



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 12 1979

MEMORANDUM

OFFICE OF ENFORCEMENT

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TO: Regional Administrators
NPDES State Directors

FROM: Assistant Administrator for Enforcement

SUBJECT: State Pretreatment Programs

I recently attended a seminar for State officials on the National Pretreatment program. As you may know, that program, based on regulations promulgated on June 26, 1978, lays the foundation for the control of toxics from industries discharging into publicly owned treatment works (POTWs). I believe the pretreatment program is a vital link in EPA's toxic strategy. With the major source enforcement effort (for both industries and municipalities), the emerging national municipal strategy, the best available technology (BAT) or second round permits effort, and the consolidated permit initiative, the States and EPA will at last be implementing a comprehensive program that will see the goal of clean water attained.

The successful implementation of these programs requires cooperation between the States and EPA. Nowhere is that cooperation more important, and perhaps more difficult to achieve, than in the pretreatment program. Resources, both Federal and State, are scarce. Few people have the training to carry out the program. The time deadline provided in the Clean Water Act is short. And, alas, the program is complicated, fills over 50 pages of the Federal Register, and is beset by many unanswered technical and legal questions.

We have been listening, however, to suggestions by State officials on making the pretreatment program more workable. Flexibility, they have said, is the key to successful program implementation. State representatives stressed the need for flexibility at our recent seminar for State officials and at the ASIWPCA session in Washington, D.C. I am endorsing these State suggestions, which are embodied in this memorandum, and ask EPA Regions and State Water Programs to use the submission of State Pretreatment Program Descriptions as a vehicle for defining that flexibility.

At the onset, however, I must express the boundaries for such flexibility:

- o legal authorities to operate pretreatment programs, both at the State and local levels, must be adequate to assure compliance with the law
- o decisions on flexibility with respect to issues currently under negotiation in law suits with Manufacturing Chemists Association and NRDC (such as removal credits and fundamentally different factor variances) must await resolution of those law suits
- o certain technical requirements, such as utilization of EPA-approved analytical methods, must be complied with as set forth in the regulations.

Beyond these constraints, there is considerable room for States and localities to exercise flexibility in designing acceptable pretreatment programs.

Size of State Pretreatment Programs

The size of a State pretreatment program is generally influenced by two factors, the extent to which the State delegates to POTWs the authority to assume primary responsibility for enforcing pretreatment standards and the number of industrial users within that State subject to pretreatment regulations. In its regulations, EPA has allowed for flexibility in addressing both of these factors.

The general pretreatment regulations allow States to exercise their discretion in electing to require the development of a local pretreatment program for those POTWs with a flow of 5 mgd or less. The State, therefore, has direct control over the size of its program through the ability to decrease its workload by delegating to POTWs responsibility for carrying out pretreatment activities. It is recommended that States delegate this responsibility as broadly as possible in order to shift the burden of regulation to the POTWs which can receive section 201 grant funding to carry out initial pretreatment activities.

In addition, another measure of flexibility is introduced through section 403.10(e) of the General Pretreatment regulations which allows States to elect to run a State pretreatment program covering industrial users of POTWs in lieu of requiring individual POTWs to develop pretreatment programs. This

option is particularly appropriate for States with a limited number of industrial users. In such States the application and enforcement of pretreatment standards for industrial users can possibly be carried out more efficiently through a single, centralized pretreatment program. To date, the States of Vermont, Connecticut and Alabama have expressed an interest in developing State-run pretreatment programs.

EPA personnel will be available to assist in tailoring applications for pretreatment program approval to reflect a State's unique situation. For example, where, as in the case of States with a limited number of industrial users, the scope and complexity of the State pretreatment program is limited, EPA can work with the State in designing a State submission which comports with the basic requirements set forth in the regulations but which minimizes the State's application burden.

Phasing of State Pretreatment Programs

EPA is attempting to introduce increased flexibility into the State regulation of industrial users by allowing for a staged implementation of State pretreatment efforts. It is EPA's position that the March 27, 1979, submission from States need only demonstrate that States have existing funding to address industrial sources covered by the eight categorical pretreatment standards currently in effect. In this submission, States should commit to a good faith effort to obtain additional funding as needed to address future categorical pretreatment standards as they are promulgated by the Agency. It is hoped that this staged approach to acquiring resources will allow States to forge ahead quickly with initial efforts in implementing the pretreatment program, while allowing them time to develop additional resources as needed.

Innovative Approaches to Pretreatment Program Operation

EPA is also encouraging States to explore innovative approaches to carrying out State and local pretreatment requirements. Flexibility exists to use contractor support to carry out activities incident to the development of the pretreatment program, such as development of an industrial waste monitoring program, and activities associated with the operation of the program, such as sampling and analytical activities. States are also encouraged to explore the option of establishing Regional or interstate laboratories to undertake analytical work for State or local pretreatment programs.

In addition, EPA has agreed to work with the Association of State and Interstate Water Pollution Control Agencies (ASIWPCA) and the Association of Metropolitan Sewerage Agencies (AMSA) to determine whether the development of common reporting and other formats, combined with common contracting out of associated activities, would produce a sufficient resource savings for EPA, States and municipalities to warrant such an effort. Finally, we have also agreed to consider suggestions from ASIWPCA and AMSA regarding modifications to the existing pretreatment regulations to allow increased flexibility for States and cities in designing their pretreatment programs. Such flexibility might include provisions allowing States and cities to propose procedures which are equivalent to the procedures set forth in the pretreatment regulations.

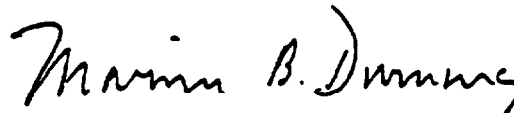
EPA Assistance

The Agency is attempting to assist in the implementation of the national pretreatment effort through several levels. First, federal grant funds will be available for both States and localities to assist in implementing this program. Grants under section 106 are the primary vehicle for assistance to States in developing and administering pretreatment programs. It is anticipated that funds provided through this mechanism will be increasingly available for pretreatment purposes as States assume responsibility for the management of construction grants activities and funds under section 205(g) of the Act are used in lieu of 106 grant funds for grant management purposes. Funding will be available to POTWs for developing pretreatment programs through section 201 construction grants. Uses for this funding include development of industrial waste ordinances, completion of industrial waste inventories of POTW systems, purchase of analytical equipment, and a limited amount of effluent sampling and analysis.

In addition, in recognition of the considerable scope and complexity of the pretreatment program, the Agency has attempted through workshops, guidance documents, and face-to-face meetings with State representatives to explain as concisely as possible the requirements and implications of the applicable regulations. In 1978 and 1979, the Agency conducted a series of 10 national seminars for State, local, and industrial representatives on the requirements of the General Pretreatment regulations. These seminars were held in each of the 10 Regional offices and attracted crowds ranging from 300 to 800 people. In the early part of 1979, EPA conducted a national seminar for State representatives in Washington, D.C.. At this seminar, updated guidance documents relating to the development and operation of approvable State

pretreatment programs were distributed to attendees. Beginning in March 1979, AMSA, in cooperation with EPA, will be presenting a series of four seminars directed at educating the AMSA membership on the national pretreatment program. In addition, during the latter part of 1979 and into 1980, EPA will be conducting local seminars throughout the States directed at assisting municipal permittees in developing approvable programs. Finally, EPA will be providing contractor support for State pretreatment activities in FY 1980.

I hope that by providing assistance to and increasing flexibility for States in the pretreatment program we can arrive at workable approaches to implementing this complex and very important component of the national water pollution control effort.



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cc: Regional Enforcement Division Directors
Regional Permit Branch Chiefs
Director, NEIC