



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

16 NOV 2017

Ms. Jaime C. Gaggero  
Director, Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson, Suite 400  
Topeka, Kansas 66612-1367

Dear Ms. Gaggero:

Enclosed is the Addendum to the Final National Pollution Discharge Elimination System Permit Quality Review (PQR). The Addendum includes the Pretreatment Section of the PQR. The EPA Region 7 sent the Interim Final PQR to KDHE on March 1, 2017, but the report did not include the Pretreatment Section at that time. The EPA Region 7 now considers the PQR final. The EPA has included KDHE's response letter to the Pretreatment Section write-up as an attachment to this report. Category One findings pertaining to the Pretreatment Section are as follows:

- Category 1 – The KDHE must ensure that all the permits for POTWs contain the notification requirements for 40 CFR § 122.42(b).
- Category 1 – The KDHE must ensure that all permits for POTWs contain requirements at 40 CFR § 122.44(j)(1) to identify SIUs.
- Category 1 – The KDHE must ensure that permits for POTWs with approved pretreatment programs contain the requirement to provide a technical evaluation of the need to calculate or reevaluate local limits following permit issuance or reissuance [40 CFR § 122.44(j)(2)(ii)].
- Category 1 – The EPA Region 7 and KDHE must ensure that industrial user permits contain the appropriate conditions for sampling (40 CFR Part 136 methods) and notification requirements per 403.8(f)(1)(iii)(B).

Once again, please convey our appreciation to your staff for their congenial cooperation and assistance. If you have any questions or need additional information, please contact Donna Porter at (913) 551-7582 or [porter.donna@epa.gov](mailto:porter.donna@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Curtis".

Glenn Curtis, Chief  
Wastewater and Infrastructure  
Management Branch

Enclosure



Printed on Recycled Paper



**ADDENDUM TO INTERIM FINAL**

**Region VII NPDES Permit Quality Review –  
Pretreatment Section**

**Kansas**

November 9, 2017

EPA, Region VII  
11201 Renner Boulevard  
Lenexa, KS 66219

## *National Topic Area*

### *Pretreatment*

The general pretreatment regulations (40 CFR Part 403) establish responsibilities of federal, state, and local government, industry and the public to implement pretreatment standards to control pollutants from industrial users which may cause pass through or interfere with POTW treatment processes or which may contaminate sewage sludge.

### *Background*

The goal of this pretreatment program review was to assess the status of the pretreatment program in Kansas as well as assess specific language in POTW NPDES permits. With respect to NPDES permits, focus was placed on the following regulatory requirements for pretreatment activities and pretreatment programs:

- 40 CFR 122.42(b) (POTW requirements to notify Director of new pollutants or change in discharge);
- 40 CFR 122.44(j) (Pretreatment Programs for POTWs);
- 40 CFR 403.8 (Pretreatment Program Requirements: Development and Implementation by POTW);
- 40 CFR 403.9 (POTW Pretreatment Program and/or Authorization to revise Pretreatment Standards: Submission for Approval);
- 40 CFR 403.12(i) (Annual POTW Reports); and
- 40 CFR 403.18 (Modification of POTW Pretreatment Program).

The PQR also summarizes the following: program oversight, which includes the number of audits and inspections conducted; number of significant industrial users (SIUs) in approved pretreatment programs; number of categorical industrial users (CIUs) discharging to municipalities that do not have approved pretreatment programs; and the status of implementation of changes to the general pretreatment regulations at 40 CFR Part 403 adopted on October 14, 2005 (known as the streamlining rule).

The State of Kansas does not have an approved pretreatment program. EPA Region 7 (Region 7) has a Memorandum of Understanding (MOU) with Kansas Department of Health and Environment (KDHE) that requires KDHE to perform most of the day-to-day Control Authority implementation requirements, while EPA is the Approval Authority. Therefore, KDHE issues NPDES permits directly to POTWs and industrial users in nonapproved programs, with oversight from Region 7. Since Kansas is not an approved pretreatment state, the responsibility is on EPA Region 7 as “direct implementation” to ensure that all permits are correctly written and issued.

According to the Integrated Compliance Information System (ICIS) there are 19 POTWs in Kansas that have approved pretreatment programs. As can be seen from the table below, there is very little data available in ICIS, except for number of approved pretreatment programs, and data designating when PCIs and PCAs were conducted. The Region is currently working on developing a procedure to ensure these data are routinely entered into ICIS.

State of Kansas Pretreatment Program at a Glance 2015	
Number of Approved POTW Pretreatment Programs	17 active
Number of SIUs in POTWs with Approved Pretreatment Programs	NA
Number of SIUs in POTWs without Approved PPs	NA
Percent of SIUs with expired Permits	NA
Number of CIUs in POTWs with Approved Pretreatment Programs	NA
Number of CIUs in POTWs without Approved Pretreatment Programs	NA*
Number of Pretreatment Compliance Inspections in 2015	2
Number of Pretreatment Compliance Audits in 2015	1
Percentage of POTWs for which CMS Goals were met	0
Date State Program updated for Streamlining Regulations	Not applicable**

NA = Not Available.

\* CIU figures for PCI/PCA records are not reported in ICIS.

\*\* EPA directly implements the Kansas pretreatment program, therefore, the streamlining rule provisions were not required to be adopted by the state.

As part of the PQR, two permits were reviewed for POTWs that are known to have approved pretreatment programs, two for POTWs that are not required to have a pretreatment programs (“nonapproved”) and two industrial wastewater permits that discharge to nonapproved POTWs. From available data, the design flows for the four Kansas POTWs permits reviewed range from 0.0285 million gallons per day (MGD) to 12 MGD.

Permittee	Permit No.	Pretreatment Program Required?	Design Flow Average	Permit Expires
Wichita	KS0095681	Yes	2 MGD	9/30/2017
Alden	KS0051641	No	0.0285 MGD	12/31/2017
Topeka	KS0042714	Yes	12 MGD	12/31/2019
Ellsworth	KS0085693	No	0.5 MGD	6/30/2019
Alexander Manufacturing Company, Inc.	KSP000065	NA – CIU (40 CFR 433)	0-Unknown Sometimes no discharge	6/30/2020
GBW Railcar Services, LLC	KSP0000084	NA – CIU (40 CFR 442)	2,000 GPD	12/31/2019

## Region 7 Permit Issuance Practices

The Region 7 MOU with KDHE was established in 1983 and is currently being updated. The two agencies have developed a good working relationship due to good communication and coordination between pretreatment coordinators.

KDHE staff develop and issue NPDES permits. The Region 7 pretreatment coordinator said the universe of approved pretreatment programs is static, so permit writers know who is required to have pretreatment program implementation language in their permit. KDHE staff also review NPDES application forms when updating permits. Both EPA and KDHE independently review annual pretreatment program reports from POTWs. If Region 7's review requires follow-up, KDHE takes the lead. While the review of local limits is done primarily by Region 7, KDHE remains involved in the process as any approvals for local limits changes will be joint approvals.

KDHE takes the lead on enforcement actions in response to the periodic compliance reports submitted by industries that discharge to POTWs that do not have approved pretreatment programs. If enforcement is required because of program deficiencies found during a PCI or PCA, the agency that led the PCI/PCA (either Region 7 or KDHE) will take the lead on enforcement proceedings.

KDHE generally is the lead for identifying any industrial users that discharge to POTWs that do not have approved pretreatment programs. The KDHE pretreatment coordinator told the Region 7 pretreatment coordinator that most of the permitted SIUs that discharge to POTWs that do not have approved pretreatment programs were referred to him by KDHE's field offices. To categorize industrial user that may be subject to categorical standards that discharge to POTWs that does not have approved pretreatment programs, KDHE sends the industry a questionnaire. Once KDHE has a reasonable idea of the potentially regulated process, KDHE performs an inspection to confirm the data submitted. Then KDHE will develop and issue a permit. If there is some question on the applicability of a standard, KDHE will contact EPA for an opinion on correct categorization.

KDHE has developed a Discharge Monitoring Report (DMR) that captures all samples taken during a six-month reporting period to ensure that CIUs in nonapproved programs are submitting their semiannual reports and are in compliance with all categorical standards. The reports are due in the month following the six-month reporting periods, which end in June and December of each year. Each report is reviewed and a compliance determination made using the PCME guidance manual nomenclature. If a violation is discovered, KDHE will issue a Notice of Violation (NOV). Copies of the semiannual reports along with copies of any NOVs are shared with Region 7. KDHE maintains the DMRs in a database to track CIU compliance status determination. This table is submitted to Region 7 semiannually.

Region 7 reports that there are approximately 60 CIUs that discharge to nonapproved programs and KDHE inspects roughly 12 per year, prioritized by compliance issues and time since last inspection. When Region 7 observes significant noncompliance for pollutant parameters (identified in the semiannual reports that KDHE sends Region 7) that may not be corrected in a timely manner, Region 7 will conduct an inspection at that industry in the upcoming fiscal year. The Region 7 pretreatment coordinator stated that KDHE resource constraints limit the number of inspections that can be conducted in any one year.

Historically, the agency that performed the PCI or Audit was responsible for entering the required data elements into the national data base. At the time of the last PQR, Region 7 noted that KDHE had stopped inputting data into ICIS, and agreed to enter the data if KDHE would provide a "tear sheet" containing the data elements. Shortly after this practice was implemented, the PCS/ICIS data person retired leaving the Water Division without any ICIS Pretreatment input support. Region 7 plans to develop plans to ensure the necessary data elements are inserted into ICIS following an audit or PCI.

If Region 7 conducts an industrial user inspection that discharges to a nonapproved program, Region 7 inputs the inspection data into ICIS. KDHE maintains a separate data system for tracking inspections of SIUs in nonapproved cities. Region 7 tracks aggregate numbers of inspections/audits against Compliance Monitoring Strategy (CMS) commitments. Region 7 inputs the Region's formal enforcement action data into ICIS.

### **Program Strengths**

The two permits for POTWs required to have pretreatment programs incorporate 40 CFR Part 403 by reference. The permits state: "The permittee shall implement and administer the Pretreatment Program in accordance with the General Pretreatment Regulations 40 CFR 403, their approved pretreatment program, and all program modifications approved by KDHE and EPA."

### ***Critical Findings***

Region 7 and KDHE are not meeting CMS goals in Kansas.<sup>1</sup> Region 7 and KDHE did not meet the CMS goal of at least one audit and two inspections within 5 years (2011-2015) at any of its 17 POTWs with approved pretreatment programs (zero percent).

Although the Standard Conditions of all permits reviewed contain the statement below, they are still lacking several required elements required under 40 CFR 122.42, 122.44, and Part 403.

Industrial Users: A municipal permittee shall require any industrial user of the treatment works to comply with 33 USC 1317, 1318 and any industrial users of storm sewers to comply with 33 USC 1308.

### **Approved Pretreatment Programs**

Neither of the NPDES permits for POTWs with approved pretreatment programs contain the notification requirements for 40 CFR 122.42(b)(1) for any new introduction of pollutants.

Neither of the permits contain the notification requirements for 40 CFR 122.42(b)(2) for any substantial change in volume or character of pollutants.

Neither of the permits contain the notification requirements for 40 CFR 122.42(b)(3) quantity and quality of effluent to POTW and anticipated impact of the change in effluent to POTW.

Neither of the permits contain requirements at 40 CFR 122.44(j)(1) to identify SIUs, although the permit requires the POTW to implement its approved Pretreatment program in accordance with 40 CFR Part 403, which contains the requirement to identify all possible industrial users. These permits also lack

---

<sup>1</sup> CMS goals are one PCA and two PCIs conducted per 5-year NPDES permit term. This PQR does not look at each POTW's NPDES permit term, but it looks at compliance for the period of 2011 through 2015.

requirements to provide a technical evaluation of the need to calculate or reevaluate local limits following permit issuance or reissuance [40 CFR 122.44(j)(2)(ii) and 40 CFR 403.8(f)(4)].

Both permits have fact sheets, however, the fact sheets do not mention pretreatment requirements. The Topeka fact sheet merely says that the POTW receives industrial wastewater from local manufacturers. The Wichita fact sheet says nothing about industrial dischargers. The fact sheets do not: designate whether a pretreatment program is required or not; describe why a pretreatment program is required; describe when the pretreatment program was approved (dates) and any subsequent modifications to the program; describe types of industrial users; or, evaluate new pollutants from these industry sectors for reasonable potential analysis for water quality-based limits.

#### Non-Pretreatment Program POTWs (Nonapproved)

These NPDES permits also lack the required permit conditions that the permits for POTWs with approved programs do not contain: notification requirements for 40 CFR 122.42(b)(1) for any new introduction of pollutants; notification requirements for 40 CFR 122.42(b)(2) for any substantial change in volume or character of pollutants; notification requirements for 40 CFR 122.42(b)(3) quantity and quality of effluent to POTW and anticipated impact of the change in effluent to POTW; and requirements at 40 CFR 122.44(j)(1) to identify SIUs.

Neither of the permits for nonapproved POTWs contain a reopener clause that specifies that the permit can be reopened to require development of a pretreatment program, if deemed necessary.

Neither of the fact sheets state that a pretreatment program is not required or why not. The Alden fact sheet says it receives domestic wastewater from residential and commercial areas. The Ellsworth fact sheet mentions that it receives domestic wastewater from residential and commercial areas and industrial wastewater from local manufacturers, and sewage flow from the Ellsworth Correctional Facility. The Ellsworth fact sheet does not elaborate on what type of industrial wastewater it receives other than the statement: "The permittee has provided a statement on the permit renewal application indicating the facility does not receive industrial wastewater or add chemicals during the treatment of the wastewater that would cause the effluent pH to go outside the range of 6.0 - 9.0 Standard Units."

#### Industrial User Permits

Both industrial user permits include specific prohibitions at 40 CFR 403.5(b)(1)-(5), however, the permits are missing the specific prohibitions at 40 CFR 403.5(b)(6)-(8) which prohibit:

- (6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
- (7) Pollutants which 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; and
- (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

Although the permits require test procedures to meet requirements at 33 USC 1314(h)<sup>2</sup> they do not specify that 40 CFR Part 136 methods are required, as required at 40 CFR 403.12(g)(3).

---

<sup>2</sup> 1314(h) Test procedures guidelines

The permits do not contain signatory requirements at 40 CFR 403.12(m) about who is authorized to sign reports.

There are no certification statement requirements as required at 40 CFR 403.6(a)(2)(ii) and 40 CFR 403.12(l).

There is no notice of slug loading requirements as required at 40 CFR 403.12(f) or indication that the need for a slug loading plan has been evaluated.

There are no requirements for notification of facility change affecting slug discharge potential as required at 40 CFR 403.8(f)(2)(vi).

There are no hazardous waste notification requirements as required at 40 CFR 403.12(p).

## **V. ACTION ITEMS**

### ***H. National Topic Areas***

#### ***Pretreatment***

Category 1 – The KDHE must ensure that all the permits for POTWs contain the notification requirements for 40 CFR 122.42(b).

Category 1 – The KDHE must ensure that all permits for POTWs contain requirements at 40 CFR 122.44(j)(1) to identify SIUs.

Category 1 – The KDHE must ensure that permits for POTWs with approved pretreatment programs contain the requirement to provide a technical evaluation of the need to calculate or reevaluate local limits following permit issuance or reissuance [40 CFR 122.44(j)(2)(ii)].

Category 1 – Region 7 and KDHE must ensure that industrial user permits contain the appropriate conditions for sampling (40 CFR Part 136 methods) and notification requirements per for CFR 403.8(f)(1)(iii)(B).

Category 2 – Region 7 and KDHE should ensure that they meet the CMS goals for conducting inspections and audits at POTWs in Kansas.

Category 2 – The KDHE should ensure that the fact sheets for POTWs with pretreatment programs designate that a pretreatment program is required and designate the date(s) the program was approved and modified.

Category 3 – The KDHE should discuss in fact sheets for POTWs with approved pretreatment programs whether the reasonable potential analysis conducted to develop water quality-based limits included analysis of all pollutants common for the types of industries discharging to the POTW.

---

<sup>3</sup> 33 USC 1317

**(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws**

**(1)**

The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in [section 1292 of this title](#)) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in [section 1292 of this title](#)) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with [section 1345 of this title](#), then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

**(2)** The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

**(3)** When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

**(4)** Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

**(c) New sources of pollutants into publicly owned treatment works**

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to [section 1316 of this title](#) if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under [section 1316 of this title](#) for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

**(d) Operation in violation of standards unlawful**

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

**(e) Compliance date extension for innovative pretreatment systems** In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of [section 1311\(k\) of this title](#), the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under [section 1342 of this title](#) or of [section 1345 of this title](#) or to contribute to such a violation, and

(B) concurs with the proposed extension.

<sup>1</sup> 33 USC 1318

**(a) Maintenance; monitoring equipment; entry; access to information**

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

**(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information**

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of

such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of [section 1905 of title 18](#). Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

**(c) Application of State law**

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

**(d) Access by Congress**

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.



August 7, 2017

Ms. Donna Porter  
Water, Wetlands and Pesticides Division, Region VII  
Water Infrastructure Management Branch  
United States Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, KS 66219

**RE: Permit Quality Review on 2015 Kansas Pretreatment program.**

*Donna*  
Dear Ms. Porter:

The Kansas Department of Health and Environment (KDHE) has reviewed the EPA Headquarters' Permit Quality Review (PQR) regarding the Pretreatment Program in the State of Kansas and offer the following remarks.

1. As noted in the background of the Pretreatment section of the PQR, Kansas does not have a delegated pretreatment program and instead has a historically successful shared responsibility arrangement with Region VII via a Memorandum of Understanding, when administering the program. Therefore, HQ's critique of the program falls on Region VII equally with Kansas.
2. The PQR cites an Integrated Compliance Information System (ICIS) report that there are 19 POTWs in Kansas with approved pretreatment programs. This is incorrect, there are 17 POTWs with approved programs and one additional city, Arkansas City, is inactive.
3. The "At a Glance" table on page 2 indicates a number of items that are "NA = Not Available". This is incorrect as this information has always been provided to Region 7 EPA by KDHE at least twice a year in Performance Partnership Grant Work Plan Reports. It would appear that information is not being input timely into ICIS by EPA staff.
4. The table also indicates two Pretreatment Compliance Inspections (PCI) and one Pretreatment Compliance Audit were conducted in 2015. In Kansas, PCI's and audits are the same; the level of detail found in an audit is the same as that found in a Kansas PCI. In 2015, three PCIs (Salina, Hutchinson and Johnson County) and three audits (Olathe, Lawrence and Topeka) were conducted. Technically, these were actually all audits, but three were termed PCI's for the sake of aligning with commitments on the annual Compliance Monitoring System agreed to with EPA. Those goals have tended to be one audit and two PCI's every five years. Kansas has assisted Region VII in far surpassing those goals.
5. Under Critical Findings, HQ believes that Region VII and Kansas have not been meeting the aforementioned goals over 2011-2015. KDHE records indicate that 17 audits and 13 PCI inspections were made on the 17 POTWs with approved pretreatment programs during that period. In fact, over 2011-2016, every approved POTW has been visited at least twice with an audit and/or PCI. HQ's finding

may be an indictment on ISIS data management rather than the inspection arrangement between Region VII and KDHE. Since 1983, only four POTWs have been found to be in Reportable Non-Compliance, a finding that suggests the Region VII – KDHE approach has been successful.

6. HQ needs to be reminded of their explicit approval in 1994 of the streamlined inspection approach used in Kansas which was in response to recognition of insufficient resources to carry out annual inspections of each POTW. Criteria were established to ensure POTWs with compliance issues were inspected more frequently while those with historically good performance and little change could forego an inspection each year. Again the process has worked since only four cities were in RNC since 1983.
7. It is true that explicit elements required under 40 CFR 122.42, 122.44 and Part 403 are not identified in the Standard Conditions of the NPDES permits of the POTWs with approved pretreatment programs, the language pertaining to industrial users has been in place since the 1980's and has been effective in keeping KDHE and EPA informed about indirect discharger changes. This is because the frequency of PCIs and audits has been sufficient to remind the local pretreatment coordinator of their responsibilities, the local pretreatment coordinators have sufficient understanding of the status of their programs and are fully aware of noting any changes and informing KDHE and EPA and the performance of these programs continues to remain well in compliance. The Kansas language is thorough yet concise, and whether implicit or explicit, has been the practice for decades. We would prefer to maintain the status quo.
8. For those major POTW dischargers with approved pretreatment programs, KDHE will insert the following language into the fact sheets associated with the NPDES permit renewals for those cities.

“The permittee was required to develop an approved pretreatment program, since the permittee operates a wastewater treatment plant(s) with a total design flow greater than 5 million gallons per day (MGD) and receives pollutants from Industrial Users which could pass through or interfere with the operation of the POTW. The permittee's pretreatment program was approved by KDHE and EPA on insert date which has enabled the permittee to regulate all Significant Industrial Users, which includes both categorical and non-categorical Industries. The permittee has also submitted several substantial program modifications to KDHE and EPA for approval, as required. This included a local limits evaluation. Technically based local limits were also approved by KDHE and EPA on insert date.”

9. Regarding the lack of explicit pretreatment provisions in permits for POTWs that do not have approved pretreatment programs, KDHE contends its pretreatment efforts have been very vigilant in finding and permitting industries that lie outside of approved program cities. Sixty such industries currently have pretreatment permits issued by KDHE. The demographics and economics of small towns in Kansas is sufficiently marginal that the likelihood of an industry coming on line and discharging into a small town POTW without KDHE being made aware of its presence is extremely low. Bureau of Water scrutinizes lists of industries permitted by other Bureaus of KDHE, e.g., Air, Waste Management, etc. to discover outliers that will need a pretreatment permit. Routine wastewater inspections by our six District Offices queries these towns if new industries have come on line, particularly if performance of the wastewater treatment system has begun deviating from historic norms. Furthermore, the application for permit renewal provided by these POTWs should reveal any new industries that have initiated discharging into the POTWs collection system. Finally, Standard Condition 17 dealing with Permit Modifications and Terminations provides permit reopener authority pursuant to K.A.R. 28-16-62. That regulation empowers KDHE to modify permits when provided new information regarding a facility. Standard Condition 5 makes any changes in the quantity or quality of a permitted discharge mandatorily reported to KDHE before the change takes place; hence, that situation constitutes new information warranting reopening of any NPDES permit.
10. We believe the three prohibitions described by 40 CFR 403.5(b)(6)-(8), as well as the test method language, signatures and certifications and slug load notifications, all of which are not explicitly

mentioned in industrial pretreatment permits, to be persnickety items that have always been enforced by KDHE. Nonetheless, KDHE is considering adding the following language to pretreatment permits for industrial users to abide by the comment.

"The permittee is prohibited from discharging the following:

"(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which 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;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW."

All wastewater samples collected at the designated outfall must be representative of the discharge of process wastes to the city sewer and must be analyzed using approved wastewater methods specified in 40 CFR Part 136.

Monitoring reports required in 40 CFR, Part 403.12(b), 403.12(d) and that are submitted in accordance with 403.12(e) and in Section B of this permit must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility. This authorization must be made in writing by the principal executive officer or ranking elected official when submitting these reports.

The permit shall immediately notify KDHE of all discharges that could cause problems to the POTW, including any slug loads discharged to the city sanitary sewer or any discharges that would violate a prohibition under Part 403.5(b). The permittee shall also provide a written, follow-up notification of the slug load, within five days of the discharge."

11. We disagree that hazardous waste notification requirements are required in industrial user pretreatment permits as current Federal regulation does not require KDHE Bureau of Water or EPA's Office of Water to be notified as a condition of the NPDES permit. The industry must notify the receiving POTW, the EPA Regional Waste Management Director and the State Hazardous Waste Program of KDHE, but not the Kansas Pretreatment Program Coordinator.

In summary, regarding the three Category 1 issues pertaining to POTWs with approved pretreatment programs, KDHE believes the current succinct language of its existing permits, while implicitly requiring the notification of pollutant changes, identification of SICs and technical evaluation on the need to recalculate local limits, are current state of practice in administering the pretreatment program in Kansas. Adding explicit requirements will not change the expectations on the permittees or the administrative practice carried out jointly by Region VII and KDHE and only makes the NPDES permit inelegant.

Regarding the remaining Category 1 issue pertaining to industrial user permits having the appropriate sampling conditions and notification requirements, KDHE is contemplating adding those provisions to the standard language of its industrial pretreatment permits.

Regarding the first Category 2 issue of meeting CMS goals, KDHE believes they are in fact meeting those goals as agreed to in 1994 with EPA.

Regarding the Category 2 issue of POTW fact sheets containing language pertaining to approved pretreatment programs, KDHE will insert a provision describing the pertinent facts of the pretreatment program in the fact sheets for the 17 cities with approved pretreatment programs.

Regarding the Category 3 issue of fact sheets for POTWs with approved pretreatment programs discussing reasonable potential analysis to include all the possible pollutants common for the type of industries discharging to the POTW, KDHE believes that the provision of language from the previous Category 2 issue, analysis of WET tests and Priority Pollutant Scans and scrutiny of the POTWs application for permit renewal provides sufficient reasonable potential analysis.

I hope EPA HQ considers these remarks to reflect on the historic and ongoing success of the pretreatment program in Kansas. The lack of rigorous and explicit alignment with Federal regulatory language has not resulted in severe or significant upsets to POTW wastewater systems in Kansas. We stand ready to address EPA concerns with any regulatory gap in our pretreatment permits, but the recommended actions do not stand to improve the historic high performance of compliance seen in Kansas cities and industries.

Sincerely,



Thomas C. Stiles, Assistant Director  
Bureau of Water  
Division of Environment  
Kansas Department of Health and Environment