

PROCEDURE FOR A POTW PRETREATMENT PROGRAM TO REQUIRE AND APPROVE CHANGES TO OUTSIDE JURISDICTION LEGAL AUTHORITIES

USEPA, Region VIII
Industrial Pretreatment Program

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The Approval Authority (EPA or the delegated state) approves POTW pretreatment programs to control the discharge from all industrial users connected to the POTW. The POTW is deemed the Control Authority. Many Control Authorities with approved pretreatment programs have other jurisdictions discharging wastewater to their POTWs. The Approval Authority specifically delegates pretreatment program responsibility to a Control Authority and includes these requirements in the Control Authority's NPDES permit. The Control Authority may be required to develop inter-jurisdictional agreements with other cities, districts, etc. that discharge wastewater to the Control Authority's POTW. While the Control Authority is solely responsible to the Approval Authority for all aspects of the pretreatment program, the outside jurisdiction may be responsible to the Control Authority for aspects of the pretreatment program. An inter-jurisdictional agreement may require that: (a) the approved POTW pretreatment program performs all pretreatment duties in the outside jurisdiction's service area; (b) the outside jurisdiction performs all of the POTW pretreatment program functions for the Control Authority, or; (c) each party performs a portion of the pretreatment program activities. In all cases, the Control Authority is the responsible entity to the Approval Authority for pretreatment implementation and enforcement. Where the Control Authority delegates pretreatment program functions to an outside jurisdiction, through a written inter-jurisdictional agreement, the Control Authority must ensure that the outside jurisdiction has a legal authority equivalent to its own approved pretreatment program for those delegated functions.

Control Authority Responsibilities/Procedures

The Control Authority has the responsibility to ensure that its legal authority and inter-jurisdictional agreements are in-place to ensure compliance with NPDES permit requirements for pretreatment program implementation and enforcement. Specifically, the Control Authority must ensure that permitting,

inspections, sampling and enforcement authorities are clearly established to cover all Industrial Users on the sewerage system.

When an Approval Authority regulation is added or revised, most approved POTW pretreatment programs will have to modify their legal authority to incorporate the changes. If the modification to the POTW legal authority mirrors that of the Approval Authority's, then the modification may be processed as a non-substantial modification since due process was already afforded in the Approval Authority's adoption. If the local legal authority modification does not mirror the change to the Approval Authority's, the change may be "significant" as defined by 40 CFR Section 403.18 and public notice of the changes must be performed by the Approval Authority prior to being incorporated as part of the program by the POTW.

Although most approved programs can incorporate changes relatively easily into their legal authority, the POTW may have a harder time encouraging outside jurisdictions to do the same. The responsibility of the POTW to implement and enforce its approved program makes adoption of changes by outside jurisdictions a high priority for the approved program, when required.

The following items should be followed by the Control Authority when making changes to its legal authority and program:

1. The Control Authority shall have all outside jurisdictions draft any necessary changes to their respective legal authorities ***prior*** to submitting the Control Authority modifications for Approval Authority review/public notice. This is specifically for the program areas where the outside jurisdiction has been delegated authority or takes actions on its own, based upon the Control Authority's approved program (includes inter-jurisdictional agreements).
2. The Control Authority shall include in its modification request, a statement certifying that all changes that are needed in outside jurisdiction legal authorities have been reviewed and shall be made concurrently with the Approval Authority action.
3. All modifications become effective upon Approval Authority

approval, (i.e. they are incorporated into the NPDES permit as enforceable provisions).

4. The Control Authority is responsible for ensuring that all outside jurisdiction legal authorities are up-to-date and that all modifications are adopted by outside legal authorities, as required. The Control Authority may want to include a requirement in all inter-jurisdictional agreements that require the outside jurisdictions modify their legal authority upon request.
5. Where any pretreatment program activity has been delegated to an outside jurisdiction, the Control Authority shall ensure that the outside jurisdiction's legal authority is equivalent to the Control Authority's. An outside jurisdiction shall not implement and enforce a Pretreatment Standard or requirement where the outside jurisdiction does not have adequate legal authority to do so. The approved program must be implemented and enforced as the minimum baseline in all jurisdictions.
6. The Control Authority shall complete and submit modifications as required by the latest version of: "Region VIII Policy on Defining and Processing Approved Program Modifications".

Approval Authority Responsibilities/Procedures

Substantial modifications must be public noticed for at least 30 days by the Approval Authority to provide affected industrial users and other interested parties an opportunity to comment. The proposed modification may be approved without further public notice if no significant comments were received and no changes were made to the submitted modification during the public comment period.

The proposed change to an approved program will be public noticed in a paper of general circulation in the jurisdiction in which all the affected industrial users are located. EPA believes that this provides the industrial user with an adequate opportunity to comment on the proposed changes.

The Approval Authority shall:

1. Ensure that the Control Authority makes all changes to its legal authority to ensure consistency with Federal pretreatment requirements.
2. Ensure that the public notice for substantial modifications specifies all outside jurisdictions in the service area of the POTW. The PN will specifically notice that IUs located in any of the jurisdictions may be affected.
3. Process and approve all modification requests.

