pollutant is present should be on the basis of not only whether the pollutant is in the process wastestream, but also whether a pollutant has the potential to enter the wastestream. Therefore, the CIU must evaluate the potential for the pollutant to enter the wastestream through spills and other potentially infrequent events in addition to whether the pollutant would be routinely expected to enter the wastestream or could be a by-product of pollutants in the wastestream.

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### **What sampling data is required?**

*Sampling Data:* Although a properly conducted technical evaluation showing that a pollutant is not present suggests that the CIU has met its burden for the sampling waiver, the Pretreatment Regulations require the IU to also conduct monitoring to further demonstrate eligibility for the waiver. EPA does not define the amount of data that is sufficient to make a decision to grant a waiver request. The amount of data needed in individual cases is necessarily a site-specific determination, because of the tremendous variations among facilities.

At a minimum, the CIU must provide the results of one or more samples prior to any treatment. The samples taken must be representative of all wastewater from all processes, including any seasonal or other variability in the discharge [40 CFR 403.12(e)(2)(iii)]. To verify that the pollutant is not present based solely on wastewater treatment, the data must show one of the following:

1. There are no detectable levels of the pollutant  
- or -
2. Any detectable levels of the pollutant are solely attributable to the intake water, as demonstrated by data on the pollutant's levels in the IU's influent water and not to any activities

at the IU's facility [40 CFR 403.12(e)(2)]

However, if a pollutant is present in the discharger's wastewater, either prior to treatment or after treatment, data on the pollutant levels in the influent water are necessary to demonstrate that the pollutant's presence is due solely to levels that exist in the intake water and not due to any of the CIU's activities. With the exception of copper and lead, data from the water supplier may be used in place of data supplied by the CIU, provided that such data is representative of the IU's intake water. Note that where the data prior to treatment shows that the pollutant is present at levels above concentrations in the background intake water, the CIU's sampling waiver request will be denied.

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**Can historical sampling data be used?**

In addition to the sample prior to the CIU's treatment, the IU may also provide historical effluent data as further proof that the pollutant is not present. This information will be useful as partial evidence of the pollutant's non-presence. However, effluent data should be viewed as secondary to the sample(s) taken prior to treatment.

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**What happens after the CIU requests the waiver?"**

Assuming that the CIU has followed the requirements for requesting the sampling waiver, the CA must determine whether to grant the sampling waiver. The regulations do not in any way require the CA to grant the sampling waiver at any time. If the CA does not believe that the CIU has demonstrated to its satisfaction that a pollutant is not present, the CA cannot grant the waiver. Even where the CIU has demonstrated that a specific pollutant is not present, the CA has the discretion to require monitoring.

The CA should base its decision on the materials submitted by the IU as well as its own historical familiarity with the facility's participation in the pretreatment program. The CA might want to review information contained in the CIU's control mechanism applications, baseline and periodic monitoring reports, and data obtained through facility inspections.

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**How is the sampling waiver made effective?**

Upon submission by the CIU, the CA must review the application to ensure that the IU has satisfactorily demonstrated that the pollutant is not present. Once the CA has made this determination, its decision to

grant the sampling waiver is effective only after it has been incorporated into the CIU's control mechanism. The control mechanism must be specific as to the sampling requirements being waived, the applicable categorical Pretreatment Standard(s), and the pollutants for which the monitoring waiver has been granted. The control mechanism must also include the following specific requirements to make the sampling waiver effective:

1. The requirement for the CIU to submit a certification, on each report where the CIU would have ordinarily submitted sampling data for the pollutant(s) not present if not for the waiver, that there has been no increase in the pollutant(s) in its wastestream due to the activities of the User; and
2. The requirement to immediately resume monitoring, at least semiannually, and notify the CA if the pollutant waived from sampling is subsequently found *to be present* or is *expected to be present*.

In addition, the control mechanism still must include all applicable categorical Pretreatment Standards, even those Standards for which monitoring has been waived.

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### **How long is the waiver valid?**

The sampling waiver is valid only for the duration of the control mechanism. To continue the waiver for the period of the next control mechanism, the CIU must reapply for the waiver, including the submission of appropriate monitoring data.

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### **How must the CA's decision to grant the waiver request be documented?**

The CA must document the reasons for authorizing the waiver and maintain any information submitted by the CIU in support of the waiver. This information must be maintained for at least 3 years after the expiration of the control mechanism in which the waiver is granted [40 CFR 403.12(e)(2)(iv)].

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### **Does the CA continue to conduct its own required monitoring of the CIU's effluent after the waiver is granted?**

The CA is required to conduct at least one effluent sample during the term of the CIU's control mechanism to confirm that no changes have occurred and that the sampling waiver is still appropriate. EPA recommends that the CA conduct this sampling during the renewal of the control mechanism, after submission of the CIU's reapplication for the waiver.

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**Should the waiver be available for a new User?**

It is at the CA's discretion whether to make the waiver available to new CIUs. However, the CA might need time to collect enough data to appropriately assess whether pollutants at a new CIU are consistently not present, and, therefore, should be cautious in approving a waiver for a new IU. Note that new CIUs must monitor for all required pollutants for the baseline monitoring report and the 90-day compliance report.

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**What local program changes are required to implement the sampling waiver provisions?**

These provisions are entirely discretionary on the CA's part. The CA is not required to adopt or implement the sampling waiver provisions for any CIU or for any pollutant. If the CA chooses not to implement these new provisions, it does not need to do anything. However, if the CA wants to implement these provisions, it must submit a program modification to the Approval Authority before it can implement the sampling waiver provisions. Note that before sampling waivers for pollutants not present may be granted, state regulations might also need to be revised to authorize implementation.

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**Where can I get more information?**

The regulations covering the sampling waiver are found in 40 CFR 403.8(f)(2)(v) and 403.12(e), which was published in the *Federal Register* on October 15, 2005 (70 FR 60134). A more detailed discussion of the sampling waiver provisions is in that *Federal Register* notice on pages 60138–60143. You can get a copy of the rule at EPA's Pretreatment Web site  
[http://cfpub.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub.epa.gov/npdes/home.cfm?program_id=3).

Information is also available from your state environmental agency or from EPA. For lists of these contacts, see EPA's Web site at  
[http://cfpub.epa.gov/npdes/contacts.cfm?program\\_id=3&type=ALL](http://cfpub.epa.gov/npdes/contacts.cfm?program_id=3&type=ALL).