



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

## MEMORANDUM

OFFICE OF ENFORCEMENT

TO: Regional Administrators  
Regional Enforcement Division Directors  
NPDES State Directors

FROM: Deputy Assistant Administrator for Office of Water Enforcement  
(EN-335)

SUBJECT: Guidance to States on Assessing Existing Abilities  
to Implement a State Pretreatment Program and Preparing  
October 10, 1978, Submission to EPA

The general pretreatment regulation (40 CFR Part 403) governing the control of industrial wastes introduced into Publicly Owned Treatment Works was promulgated by EPA on June 26, 1978. One of the keystones of the industrial waste control program set forth in this regulation is the State pretreatment program. The regulation requires that an NPDES State submit to EPA by October 10, 1978, an evaluation of its existing abilities to implement a State pretreatment program. The attached guidance is indeed to provide assistance to States in developing this October 10 submission.

### Background

Section 403.10 of the pretreatment regulation elaborates on the State pretreatment program responsibilities required by section 54(c)(2) of the Clean Water Act of 1977. In general, NPDES States are required to develop authorities, procedures and resources to oversee the operation of local pretreatment programs which will be the primary mechanism for applying and enforcing Federal pretreatment standards for industrial users. In addition, States will be required to apply enforce pretreatment standards directly against industrial users where a local program has not been developed.

The regulation allows States from 6 to 18 months in which to modify the existing NPDES program, if necessary, to develop authorities, procedures and resources to implement the State responsibilities explained in the regulation. Where a State's existing authorities can be used to implement certain pretreatment requirements, the State must begin to exercise these authorities. In order to determine which pretreatment responsibilities a State is presently capable of carrying out, section 403.10(b) of the regulation requires that the State submit to EPA by October 10, 1978, a statement identifying those authorities, procedures and resources which presently can be devoted to implementing the State pretreatment program; and those authorities, procedures and resources which the State will acquire, through a modification of the State NPDES program, in order to implement fully the State requirements embodied in the pretreatment regulation.

## State Submission

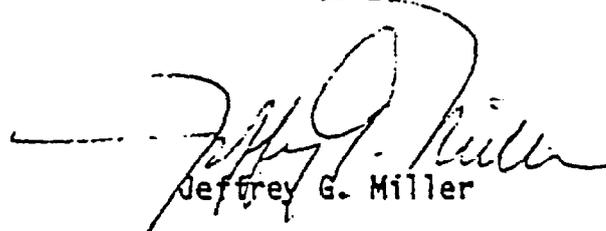
The October 10 submission, although general in nature, serves two purposes. First, it will assist the State and EPA in identifying those pretreatment activities which the State should begin to implement. Second, the information in this submission provides EPA and the State with early notice of changes which must be made in the State NPDES program in order to develop an approvable program by the regulatory deadline of March 27, 1979 (or March 27, 1980, if legislative changes are required).

The enclosed documents are intended to provide guidance on developing the assessment of existing State capabilities due to EPA by October 10.

- o Document A suggests a format for use by the State Attorney General (or independent counsel of the State water pollution control agency, where appropriate) in certifying to the State's existing authority to implement the State pretreatment requirements outlined in the regulation.
- o Document B elaborates on the authorities set forth in Document A and should be helpful in developing a State Attorney General's Pretreatment Statement similar to the one proposed in Document A. Attached to Document B is the model Attorney General's Statement which may have been used by States in developing their application for NPDES program approval. It should provide an indication to States of those authorities which have already been certified to in the application for NPDES program approval.
- o Document C provides guidance on assessing existing State procedures and resources in light of regulatory requirements.

These guidance documents suggest the format, scope and detail of information which should be provided to EPA. The State may, however, submit information in whatever format and detail is best suited to demonstrate the State's existing ability to carry out a pretreatment program. This information should be submitted to the EPA Regional Enforcement Division Director by October 10, 1978. If you have any questions on the preparation of the submission, please contact the EPA Regional Enforcement Division Director or Nancy Hutzell, Permits Division (202/755-0750).

We encourage NPDES States to provide an accurate and thorough analysis of existing abilities at this early stage. By so doing, we all can help to ensure the timely development of effective State pretreatment programs which will contribute to the successful implementation of the national pretreatment effort.



Jeffrey G. Miller

Attachments

cc: Regional Permits Branch Chiefs

DOCUMENT A

Suggested Format for Attorney General's Pretreatment Statement

I hereby certify that in my opinion the laws of the State (Commonwealth) of \_\_\_\_\_ provide adequate authority to carry out those aspects of a State pretreatment program, as required by 40 CFR 403, indicated below. I have noted those authorities which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this statement. I have also noted those authorities which the State currently is not capable of implementing.

1. Authority to Apply Categorical Pretreatment Standards for Industrial Users

State law provides authority to apply to industrial users of Publicly Owned Treatment Works pretreatment effluent standards and limitations promulgated under section 307(b) and (c) of the CWA as amended including prohibitive discharge standards developed pursuant to 40 CFR §403.5 (general pretreatment regulations).  
[Federal Authority CWA sections 307, 510 and 40 CFR §§403.5, 403.8, 403.10.]

Remarks of the Attorney General:

o Authority does not exist

o The following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

2. Authority to Apply Pretreatment Requirements in Permits for Publicly Owned Treatment Works

State law provides authority to apply in terms and conditions of permits issued to Publicly Owned Treatment Works the applicable requirements of section 402(b)(8) of the CWA as amended and 40 CFR part 403 including:

- (a) A compliance schedule for the development of a POTW pretreatment program as required by 40 CFR §403.8(d);
- (b) The elements of an approved POTW pretreatment program as required by 40 CFR §403.8(c);
- (c) A modification clause requiring that the Publicly Owned Treatment Works' permit be modified or alternatively revoked and reissued after the effective date for approval of the State pretreatment program to incorporate into the Publicly Owned Treatment Works' permit an approved POTW pretreatment program or a compliance schedule for developing a POTW pretreatment program in accordance with the requirements of 40 CFR §403.10(d);
- (d) Prohibitive Discharge limitations applicable to industrial users as required by 40 CFR §403.5; and
- (e) Demonstrated percentages of removal for those pollutants for which a removal allowance was requested in accordance with the requirements of 40 CFR §403.7;

[Federal Authority: CWA sections 402(b)(1)(A), 402(b)(1)(C), 510; 40 CFR §§24.45, 403.8, 403.10]

Remarks of the Attorney General:

- o Authority does not exist \_\_\_\_\_
  - o the following statutory/regulatory changes need to be made:
- o Authority does exist \_\_\_\_\_
  - o by Statute \_\_\_\_\_ Cite \_\_\_\_\_
  - o by Regulation \_\_\_\_\_ Cite \_\_\_\_\_
  - o Other \_\_\_\_\_ Specify: \_\_\_\_\_

Comments:

3. Authority to Require Information Regarding the Introduction of Pollutants into Publicly Owned Treatment Works

State law provides authority to require in permits issued to publicly owned treatment works conditions requiring the permittee to:

- a. Give notice to the State permitting agency of new introductions into such works of pollutants from any source which would be a new source as defined in section 306 of the CWA if such source were discharging pollutants directly to State waters;
- b. Give the State notice of new introductions of pollutants into such works from a source which would be a point source subject to section 307 if it were discharging such pollutants directly to State waters;
- c. Give the State notice of a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit; and
- d. Identify in terms of character and volume of pollutants any significant source introducing pollutants subject to pretreatment standards under section 307(b) of the CWA as amended.

[Federal Authority: CWA sections 402(b)(8); 40 CFR §§124.45(d), 403.8, 403.10]

Remarks of the Attorney General:

Authority does not exist

the following statutory/regulatory changes need to be made:

Authority does exist

by Statute \_\_\_ Cite \_\_\_\_\_

by Regulation \_\_\_ Cite \_\_\_\_\_

Other \_\_\_ Specify: \_\_\_\_\_

Comments:

4. Authority to Make Determinations on Requests for Pretreatment Program Approval and Removal Allowances

State law provides authority to approve and deny:

- a. Requests for POTW pretreatment program approval in accordance with the requirements of 40 CFR §§403.8(f) and 403.11; and
- b. Requests for authority to reflect removals achieved by the Publicly Owned Treatment Works in accordance with the requirements of 40 CFR §§403.7, 403.10(f)(1) and 403.11.

[Federal Authority: CWA sections 307(b), 402(b)(8); 40 CFR §§403.7, 403.8, 403.10, 403.11]

Remarks of the Attorney General:

o Authority does not exist

o the following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

5. Authority to Make Determinations on Categorization of Industrial Users and Requests for Fundamentally Different Factors Variances

State law provides authority to:

- a. Make a determination as to whether or not an industrial user falls within a particular industrial subcategory in accordance with the requirements of 40 CFR §403.6; and
- b. Deny and/or recommend approval of requests for Fundamentally Different Factors variances for industrial users as required by 40 CFR §§403.10(f)(1) and 403.13.

[Federal Authority: CWA sections 402(b)(1)(A), 402(b)(8), 510;  
40 CFR §§403.6, 403.10, 403.13]

Remarks of the Attorney General:

- o Authority does not exist
  - o the following statutory/regulatory changes need to be made:
  
- o Authority does exist
  - o by Statute \_\_\_ Cite \_\_\_\_\_
  - o by Regulation \_\_\_ Cite \_\_\_\_\_
  - o Other \_\_\_ Specify: \_\_\_\_\_
  - o Comments:

6. Authority to Apply Recording, Reporting and Monitoring Requirements

State law provides authority to:

- a. Require any industrial user of a publicly owned treatment works to:
  - (1) submit the report required by 40 CFR 403.12(b) which:
    - (a) Sets forth basic information about the industrial user, (e.g., process, flow);
    - (b) Identifies the characteristics and amount of the wastes discharged by the industrial user to the POTW; and
    - (c) Proposes a schedule by which any technology and/or operation and maintenance practices required to meet pretreatment standards will be installed;

- (2) Submit the reports required by 40 CFR §403.12(c) which account for the industrial user's progress in installing any required pretreatment or operation and maintenance practices;
  - (3) Submit the report required by 40 CFR §403.12 (d) following the final compliance date for the applicable pretreatment standard; and
  - (4) Submit periodic reporting on continued compliance with applicable pretreatment standards as required by 40 CFR §403.12(e);
- b. Require POTWs subject to the requirements of 40 CFR §403.8(a) to:
- (1) Report on progress in developing an approvable POTW pretreatment program as required by 40 CFR §403.12 (h); and
  - (2) Report on continued compliance with any authorized modifications of categorical pretreatment standards as required by 40 CFR §403.7, 403.12(i) and (j);
- c. Require POTWs subject to the requirements of 40 CFR §403.8(a) and all industrial users subject to pretreatment standards to:
- (1) Establish and maintain records as required by 40 CFR §403.12(n);
  - (2) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods) necessary to determine continued compliance with pretreatment standards and requirements;
  - (3) Take samples of effluents (in accordance with specified methods at such locations, at such intervals, and in such manner as may be prescribed); and
  - (4) Provide other information as may reasonably be required.

[Federal Authority: CWA section 308(a) and (b), 402(b)(2), 402(b)(9); 40 CFR §§124.45(c), 124.61-63, 124.73(d), 403.7, 403.8, 403.10, 403.12]

Remarks of the Attorney General:

o Authority does not exist

o the following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

7. Authority to Apply Entry, Inspection and Sampling Requirements

State law provides authority to enable authorized representatives of the State, and POTWs with approved pretreatment programs, upon presentation of such credentials as are necessary, to:

- (1) Have a right of entry to, upon, or through any premises of a POTW or of an industrial user of a POTW in which premises an effluent source is located or in which any records are required to be maintained;
- (2) At reasonable times have access to and copy any records required to be maintained;
- (3) Inspect any monitoring equipment or method which is required; and
- (4) Have access to and sample any discharge of pollutants to State waters or to a POTW resulting from the activities or operation of the POTW or industrial user.

[Federal Authority: CWA section 308(a) and (b), 402(b)(2), 402(b)(9); 40 CFR §§124.45(c), 124.61-63, 124.73(d), 403.7, 403.8, 403.10, 403.12]

Remarks of the Attorney General:

o Authority does not exist

o the following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings and Public Access to Information

State law provides authority to comply with requirements of 40 CFR §403.11 to:

- a. Notify the public, affected States and appropriate governmental agencies of:
  - (1) requests for POTW pretreatment program approval; and
  - (2) approval of POTW pretreatment programs;
- b. Transmit such documents and data to and from the United States Environmental Protection Agency and to other appropriate governmental agencies as may be necessary;
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for POTW pretreatment program approval; and
- d. Ensure that requests for POTW pretreatment program approval and all comments received pertaining to these requests for program approval are available to the public for inspection and copying.

[Federal Authority: 40 CFR §403.11]

Remarks of the Attorney General:

o Authority does not exist

o the following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

9. Authority to Enforce Against Violations of Pretreatment Standards and Requirements

State law provides authority to:

a. Enforce against violations by industrial users and POTWs of:

(1) Permit Requirements;

(2) National categorical pretreatment standards;

(3) Prohibitive discharge limitations developed in accordance with 40 CFR §403.5;

(4) Requirements for recording, reporting, monitoring, entry, inspection and sampling;

b. Enforce against violations described in paragraph (a) above using enforcement mechanisms which include the following:

(1) Injunctive relief;

(2) Civil and criminal penalties and fines which are comparable to the maximum penalties and amounts recoverable under section 309 of the CWA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied.

[Federal Authority: CWA section 309, 402(b)(7), 402(h); 40 CFR §§403.8, 403.10]

Remarks of the Attorney General:

o Authority does not exist

o the following statutory/regulatory changes need to be made:

o Authority does exist

o by Statute \_\_\_ Cite \_\_\_\_\_

o by Regulation \_\_\_ Cite \_\_\_\_\_

o Other \_\_\_ Specify: \_\_\_\_\_

o Comments:

## DOCUMENT B

### Explanation of Authorities Listed in the Model Attorney General's Pretreatment Statement

Document A provides a suggested format for use by the State Attorney General (or attorney for those State water pollution control agencies with independent legal counsel) in indicating whether the State has adequate authority to implement a State pretreatment program as defined by 40 CFR §403.10(f).

Each section of the pretreatment statement should include a citation of the State statutes and/or regulations applicable to that particular authority. The enumerated authorities may be covered by State statutory or regulatory authorities with language which differs from that used in the suggested Attorney General's Pretreatment Statement format. While the recommended format attempts to precisely describe the required authorities in functional terms, it is not intended that any particular State statute or regulation expressly conform to the phraseology used in the model Attorney General's Pretreatment Statement.

Where the language of the State statute or regulation cited does not squarely address the authority for which it is cited, but in the opinion of the Attorney General the particular provision does provide adequate authority pursuant to applicable case law or otherwise, a brief explanation of the reasoning supporting the opinion, with such supplementary citation of authority as may be necessary, should be provided. If a specific regulation is based upon a broad statutory provision, the Attorney General should provide his opinion that such regulations do not violate any applicable doctrines under State law concerning the delegation of legislative authority to State administrative agencies.

In addition, the State should indicate any statutory and/or regulatory authorities which have been proposed, but which are not yet in effect, which may be relied upon in implementing the State pretreatment program.

This Document explains in more detail the authorities cited in each section of the model Attorney General's Pretreatment Statement (Document A).

1. Authority to Apply Categorical Pretreatment Standards to Industrial Users.

The general pretreatment regulation envisions that NPDES States will play a dual role in applying to industrial users categorical pretreatment standards promulgated under section 307(b) and (c) of the CWA. Where a POTW pretreatment program has been approved, the program will be incorporated into its permit and the POTW will assume primary responsibility for ensuring that industrial users comply with the standards and in enforcing against violations of the standards. In such cases, the State must have the authority to take back-up actions to ensure that standards are applied to industrial users and that violations of such standards are enforced in accordance with the requirements of the Act, the pretreatment regulations, and the POTW's permit.

Where a POTW pretreatment program is not required the NPDES State has the primary responsibility for ensuring, through a compliance monitoring and enforcement program, that industrial users install required technology and meet the applicable discharge limitations imposed by the pretreatment standards.

The State authorities needed to ensure that these State responsibilities are carried out are explained in more detail under the discussion of authorities 6, 7 and 9 in this document.

The State should already have certified that it has general authority to apply Federal pretreatment standards to industrial users in the Attorney General's statement submitted to EPA when it applied for State NPDES program approval [see sections 2 a (4), and 7 of the Attorney General's statement attached to this document].

2. Authority to Apply Pretreatment Requirements in Permits for Publicly Owned Treatment Works.

Section 402(b)(8) of the CWA as amended requires that NPDES States have the authority to issue permits to POTWs which incorporate a pretreatment program for the control of pollutants from industrial users. This section of the Attorney General's statement asks for certification that the State has the authority to incorporate into municipal permits such a program as required by the Act and the general pretreatment regulations. Specifically, the State must have authority to incorporate the following into municipal permits:

a. Compliance Schedule

In most cases, the first step in incorporating pretreatment conditions in POTW permits will be the incorporation of a pretreatment compliance schedule in the reissued or modified permit. The schedule will give the permittee a time frame in which to develop a pretreatment program which fulfills the requirements of 40 CFR §403.8. The State must have authority to develop a pretreatment compliance schedule as a condition of a municipal permit.

b. Approved program conditions

The pretreatment regulation specifies that the conditions of an approved POTW pretreatment program will be incorporated into and will be enforceable through the municipal permit. The conditions of an approved POTW pretreatment program are incorporated into the permit in one of two ways.

First, a permittee may develop a POTW pretreatment program on its own initiative, before a compliance schedule requiring the development of such a program is incorporated into the municipal permit. In such cases, the municipal permit must be revoked and reissued or modified at the time of POTW pretreatment program approval to incorporate the pretreatment program as an enforceable condition of the permit.

Second, where a POTW's permit is reissued or modified to incorporate a compliance schedule for the development of a POTW pretreatment program, the terms and conditions of the pretreatment program should automatically become enforceable through the municipal permit upon approval of the program. The following language should be incorporated into the municipal permit at the time it is reissued or modified to incorporate a pretreatment compliance schedule:

"The terms and conditions of the POTW pretreatment program, when approved, shall be enforceable through the permittee's NPDES permit."

The State must have the authority to ensure, at a minimum, that POTW permits contain a POTW pretreatment program as an enforceable condition of the permit or a clause establishing that terms and conditions of POTW pretreatment program, once approved, will be enforceable through the POTW permit. Instead of inserting the above-referenced clause calling for automatic incorporation of pretreatment program conditions in the permit following program approval, a State with appropriate authority may, at its discretion, revoke and reissue or modify the permit to incorporate the approved program.

c. Modification Clause

Section 54(c)(2) of the Clean Water Act of 1977 (P.L. 95-217) provides that States be given time in which to modify, if necessary, their existing NPDES authorities in order to implement a State pretreatment program. Section 403.10(b)(2) of the general pretreatment regulation specifies that a State needing to modify its NPDES program be given until March 27, 1979, to request approval of a modified State program unless the State must amend or enact a law to make required modifications, in which case the NPDES State will have until March 27, 1980, by which to request State pretreatment program approval.

Therefore, if a State must modify its existing authorities in order to be able to incorporate pretreatment requirements into POTW permits (i.e., by inserting a pretreatment compliance schedule in the permit or incorporating the terms and conditions of an approved pretreatment program) it will be given until March 27, 1979, or March 27, 1980, depending on the need for legislative changes, to make the required State program modifications. In these cases where the State must seek a modification of its NPDES program in order to incorporate pretreatment requirements in POTW permits, the State will be required, in the interim, to insert a modification clause into reissued or modified POTW permits. This modification clause must require that the State incorporate pretreatment requirements in State-issued POTW permits when it develops the authority to do so, but in no case later than September 27, 1979, or September 27, 1980, if legislative changes are needed.

Where a State indicates on its Attorney General's Pretreatment Statement (sections 2a, and 2b) that it currently has the authority to incorporate a pretreatment compliance schedule and/or the elements of an approved pretreatment program into municipal permits, it must begin to incorporate these pretreatment requirements into reissued or modified permits in lieu of incorporating the modification clause.

d. Prohibitive Discharge Limitations

The State must have the authority to require that specific limitations for the prohibitive discharges referred to in 40 CFR 403.5 be developed by municipal permittees which are required to implement a pretreatment program. These limitations must be incorporated into the POTW's NPDES permits.

e. Removal Allowances

Municipal permittees desiring to modify categorical pretreatment standards for industrial users to reflect removal obtained by the treatment works must submit documentation of pollutant removal to the State at the time of POTW pretreatment program approval or, subsequently, at the time of permit expiration and reissuance. (See 40 CFR §403.7). More specifically, the POTW must submit the documented percentages of removal for each pollutant for which a modification of national standards is desired. As explained in the regulation, this percentage is obtained by comparing the presence of the pollutant in the influent and effluent of the POTW where it has been demonstrated that the pollutant has been treated by the POTW.

The State must have authority to ensure that these documented percentages are translated into the municipal permit at the time of POTW pretreatment program approval. Thereafter, when a Federal pretreatment standard is promulgated for an industrial category which discharges one of the pollutants for which there is documented removal, the POTW must be allowed to modify the standard to reflect the removal allowance. Subsequent applications for authorizations covering additional pollutants should be processed only at the time of the POTW's NPDES permit reissuance.

3. Authority to Require Information Regarding the Introduction of Pollutants Into Publicly Owned Treatment Works.

Permit conditions described in authority 3 are explicitly required by section 402(b)(8) of the Clean Water Act. The Attorney General should indicate in his remarks whether the POTW, with the aid of the State if necessary, will have adequate authority to carry out the duties imposed by section 402(b)(8). The permittee must have authority to obtain the required notice from industrial users concerning new introductions into treatment works and concerning any change in character or volume of flow. NPDES States should already have certified to the authority to ensure that POTWs require these notices in the Attorney General's statement submitted to EPA when it applied for NPDES program approval (see section 6 of

In addition, the Clean Water Act of 1977 amended prior law to impose a new duty under section 402(b)(8). The amended Act requires States to ensure that NPDES permits contain conditions to "require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b)" of the Act. This information may be acquired by a sampling program carried out directly by the POTW or may be obtained indirectly from information submitted by industrial users.

4. Authority to Make Determinations on Requests for Pretreatment Program Approval and Removal Allowances

a. Approval of POTW Pretreatment Programs

The State must have the authority to approve and deny requests for POTW pretreatment program approval. This includes the authority to:

- o assess the sufficiency of municipal ordinances, contracts or other similar mechanisms used by the POTW for controlling the introduction of pollutants by industrial users;
- o determine if municipal resources and funding mechanisms will be adequate to support an effective pretreatment program;
- o assess the appropriateness of effluent limitations for industrial users developed by the POTW;
- o determine if the staff (or contractor) expertise, equipment, and procedures will allow the POTW to monitor effectively the compliance by industrial users with pretreatment requirements;
- o determine if the permittee's enforcement authorities are sufficient to meet the regulatory requirements of 403.8;
- o issue public notice of the application for pretreatment program approval which fulfills the requirements of 40 CFR §403.11(b)(1) and (f); and
- o provide opportunity for a public hearing on the application for program approval in accordance with the requirements of 40 CFR §403.11(b)(2).

b. Approval of Removal Allowances

The State must have authority to approve and deny requests for removal allowances submitted by the POTW. This will require that the State have the authority to sample the influent and effluent of the POTW in order to verify the removal percentages submitted by the POTW. In addition, the State must have the authority to conform to the public participation requirements described in 40 CFR §403.11.

5. Authority to Make Determinations on Categorization of Industrial Users and Requests for Fundamentally Different Factors Variances

a. Categorization of Industrial Users

The State must have authority to make determinations on the industrial subcategory in which an industrial user is classified. 40 CFR §403.6 provides that an industrial user may request certification by the State NPDES Program Director as to whether the industrial user falls within a particular industrial subcategory. The State must have authority to make such a determination after considering the industrial user's application, the development document for the industrial subcategory in question, and any other relevant information. The State Director's determination must be submitted to the Regional Enforcement Division Director and may be modified by the Enforcement Division Director.

b. Fundamentally Different Factors Variances

Variations from the numerical discharge limits contained in a national pretreatment standard for an existing source may be necessary to compensate for factors not adequately considered in establishing the standard. The fundamentally different factors variance allows a mechanism to provide for such allowances. The pretreatment regulation requires that the State have the authority to make determinations on requests for fundamentally different factors variances, taking into consideration the factors listed in 40 CFR §403.13. States are to have the authority to deny a request for a fundamentally different factors variance when it is found that circumstances do not warrant an adjustment to national categorical discharge limits. States will not make the final determination to approve a

request for a fundamentally different factors variance. This decision will be made by EPA. States however should have the authority to recommend approval of the fundamentally different factors variance to EPA.

## 6. Authority to Apply Recording, Reporting and Monitoring Requirements

The State Attorney General must indicate whether the authority to impose each requirement listed in this part exists. Where such authority does exist, the State should indicate what mechanisms are authorized to exercise this authority, e.g., a permit or order to industrial users.

- a. Where the State has assumed primary responsibility for applying Federal pretreatment standards to industrial users pending the development of a POTW pretreatment program, or in lieu of the POTW pretreatment program where appropriate, the State must ensure that the reports listed in this section are submitted to the State by the industrial user. Once a POTW pretreatment program has been approved and incorporated into the municipal permit, the State should continue to exercise its authorities, where needed, to ensure that these reports are submitted to the municipal permittee. Where the POTW pretreatment program has been approved, a State may at its discretion require that the industrial user or the municipal permittee submit to it the reports required of the industrial user by 40 CFR §403.12(b)-(e), (n).
- b. Once a compliance schedule has been incorporated into a municipal permit to require the development of a POTW pretreatment program, the municipal permittee must report to the State on its progress in developing the program in accordance with the terms of the compliance schedule. The State must require in the compliance schedule that such reports be submitted at least as frequently as required by 40 CFR §403.12(h). Once the POTW pretreatment program has been approved, if the POTW receives approval of a removal allowance as provided for by 40 CFR §403.7, it must report to the State periodically on its continued removal at the approved level. The State must have the authority to insure that it receives such reports at least once every six months as required by 40 CFR §403.12(j).
- c. The authorities listed in paragraph c of the model Attorney General's Pretreatment Statement satisfy the requirement of section 402(b)(2) of the Act that recording provisions of the sort provided in section 308 of the CWA may be applied by the State to holders of NPDES permits. In addition, industrial users are also included within the listed authorities in order to assure compliance with section 402(b)(9) of the Act which

requires that the State have adequate authority to insure compliance by industrial users with section 308 of the CWA. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 5 and 7 of the Attorney General's statement attached to this document).

7. Authority to Apply Entry, Inspection and Sampling Requirements

The authorities listed in this section satisfy the requirements of section 402(b)(8) and (9) of the CWA that monitoring, entry, inspection and sampling provisions of the sort provided in section 308 of the CWA may be applied by the State to holders of NPDES permits and industrial users of POTWs. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 5 and 7 of the Attorney General's statement attached to this document).

8. Authority to Issue Notices, Transmit Data and Provide Opportunity for Public Hearings and Public Access to Information

The public participation requirements of the pretreatment program are set forth in detail in 40 CFR §403.11. In general, the State will be primarily concerned with the requirement for public notice, and public hearing if requested, on all POTW Pretreatment program submissions. Since removal allowances will be approved only at the time of POTW pretreatment program approval or permit reissuance, the public participation requirement for removal allowance determinations will be included in the pretreatment program approval and/or permit reissuance public participation procedures.

The Attorney General should determine whether sufficient general authority exists in State law and regulations to allow compliance with the public participation requirements of the pretreatment regulations. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 8 of the Attorney General's statement attached to this document).

9. Authority to Enforce Against Violations of Pretreatment Standards and Requirements

- a. State enforcement authorities can generally be grouped into two responsibilities. First, States must have authority to enforce directly against industrial users for violations of categorical pretreatment standards. Such authority is clearly essential in cases where there is no approved POTW pretreatment program to serve as the primary enforcement authority. In addition, however, the State must maintain authority to enforce directly against industrial users for violations of pretreatment standards even when a POTW pretreatment program has been developed and is

requires that the State have adequate authority to insure compliance by industrial users with section 308 of the CWA. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 5 and 7 of the Attorney General's statement attached to this document).

7. Authority to Apply Entry, Inspection and Sampling Requirements

The authorities listed in this section satisfy the requirements of section 402(b)(8) and (9) of the CWA that monitoring, entry, inspection and sampling provisions of the sort provided in section 308 of the CWA may be applied by the State to holders of NPDES permits and industrial users of POTWs. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 5 and 7 of the Attorney General's statement attached to this document).

8. Authority to Issue Notices, Transmit Data and Provide Opportunity for Public Hearings and Public Access to Information

The public participation requirements of the pretreatment program are set forth in detail in 40 CFR §403.11. In general, the State will be primarily concerned with the requirement for public notice, and public hearing if requested, on all POTW Pretreatment program submissions. Since removal allowances will be approved only at the time of POTW pretreatment program approval or permit reissuance, the public participation requirement for removal allowance determinations will be included in the pretreatment program approval and/or permit reissuance public participation procedures.

The Attorney General should determine whether sufficient general authority exists in State law and regulations to allow compliance with the public participation requirements of the pretreatment regulations. NPDES States should already have certified to a similar authority in conjunction with the approval of the State NPDES program (see part 8 of the Attorney General's statement attached to this document).

9. Authority to Enforce Against Violations of Pretreatment Standards and Requirements

- a. State enforcement authorities can generally be grouped into two responsibilities. First, States must have authority to enforce directly against industrial users for violations of categorical pretreatment standards. Such authority is clearly essential in cases where there is no approved POTW pretreatment program to serve as the primary enforcement authority. In addition, however, the State must maintain authority to enforce directly against industrial users for violations of pretreatment standards even when a POTW pretreatment program has been developed and is

serving as the primary enforcement mechanism. The State will be required to take action directly against industrial users when the POTW fails to act on a violation by the industrial user and when the remedy sought by the POTW is insufficient to deter non-compliance by the industrial user with pretreatment standards.

Second, States must have authority to enforce against the POTW for violations of permit requirements relating to pretreatment. Initially, States will be concerned with enforcing against a POTW for violation of the compliance schedule for developing a pretreatment program incorporated in the POTW permit. Once the POTW pretreatment program has been approved and its terms and conditions incorporated into the POTW permit, the State is to enforce these pretreatment program requirements through the POTW permit. One of the program conditions will require the POTW to ensure that industrial users comply with 307(b) and (c) pretreatment standards. Therefore, if an industrial user is found to be in violation of a pretreatment standard, the State should have authority to take action against the POTW, as well as the industrial user, on the basis that such a violation by the industrial user demonstrates a failure of the POTW to carry out its permit requirements. Another pretreatment requirement enforceable through the POTW permit will be prohibitive discharge limitations for industrial users developed in accordance with the requirements of 40 CFR §403.5.

- b. State law must provide both civil penalties and criminal fines, and injunctive relief, for violations of permits and for violations of pretreatment standards and prohibitions by industrial users. Other sanctions, such as actions for damages, are not acceptable substitutes for civil and criminal penalty provisions. The maximum civil penalties and criminal fines recoverable under State law must be comparable to maximum amounts provided in section 309 of the CWA or must represent an actual and substantial economic deterrent.

The State is encouraged to exercise the enforcement sanctions listed below. The Attorney General in his remarks should note where State law provides for these enforcement mechanisms:

- o Provisions for administrative compliance orders requiring cessation of violations of permit conditions or violations of categorical pretreatment standards or permitting the administrative assessment of penalties for violations. If such provisions are present in the State's law, the Attorney General should indicate whether these procedures must be exhausted before the State is permitted to seek civil or criminal penalties or fines or injunctive relief.
- o Provisions similar to section 402(h) of the CWA allowing the State to seek injunctive relief restricting or prohibiting the introduction of pollutants into a publicly owned treatment works in the event a condition of a permit for the discharge of pollutants from such a treatment works is violated.

- o Provisions similar to 309(f) of the CWA allowing the State to bring a civil action directly against a POTW, including those POTWs which do not have a pretreatment program incorporated in their NPDES permit, for a violation by industrial users of pretreatment standards. The industrial user in violation would be joined in such an action.

#### Additional Information

In addition, the State should indicate those existing provisions of State law which can be relied on by POTWs in implementing a pretreatment program as described in 40 CFR §403.8 including enforcing against violations of pretreatment standards by industrial users, requiring reporting, recording and monitoring by industrial users, and providing authority to enter the premises of industrial users to determine compliance with pretreatment requirements. The State should also indicate if it intends to develop new statutory or regulatory authority which can be relied on by POTWs in implementing the authorities required by 40 CFR §403.8.

ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.), that in my opinion the laws of the State [Commonwealth] of \_\_\_\_\_ provide adequate authority to carry out the program set forth in the "Program Description" submitted by the \_\_\_\_\_ The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

1. Authority to issue Permits.

a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. (hereinafter "the FWPCA" or "the Act").  
[Federal Authority: FWPCA §§ 301(a), 402(a)(1), 402(b)(1)(A); 40 C.F.R. § 124.10.]

State Statutory or Regulatory Authority:

Remarks of the Attorney General:

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells.  
[Federal Authority: FWPCA § 402(b)(1)(D); 40 C.F.R. § 124.80.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

2. Authority to Apply Federal Standards and Requirements.

a. Effluent standards and limitations and water quality standards.

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA, including:

- (1) Effluent limitations pursuant to Section 301;
- (2) Water quality related effluent limitations pursuant to Section 302;
- (3) National standards of performance pursuant to Section 306;
- (4) Toxic and pretreatment effluent standards pursuant to Section 307; and
- (5) Ocean discharge criteria pursuant to Section 403.  
[Federal Authority: FWPCA §§ 301(b), 301(e), 302, 303, 304(d), 304(f), 306, 307, 402(b)(1)(A), 403, 208(e), and 510; 40 C.F.R. § 124.42.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

b. Effluent limitations requirements of Sections 301 and 307.

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, State law provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purposes of these sections of the FWPCA. Such limitations may be based upon an assessment of technology and processes as required under the FWPCA with respect to individual point sources, and include authority to apply:

- (1) To existing point sources, other than publicly-owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;

- (2) To publicly owned treatment works, effluent limitations based upon the application of secondary treatment or the best practicable waste treatment technology; and
- (3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works. [Federal Authority: FWPCA §§ 301, 304(d), 307, 402(a)(1), 402(b)(1)(A); 40 C.F.R. § 124.42(a)(6).]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

c. Schedules of compliance.

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA. This includes authority to set interim compliance dates in permits which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality.

[Federal Authority: FWPCA §§ 301(b), 303(e), 304(b), 306, 307, 402(b)(1)(A), 502(11), and 502(17); 40 C.F.R. §§ 124.44 and 124.72.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

3. Authority to Deny Permits in Certain Cases.

State law provides authority to insure that no permit will be issued in any case where:

- a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;
- c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the FWPCA; or
- d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the FWPCA.  
[Federal Authority: FWPCA §§ 301(f), 402(b)(5), 402(d)(2), and 208(e); 40 C.F.R. §§ 124.41 and 124.46.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years.

[Federal Authority: FWPCA § 402(b)(1)(B); 40 C.F.R. § 124.51.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirements.

State law provides authority to:

a. Require any permit holder or industrial user of a publicly owned treatment works to:

- (1) Establish and maintain specified records;
- (2) Make reports;
- (3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
- (4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed); and
- (5) Provide such other information as may reasonably be provided.

b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:

- (1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;
- (2) At reasonable times have access to and copy any records required to be maintained;
- (3) Inspect any monitoring equipment or method which is required; and
- (4) Have access to and sample any discharge of pollutants to State waters or to publicly owned treatment works resulting from the activities or operations of the permittee or industrial user.

[Federal Authority: FWPCA §§ 304(h)(2)(A) and (B), 305(2), 402(d)(2), and 402(b)(9); 40 C.F.R. §§ 124.45(c), 124.61-63, and 124.73(d).]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

6. Authority to Require Notice of Introductions of Pollutants into Publicly Owned Treatment Works.

State law provides authority to require in permits issued to publicly owned treatment works conditions requiring the permittee to give notice to the State permitting agency of:

- a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;
- b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or
- c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.  
[Federal Authority: FWPCA § 402(b)(3); 40 C.F.R. 124.45(d).]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

State law provides authority to insure that any industrial user of a publicly owned treatment works will comply with FWPCA requirements concerning:

- a. User charges and recovery of construction costs pursuant to Section 204(b);

- b. Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307; and
- c. Inspection, monitoring and entry pursuant to Section 308.  
 [Federal Authority: FWPCA § 402(b)(9); 40 C.F.R. § 124.43(e).]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

State law provides authority to comply with requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 (hereinafter "the Guidelines") to:

- a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

[Federal Authority: Generally: FWPCA §§ 101(e) and 304(h)(2)(B).

Function 8(a): FWPCA §§ 402(b)(3) (public notice), 402(b)(5) (notice to affected States), 402(b)(6) (notice to Army Corps of Engineers); 40 C.F.R. §§ 124.31 (tentative permit determinations), 124.32 (public notice), 124.33 (fact sheets) and 124.34 (notice to government agencies).

Function 0(b): FWPCA §§ 402(b)(4) (notices and permit applications to EPA), 402(b)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§ 124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.24 (notice to other government agencies), 124.45 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA).

Function 3(c): FWPCA § 402(b)(3) (opportunity for public hearing); 40 C.F.R. §§ 124.36 (public hearings), 124.37 (notice of public hearings).]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

9. Authority to Provide Public Access to Information.

State law provides authority to make information available to the public, consistent with the requirements of the FWPCA and the Guidelines, including the following:

- a. Except insofar as trade secrets would be disclosed, the following information is available to the public for inspection and copying:
  - (1) Any NPDES permit, permit application, or form;
  - (2) Any public comments, testimony or other documentation concerning a permit application; and
  - (3) Any information obtained pursuant to any monitoring, recording, reporting or sampling requirements or as a result of sampling or other investigatory activities of the State.
- b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.  
[Federal Authority: FWPCA §§ 304(h)(2)(B), 303(b), 402(b)(2) and 402(j); 40 C.F.R. § 124.35.]

State Statutory and Regulatory Authority:Remarks of the Attorney General:10. Authority to Terminate or Modify Permits.

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

- a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

[Federal Authority: FIFCA § 402(b)(1)(C); 40 C.F.R. §§ 124.45(b) and 124.72.]

State Statutory and Regulatory Authority:Remarks of the Attorney General:11. Authority to Abate Violations of Permits or the Permit Program.

State law provides authority to:

- a. Abate violations of:

- (1) Requirements to obtain permits;
- (2) Terms and conditions of issued permits;
- (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and

- (4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling.
- b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:
- (1) Injunctive relief, without the necessity of a prior revocation of the permit;
  - (2) Civil penalties;
  - (3) Criminal fines for willful and negligent violations; and
  - (4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;
- c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained.  
[Federal Authority: FWPCA §§ 402(b)(7), 309, 304(a)(2)(C), 402(h), 504; 40 C.F.R. § 124.73.]

State Statutory and Regulatory Authority:

Remarks of the Attorney General:

12. State Board Membership

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes [or will include, at the time of approval of the State permit program], as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provision contained in Section 304(h)(2) of the FWPCA.  
[Federal Authority: FWPCA § 304(h)(2)(D); 40 C.F.R. § 124.94.]

State Statutory and Regulatory Authority:Remarks of the Attorney General:

In addition to the foregoing State Statutory and Regulatory Authorities, the following additional authorities support the State "Program Description" for the reasons stated below:

[add any additional authorities or if all necessary authorities have been cited above, so indicate.]

Under authorities in effect at the time of this Statement, no outstanding permits issued by this State [Commonwealth] for the discharge of pollutants are valid for the purposes of the National Pollutant Discharge Elimination System created under the FWPCA. All persons presently in possession of a valid State permit for the discharge of pollutants are required to:

1. Comply with the application requirements specified in subpart C of the Guidelines;
2. Comply with permit terms, conditions, and requirements specified in subparts E, F, and G of the Guidelines; and
3. If such persons are disposing of pollutants into wells, apply for and comply with a permit issued by the [State permit issuing agency or employee].

Dated: \_\_\_\_\_

\_\_\_\_\_  
[City, State]

\_\_\_\_\_  
[Signature]  
[Title]

## DOCUMENT C

### Explanation of Procedural and Funding Requirements for State Pretreatment Programs

Section 403.10(b) of the pretreatment regulation requires that the Director of the State water pollution control agency submit to EPA by October 10, 1978, an analysis of the State's current ability to develop the procedures and resources required by 40 CFR 403.10. This document describes in more detail the procedural and funding requirements spelled out in 40 CFR 403.10. It is intended to provide assistance to States in determining, for the October 10 submission, the extent to which they are currently able to implement these requirements.

In developing this analysis, emphasis should be placed on assessing the State's existing technical abilities and the adequacy of existing State resources to carry out the pretreatment program. Where additional procedures, technical expertise or resources will be needed to fully implement the program, the State should indicate how these requirements will be acquired. For example, the State should indicate whether it intends to request additional funds to hire State personnel with technical expertise to carry out the sampling and analytical requirements, whether it will contract with an outside source to provide this expertise, or whether it will address this procedural requirement with a combination of both approaches.

## DOCUMENT C

### Explanation of Procedural/Funding Requirements for State Pretreatment Programs

#### 1. Procedures/Funding to Identify POTWs Which Will be Required to Develop POTW Pretreatment Programs

The State must have the ability to determine which of its municipal permittees will be required to develop a POTW pretreatment program. As section 403.8(a) of the pretreatment regulation explains, POTWs required to develop a program will include those POTWs with a design flow over 5 mgd receiving from industrial users wastes which:

- o pass through the POTW untreated
- o interfere with the operation of the treatment works
- o are subject to pretreatment standards developed under the authority of section 307(b) or (c) of the CWA.

In determining which POTWs are above 5 mgd, the State should look at average design flow. In addition, if one permittee controls several treatment works, the cumulative flow of the treatment works should be considered in calculating average design flow. For example, one Regional Authority controlling 3 treatment works with average design flows of 3, 2 and 2 mgd respectively would be viewed, for the purposes of the pretreatment regulation, as a single operation with an average design flow greater than 5 mgd.

A recommended first step in determining which POTWs over 5 mgd should be required to develop a pretreatment program would be to determine which POTWs receive wastes from one or more industries within the 21 industrial categories listed in the NRDC Consent Decree (for reprinting of Consent Decree see The Environmental Reporter-Cases, 8 ERC 2120). EPA anticipates that categorical pretreatment standards under section 307(b) and (c) will be developed for almost all industrial subcategories within the 21 industrial categories listed in the NRDC Consent Decree. A possible approach to detecting these sources would be to examine industrial inventories such as the Dunn and Bradstreet Market Indicator and the Directory of Chemical Producers, published by the Stanford Research Institute, to determine which of the listed sources are within the State and discharging into POTWs.

A second step in identifying POTWs required to develop a POTW pretreatment program might be to look at those POTWs which are not meeting their permit conditions. Such permittees would be likely candidates for a pretreatment program aimed at controlling pollutants which interfere with the operation of the POTW.

Section 403.8(a) of the pretreatment regulations also gives the State authority to require the development of a pretreatment program by POTWs with average design flows of 5 mgd or less. It is recommended that the State require the development of a program wherever the POTW receives industrial wastes from sources in one or more of the 21 industrial categories listed in the NRDC Consent Decree, is not meeting its permit conditions or where municipal sludge is not meeting applicable requirements. The State is strongly urged to exercise its option to extend the requirement to develop pretreatment program as broadly as possible. The burden of proof for demonstrating that a program is not needed should rest on the POTW. Where there is some doubt that a certain POTW has industrial influent subject to pretreatment requirements, the POTW can be allowed to show that it need not develop a program. In such cases, a clause can be inserted in the municipal permit along with the compliance schedule for the development of a pretreatment program. This clause would state that if the industrial waste inventory required by the compliance schedule demonstrates that the POTW has no significant contribution of industrial wastes which would be subject to pretreatment requirements, the POTW would not be required to continue development of the program.

In brief narrative form, the State should explain those procedures it has currently developed for identifying POTWs above and below 5 mgd required to develop a pretreatment program. The narrative should be accompanied by a statement of the resources currently devoted to this undertaking. If a program to identify appropriate POTWs is planned for the future, the State should indicate what approaches to identifying POTWS will be used and what criteria will be applied in identifying the pollutants and industries subject to pretreatment requirements. The State should also describe briefly its planned procedures for providing technical and legal assistance to POTWs where help is needed in developing a POTW pretreatment program.

## 2. Procedures/Funding to Notify POTWs of Pretreatment Requirements

The State should indicate those procedures it has developed to notify POTWs of applicable pretreatment requirements as set forth in 40 CFR 403.8(2)(iii). This may consist of a mailing system for distributing information such as copies of the pretreatment regulation and any guidance on developing a POTW pretreatment program prepared by the State or EPA. Any such distribution system should be coordinated with similar information networks employed by State personnel in charge of EPA construction grants.

3. Procedures/Funding to Incorporate Pretreatment Requirements in Municipal Permits

Where States currently have the authority to revoke and reissue or modify municipal permits to incorporate an approved pretreatment program or a compliance schedule for developing such a program, (see Attorney General's Pretreatment statement section 2) they will be required to exercise this authority. Otherwise, a State must include a modification clause in appropriate POTW permits which calls for the incorporation of pretreatment requirements at a later date. The State should indicate to EPA the priorities it will use for incorporating pretreatment requirements into POTW permits and an estimate of the additional resources, if any, which will be required to carry out this task. For example, the State should indicate to the best of its ability:

- o the number of municipal permits which will incorporate pretreatment requirements at the same time as they are revoked and reissued or modified for the purpose of meeting the provisions of 301(i) or 301(h) of the Clean Water Act;
- o the number of expiring municipal permits not receiving 301(i) or 301(h) modifications which will incorporate pretreatment conditions upon reissuance
- o the number of municipal permits to be revoked and reissued or modified to include an approved pretreatment program or a compliance schedule for developing such a program

4. Procedures/Funding to Make Determinations on Requests for POTW Pretreatment Program Approval and Removal Allowances

The State must have the procedures and funding to receive and make determinations on requests for POTW pretreatment program and removal allowance approval. In general this responsibility will require that the State have procedures and funding to:

- o comply with the public notice provisions of section 403.11(b)(1) of the regulation which requires the State to:
  1. mail notices of the request for approval to adjoining States whose waters may be affected;
  2. mail notices of the request to appropriate area-wide planning agencies (Section 208 of the CWA) and other persons or organizations with an interest in the request for program approval or removal allowance;

3. publish a notice of the request in the largest daily newspapers of the municipality in which the POTW requesting program or removal allowance approval is located. These notices shall indicate that a comment period will be provided for interested parties to express their views on the request for program approval or removal allowance.
  - o Provide a public hearing if requested by any affected or interested party as provided for in section 403.11(b)(2). Notice of such a hearing will be published in the same newspapers where the original notice of request for program or removal credit approval appeared.
  - o Make a final determination on the request if EPA has not objected in writing to the approval of the request during the comment period. In making the final determination, the State should take into consideration views expressed by interested parties during the comment period and hearing, if held.
  - o Issue a public notice of the final determination on the request. This notice shall be sent to all persons who submitted comments and/or participated in the public hearing. In addition, the notice will be published in the same newspapers as the original notice of request for approval was published.

The State should indicate to EPA by October 10, its current ability to carry out these responsibilities, focusing primarily on staffing and funding availability. This assessment should be based on an estimate of the number of POTWs which will be scheduled to receive POTW pretreatment program and removal allowance approval during the remainder of the State's budget year. The State should then indicate the projected resource levels for POTW pretreatment program and removal allowance approval in each of the budget years 1979-1983 based on the estimated number of POTWs requesting program and removal allowance approval during each of these years. Finally, the State should explain how it can insure, to the best of its ability, that the funding required to carry out this activity will be available each year.

5. Procedures/Funding for Identifying and Notifying Industrial Users Subject to Pretreatment Requirements

The pretreatment regulations provide that where a POTW is not required to develop a POTW pretreatment program, the State will assume responsibility for identifying industrial users of the POTW which might be subject to pretreatment standards. The State may

devise its own methods for obtaining this information, including requiring the POTW to identify the industrial users in question. Reference to the Dunn and Bradstreet and Directory of Chemical Producers listings, as mentioned earlier, may provide a convenient first step. In many cases this information may already have been provided by the POTW through part 4 of the municipal permit application form. Through whatever means it chooses, the State should insure that all industrial users which fall within one or more of the 21 industrial categories listed in the NRDC Consent Decree are identified. In addition, the State should identify as subject to pretreatment standards all industrial users which contribute pollutants which interfere with the operation of the treatment works or pass through the POTW untreated.

Once the appropriate industrial users have been identified, the State must ensure that they are notified of all applicable existing pretreatment standards and of applicable pretreatment standards which might be forthcoming. Acceptable procedures would include a mailing list for industrial users or an arrangement with the POTW requiring it to provide the requisite notice.

The State should indicate by October 10, whether it has presently in operation effective procedures for identifying and notifying industrial users currently or potentially subject to pretreatment standards. If such procedures are not currently on line, if for example, information supplied by part 4 of the municipal application form is not sufficiently detailed to provide the required information, the State should indicate how it plans to develop the ability to identify and notify appropriate industrial users. The description of these procedures should be accompanied by an assessment of resources needed to implement them, the current availability of resources to meet this need and plans for obtaining additional resources if required.

6. Procedures/Funding for Identifying the Character and Volume of Pollutants Contributed by Industrial Users to POTWs

Section 403.10(f)(2)(i) of the pretreatment regulation provides that where a POTW is not required to develop a POTW pretreatment program, the State will be required to carry out those procedures which would otherwise have been the responsibility of the POTW. One of these responsibilities is the identification of the character and volume of pollutants being contributed to the POTW by sources subject to pretreatment requirements (see 403.8(f)(2)(ii)). Industrial users subject to pretreatment requirements include those which are subject to pretreatment standards promulgated under section 307(b) and (c) and/or, contribute pollutants which interfere with the operation of the POTW or which pass through the POTW untreated. This responsibility is complicated by the fact that

analytical and monitoring techniques are not yet available to provide a quantitative analysis of the presence of many of the pollutants in question. In recognition of this problem, EPA recommends that States follow the procedures outlined below in developing their inventory of industrial waste contribution.

- o The first step in the waste inventory should be a qualitative analysis of pollutants being contributed by all industrial sources within the system. The individual industrial users should be asked to provide information on the type and approximate quantity of pollutants discharged by the facility. This information should be derived entirely from knowledge of the facility's process and should not require any sampling at the source.
- o Second, the State should review this qualitative information on the pollutants being discharged into the system and remove from further consideration those pollutants which are not within the 129 pollutants to be regulated with national pretreatment standards and/or which are known not to interfere with the operation of the POTW or pass through the POTW untreated.
- o Third, the State (or POTW if the State so directs) will then sample the influent to the POTW to determine which of the pollutants remaining after step two appear in significant concentrations in the influent to the POTW. In carrying out this sampling, the State should use those sampling and analytical techniques set forth in 40 CFR part 136. If a pollutant appears at such a low concentration that it is highly unlikely that it would have an adverse effect on the operation of the POTW, pass through untreated, or if the pollutant does not appear at all in the influent to the POTW, it should be excluded from further consideration.
- o Fourth, the analysis in preceeding steps has resulted in a list of those pollutants contributed to the system which may affect the operation of the POTW or pass through the POTW untreated. The next step is to determine which industrial users have such pollutants in their effluent.
- o Fifth, those industrial users identified in step four will be required to do sampling and analysis to quantify the amounts of those pollutants being discharged by that source into the POTW. If necessary, the State may then impose upon that industrial user an effluent limitation which will ensure that such pollutants are discharged at levels which will not interfere with the operation of the treatment works or pass through in unacceptable amounts.

- o Finally, as Federal pretreatment standards for industrial subcategories are promulgated, the State will require that industrial users belonging to those subcategories sample and analyze their effluent to quantify the amount of pollutants regulated by the standard being discharged by that industrial user.

The above procedures can be characterized as a 2-part program. Initially, prior to the development of sampling and analytical techniques for many of the complex pollutants regulated within the 21 industrial categories (and approximately 400 industrial subcategories) set forth in the NRDC Consent Decree, the State will focus on identifying and quantifying only those pollutants which interfere with the operation of the treatment works. Then, as Federal pretreatment standards for the 129 pollutants in the 21 industrial categories emerge, along with recommended sampling and analytical techniques for such pollutants, the State will be required to elicit specific quantitative information on the character and volume of pollutants discharged by industrial users regulated by Federal standards.

POTWs which are required to develop a POTW pretreatment program are responsible for carrying out the industrial waste inventory in lieu of the State (see 403.8(f)(ii) and step 2 of the municipal pretreatment compliance schedule). The State should recommend that this 2-step program be used by such POTWs.

The State should indicate to EPA by October 10 its current ability to carry out the industrial waste characterization program described above. Particular attention should be paid to the availability of resources to implement this survey, the technical ability of the State to sample influent to POTWs as required by step 3 above, and the State's technical ability to develop effluent limitations for industrial users where necessary to control the introduction of pollutants which interfere with the operation of the POTW. The State should discuss those resources and technical abilities which it will need to acquire to fully implement the components of the industrial waste inventory described above.

7. Procedures/Funding to Make Determinations on Requests for Fundamentally Different Factor Variances

Section 403.13 of the pretreatment regulation provides that States will be responsible for considering requests for fundamentally different factors variances. Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during the development of a categorical pretreatment standard applicable to that user may apply for a fundamentally different factors variance allowing a modification of the discharge limit specified in that standard.

The State must have procedures to review such requests, and make a determination to deny the request or recommend to EPA that the request be approved. In making this determination, the State must consider the factors outlined in 403.13(c) and (d). The State should submit to EPA by October 10, 1978, a discussion of its current ability to consider requests for fundamentally different factor variances. Emphasis should be placed on current funding availability and projected funding needs. In addition, the State should identify the existing or required technical expertise it will need to evaluate the various factors listed in 403.13(c) and (d).

8. Procedures/Funding to Ensure Compliance with Pretreatment Standards and Permit Conditions

Where a POTW is not required to develop a POTW pretreatment program, the State will be required to ensure that industrial users of that POTW subject to pretreatment standards comply with those standards. In order to do so, the State must develop procedures which include the following:

- o Where State law provides adequate authority, the State should have the technical ability to review the technology which the industry proposes to install in order to meet State or Federally imposed pretreatment standards.
- o Once the compliance date for a pretreatment standard has passed, the State must have procedures to receive and analyze the report submitted by the industry, in compliance with the requirements of 403.12(d), indicating whether or not the industry has complied with applicable effluent limitations.

- o The State must develop the administrative and technical ability to receive and analyze the periodic reports submitted by industrial users indicating continued compliance with pretreatment standards (see 403.12(e)).
- o The State must ensure that it has adequate resources and technical expertise to determine, independent of reports submitted by the industrial user, that the user is in compliance with applicable pretreatment standards. For example, the State should have procedures for scheduling periodic checks on industrial users to spot-check compliance, sampling the effluent at the industrial sources and analyzing this effluent to ensure compliance with applicable limitations.

Where a POTW pretreatment program has been developed and the POTW has been granted a removal allowance for certain pollutants, the State must have procedures to:

- o receive and analyze periodic reports from the POTW indicating continued removal at the rate allowed by the POTW's permit and continued compliance with sludge requirements;
- o sample and analyze the influent to and effluent from the POTW to determine, independent of reports submitted by the POTW, that the POTW is maintaining the approved level of removal and is in compliance with all applicable sludge requirements.

It is recognized that the sampling and analytical requirements explained in this section may impose a substantial resource burden on the State. While it is preferred that the State develop its own technical expertise, an acceptable alternative would be for the State to contract with private consultants, universities or other groups with sufficient technical expertise to carry out the sampling and analytical requirements described in this section.