

# **PRETREATMENT PROGRAM MODIFICATIONS**

## **REGION VIII GUIDANCE ON DEFINING AND PROCESSING APPROVED PROGRAM MODIFICATIONS**

**USEPA - Region VIII  
Industrial Pretreatment Program**

**June 15, 1999**

EPA promulgated modifications to pretreatment program modification procedures (40 CFR Section 403.18) on July 17, 1997 (62 FR 38406). This regulation also modified other Sections of 40 CFR Part 403 that relate to approved POTW pretreatment program modifications. The proposed regulations were public noticed on July 30, 1996 (61 FR 39804). This Guidance summarizes those changes and provides guidance to Approval Authorities and Control Authorities on implementation of the modified rules.

In general, the modified regulation revised what types of program changes are considered to be substantial, how public notices are to be performed, and a new procedure for non-substantial modifications.

### **SUBSTANTIAL MODIFICATIONS**

The following program changes are considered substantial modifications:

- Modifications that relax POTW legal authorities unless the modifications directly reflect revisions to Part 403;
- Modifications that relax local limits, except modifications of pH to the pH 5 minimum or reallocations of MAILs;
- Changes to the type or form of control mechanism used by the POTW for SIUs (e.g. order vs permit);
- A decrease in the frequency of self-monitoring or reporting for industrial users (general policy or approved program);
- A decrease in the frequency of industrial user inspections or sampling by the POTW (general policy or

approved program);

- Changes to the POTW's confidentiality procedures;
- Any other modification that the Approval Authority deems substantial.

All substantial modifications shall be submitted to the Approval Authority. The submittal should include all of the following:

1. A statement of basis for the proposed modification;
2. An attorney's statement confirming that the modified legal authority will comply with the requirements of local law, including complying with state and local law, regarding review and adoption by the Control Authority of the new/modified legal authority. The attorney's statement shall also confirm that the changes will not result in the POTW being in violation of its NPDES permit;
3. A copy of the draft legal authority that shows additions (by means of **CAPITALIZATION AND BOLDING** and deletions by means of ~~STRIKETHROUGHS AND BOLDING~~ at a minimum;
4. A copy of the draft legal authority showing all changes as they will look in final format;
5. A copy of the new forms/procedures affected by this modification;
6. Any other documentation required by the Approval Authority.

Substantial modifications shall be public noticed for comment in a paper of general circulation. No further public notice is required if the original public notice provides for only one public notice **AND** no comments are received **AND** the requested modification can be approved without change. The public notice may be performed by the POTW if the Approval

Authority agrees **AND** the public notice language is approved by the Approval Authority. The decision on what party will perform the actual public notice is decided by the Approval Authority. The Approval Authority is responsible for all public notices in any case.

#### **NON-SUBSTANTIAL MODIFICATIONS**

Non-substantial modifications include changes to the approved program and legal authority not defined as substantial modifications. Region VIII requires that an attorney's statement be prepared and submitted for any non-substantial modification involving a change to a Pretreatment Standard, excluding a change that mirrors a change in the Federal regulations.

When requesting a non-substantial modification, the approved program should submit to the Approval Authority the same documents listed above for substantial modifications, unless otherwise directed. The POTW shall submit the non-substantial modifications at least 45 days prior to implementation by the POTW. The submittal should be sent by certified mail to ensure that the 45 day requirement is met. POTWs are discouraged from sending in multiple non-substantial modifications. It is strongly recommended that non-substantial modifications be grouped or combined into a single request. In addition, non-substantial modifications may be submitted as a part of a substantial modification request.

The Approval Authority shall review and approve/disapprove the non-substantial modification request within 45 days. Within the 45 days, the Approval Authority may request revisions to or additional information in order to process a modification request. Upon receipt by the Approval Authority of the requested information, the 45 day clock shall begin.

Alternatively, the Approval Authority may disapprove the modification request until additional information is submitted or revisions to the original request are made.

If the Approval Authority does not notify the POTW within 45 days to approve or disapprove the modification request, or request additional information or revision, or that the modification is deemed to be substantial, the POTW may implement the modification after 45 days.

All substantial and non-substantial modifications approved in accordance with 40 CFR Section 403.18 become enforceable conditions of the POTWs NPDES permit (40 CFR Section 122.63(g)).