

Missouri Clean Water Commission Meeting  
Department of Natural Resources  
Lewis and Clark State Office Building  
LaCharrette/Nightingale Creek Conference Rooms  
1101 Riverside Drive  
Jefferson City, Missouri

November 2, 2011

**Request a Finding of Necessity for the Proposed New Rule  
10 CSR 20-6.100 – General Pretreatment Regulation**

**Issue:** A Regulatory Impact Report (RIR) on the proposed General Pretreatment Regulation was on public notice May 27 through July 26. The Water Protection Program anticipates filing this proposed new rule, 10 CSR 20-6.100, following this commission meeting.

**Background:** Pretreatment regulations apply to pollutants from industrial sources which are subject to National Pretreatment Standards and are discharged to a Publicly Owned Treatment Works (POTW). On October 14, 2005, the U.S. Environmental Protection Agency (EPA) adopted modifications to their General Pretreatment Regulations, 40 CFR Part 403, as published in 70 FR 60191-60198. Some provisions of the revised regulation are more restrictive, and others reduce the regulatory burden on industries and POTWs.

The Water Protection Program proposes to rescind the State of Missouri's existing General Pretreatment Regulations, 10 CSR 20-6.100, and to incorporate by reference the EPA's General Pretreatment Regulation, 40 CFR 403 in a new rule, with some modifications.

Two comments were received on the RIR. This rule will result in cost savings, for both public and private entities. There will be a one-time cost to the city to revise their pretreatment ordinance to implement the rule changes. And, there will be a one-time cost to the WPP to review the ordinance changes.

This rulemaking is necessary to incorporate both the restrictive and less restrictive provisions as required under the current federal regulation.

**Recommended Action:** Staff recommends the Commission approve a finding of necessity for this proposed new rule.

**Suggested Motion Language:** "The Commission approves the finding of necessity for the proposed new rule, 10 CSR 20-6.100."

**List of Attachments:**

- Proposed New Rule
- Proposed Rescission
- Public and Private Fiscal Notes
- Regulatory Impact Report, Comments and Responses
- Rulemaking Report and Schedule



Title 10—DEPARTMENT OF  
NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 6—Permits

**PROPOSED RULE**

**10 CSR 20-6.100 General Pretreatment Regulation**

*PURPOSE: The Missouri Department of Natural Resources proposes a new rule to the State of Missouri's existing General Pretreatment Regulation, 10 CSR 20-6.100. The rule will incorporate by reference the Environmental Protection Agency's General Pretreatment Regulation, 40 CFR Part 403. This substantive new rule will support the implementation and enforcement of substantive federal requirements that include both restrictions and a reduced regulatory burden on industries and Publicly Operated Treatment Works (POTWs).*

*PUBLISHER'S NOTE: The Secretary of State has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.*

(1) Provisions incorporated.

(A) The provisions of the *General Pretreatment Regulations for Existing and New Sources of Pollution*, 40 CFR §403, as in effect January 1, 2011, are hereby adopted and incorporated by reference subject to the additions, modifications, and substitutions set forth in 10 CSR 20-6.100 (3) through (13).

(B) The provisions of the following rules, as in effect January 1, 2011, are hereby adopted and incorporated by reference. The rules in this list refer to only the rules that contain pretreatment standards or limitations for industrial facilities that discharge to the local publically owned treatment works.

- 40 CFR §406 Grain Mills Point Source Category
- 40 CFR §413 Electroplating Point Source Category
- 40 CFR §414 Organic Chemicals, Plastics, and Synthetic Fibers
- 40 CFR §415 Inorganic Chemicals Manufacturing Point Source Category
- 40 CFR §417 Soap and Detergent Manufacturing Point Source Category
- 40 CFR §418 Fertilizer Manufacturing Point Source Category
- 40 CFR §419 Petroleum Refining Point Source Category
- 40 CFR §420 Iron and Steel Manufacturing Point Source Category
- 40 CFR §421 Nonferrous Metals Manufacturing Point Source Category

- 40 CFR §423 Steam Electric Power Generating Point Source Category
- 40 CFR §425 Leather Tanning and Finishing Point Source Category
- 40 CFR §426 Glass Manufacturing Point Source Category
- 40 CFR §428 Rubber Manufacturing Point Source Category
- 40 CFR §429 Timber Products Processing Point Source Category
- 40 CFR §430 The Pulp, Paper, and Paperboard Point Source Category
- 40 CFR §433 Metal Finishing Point Source Category
- 40 CFR §439 Pharmaceutical Manufacturing Point Source Category
- 40 CFR §443 Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving And Roofing Materials (Tars and Asphalt) Point Source Category
- 40 CFR §446 Paint Formulating Point Source Category
- 40 CFR §447 Ink Formulating Point Source Category
- 40 CFR §455 Pesticide Chemicals
- 40 CFR §458 Carbon Black Manufacturing Point Source Category
- 40 CFR §461 Battery Manufacturing Point Source Category
- 40 CFR §464 Metal Molding and Casting Point Source Category
- 40 CFR §465 Coil Coating Point Source Category
- 40 CFR §466 Porcelain Enameling Point Source Category
- 40 CFR §467 Aluminum Forming Point Source Category
- 40 CFR §468 Copper Forming Point Source Category
- 40 CFR §469 Electrical and Electronic Components Point Source Category
- 40 CFR §471 Nonferrous Metals Forming and Metal Powders Point Source Category

Note: 40 CFR §412 Concentrated Animal Feeding Operations (CAFO) Point Source Category has been adopted at 10 CSR 20-6.300(4)(C).

- (2) Federal statutes and regulations that are cited in 40 CFR §403 through 471 that are not specifically adopted by reference shall be used as guidelines in interpreting the Federal regulations in Parts 403 through 471.
- (3) The “director” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of Staff of the Missouri Clean Water Commission or that person’s delegated representative.
- (4) In the provisions of 40 CFR §403, for all occurrences of the citation to 40 CFR §136, substitute the citation 10 CSR 20-7.015(9)(A).
- (5) In lieu of 40 CFR §403.4, the following shall apply:  
Local Law. The provisions of 10 CSR 20-6.100 shall not supersede any pretreatment requirements, including any standards or prohibitions established by any local law, as long as the local requirements are not less stringent than any set forth in the pretreatment requirements of 10 CSR 20-6.100 or other requirements or prohibitions established by the state or federal government.
- (6) State Enforcement Actions. In lieu of 40 CFR §403.5(e), the following shall apply:

If, within thirty (30) days after notice of an interference or pass-through violation has been sent by the state to the POTW and to persons or groups who have requested the notice, the POTW fails to commence appropriate enforcement action to correct the violation, the state may take appropriate enforcement action.

- (7) Substitute “Missouri Clean Water Commission” for “Regional Administrator” in section 40 CFR §403.6(a)(5).
- (8) Substitute “Missouri Clean Water Law, Chapter 644, Water Pollution, Powers and Duties of the Commission—rules, procedure. Section 644.026(13), RSMo,” for “section 402(b)(1)(C) of the Act” in 40 CFR 403.8(e).
- (9) Substitute “the Missouri Hazardous Waste Management Law, Chapter 260, Environmental Control, Sections 260.350 to 260.430 RSMo and the Missouri Solid Waste Management Law, Chapter 260, Environmental Control, Sections 260.200 to 260.345, RSMo” for “subtitles C and D of the Resource Conservation and Recovery Act.” in 40 CFR §403.8(f)(2)(iii).
- (10) Substitute “Missouri Department of Natural Resources” for the term “agency” in the section 40 CFR §403.16.
- (11) Confidentiality.
  - (A) In lieu of 40 CFR §403.14(a), the following shall apply:  
Authorities. Any claim for confidentiality to the control authority must be in accordance with the Missouri Sunshine Law, Chapter 610, Governmental Bodies and Records, Sections 610.010 through 610.028, RSMo, inclusive. If no claim is made at the time of submission, the control authority may make the information available to the public without further notice.
  - (B) In lieu of 40 CFR §403.14 (b), the following shall apply:  
Effluent Data. Information and data provided to the control authority pursuant to this part which is effluent data shall be available to the public without restriction.
  - (C) The provisions of 40 CFR §403.14(c) are omitted.
- (12) Pretreatment Authorization.

Where the director is also the control authority, the director may issue a pretreatment authorization to a categorical industrial user which discharges industrial process wastewater to a Publicly Owned Treatment Works (POTW). This authorization will be used to set forth the conditions governing the user’s discharge to the POTW, where the POTW does not have an approved pretreatment program or the POTW has not issued discharge permits that meet the requirements set forth in 10 CSR 20-6.100(1) and (2).
- (13) Judicial Relief.
  - (A) The director shall have authority to seek judicial relief pursuant to Missouri Clean Water Law, Chapter 644, Water Pollution, Unlawful acts prohibited—false statements and negligent acts prohibited—penalties—exception, Section 644.076, RSMo for noncompliance by industrial users when the POTW has failed to act or has acted to seek

such relief but has sought judicial relief which the director finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision.

(B) The director shall have authority to seek judicial relief pursuant to the Missouri Clean Water Law, Chapter 644, Water Pollution, Unlawful acts prohibited—false statements and negligent acts prohibited—penalties—exception, Section 644.076, RSMo for noncompliance by industrial users where the director is the control authority.

The Environmental Protection Agency federal regulations, 40 CFR §403 through 471, inclusive, that are in effect as of January 1, 2011, herein incorporated by reference, are available by writing to the Office of the Federal Register and the National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954. This rule does not incorporate any subsequent amendments or additions. The substitution of terms set forth shall apply in this rule in addition to any other modifications set forth in this rule.

*AUTHORITY: section 644.041, RSMo 1994. \* Original rule filed February 1, 1988, effective June 13, 1988. Amended Filed March 1, 1996, effective November 30, 1996. Amended: Filed April 16, 2012, effective June 30, 2012.*

*\*Original authority: 644.041, RSMo 1972, amended 1973, 1987.*

*Public Cost: This rule requires a one time cost of compliance by the Missouri Department of Natural Resources and the 43 cities or political subdivisions with pretreatment ordinances, of \$115,136, in the aggregate, over a five year period from 2013 through 2017. Cost savings to the cities occur after the adoption, implementation and approval of the pretreatment ordinances.*

*Private Cost: This proposed rule will not cost private entities more than \$500.00 in the aggregate. Cost savings occur over the life of the rule. Cost savings are realized by the affected private entities after the ordinances are implemented.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Walter Fett, P.O. Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through e-mail to [Walter.Fett@dnr.mo.gov](mailto:Walter.Fett@dnr.mo.gov). Public comments must be received by March 14, 2012. The Missouri Clean Water Commission will hold a public hearing at 9 A.M., March 7, 2012, at the Lewis and Clark State Office Building, Nightingale Creek Conference Room, 1 East, 1101 Riverside Drive, Jefferson City, Missouri 65102.*

**Title 10—DEPARTMENT OF  
NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 6—Permits**

**PROPOSED RECISSION**

**10 CSR 20-6.100 General Pretreatment Regulation** This rulemaking proposes a rescission of the existing general pretreatment regulation. Substantive federal changes to general pretreatment regulations require this rescission. A new proposed rule in place of this rescission will incorporate by reference the Environmental Protection Agency's federal regulation 40 CFR Part 403. The proposed rule for general pretreatment will allow for continued implementation and enforcement of the federal requirements under the current delegation agreement with the EPA.

*AUTHORITY: section 644.041, RSMo 1994. \* Original rule filed Feb. 1, 1988, effective June 13, 1988. Amended: Filed March 1, 1996, effective Nov. 30, 1996.*

*\*Original authority 1972, amended 1973, 1987.*

*[10 CSR 20-6.100 General Pretreatment Regulation*

*PURPOSE: This rule sets forth procedures to prevent the introduction of pollutants into publicly-owned treatment works which will interfere with the operation of publicly-owned treatment works, including interference with its use or disposal of municipal sludge, to prevent the introduction of pollutants into publicly-owned treatment works which will pass through the treatment works or otherwise be incompatible with these works, and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.*

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.*

*(1) Applicability. This rule applies to--*

*(A) Pollutants from nondomestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into publicly-owned treatment works (POTWs) as defined in section (2), POTWs which receive wastewater from sources subject to pretreatment standards and any new or existing source subject to pretreatment standards; and*

*(B) Pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant. (Sources that discharge to treatment facilities regulated by the Missouri Public Service Commission are subject to the pretreatment standards and the provisions of this rule.)*

*(2) Definitions.*

*(A) Except as discussed in this rule, the general definitions, abbreviations and methods of analysis set forth in section 644.016, RSMo and 10 CSR 20-2.010 shall apply to this rule.*

*(B) The term Act means Federal Water Pollution Control Act, also known as the Clean Water Act 33 U.S.C. 1251.*

*(C) The term approved POTW pretreatment program, program or POTW pretreatment program means a program administered by a POTW that meets the criteria established in sections (7) and (8) and which has been approved by the director in accordance with section (9) of this rule.*

*(D) The term director means the executive secretary of the Missouri Clean Water Commission or that person's delegated representative.*

*(E) The term indirect discharge or discharge means the introduction of pollutants into a POTW from any nondomestic source regulated under the Missouri Clean Water Law.*

*(F) The term industrial user or user means a source of indirect discharge.*

*(G) The term interference means a discharge which, alone or in conjunction with a discharge(s) from other sources--*

*1. Both inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and*

*2. Therefore is a cause of a violation of any requirement of the POTW's National Pollutant Discharge Elimination System (NPDES) permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and corresponding regulations or permits issued under the law or regulations (or more stringent local laws): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act and the Toxic Substances Control Act.*

*(H) The term national pretreatment standard, pretreatment standard or standard means any regulation containing pollutant discharge limits promulgated by the Missouri Clean Water Commission in accordance with section 644.026(16), RSMo, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to section (4) of this rule.*

*(I) New Source.*

*1. The term new source means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section provided that--*

*A. The building, structure or facility or installation is constructed at a site at which no other source is located; or*

*B. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or*

*C. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.*

*(I) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subparagraph (2)(I)1.B. or (2)(I)1.C. of this rule but otherwise alters, replaces, or adds to existing process or production equipment.*

*(II) Construction of a new source as defined under this part has commenced if the owner or operator has--*

*(a) Begun, or caused to begin as part of a continuous on-site construction program--*

*I. Any placement, assembly, or installation of facilities or equipment;*

*II. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or*

*III. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this item.*

*(J) The term pass through means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge(s) from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).*

*(K) The term POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.*

*(L) The term pretreatment means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by subsection (5)(D). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with subsection (5)(E).*

*(M) The term pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.*

*(N) The term regional administrator means the appropriate Environmental Protection Agency (EPA) Regional Administrator.*

*(O) The term submission means a request by a POTW for approval of a pretreatment program to the director, or a request by a POTW to the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.*

*(P) Significant Industrial User.*

*1. Except as provided in paragraph (2)(P)2. of this rule, the term significant industrial user means--*

*A. All industrial users subject to categorical pretreatment standards under section (5) and 40 CFR chapter I, subchapter N; and*

*B. Any other industrial user that discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of a POTW treatment plant; or is designated as such by the control authority on the basis that the industrial user has a*

*reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement; and*

*2. Upon a finding that an industrial user meeting the criteria in subparagraph (2)(P)1.B. of this rule has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with paragraph (7)(E)6., determine that such industrial user is not a significant industrial user.*

*(3) Local Law. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in pretreatment standards or any other requirements or prohibitions established under the Missouri Clean Water Law or this rule.*

*(4) Pretreatment Standards.*

*(A) Prohibited Discharges.*

*1. General prohibitions. A user may not introduce into a POTW any pollutant(s) which cause pass-through or interference. The general prohibitions and the specific prohibitions in subsection (4)(B) of this rule apply to each user introducing pollutants into a POTW whether or not the user is subject to other pretreatment standards or any national or local pretreatment requirements.*

*2. Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (4)(A)1. of this rule and the specific prohibitions in paragraphs (4)(B)3. 5. of this rule where the user can demonstrate that-*

*A. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge(s) from other sources, would cause pass-through or interference; and*

*B. A local limit designed to prevent pass-through, interference or both was developed in accordance with subsection (4)(C) of this rule for each pollutant in the user's discharge that caused pass-through or interference and the user was in compliance with each local limit directly prior to and during the pass-through or interference; or*

*C. If a local limit designed to prevent pass-through, interference or both has not been developed in accordance with subsection (4)(C) of this rule for the pollutant(s) that caused the pass-through or interference, the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.*

*(B) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:*

*1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty degrees Fahrenheit (140°F) or sixty degrees Centigrade (60°C) using the test methods specified in 10 CSR 25-4.261;*

*2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the POTW is specifically designed to accommodate the discharges;*

*3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;*

*4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;*

5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty degrees Celsius (40°C);

6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through;

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in such quantities that may cause acute worker health and safety problems; and

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

(C) When Specific Limits Shall Be Developed by POTW.

1. Each POTW developing a POTW pretreatment program pursuant to section (7) shall develop and enforce specific limits to implement the prohibitions listed in paragraph (4)(A)1. and subsection (4)(B) of this rule.

2. All other POTWs, in cases where pollutants contributed by the user(s) shall result in interference or pass-through, and the violation is likely to recur, develop and enforce specific effluent limits for the industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

3. Specific limits shall be developed by the control authority (as defined in subsection (10)(A)) for any temporary discharge of wastewaters resulting from the cleanup or closure of a hazardous waste site under the authority of the Missouri Hazardous Waste Management Law, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the Toxic Substances Control Act (TSCA).

4. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested the notice and an opportunity to respond.

(D) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (4)(C), these limits shall be deemed pretreatment standards for the purposes of the Missouri Clean Water Law.

(E) State Enforcement Actions. If, within thirty (30) days after notice of an interference or pass-through violation has been sent by the state to the POTW and to persons or groups who have requested the notice, the POTW fails to commence appropriate enforcement action to correct the violation, the state may take appropriate enforcement action.

(5) Pretreatment Standards.

(A) Categorical Standards. Pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N as revised on July 1, 1995. These standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in section (4) of this rule and are incorporated by reference.

(B) Category Determination Request.

1. Request deadline. Within sixty (60) days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or POTW may request that the director provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user shall request this certification prior to commencing discharge from the added or changed processes or operation. A new source

shall request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of this submission. Within thirty (30) days of notification, the industrial user may provide written comments on the POTW submission to the director.

2. Contents of request. Each request shall contain a statement--

A. Describing which subcategories might be applicable; and

B. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

3. Deficient requests. The director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the director that their requests are deficient and, unless the time period is extended, will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within an extended period allowed by the director, the request for a determination shall be denied.

4. Final decision.

A. When the director receives a submittal, s/he, after determining that it contains all of the information required by paragraph (5)(B)2., will consider the submission, any additional evidence that may have been requested and any other available information relevant to the request. The director will then make a written determination of the applicable subcategory and state the reasons for the determination.

B. The director shall send a copy of the determination to the affected industrial user and the POTW.

5. Requests for hearing, legal decision or both. Within thirty (30) days following the date of receipt of notice of the final determination as provided for by subparagraph (5)(B)4.B. of this rule, the requester may submit a petition to reconsider or contest the decision to the Missouri Clean Water Commission in accordance with procedures contained in the Missouri Clean Water Law.

(C) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N as revised on July 1, 1995. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 644.061, RSMo shall be required to meet compliance dates set forth in any applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in subsection (2)(K). New sources shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), new sources must meet all applicable pretreatment standards.

(D) *Concentration and Mass Limits.*

1. Pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local or state authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

2. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

3. A control authority calculating equivalent mass-per-day limitations under paragraph (5)(D)2. of this rule shall calculate such limitations by multiplying the limits in the standard by the industrial user's average rate of production. The average rate of production shall be based not upon the designed production capacity, but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

4. A control authority calculating equivalent concentration limitations under paragraph (5)(D)2. of this rule shall calculate such limitations by dividing the mass limitations derived under paragraph (5)(D)3. of this rule by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year.

5. Equivalent limitations calculated in accordance with paragraphs (5)(D)3. and 4. of this rule shall be deemed pretreatment standards for the purposes of section 307(d) of the Act and this section. Industrial users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

6. Many categorical pretreatment standards specify one (1) limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four (4)-day average limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both types of equivalent limitations.

7. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change shall be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

(E) Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable categorical pretreatment standard or requirement, no industrial user shall ever increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical pretreatment standard or requirement. The control authority (as defined in subsection (10)(A)) may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or in other cases where the imposition of mass limitations is appropriate.

(F) Combined Wastestream Formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits

may be derived by the control authority, as defined in subsection (10)(A), or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical pretreatment standard(s) and an alternative consecutive sampling day average value using the average monthly value(s) specified in the appropriate categorical pretreatment standard(s). The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

1. *Alternative limit calculation.* For purposes of these formulas, the average daily flow means a reasonable measure of the daily flow for a thirty (30)-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

*Alternative Concentration Limit:*

where

*CT*=the alternative concentration limit for the combined wastestream;

*C<sub>i</sub>*=the categorical pretreatment standard concentration limit for a pollutant in the regulated stream *i*;

*F<sub>i</sub>* = the average daily flow (at least a thirty (30)-day average) of stream *i* to the extent that it is regulated for such pollutant.

*FD* = the average daily flow (at least a thirty (30)-day average) from:

A. Boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial users regulated process wastestream(s) will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; or

B. Sanitary wastestreams where these streams are not regulated by a categorical pretreatment standard; or

C. From any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one (1) or more of the following reasons (see Appendix D of 40 CFR part 403):

(I) The pollutants of concern are not detectable in the effluent from the industrial user;

(II) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(III) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or

(IV) The wastestream contains only pollutants which are compatible with the POTW;

*FT = the average daily flow (at least a thirty (30)-day average) through the combined treatment facility (includes  $F_i$ ,  $FD$  and unregulated streams); and*  
*N = the total number of regulated streams.*

*Alternative Mass Limit:*

*where*

*MT = the alternative mass limit for a pollutant in the combined wastestream;*

*M<sub>i</sub> = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production);*

*F<sub>i</sub> = the average flow (at least a thirty (30)-day average) of stream i to the extent that it is regulated for such pollutant;*

*FD = the average daily flow (at least a thirty (30)-day average)--*

*A. From boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial users regulated process wastestream(s) will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; or*

*B. Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or*

*C. From any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one (I) or more of the following reasons (see Appendix D of 40 CFR part 403):*

*(I) The pollutants of concern are not detectable in the effluent from the industrial user;*

*(II) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;*

*(III) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or*

*(IV) The wastestream contains only pollutants which are compatible with the POTW;*

*FT = the average flow (at least a thirty (30)-day average) through the combined treatment facility (includes  $F_i$ ,  $FD$  and unregulated streams); and*

*N = the total number of regulated streams.*

*2. Alternate limits below detection limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants. If a calculated limit is below the detection limit, the control authority must require the regulated process wastestream to be segregated or appropriate flow reductions to be implemented to allow detection.*

*3. Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of subsection (10)(G) of this regulation.*

*4. Choice of monitoring location. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the*

*industrial user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring point(s) shall not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.*

*(6) Reserved.*

*(7) POTW Pretreatment Programs.*

*(A) POTWs Required to Develop a Pretreatment Program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (5 mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the state exercises its option to assume local responsibilities as provided for in 40 CFR 403.10(e). The director may require that a POTW with a design flow of five (5) mgd or less develop a POTW pretreatment program if s/he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent interference with the POTW or pass-through.*

*(B) Incorporation of Approved Programs in Permits. The POTW's NPDES permit will be reissued or modified by the state to incorporate the approved program conditions as enforceable conditions of the permit. The modification of a POTW's NPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in section (9) shall be deemed a minor permit modification.*

*(C) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule for the approval of the legal authority, procedures and funding required by subsection (7)(E).*

*(D) Cause for Reissuance or Modification of Permits. Under the authority of section 644.026(13), RSMo, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to--*

- 1. Put the POTW on a compliance schedule for the development of POTW pretreatment program where the addition of pollutants into the POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health or the environment;*
- 2. Coordinate the issuance of a section 201 construction grant with the incorporation into the permit of a compliance schedule for POTW pretreatment program;*
- 3. Incorporate a modification of the permit approved under 10 CSR 20-6.010;*
- 4. Incorporate an approved POTW pretreatment program in the POTW permit; or*
- 5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.*

*(E) POTW Pretreatment Program Requirements. A POTW pretreatment program shall meet the following requirements:*

- 1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the*

requirements of sections 307(b) and (c) and 402(b)(8) of the Act. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to--

A. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to exceed its NPDES permit limits;

B. Require compliance with applicable pretreatment standards and requirements by industrial users;

C. Control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under subsection (3)(P), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms shall be enforceable and contain, at a minimum, the following conditions:

(I) Statement of duration (in no case more than five (5) years);

(II) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(III) Effluent limits based on applicable general pretreatment standards in section (4) of this rule, categorical pretreatment standards, local limits, and state and local law;

(IV) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and state and local law; and

(V) Statement of applicable civil and criminal penalties for any violation of pretreatment standards and requirements, and any applicable compliance schedule;

D. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements and the submission of all notices and self-monitoring reports from industrial users as is necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including, but not limited to, the reports required in section (10);

E. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection (10)(M) to assure compliance with pretreatment standards. This authority shall be at least as extensive as the authority provided under section 308 of the Act;

F. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of one thousand dollars (\$1,000) a day for each violation by industrial users of pretreatment standards and requirements unless otherwise limited by state law.

*(I) Pretreatment requirements which will be enforced through the remedies set forth in subsection (7)(F) of this rule shall include, but not be limited to, the duty to allow or carry out inspections, entry or monitoring activities; any rules or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief pursuant to section 644.076, RSMo for noncompliance by industrial users when the POTW has failed to act or has acted to seek such relief but has sought judicial relief which the director finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision; and*

*G. Comply with the confidentiality requirements set forth in section (12);*

*2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to--*

*A. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the director upon request;*

*B. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subparagraph (7)(E)2.A. This information shall be made available to the director upon request;*

*C. Notify industrial users identified under subparagraph (7)(E)2.A. of applicable pretreatment standards and any applicable requirements under the Missouri Hazardous Waste Management Law. Within thirty (30) days of approval, pursuant to paragraph (7)(E)6. of this rule, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result.*

*D. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in section (10);*

*E. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two (2) years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge. The results of these activities shall be made available to the director upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following:*

*(I) Description of discharge practices, including nonroutine batch discharges;*

*(II) Description of stored chemicals;*

*(III) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under subsection (4)(B) of this rule with procedures for follow-up written notification within five (5) days; and*

*(IV) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment necessary for emergency response;*

*F. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in reports and notices required under section (10), or indicated by analysis, inspection and surveillance activities described in subparagraph (7)(E)2.E. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and*

*G. Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one(1) or more of the following criteria:*

*(I) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6)-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;*

*(II) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6)-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);*

*(III) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);*

*(IV) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under part (7)(E)1.F. (II) of this rule to halt or prevent such a discharge;*

*(V) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;*

*(VI) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90)-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;*

*(VII) Failure to accurately report noncompliance; and*

*(VIII) Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program;*

3. *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (7)(E)1. and 2. In some limited circumstances, funding and personnel may be delayed where--

A. *The POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section; and*

B. *A limited aspect of the program does not need to be implemented immediately (see subsection (8)(B)).*

4. *Local limits.* The POTW shall develop local limits as required in paragraph (7)(C)1. of this rule or demonstrate that they are not necessary;

5. *The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum--*

A. *Describe how the POTW will investigate instances of noncompliance;*

B. *Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;*

C. *Identify (by title) the official(s) responsible for each type of response; and*

D. *Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in paragraphs (7)(E)1. and 2. of this rule; and*

6. *The POTW shall prepare a list of its industrial users meeting the criteria in paragraph (2)(P)1. The list shall identify the criteria in paragraph (2)(P)1. applicable to each industrial user and, for industrial users meeting the criteria in paragraph (2)(P)2., shall also indicate whether the POTW has made a determination pursuant to paragraph (2)(P)2. that such industrial user should not be considered a significant industrial user. This list, and any subsequent modifications thereto, shall be submitted to the director as a nonsubstantial program modification pursuant to paragraph (16)(B)2. Discretionary designations or redesignation by the control authority shall be deemed to be approved by the director ninety (90) days after submission of the list or modifications thereto, unless the director determines that the modification is in fact a substantial modification.*

(F) *Tributary POTWs With Pretreatment Programs.* When one (1) POTW contributes wastewater to the treatment facilities of another POTW and both have approved pretreatment programs, the tributary POTW shall be responsible for fulfilling all requirements contained in subsection (7)(E) of this rule within its jurisdiction. The receiving POTW shall be responsible for setting local limits at the point(s) of connection. The tributary POTW shall take the necessary steps to ensure that the limits established by the receiving POTW will be met and that industries meet categorical limitations. On an annual basis, the tributary POTW shall provide the receiving POTW technical information gathered during program implementation for any indirect discharges contributing wastewater to the receiving POTW. The content of the annual report and operating agreements shall be contained in a formal agreement between the POTWs. These formal agreements shall be adopted within nine (9) months (March 13, 1989) of the effective date of this regulation (June 13, 1988) and fully effective within one (1) year (June 13, 1989) of the effective date (June 13, 1988) for previously approved programs and at the time of approval for any new pretreatment programs.

(8) *POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards.*

(A) *Approval Request.* A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in paragraphs (8)(B)1. 4. of this rule. This description shall be submitted to the director who will make a determination on the request for program approval in accordance with the procedures described in section (9).

*(B) Contents of POTW Program Submission. The program description must contain the following information:*

*1. A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in section (7). This statement shall identify--*

*A. The provision of the legal authority under paragraph (7)(E)1. which provides the basis for each procedure under paragraph (7)(E)2.;*

*B. The manner in which the POTW will implement the program requirements set forth in section (7), including the means by which pretreatment standards will be applied to individual industrial users (by order, permit, ordinance, etc.); and*

*C. How the POTW intends to ensure compliance with pretreatment standards and requirements and to enforce them in the event of noncompliance by industrial users;*

*2. A copy of any statutes, ordinances, regulations, agreements or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising, and/or funding the POTW pretreatment program if approved;*

*3. A brief description (including organization charts) of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth;*

*4. A description of the funding levels and full- and part-time personnel available to implement the program; and*

*5. Written policies and procedures for implementing those activities described in paragraph (7)(E)2.*

*(C) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements set forth in subsection (8)(B) of this rule except that the requirements may be relaxed if the submission demonstrates that--*

*1. A limited aspect of the program does not need to be implemented immediately;*

*2. The POTW has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and*

*3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program may be modified or withdrawn.*

*(D) Director's Action. Any POTW requesting POTW pretreatment program approval shall submit to the director three (3) copies of the submission described in subsection (8)(B) of this rule. Upon a preliminary determination that the submission meets the requirements of subsection (8)(B) of this rule, the director will--*

*1. Notify the POTW that the submission has been received and is under review; and*

*2. Commence the public notice and evaluation procedures set forth in section (10).*

*(E) Notification Where Submission is Defective. If, after review of the submission as provided for in subsection (8)(D) of this rule, the director determines that the submission does not comply with the*

requirements of subsection (8)(B) or (C) of this rule, the director shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsection (8)(B) or (C) of this rule.

*(F) Consistency With Water Quality Management Plans.*

1. In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR 130 and 131 where the 208 plan includes management agency designations and addresses pretreatment in a manner consistent with 40 CFR 403. In order to assure consistency the director shall solicit the review and comment of the appropriate 208 planning agency during the public comment period provided for in subparagraph (9)(B)1.B. prior to approval or disapproval of the program.

2. Where no 208 plan has been approved or where a plan has been approved but lacks management agency designations does not address pretreatment in a manner consistent with this regulation or both, the director nevertheless shall solicit the review and comment of the appropriate 208 planning agency.

*(9) Approval Procedures for POTW Pretreatment Programs.* The following procedures shall be adopted in approving or denying requests for approval of POTW pretreatment programs:

*(A) Deadline for Review of Submission.* The director will have ninety (90) days from the date of public notice of any submission complying with requirements of subsection (8)(B) to review the submission. The director will review the submission to determine compliance with the requirements of subsections (7)(B) and (F). The director may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in subparagraph (9)(B)1.B. of this rule is extended beyond thirty (30) days or if a public hearing is held as provided for in paragraph (9)(B)2. of this rule. In no event, however, shall the time for evaluation of the submission exceed a total of one hundred eighty (180) days from the date of public notice of a submission meeting the requirements of subsection (8)(B);

*(B) Public Notice and Opportunity for Hearing.* Upon receipt of a submission the director shall commence its review. Within five (5) days after making a determination that a submission meets the requirements of subsection (8)(B), the director shall--

1. Issue a public notice of request for approval of the submission.

A. The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include mailing notices of the request for approval of the submission to designated 208 planning agencies, federal and state fish and wildlife resource agencies and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

B. The public notice shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

C. All written comments submitted during the thirty (30)-day comment period will be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

D. The POTW shall be required to publish a notice of the submission of the request for approval in the largest daily newspaper within the jurisdiction(s) served by the POTW; and

2. The director shall provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

A. This request for public hearing shall be filed within the thirty (30)-day (or extended) comment period described in subparagraph (8)(B)1.B. of this rule and shall indicate the interest of the person filing a request and the reasons why a hearing is warranted.

B. The director shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved.

C. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under subparagraph (8)(B)1.A. of this rule. In addition, notice of the hearing shall be sent to those persons requesting individual notice;

(C) Director's Decision. At the end of the thirty (30)-day (or extended) comment period and within the ninety (90)-day (or extended) period provided for in subsection (8)(A) of this rule, the director shall approve or deny the submission based upon the evaluation in subsection (8)(A) of this rule and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the director makes a determination to deny the request, the director shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the director may allow the requester additional time to bring the submission into compliance with applicable requirements;

(D) EPA Objection to Director's Decision. No POTW pretreatment program shall be approved by the director if following the thirty (30)-day (or extended) evaluation period provided for in subparagraph (8)(B)1.B. of this rule and any hearing held pursuant to paragraph (8)(B)2. of this rule the regional administrator sets forth in writing objections to the approval of such objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. Unless retracted, the regional administrator's objections shall constitute a final ruling denying approval of a POTW pretreatment program ninety (90) days after the date the objections are issued;

(E) Public Access to Submission. The director shall ensure that the submission, and any comments upon such submission, are available to the public for inspection and copying; and

(F) Notice of Decision. The director shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director shall cause to be published a notice of approval of the submission. In addition, the director shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published.

(10) Reporting Requirements for POTWs and Industrial Users.

(A) Definition. The term control authority as it is used in this section refers to--

1. The POTW if the POTW's submission for its pretreatment program, paragraph (2)(S)1., has been approved in accordance with the requirements of section (9); or

2. The director if the submission has not yet been approved or if a submission has not been required.

(B) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standard--Baseline Report. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or one hundred eighty (180) days after the final administrative

decision made upon a category determination submission under paragraph (5)(A)4., whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in paragraphs (10)(B)1. 7. Where reports containing this information already have been submitted to the director or regional administrator in compliance with the requirements of 40 CFR 128.140(b), the industrial user will not be required to submit this information again. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the control authority a report which contains the information listed in paragraphs (10)(B)1. 5. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall provide estimates of the information requested in paragraphs (10)(B)4. and 5. of this rule.

1. *Identifying information.* The user shall submit the name and address of the facility including the name of the operator and owners;
2. *Permits.* The user shall submit a list of any environmental control permits held by or for the facility;
3. *Description of operations.* The user shall submit a brief description of the nature, average rate of production and standard industrial classification of the operation(s) carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;
4. *Flow measurement.* The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day (gpd), to the POTW from each of the following:
  - A. *Regulated process streams; and*
  - B. *Other streams as necessary to allow use of the combined wastestream formula of subsection (5)(E). The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations;*
5. *Measurement of pollutants.*
  - A. *The user shall identify the pretreatment standards applicable to each regulated process.*
  - B. *In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations.*
  - C. *A minimum of four (4) grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four (24)-hour composite samples shall be obtained through flow-proportional composite sampling techniques, where feasible. The control authority may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is not feasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged;*
  - D. *The user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph;*

*E. Samples should be taken immediately downstream from pretreatment facilities if they exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with*

*the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of subsection (5)(E) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with subsection (5)(E), this adjusted limit along with supporting data shall be submitted to the control authority.*

*F. Sampling and analysis shall be performed in accordance with the techniques prescribed in 10 CSR 20-7.015(9)(A). Where 10 CSR 20-7.015(9)(A) does not contain sampling or analytical techniques for the pollutant in question, or where the director determines that these sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director.*

*G. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.*

*H. The baseline report shall indicate the time, date and place, of sampling and methods of analysis, and shall certify that sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;*

*6. Certification. A statement, reviewed by an authorized representative of the industrial user, as defined in subsection (10)(K) of this rule and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M), additional pretreatment or both is required for the industrial user to meet the pretreatment standards and requirements; and*

*7. Compliance schedule. If additional pretreatment, O and M, or both, will be required to meet the pretreatment standards; the shortest schedule by which the industrial user can provide additional pretreatment, O and M, or both must be included. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.*

*A. Where the industrial user's categorical pretreatment standard has been modified by the combined wastestream formula, subsection (5)(E), a fundamentally different factors variance, section (11), or both, at the time the user submits the report required by subsection (10)(B) of this rule, the information required by paragraphs (10)(B)6. and 7. of this rule shall pertain to the modified limits.*

*B. If the categorical pretreatment standard is modified by the combined wastestream formula, subsection (5)(E), a fundamentally different factors variance, section (11), or both, after the user submits the report required by subsection (10)(B) of this rule, any necessary amendments to the information requested by paragraphs (10)(B)6. and 7. of this rule shall be submitted by the user to the control authority within sixty (60) days after the modified limit is approved.*

*(C) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by paragraph (10)(B)7. of this rule:*

*1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment*

*standards (hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction);*

*2. No increment referred to in paragraph (10)(C)1. of this rule shall exceed nine (9) months; and*

*3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on this date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between progress reports to the control authority.*

*(D) Report on Compliance with Categorical Pretreatment Standard Deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in paragraphs (10)(B)4. 6. of this rule. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in section (5), the report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report shall include the user's actual production during the appropriate sampling period.*

*(E) Periodic Reports on Continued Compliance.*

*1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of this pretreatment standard, or in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the approval authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by these categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (10)(B)4. of this rule except that the control authority may require more detailed reporting of flows. Where the applicable pretreatment standard contains limitations based upon the rate of production, the user shall also supply the necessary production information to demonstrate compliance. At the discretion of the control authority and in consideration of these factors as local high or low flow rates, holidays, budget cycles, the control authority may agree to alter the months during which these reports are to be submitted.*

*2. Where the control authority has imposed mass limitations on industrial users as provided for by subsection (5)(D), the report required by paragraph (10)(E)1. of this rule shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.*

*3. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in subsection (5)(D) of this rule, the report required by paragraph (5)(E)1. of this rule shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph (5)(E)1. of this rule shall include the user's actual average production rate for the reporting period.*

*(F) Notice of Potential Problems, Including Slug Loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by subsection (5)(D) by the industrial user.*

*(G) Monitoring and Analysis to Demonstrate Continued Compliance. The reports required in paragraph (10)(B)5., and subsections (10)(D) and (E) of this rule shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards.*

*1. The sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subsection (10)(D) of this rule. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.*

*2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation, except the industrial user is not required to resample if--*

*A. The control authority performs sampling at the industrial user at a frequency of at least once per month; or*

*B. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.*

*3. The reports required in subsection (10)(E) of this rule shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The control authority shall require the frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.*

*4. All analyses shall be performed in accordance with procedures established by the director and contained in 10 CSR 20-7.015(9)(A), or with any other test procedures approved by the director. Sampling shall be performed in accordance with the techniques approved by the director. Where 10 CSR 20-7.015(9)(A) does not include sampling or analytical techniques for the pollutants in question, or where the director determines that these sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director.*

*5. If an industrial user subject to the reporting requirement in subsection (10)(E) of this rule monitors any pollutant more frequently than required by the control authority, using the procedures prescribed in paragraph (10)(G)4. of this rule, the results of this monitoring shall be included in the report.*

*(H) Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every six (6) months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance*

*with the techniques described in 10 CSR 20-7.015(5)(B). Where 10 CSR 20-7.015(5)(B) does not contain sampling or analytical techniques for the pollutant in question, or where the director determines that these sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the director. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.*

*(I) Annual POTW Reports. POTWs with approved pretreatment programs shall provide the director with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one (1) jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one (1) year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:*

- 1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements;*
- 2. A summary of the status of industrial user compliance over the reporting period;*
- 3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and*
- 4. Any other relevant information requested by the director.*

*(J) Notification of Changed Discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p).*

*(K) Compliance Schedule for POTW's. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by section (7):*

- 1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (acquiring required authorities, developing funding mechanisms, acquiring equipment);*
- 2. No increment referred to in paragraph (10)(K)1. of this rule shall exceed nine (9) months; and*
- 3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on this date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine (9) months elapse between these progress reports to the director.*

*(L) Signatory Requirements for Industrial User Reports. The reports required by subsections(10)(B), (D) and (E) of this rule shall be signed by an authorized representative of the*

*industrial user and shall include the certification statement contained in subparagraph (5)(B)2.B. of this rule. An authorized representative may be--*

*1. A responsible corporate officer, if the industrial user submitting the reports required by subsections (10)(B), (D) and (E) of this rule is a corporation. For the purpose of this paragraph, a responsible corporate officer means--*

*A. A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or*

*B. The manager of one (1) or more manufacturing, production or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*

*2. A general partner or proprietor if the industrial user submitting the report required by subsections (10)(B), (D) and (E) of this rule is a partnership or sole proprietorship respectively;*

*3. A duly authorized representative of the individual designated in paragraph (10)(L)1. or 2. of this rule if--*

*A. The authorization is made in writing by the individual described in paragraph (10)(L)1. or 2. of this rule;*

*B. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and*

*C. The written authorization is submitted to the control authority; or*

*4. If an authorization under paragraph (10)(L)3. of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (10)(L)3. of this rule shall be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.*

*(M) Signatory Requirements for POTW Reports. Reports submitted to the director by the POTW in accordance with subsection (10)(H) of this rule shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.*

*(N) Provisions Governing Fraud and False Statements. The reports required by subsections (10)(B), (D), (E) and (H) of this rule are subject to--*

*1. The provisions of 18 U.S.C. 1001 relating to fraud and false statements;*

*2. The provisions of section 309(c)(4) of the Act, governing false statements, representations or certifications; and*

*3. The provisions of section 390(c)(6) regarding responsible corporate officers.*

*(O) Recordkeeping Requirements.*

*1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. These records shall include for all samples:*

*A. The date, exact place, method and time of sampling and the names of the person(s) taking the samples;*

*B. The dates analyses were performed;*

*C. Who performed the analyses;*

*D. The analytical techniques/methods used; and*

*E. The results of the analyses.*

*2. Any industrial user or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of three (3) years any records of monitoring activities and results (whether or not the monitoring activities are required by this section) and shall make these records available for inspection and copying by the director (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director.*

*3. Any POTW to which reports are submitted by an industrial user pursuant to subsections (10)(B), (D), (E) and (H) of this rule shall retain these reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the director. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director.*

*(P) Inactive POTW Pretreatment Programs. If the director determines that the conditions under which a POTW was required to establish a pretreatment program (subsection (7)(A)) do not currently exist, the director may place the program on inactive status if requested to do so by the POTW. While on inactive status, the POTW will be exempted from the reporting requirements contained in this rule except that certification must be made to the director as required that current conditions do not warrant a return to active program status.*

*(Q) Pretreatment Authorizations. Where the director is also the control authority, s/he may issue a pretreatment authorization to an industrial user. This authorization will be used to set forth the conditions governing the user's discharge to the POTW.*

*(11) Variances From Categorical Pretreatment Standards for Fundamentally Different Factors.*

*(A) Definition. The term requester means an industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.*

*(B) Purpose and Scope. In some cases, information which may affect the categorical pretreatment standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical pretreatment standards, making them either more or less stringent, as they apply to a certain industrial user within an industrial category or subcategory. This will only be done if data specific to that industrial user indicates present factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance under this section or this variance request may be initiated by the director.*

*(C) Submissions. All requests for variances shall be made in writing to the director and shall contain all information required by 40 CFR 403.13(h). The director shall forward all requests to the regional administrator for a determination as to whether or not fundamentally different factors do exist.*

*(D) Notification. Upon receipt of the regional administrator's determination, the director shall notify the requester that a variance has either been granted or denied.*

*(12) Confidentiality.*

*(A) Authorities. Any claim for confidentiality to the control authority must be in accordance with sections 610.010--610.028, RSMo. If no claim is made at the time of submission, the control authority may make the information available to the public without further notice.*

*(B) Effluent Data. Information and data provided to the control authority pursuant to this part which is effluent data shall be available to the public without restriction.*

*(13) Net/Gross Calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in accordance with this section.*

*(A) Application Deadline and Contents. Any industrial user wishing to obtain a credit for intake pollutants shall make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a net basis, that is, adjusted to reflect credit for pollutants in the intake water, if the requirements of subsections (13)(B) and (C) of this rule are met.*

*(B) Criteria.*

*1. The industrial user shall demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.*

*2. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.*

*3. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.*

*4. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.*

*(C) Applicable categorical pretreatment standards shall be applied on a net basis.*

*(14) Upset Provision.*

*(A) Definition. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.*

*(B) Effect of an Upset. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (14)(C) are met.*

*(C) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that--*

*1. An upset occurred and the industrial user can identify the specific cause(s) of the upset;*

*2. The facility was at the time being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures; and*

3. The industrial user has submitted the following information to the POTW and control authority within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission shall be provided within five (5) days):

A. A description of the indirect discharge and cause of noncompliance;

B. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

C. Steps being taken, planned to reduce, or both, eliminate and prevent recurrence of the noncompliance.

(D) Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(E) User Responsibility in Case of Upset. The industrial user shall control production on all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(15) Bypass.

(A) Definitions.

1. Bypass means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(B) Bypass Not Violating Applicable Pretreatment Standards or Requirements.

1. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (15)(C) and (D) of this rule.

(C) Notice.

1. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible, at least ten (10) days before the date of the bypass.

2. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass or should have become aware. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(D) Prohibition of Bypass.

1. Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless--

A. The bypass was unavoidable to prevent loss of life, bodily injury or severe property damage;

B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment

downtime. This condition is not satisfied if adequate back-up equipment could have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

C. The industrial user submitted notices as required under subsection (15)(C) of this rule.

2. The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three (3) conditions listed in paragraph (15)(D)1. of this rule.

(16) Modification of POTW Pretreatment Programs.

(A) General. Either the director or a POTW with an approved POTW pretreatment program may initiate a program modification at any time to reflect changing conditions at the POTW. A program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under section (9).

(B) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

1. For substantial modifications, as defined in subsection (16)(C) of this rule--

A. The POTW shall submit to the director a statement of the basis for the desired modification, a modified program description, or such other documents the director determines necessary under the circumstances;

B. The director shall approve or disapprove the modification based on the requirements of subsection (7)(E), following the procedures in subsections (9)(B) (E);

C. The modification shall be incorporated into the POTW's state operating permit after approval. The permit shall be modified to incorporate the approved modification; and

D. The modification shall become effective upon approval by the director; and

2. The POTW shall notify the director of any other (that is, nonsubstantial) modifications to its pretreatment program at least thirty (30) days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in subparagraph (16)(B)1.A. of this rule. Such nonsubstantial program modifications shall be deemed to be approved by the director unless the director determines that a modification submitted is in fact a substantial modification, ninety (90) days after the submission of the POTW's statement. Following such approval by the director, such modifications shall be incorporated into the POTW's permit. If the director determines that a modification reported by a POTW in its statement is in fact a substantial modification, the director shall notify the POTW and initiate the procedures in paragraph (16)(B)1. of this rule.

(C) Substantial Modifications.

1. The following are substantial modifications for the purposes of this rule:

A. Changes in the POTW's legal authorities;

B. Changes to local limits, which result in less stringent local limits;

C. Change to the POTW's control mechanism, as described in subparagraph (7)(E)1.C.;

D. Changes to the POTW's method for implementing categorical pretreatment standards (for example, incorporation by reference, separate promulgation, etc.);

E. A decrease in the frequency of self-monitoring or reporting required of industrial users;

F. A decrease in the frequency of industrial user inspections or sampling by the POTW;

G. Changes to the POTW's confidentiality procedures;

H. Significant reductions in the POTW's pretreatment program resources (including personnel commitments, equipment, and funding levels); and

I. Changes in the POTW's sludge disposal and management practices.

2. The director may designate other specific modifications, in addition to those listed in paragraph (16)(C)1. of this rule, as substantial modifications.

3. A modification that is not included in paragraph (16)(C)1. of this rule is nonetheless a substantial modification for purposes of this rule if the modification--

A. Would have a significant impact on the operation of the POTW's pretreatment program;

B. Would result in an increase in pollutant loadings at the POTW; or

C. Would result in less stringent requirements being imposed on industrial users of the POTW. ]

*AUTHORITY: section 644.041, RSMo 1994. \* Original rule filed Feb. 1, 1988, effective June 13, 1988. Amended: Filed March 1, 1996, effective Nov. 30, 1996.*

*\*Original authority 1972, amended 1973, 1987.*

*Public Cost: This proposed rescission will not cost public entities more than \$500.00 in the aggregate.*

*Private Cost: This proposed rescission will not cost private entities more than \$500.00 in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Walter Fett, P.O. Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through e-mail to [Walter.Fett@dnr.mo.gov](mailto:Walter.Fett@dnr.mo.gov). Public comments must be received by March 14, 2012. The Missouri Clean Water Commission will hold a public hearing at 9 A.M., March 7, 2012, at the Lewis and Clark State Office Building, Nightingale Creek Conference Room, 1 East, 1101 Riverside Drive, Jefferson City, Missouri 65102.*

**FISCAL NOTE**

**PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	10 CSR 20-6.100 General Pretreatment Regulation
Type of Rulemaking:	New Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate*
Department of Natural Resources	Cost of Compliance is \$48,233 through 2017. *The Cost of Compliance in the aggregate after 2017 over the life of the rule is \$0.
Cities or Publically Owned Treatment Works	Cost of Compliance is \$66,904* from 2013 through 2017. The Cost of Compliance in the aggregate after 2017, over the life of the rule, is \$0.
Total	Cost of Compliance is \$115,136 from 2013 through 2017. *The Cost of Compliance in the aggregate after 2017, over the life of the rule, is \$0.

\*The Cost of Compliance is a one-time implementation cost under the federal regulation 40 CFR 403, effective October 14, 2005 for both the State of Missouri and the cities (Publicly Operated Treatment Works, POTWs) After the adoption of an ordinance the cost of compliance over the life of the rule is \$0, due to the savings available each year, both to the Department and to the cities.





43 Cities (POTWs) Required to Adopt the New Ordinance

		FY 2013 City Attorney Ordinance Adoption	FY 2014 City Attorney Ordinance Adoption	FY 2015 City Attorney Ordinance Adoption	FY 2016 City Attorney Ordinance Adoption	FY 2017 City Attorney Ordinance Adoption	FY 2018 City Attorney Ordinance Adoption
Engineer - (43) ordinance preparation - 40 hours	0.0192	\$4,062	\$12,185	\$12,550	\$14,363	\$17,753	
Clerk - (43) admin support - 20 hours	0.0096	\$808	\$2,424	\$2,497	\$2,857	\$3,332	
Attorney - (43) ordinance review - 40 hours	0.0192	\$6,404	\$19,212	\$19,788	\$22,646	\$27,991	
<b>PS TOTAL</b>	<b>0.0481</b>	<b>\$11,273</b>	<b>\$33,820</b>	<b>\$34,835</b>	<b>\$39,866</b>	<b>\$49,275</b>	
FRINGE		\$5,985	\$17,955	\$18,494	\$21,165	\$26,160	
EE - \$4,800 est.		\$30	\$30	\$30	\$30	\$30	
<b>PS + Fringe + EE TOTAL</b>		<b>\$17,258</b>	<b>\$51,805</b>	<b>\$53,358</b>	<b>\$61,061</b>	<b>\$75,465</b>	
Indirect		\$5,324	\$15,982	\$16,461	\$18,837	\$23,281	
<b>COSTS TO CITIES SUBTOTAL</b>		<b>\$22,583</b>	<b>\$67,787</b>	<b>\$69,820</b>	<b>\$79,899</b>	<b>\$98,746</b>	<b>\$338,834</b>
<b>*SAVINGS TO CITIES</b>		<b>-\$7,416</b>	<b>-\$29,665</b>	<b>-\$51,914</b>	<b>-\$76,635</b>	<b>-\$106,300</b>	<b>-\$271,930</b>
<b>Actual Cost Savings TOTAL</b>		<b>\$15,166</b>	<b>\$38,122</b>	<b>\$17,906</b>	<b>\$3,264</b>	<b>-\$7,554</b>	<b>\$66,904</b>

Env. Engineer & municipal clerk, personal service, including EE, see Missouri May 2010 mean annual wages/salaries. engineer \$70,000 & clerk \$28,010 respectively. [http://www.bls.gov/oes/current/oes\\_mo](http://www.bls.gov/oes/current/oes_mo).  
 City Attorney personal service see Missouri May 2010 mean annual wages/salaried lawyers \$111,000. [http://www.bls.gov/oes/current/oes\\_mo](http://www.bls.gov/oes/current/oes_mo).  
 Forty-three (43) ordinances require .05 FTEs per each ordinance.

FTE calculation varies depending on the estimated number of ordinances adopted per year.  
 FTE calculation = City Engineer, (pretreatment coord.) = 40 hours ordinance preparation = 40/2,080 hours = .0192 FTE per ordinance  
 FTE calculation = City Clerk = 20 hours per ordinance = 20/2,080 hours preparation = .0096 FTE  
 FTE calculation = City Attorney = 40 hours per ordinance preparation = 40/2,080 hours = .0192 FTE  
 Savings to city is realized upon adoption of new pretreatment ordinance, and occurs year-to-year after adoption, depending on how quickly an ordinance is adopted  
 Saving to each city is \$2,472 annually for each city (derived from the federal rule)  
 Saving to 3 cities for FY 2013 = 3\*\$2,472 = \$7,416  
 Savings to cities for FY 2014 = previous years savings plus the savings for 9 additional cities = \$7,416 + 9\*\$2,472 = \$29,665.  
 Savings to cities for subsequent years calculated in the same way as for FY 2014.  
 Savings to all cities from FY 2013 through FY 2014 = \$271,930  
 Savings annually over the life of the rule are \$106,300.

	FY 2013 (3 Months)	FY 2014	FY 2015	FY 2016	FY 2017	TOTAL POTWS	Remaining POTW FY 2018
POTW Ordinance Adoptions:	3	9	9	10	12	43	0
Total Ordinance Reviews and Approvals:	3	9	9	10	12	43	0

<b>Total for DNR and POTWs</b>	
DNR:	\$48,233
POTW:	\$66,904
	\$115,136



\*Savings To Cities: Under the federal regulation, 40 CFR 403 *General Pretreatment Regulations for Existing and New Sources of Pollution*, in effect October 14, 2005, the basis for the cost savings in this public fiscal note, the estimated cost savings in annual burden hours and costs to the affected respondents is calculated for industrial users, POTWs, and the States. Applied nationally, the annual cost savings were estimated to be \$10.1million dollars (in 2005 dollars). A 3% inflation rate, consistent with the rate used by the Legislative Oversight Committee, is applied to the savings annually over a six year period. The savings to Missouri cities was initially derived from the federal cost savings calculations, and is presented as follows:

1)  $10.1$  (annual cost savings applied nationally) \*  $(1.03)^6$  (inflation rate over six yrs.) =  $12.06$

The total annual cost savings after the application of the inflation rate is then \$12.06 million for the federal rule, nationwide.

2) Next, the savings was calculated for the State of Missouri, adjusting for the number of POTWs (43 cities, i.e. publicly owned treatment works) with approved pretreatment programs. The number of POTWs, 43, is compared to the number of POTWs considered in the development of the federal rule. There were 1,464 POTWs cited in the Federal Register notification in 2005, and there were 43 POTWs in Missouri as of 2009.

The ratio of POTWs is 43 to 1464.

$\$12,060,000$  (the total federal annual cost savings) \*  $43/1,464$  (POTWs) =  $\$354,219$

The total annual savings is \$354,000 (rounded). Savings are realized by implementing the federal pretreatment rule changes in Missouri.

3) The next step at the State level is to separate the federal public savings from the private savings.

The public savings in this fiscal note is based on the annual cost savings portion of total federal savings or,

\* $\$354,000$  (Missouri's annual savings) x  $0.30$  =  $\$106,300$  cost savings in the aggregate, after 2017.

The  $0.30$  (30%) represents the estimated private portion of the federal total savings. The federal regulation assumes the costs savings based on reduced sampling and analysis.

The total cost savings is \$271,930 for the cities (POTWs) in the State of Missouri, once the new rule is adopted and implemented, in this fiscal note, from 2013 through 2017.

The average savings to each city, after adoption of the ordinance, is as follows:  $\$106,300 \div 43 = \$2,472.00$  (cost savings per city or POTW).

There will be a transition period as cities revised their ordinances in order to implement the new rule. The total cost savings expected annually are based on the assumption that cities will adopt new ordinances within five years (2013 through 2017).

#### IV. Assumptions

The fiscal impacts in this rulemaking are estimated costs for the Department to review and approve city ordinances for publicly operated treatment works (POTWs) and for the cities, i.e. the POTWs, to adopt and implement this new rule. The public entities affected are the State of Missouri and the 43 cities that have an approved pretreatment ordinance. Each city's approved pretreatment ordinance contains its legal authority. The Department is required under federal regulation to approve each pretreatment ordinance.

Although cost savings were predicted in the federal rulemaking, the cost to change a city's pretreatment ordinance was not considered. There is a one-time cost to the city to change the pretreatment program ordinance and, the cost to the State to review and approve. This one-time cost is included in this fiscal note. The costs of adopting this revised ordinance is spread over 5 years. Once ordinances are adopted, cities are expected to benefit annually from the cost savings.

The duration of the proposed rule is indefinite. There is no sun-set clause. Costs imposed by the proposed rule are shown on an annual basis through 2017. Savings are shown through 2017 and continue over the life of the rule. It is assumed that additional years will be consistent with the assumptions used to calculate the annual costs and savings identified in this fiscal note.

The State of Missouri is adopting the federal rule 40 CFR 403 with modifications as a new rule, 10 CSR 20-6.100 and, at the same time, is rescinding the current rule at 10 CSR 20-6.100 through a separate rulemaking recission.

The new rule incorporates 40 CFR 403 *General Pretreatment Regulations for Existing and New Sources of Pollution* by reference and, includes modifications. The cost savings shown nationally in the Federal Register, 70 FR 60187, and Table at 70 FR 60188, are an accurate estimate of the expected annual savings due to the adoption of the federal rule 40 CFR 403 by states.

A 3% inflation rate is applied in this public fiscal note for personnel services costs, consistent with the practice of the Legislative Oversight Committee. Current wage/salary rates for Department employees determine the pay used for the personnel services. Wage/salary employment estimates for the cities (POTWs) are based on the May 2010 National Occupational Employment Statistics (OES) estimates for each state.

The footnotes below Table 1 at 70 FR 60188 in the federal rule contain information on the *costs savings* attributed to public entities. A thorough breakdown of the cost to public entities is not available. It is assumed in this public fiscal note that a 30% cost savings will be realized by public entities. For instance, where sampling and analysis is reduced for the Non-Significant Categorical Industrial User under this rule, one sampling event for a city may be eliminated and two sampling events for the industrial user may be eliminated. In this 2 to 1 ratio, the public costs savings would be 30%.

There currently are 43 cities with approved and active pretreatment programs. This is based on the 2009 annual pretreatment reports from the POTWs which were reviewed in the development of this rule. There were one thousand, four-hundred and sixty-four (1,464) POTWs considered in the development of the federal rule. Savings were considered relative to the number of POTWs in the state of Missouri, 43 (forty-three) and compared to the national number for POTWs in the federal rule.

The Department requested that a number of cities estimate the costs of a new or modified ordinance needed to implement pretreatment. A true cost estimate is difficult to calculate due to the strong variability of the responses received. The number of hours selected to develop an ordinance reflects the need for professional and administrative personnel services including the time expended to approve and adopt.

The State of Missouri will have no additional costs related to this rule change after the ordinances are approved and adopted.

Adoption of the proposed changes in the city ordinances is assumed to begin in fiscal year 2013. It is assumed that all pretreatment programs will have adopted and implemented their ordinances by the end of FY2017.

#### *Cost of Ordinances needed to implement changes*

This fiscal note provides cost estimates for the Department and other public entities for implementing the new rule, 10 CSR 20-6.100. The cost to the Department is a one-time cost to review and approve the cities pretreatment ordinance based on the rule changes. Other public entities affected are the forty-three (43 cities) having Publically Owned Treatment Works (POTWs) with their one-time cost to prepare and adopt a pretreatment ordinance as a result of changes in the 2005 federal pretreatment regulation.

A city's review and adoption of the approved pretreatment ordinance, is not addressed in the federal rule. A city ordinance contains the legal authority, pollutant limitations, and reporting requirements and, is needed to implement the pretreatment program required under the federal regulation 40 CFR 403, effective October 14, 2005.

Costs to adopt the ordinance are spread over 5 years. After the ordinances are adopted, cities are expected to benefit from an annual cost savings as predicted under the federal rule and in this fiscal note. The cost of compliance after adoption of a pretreatment ordinance, in the aggregate, after 2017, over the life of the rule, is \$0, having met the requirements under 40 CFR 403, effective October 14, 2009.

#### *Cost savings realized after implementation of ordinance*

A cost savings was predicted in the federal rule making at 70FR 60187 and 60188.

This fiscal note provides estimated cost savings to public entities for implementing the new rule, 10 CSR 20-6.100. The public entities affected are the forty-three (43 cities) having Publically Owned Treatment Works (POTWs) with approved pretreatment ordinances. A city's approved pretreatment ordinance contains the legal authority, pollutant limitations, and reporting requirements to implement the pretreatment program requirements under the federal regulation 40 CFR 403, effective October 14, 2005.

The federal rulemaking did consider the savings to the city with implementation of the pretreatment ordinance. The cost estimate to the cities (POTWs) is a one-time cost to prepare and adopt a pretreatment ordinance. After the ordinances are adopted, cities are expected to benefit from an annual cost savings. The cost of compliance in the aggregate, after 2017, over the life of the rule is \$0, having met the requirements under 40 CFR 403, effective October 14, 2009.

A cost savings was predicted in the federal rule making at 70FR 60187 and 60188.

#### *Statements explaining the spreadsheet totals*

- one time cost to the Department to review and approve the city pretreatment ordinances is \$48,233
- one time cost to the Cities (POTWs) to prepare and submit the pretreatment ordinance is \$338,834
- 2013 through 2017, the total savings to the Cities as a result of changes, assuming reduced monitoring and analysis, is \$271,930
- cost of compliance for the POTWs is a total of \$66,904 from 2013 through 2017

- the average savings to each city after adoption of the ordinance each year is \$2,472 = \$106,300 / 43 cities (POTWs)
- assuming all ordinances have been adopted through 2017, the cost of compliance is zero over the life of the rule under this specific federal rule change

*Statements explaining the cost of the ordinance per city based on the spreadsheet totals*

- the average cost of an ordinance is \$7,879.86 or, \$338,834 / 43 cities (POTWs) without savings

*Summary –*

*This proposed new rule requires a one time cost of compliance from the Missouri Department of Natural Resources and, the 43 cities or political subdivisions with pretreatment ordinances, of \$115,136, (\$ 48,233 plus \$66,904) over a five year period from 2013 through 2017. The cost of compliance to the cities thereafter is zero. Cost savings occur each year after 2017, based on the adoption, implementation and approval of a pretreatment ordinance.*

**FISCAL NOTE**

**PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	10 CSR 20-6.100 General Pre-treatment Regulations
Type of Rulemaking	New Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected: (NAICS code)	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
156	Metal Finishing (subsectors 332, 333, 334, 335)	Savings \$113,123
31	Electroplating (332813, 334412)	Savings \$22,480
28	Pharmaceutical (325411, 325412)	Savings \$20,304
18	Soap, Detergent (325611)	Savings \$13,053
14	Organic Chemicals (subsectors in 325)	Savings \$10,152
10	Metal Casting (subsectors in 331)	Savings \$7,251
85	Various other categorical industries, examples: Electric utilities, metal forming, leather, porcelain, paper manufacturer	Savings \$61,637
Subtotal 342	Categorical industries, subject to federal limitations.	---
Total 228	Various non-categorical significant industrial users, examples: Hospitals Food Processing Industries	Cost of Compliance = 0 Savings in the aggregate = 0 (Not affected by the new rule)
Total 570		Cost of Compliance = 0 Savings in the aggregate over the life of the rule = \$248,000

This fiscal note will estimate the cost savings to all private entities. Private entities affected by the pretreatment rules currently the are three hundred forty-two (342) of the total five hundred seventy (570) regulated industries that discharge industrial wastewater into the sewer system.

A cost savings is predicted in the federal rule making. A federal cost analysis used to measure the fiscal impact to all states, including the Missouri industrial users, was published in the Federal Register at 70 FR 60187-60188. The federal register publication is available at:

[http://www.epa.gov/npdes/regulations/streamlining\\_fr\\_notice.pdf](http://www.epa.gov/npdes/regulations/streamlining_fr_notice.pdf)

This cost savings is largely attributed to two changes to the federal rule. First, there are reduced monitoring and reporting requirements for new classifications of industrial users, a Nonsignificant Categorical Industrial User, and a Middle-Tier Categorical Industrial User. Second, the sampling and analysis for pollutants in the categorical limitations can be eliminated if the pollutants are not present and are not suspected to be present. These cost savings to Missouri industrial users will be realized after cities with approved pretreatment programs revise their ordinances and issues permits incorporating the changes. Cost savings may realized by the 342 categorical industrial users subject to federal pollutant limitations in 40 CFR 405 to 471 under the new classifications, Non-significant Categorical Industrial User and the Middle-Tier Categorical Industrial User or, if the pollutants are not expected to be present under these less restrictive provisions. In the above table the cost savings are equally distributed among the types of business entities that are subject to categorical limitations.

### III. Worksheet

Federal regulation, 40 CFR 40 *General Pretreatment Regulations for Existing and New Sources of Pollution*. is used as a basis for this private fiscal note.

The total private and public fiscal costs were calculated in the adoption of the federal rule, 40 CRR 403. Applied nationally, the annual cost savings were estimated to be \$10.1million dollars (in 2005 dollars).

For the purposes of this fiscal note, a 3% inflation rate is applied annually over six years, 2005 through 2011, the federal cost savings are as follows:

$$10.1 * (1.03)^6 = 12.06$$

The total annual cost savings is \$12.06 million for the federal rule, nationwide.

Next, the cost savings was calculated for the State of Missouri, adjusting for the number of Publicly Owned Treatment Works (POTWs or cities) with approved pretreatment programs, compared to the number of POTWs considered in the development of the federal rule. There were 1,464 POTWs cited in the Federal Register notification, and there were 43 POTWs in Missouri in 2009.

$$\$12.06 \text{ Million} / 1464 * 43 = \$354,219$$

Therefore, \$354,000 annually will be saved in the State of Missouri by implementing the pretreatment rule changes.

The private cost in this fiscal note is an annual cost savings of the total private and public costs as presented in the federal rule.

$$\$354,000 \times 0.70 = \$248,000 \text{ (0.70 represents the private cost estimate in the federal rule)}$$

\$248,000 in the aggregate will be saved by private industries in the State of Missouri when the new rule is fully implemented.

There will be a transition period as cities revised their ordinances in order to implement the new rule. The total cost savings expected after 2017, as indicated above, are based on the assumption that cities will adopt new ordinances within five years.

### IV. Assumptions

The cost analysis for the adoption of the federal rule 40 CFR 403 can be found in the Federal Register at 70 FR 60187 and Table 1 at 70 FR 60188. The federal analysis is assumed to be an accurate estimate of the expected annual costs attributed to the adoption of this federal rule. The cost analysis was not broken down into manhours and job classification because this information is not available.

An annual inflation rate of 3% is applied for 6 years since 2005, the year the federal rule was adopted. This value is consistent with the inflation rate used in the public fiscal note.

There were 43 cities with approved and active pretreatment programs. This is based on the 2009 annual pretreatment reports from the cities, which were reviewed in the development of this rule. There were 1,464 Publically-Owned Treatment Works (POTWs or cities) considered in the development of the federal rule. The savings here are assumed to be proportional to the number of cities with active pretreatment programs, as compared to the national number of all cities considered in development of the federal rule.

The footnotes in Table 1 at 70 FR 60188 in the federal rule contain information on the costs attributed to private entities. A thorough breakdown of the cost to private entities is not available. It is assumed a 70% cost savings will be realized by private entities. For instance, where sampling and analysis can be reduced for the Non-Significant Categorical Industrial User under this rule, one sampling event for a city may be eliminated and two sampling events for the industrial user may be eliminated. In this 2 to 1 ratio, the private costs savings would be 70%.

For the purpose of this fiscal note estimate cost savings were equally distributed among the types of business entities that are subject to categorical limitations.

This proposed rule will not cost private entities more than \$500.00 in the aggregate. Cost savings occur over the life of the rule. These cost savings are realized after cities with approved pretreatment programs revise their ordinances and issue the permits incorporating the required changes.



Missouri Department of Natural Resources  
**Regulatory Impact Report**  
In Preparation for Proposing  
A Rescission of the Existing Rule and a New Rule 10 CSR 20-6.100

**Division/Program:** \_\_\_\_\_ Water Protection Program \_\_\_\_\_

**Rule number:** 10 CSR 20-6.100 **Rule title:** General Pretreatment Regulation \_\_\_\_\_

**Type of rule action:** New Rule and Rescission of Existing Rule

**Nature of the rulemaking:** Prescribes environmental standards

**Approval of the Completed Regulatory Impact Report**

John Madusa  
Program Director

2/16/11  
Date

Missouri Department of Natural Resources  
**Regulatory Impact Report**  
In Preparation for Proposing  
the Rescission of 10 CSR 20-6.100 and a New rule 10 CSR 20-6.100

Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report....” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

Determination: The Missouri Department of Natural Resources has determined this rulemaking does not prescribe environmental conditions or standards; it is simply an alignment of the State of Missouri regulations with current federal rules. Due to the complexity of the text and several changes, the Department has produced this Regulatory Impact Report to provide the public with specific explanations of the changes that were made and how they are incorporated in the rule. The Regulatory Impact Report will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.

The General Pretreatment Regulations of the rule, 10 CSR 20-6.100, apply to pollutants from industrial sources which are subject to Pretreatment Standards and are discharged to a Publicly Owned Treatment Works (POTW). Pretreatment regulations also apply to POTWs which receive wastewater from these sources.

The new rule will adopt the federal *General Pretreatment Regulations for Existing and New Sources of Pollution*, 40 CFR §403, with substitutions and modifications to refer to State of Missouri statutes and regulations to enable enforcement of the General Pretreatment Regulations under state law. Federal regulations with pretreatment standards and limitations are also adopted by reference, with no changes.

Modifications of 40 CFR §403 for the new rule 10 CSR 20-6.100 are as follows:

- The "director" is defined as the Director of Staff of the Missouri Clean Water Commission.
- The test methods refer to the State of Missouri approved test methods, instead of federal test methods.
- The provisions of this state (instead of federal) regulation shall not supersede any local law, as long as the local requirement is not less stringent.
- The State (instead of the EPA) may initiate enforcement actions if the POTW control authority does not take action. The director shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has failed to act

- The "Missouri Clean Water Commission" has the authorities assigned to the EPA Regional Administrator in the federal law. The Missouri Clean Water Law is cited as legal authority to promulgate regulations and the Missouri Department of Natural Resources is designated as the regulatory agency.
- The new rule will reference Missouri Solid Waste Management Law in addition to Missouri Hazardous Waste Management Law as being applicable to any solid waste or sludges generated as a result of pretreatment of industrial effluent to remove pollutants prior to discharge to the POTW's sewer system.
- The reference to confidentiality rules in the federal regulation will refer to the provisions of the Missouri Sunshine Law.
- Issuance of a permit to industries in cities without an approved pretreatment program is prohibited in the Missouri Clean Water Law, Chapter 644, Water Pollution, Powers and Duties of the Commission—rules, procedure, Section 644.026(13) RSMo. In lieu of a permit, the director may set forth the conditions for discharge from industries subject to federal limitations which are adopted in the State of Missouri regulations.

2. A report on the peer-reviewed scientific data used to commence the rulemaking process.

The changes to the General Pretreatment Regulations are based on the data published in 70 FR 60134 to 60190. The federal rule, 40 CFR §403, was subject to public review and comment which is summarized in the Federal Register. All documents considered for the rule change (except for confidential business information) is contained in EPA's Docket ID No. OW-2002-0007.

3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.

The rule affects industries that discharge process wastewater to POTWs and, those POTWs that receive the wastewater. The POTWs will bear some costs to adopt these changes in their individual sewer ordinances which cover pretreatment issues. After this initial cost, it is expected that most POTWs and industrial users will benefit from the proposed rule. The cost savings were analyzed in the development of the federal rule and are presented in the Federal register at 70 FR 60187 to 60189.

There are currently 43 POTWs which range from small towns with one industrial facility to the St. Louis Metropolitan Sewer District with over 200 industries that discharge to the sewer system.

The significant industrial users (SIUs) regulated by the POTW include categorical industrial users as well as other SIUs, identified as industries that have potential to cause interference at the POTW. An estimate of the number of industries in the State of Missouri are listed in the table below.

**Regulated Industries in the State of Missouri**

Code of Federal Regulations (CFR), Pretreatment standards	Description	Number of Facilities
40 CFR 433	Metal Finishing	156
40 CFR 413	Metal Plating	31
40 CFR 439	Pharmaceutical	28
40 CFR 417	Soap, Detergent	18
40 CFR 414	Organic Chemical	14
40 CFR 464	Metal Casting	10
Other categories	Various	85
Noncategorical SIU*	Various industries	228
Total regulated		~584

\*Non-categorical Significant Industrial Users are facilities that discharge wastewater that may affect the treatment plant, but are not subject to Categorical Pretreatment Standards.

4. A description of the environmental and economic costs and benefits of the proposed rule.

There is expected to be no environmental cost of the proposed rule. The less restrictive provisions allow for reduced monitoring for certain pollutants not expected to be present, and also for industries that discharge a small amount of effluent to the POTW each day.

5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

The costs to the Department of Natural Resources to implement the pretreatment program are not expected to change significantly as a result of the rule change. Current activities include the Pretreatment Compliance Inspection of the POTW's pretreatment program, and review of the POTW's annual reports. For industrial users in cities without an approved pretreatment program, an annual inspection is performed by the department, and a compliance report is submitted to the EPA, annually. These requirements will not change.

The department will review any changes to the POTW's pretreatment program (sewer ordinance changes). The EPA has determined (re: 70 FR 60187) that if the sewer ordinance changes are consistent with the federal rule, then the changes are deemed insignificant. A public notice and department approval are not then required. This will take a minimal amount of the Pretreatment Coordinator's time to review the ordinance changes when the cities transition to the new requirements.

6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.

The environmental costs of inaction are an increase in risk of interference at the POTW. Interference may be the violation of pollutant limitations in the permit, a kill-off of microorganisms beneficial to secondary treatment, or contamination of the sludge, which would be more expensive to dispose of if land application limits are exceeded.

These risks are difficult to quantify for each industry. An example would be the requirement for an evaluation of the need for a slug control plan at the industry in the federal regulation. A "slug" is a one-time discharge, such as a chemical spill or a batch discharge, which causes interference with the operation of the treatment plant, causes the treatment plant to violate its permit limitations, or contaminates the sludge. The cost of developing a slug control plan is minimal, but the industry would have some costs for corrective actions, such improved chemical storage and containment systems for spills.

The more restrictive provisions in 40 CFR §403 are required. The State of Missouri is subject to legal proceedings if not adopted. There would be costs associated with obtaining legal counsel to defend the State.

The probable financial benefit is \$296,000 per year to the POTWs and regulated industries in the State of Missouri, due to the less restrictive provisions of the proposed rule. These less restrictive provisions may not be adopted without adopting the more restrictive provisions of the rule. This financial benefit was estimated using the federal estimate developed for the adoption of 40 CFR §403, and is detailed at 70 FR 60188, and was prorated for the number of POTWs in the State of Missouri.

7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.

A less costly method is not considered possible, because the federal minimum requirements must be met. Adoption of the less restrictive provision, without adoption of the more restrictive provisions is not allowed.

8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.

The purpose of the proposed rule may be achieved by re-writing section 20 CFR 20-6.100 to incorporate the required, more restrictive, elements of the federal rule. The optional, less restrictive elements could then be added, or omitted from the revised rule, as needed.

It was decided that adopting the entire federal regulation was more time efficient for both the regulators and the regulated community. Adopting the federal rule, 40 CFR §403, will allow all the stakeholders to be able to reference the same document, without comparing the documents line-by-line to determine which document is more stringent. Pursuant to the

federal rule 40 CFR Section 403.4, the most stringent of the state, federal, or local limits or pretreatment standards are applicable.

Changes, substitutions, and modifications incorporated into the revised State of Missouri rule 10 CSR 20-6.100 are intended to establish the State's legal authorities to enforce the rule and clarify roles and duties of the Department of Natural Resources.

9. An analysis of both short-term and long-term consequences of the proposed rule.

In the short term, the cities with approved pretreatment programs will need to revise their sewer ordinance to incorporate the more stringent elements of the adopted federal regulation.

In the longer term, it is expected that the POTWs and regulated industries will save money due to reduced monitoring (sampling and analysis) and reporting in those specific instances where the regulations are less stringent.

10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.

The proposed rule addresses industrial discharges to a POTW that are not amenable to biological treatment.

- Industrial discharges may pass-through the treatment works and cause a noncompliance of the POTWs permit limitations. Industrial pollution in the receiving water body may then exceed the limitations which are designed to protect human health or other beneficial uses of the water body.
- Industrial discharges may contaminate the sludge produced at the POTW, limiting the beneficial uses of sludge. For example, the sludge may exceed pollutant limitations for land application, and then be sent to a landfill at additional expense to the POTW.
- Industrial discharges may interfere with the operation of the treatment plant. The beneficial microbes necessary in the biological treatment process typical of secondary treatment may die off due to an industrial pollutant. The result would be an increased discharge of pollutants (biochemical oxygen demand and suspended solids) that violates permit conditions, and also pathogens that may lead to illness.
- Industrial discharges may affect the safety or health of treatment plant workers.

11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information.

The following documents were considered in the development of the proposed rule. Additional scientific information related to risk analysis or management was not necessary for the adoption of the federal regulation.

Federal Register Notice, October 14, 2005, "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution, Final Rule", 70 FR 60134 to 60198.

Fact Sheet 1.0: Pretreatment Streamlining Rule Summary of Changes Made Under the Streamlining Rule, (EPA 833-F-06-006)  
Fact Sheet 2.0: Required Changes, (EPA 833-F-06-005)  
Fact Sheet 3.0: Equivalent Mass Limits for Concentration Limits, (EPA 833-F-06-008)  
Fact Sheet 4.0: Equivalent Concentration-Based Limits for Flow-Based Standards, (EPA 833-F-08-002)  
Fact Sheet 5.0: New Classifications for Categorical Industrial Users, (EPA 833-F-06-011)  
Fact Sheet 6.0: Optional Sampling Waiver for Pollutants Not Present, (EPA 833-F-08-003)  
Fact Sheet 7.0: Best Management Practices, (EPA 833-F-06-013)  
Fact Sheet 8.0: Slug Control Plans, (EPA 833-F-07-004)  
Fact Sheet 10.0: General Control Mechanism Option, (EPA 833-F-09-003)

Documents may be accessed, reviewed and printed from the EPA's web site at <http://cfpub.epa.gov/npdes/pretreatment/streamlining.cfm>

12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.

The changes to the federal regulation were based on the analysis and public comments referenced in the Federal Register notice. All publically available information is contained in EPA's docket number OW-2002-0007, available electronically at

<http://www.epa.gov/dockets/index.htm>

or by mail at

EPA West Building, Room 3334  
1301 Constitution Avenue, NW  
Washington, DC 20004

The EPA has considered the uncertainties and assumptions in the federal rulemaking and no additional analyses will be done in adopting the federal rule.

13. A description of any significant countervailing risks that may be caused by the proposed rule

No significant countervailing risks have been identified with this proposed rule. The proposed rule is based on the federal rule which was developed with input from stakeholders. The federal rule development began with issue papers distributed to stakeholders in May, 1996 and the proposed rule was first published in the Federal Register on July 22, 1999 (64 FR 39464). Comments were received and the answers to comments are summarized with the publication of the final rule in the Federal Register on October 14, 2005 (70 FR 60134). The federal rule was developed over a period time, and with the input of the regulated entities, the states, and other interested parties.

14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.

One alternative regulatory approach is to adopt only the more restrictive requirements of the federal regulation 40 CFR §403 and incorporate these into the existing regulation 10 CSR 20-6.100. A provision of the federal rule (§403.4) states that any pretreatment requirements established by state or local law must be at least as restrictive as the federal requirement.

The chosen alternative is to adopt the entire federal regulation 40 CFR §403. This will allow the State and regulated entities to take advantage of the less restrictive requirements of the federal regulation. The less restrictive requirements are beneficial to the regulated entities and are expected to result in cost savings. In addition, it is simpler for both the State of Missouri and the regulated entities to understand the adopted regulation, rather than compare the federal and the state rules to determine the differences.

15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State

Regulatory Impact Reports for current rule developments of the Water Pollution Control Branch may be found on the Water Protection Rule Development web page at:

<http://dnr.mo.gov/env/wpp/rules/wpp-rule-dev.htm>

The Regulatory Impact Report provides information on rule development. Please provide comments in the time frame indicated. The comment period for this Regulatory Impact Report is planned for May 4, 2011 to July 5, 2011.

Comments can be submitted by e-mail to Walter Fett, [walter.fett@dnr.mo.gov](mailto:walter.fett@dnr.mo.gov). E-mails must include the senders contact information (i.e. name, mailing address, telephone number). Comment may also be sent by mail to:

Walter Fett  
Pretreatment Coordinator  
Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

16. Provide information on how to request a copy of comments or the web information where the comments will be located.

Hard copies of received comments may be requested via telephone at (573) 526-4589. Web posting will be to the Water Protection Rule Development web page, listed above.



# City of Independence

## WATER POLLUTION CONTROL DEPARTMENT

P.O. Box 1019 • INDEPENDENCE, MISSOURI 64051-0519 • (816) 325-7711 • FAX (816) 325-7722

AN EQUAL OPPORTUNITY EMPLOYER

July 14, 2011

Mr. Walter Fett  
NPDES Permits & Engineering Section  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

Re: 10 CSR 20-6.100 General Pretreatment Regulation Draft Proposed Rule

Dear Mr. Fett:

The following comments are submitted on behalf of the City of Independence, Water Pollution Control Department (WPC). WPC administers the City's approved industrial pretreatment program.

We applaud the Department of Natural Resources for proposing to adopt federal pretreatment streamlining regulations. With EPA poised to promulgate pretreatment standards for dentists, we definitely need the authority to issue general permits and to require Best Management Practices in lieu of effluent limits. Streamlining provisions should enable us to more effectively manage the anticipated increased workload associated with regulating dentists as categorical industrial users.

We do have a concern regarding the proposed substitution in Section (9) of the draft rule of "the Missouri Hazardous Waste Management Law...and the Missouri Solid Waste Management Law..." for "subtitles C and D of the Resource Conservation and Recovery Act" in 40 CFR §403.8(f)2)(iii). Publicly Owned Treatment Works have already notified Significant Industrial Users (SIUs) of applicable requirements under subtitles C and D of the Resource Conservation and Recovery Act pursuant to §403.8(f)2)(iii). We do not believe it is appropriate to change the notification requirements retroactively. New notification requirements could be burdensome for pretreatment programs with many SIUs.

Thank you for considering our comments.

Sincerely,

  
Dorris L. Bender  
Environmental Compliance Manager

c: Dick Champion, Jr.





**Metropolitan St. Louis  
Sewer District**

Division of Environmental Compliance  
10 East Grand Avenue  
St. Louis, MO 63147-2913  
Phone: 314.768.6200 www.stlmsd.com

2011 JUL 13 PM 1:04  
WATER PROTECTION DIVISION

July 12, 2011

Walter Fett  
Pretreatment Coordinator  
Water Pollution Control Program  
**DEPARTMENT OF NATURAL RESOURCES**  
P.O. Box 176  
Jefferson City, MO 65102

**Re: Comments for 10CSR 20-6.100 - General Pretreatment Regulations Proposed Rule**

Dear Mr. Fett:

The Metropolitan St. Louis Sewer District, which has a State-approved Industrial Pretreatment Program, submits comments regarding the Department of Natural Resources' proposed rule. We are pleased that the Department is proposing adoption of the most recent federal pretreatment regulations. Those regulations include streamlining provisions which provide flexibility to better administer the regulations.

One example of the benefits that the proposed rule would have for the District's service area is the ability to eliminate individual discharge permits which provide little additional environmental protection. Under the existing regulations, all industries subject to EPA-regulated wastewater categories must be issued a permit. The permits must be issued regardless of the volume of wastewater discharged. Unfortunately, for industries with very low discharge volumes, the permits provide little to no additional useful data, while increasing expenses for both the industries and the District. The proposed rule would allow the District to forego permits for industries that discharge less than 100 gallons per day of EPA-regulated wastewater, so long as the industries are and remain in good compliance. All other wastewater requirements, including discharge limitations, would continue to apply. For the District's customers, this could reduce regulatory costs for approximately 20 percent of wastewater discharge permittees.

We do want to echo one concern expressed by other pretreatment programs in Missouri. In Section 9 of the proposed rule, the Department proposes to substitute "the Missouri Hazardous Waste Management Law...and the Missouri Solid Waste Management Law..." for "subtitles C and D of the Resource Conservation and Recovery Act" in 40 CFR §403.8(f)(2)(iii). This section of 403 requires that industrial users be notified of any applicable requirements under subtitles C and D of the Resource Conservation and Recovery Act (RCRA). We do not believe it is appropriate to change the notification requirements retroactively for all industrial users that have been previously notified.

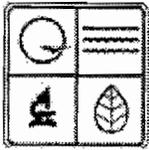
We appreciate the opportunity to provide comment.

Sincerely,  
**METROPOLITAN ST. LOUIS SEWER DISTRICT**

Douglas M. Mendoza, P.E.  
Manager of Industrial Pretreatment

cc: John Lodderhose





Missouri  
Department of  
Natural Resources

**Response to Regulatory Impact Report Comments**

**10 CSR 20-6.100 General Pretreatment Regulation**

**Type of Rulemaking: New Rule**

---

**Response to Comments made by Douglas Mendoza, Manager of Industrial Pretreatment at the Metropolitan St. Louis Sewer District (MSD), by letter dated July 12, 2011**

**Comment:** In Section 9 of the proposed rule, the Department proposes to substitute "the Missouri Hazardous Waste Management Law . . . and the Missouri Solid Waste Management Law. . ." for "subtitles C and D of the Resource Conservation and Recovery Act" in 40 CFR §403.8(f)(2)(iii). This section requires that industrial users be notified of any applicable requirements under subtitles C and D of the Resource Conservation and Recovery Act (RCRA). We do not believe it is appropriate to change the notification requirements retroactively for all industrial users that have been previously notified.

**Response:** The pretreatment program is a component of the National Pollutant Discharge Elimination System (NPDES) permit program. As such, the enforceable requirement to implement the pretreatment requirements is included in the permit to discharge wastewater from the treatment plants. In the Bissell Point operating permit MO-0025178, the requirement for implementation refers to 40 CFR 403 in Special Condition #18. So, a one-time notification of federal hazardous waste requirements for sludges generated by the pretreatment system meets the requirement in the permit.

If a future operating permit references the Missouri General Pretreatment Regulation, 10 CSR 20-6.100, it appears another notification would be required. It is the rule author's opinion that this may be done during the annual inspection of the industrial user, and documented in the inspection report. This would minimize the additional burden to the city.

The State of Missouri is authorized to implement hazardous waste regulations, and these laws and regulations are enforced in lieu of the federal regulation for those covered matters. The Department will keep the reference to Missouri law in the proposed General Pretreatment Regulation, 10 CSR 20-6.100. There will be an additional opportunity to comment on this matter in the public notice period for the proposed regulation.

---

**Response to Comments made by Dorris Bender, Environmental Compliance Manager, City of Independence, by letter dated July 14, 2011**

**Comment:** We do have a concern regarding the proposed substitution in section (9) of the draft rule of "the Missouri Hazardous Waste Management Law . . . and the Missouri Solid Waste Management Law . . ." for "subtitles C and D of the Resource Conservation and Recovery Act" in 40 CFR §403.8(f)2(iii). Publicly Owned Treatment Works have already notified Significant Industrial Users (SIUs) of applicable requirements under subtitles C and D of the Resource Conservation and Recovery Act pursuant to §403.8(f)2(iii). We do not believe it is appropriate to change the notification requirements retroactively. New notification requirements could be burdensome for pretreatment programs with many SIUs.

---

**Response:** The pretreatment program is a component of the National Pollutant Discharge Elimination System (NPDES) permit program. As such, the enforceable requirement to implement the pretreatment requirements is included in the permit to discharge wastewater from the treatment plants. In the Rock Creek operating permit MO-0089681, the requirement for implementation refers to 40 CFR 403 in Special Condition #7. So, a one-time notification of federal hazardous waste requirements for sludges generated by the pretreatment system meets the requirement in the permit.

If a future operating permit references the Missouri General Pretreatment Regulation, 10 CSR 20-6.100, it appears another notification would be required. It is the rule author's opinion that this may be done during the annual inspection of the industrial user, and documented in the inspection report. This would minimize the additional burden to the city.

The State of Missouri is authorized to implement hazardous waste regulations, and these laws and regulations are enforced in lieu of the federal regulation for those covered matters. The Department will keep the reference to Missouri law in the pretreatment regulation. There will be an additional opportunity to comment on this matter in the public notice period for the proposed rule.

---

Missouri Department of Natural Resources  
**Water Protection Program**  
**Rulemaking Report**  
Updated: November 2, 2011

Affected Rule: Rescission of 10 CSR 20-6.100 General Pretreatment Regulation, and adoption of a New Rule for 10 CSR 20-6.100 General Pretreatment Regulation

1. What is the purpose of this rulemaking?

Pretreatment regulations apply to pollutants from industrial sources which are subject to National Pretreatment Standards and are discharged to a Publicly Owned Treatment Works (POTW). Pretreatment regulations also apply to POTWs which receive wastewater from these sources. The Standards are promulgated to prevent the introduction of pollutants to a POTW which will:

- Interfere with the operation of the POTW or prevent use or disposal of sludge, or
- Pass thru the treatment works or otherwise be incompatible with such works.
- And, to improve opportunities to recycle or reclaim wastewater and sludge.

On October 14, 2005, the U.S. Environmental Protection Agency (EPA) adopted modifications to their General Pretreatment Regulations, 40 CFR Part 403, as published in 70 FR 60191-60198. The codified version of these changes to 40 CFR Part 403 appeared in the Code of Federal Regulations in July, 2006. Some provisions of the revised regulation are more restrictive, and others reduce the regulatory burden on industries and POTWs. In the State of Missouri, these federal rules are implemented and enforced by the Department of Natural Resources (Department) through a delegation agreement with the EPA. State law must be changed before the POTW can incorporate these changes.

The Water Protection Program proposes to rescind the State of Missouri's existing General Pretreatment Regulations, 10 CSR 20-6.100, and to incorporate by reference the EPA's General Pretreatment Regulation, 40 CFR 403 in a new rule. No later federal amendments or additions are included. Copies of the federal documents can be obtained from the Government Printing Office at <http://www.gpoaccess.gov/>.

2. Why is the rulemaking being proposed now?

The more restrictive provisions of 40 CFR Part 403 are required to be adopted by the State of Missouri and were promulgated in the Federal Register on October 14, 2005. It is also necessary to adopt the more restrictive provisions of the federal regulation before the less restrictive provisions are implemented.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

Yes. The federal regulation 40 CFR Part 403 will be incorporated by reference. The agency is bound by Section 536.031 RSMo to provide copies at no more than the actual cost of reproduction.

The web link to the federal rule is:

[http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr403\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr403_06.html)

And, the initial publication in the Federal Register is at:

<http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=3156937364+2+2+0&WAIAction=retrieve>

4. Is a Regulatory Impact Report required for this rulemaking?

No. The Regulatory Impact Report is not required because it strictly adopts federal mandates.

- The federal regulation to be incorporated is 40 CFR 403.
- The federal mandate contains regulations that are more restrictive than state law and, are required to be adopted by the State of Missouri.
- The federal docket is No. OW-2002-0007, and the documents are available at:  
<http://www.regulations.gov/search/Regs/home.html#home>

5. What authority does DNR have to carry out this rulemaking?

Missouri Revised Statutes Section 644.026, paragraphs (2), (3), and (7) grant authority to the Clean Water Commission to adopt, promulgate or repeal after notice and hearing, those regulations to enforce, implement and effectuate the responsibilities of Missouri' Clean Water Law.

*AUTHORITY: section 644.041, RSMo 1994. \* Original rule filed Feb. 1, 1988, effective June 13, 1988. Amended: Filed March 1, 1996, effective Nov. 30, 1996.*

*\*Original authority 1972, amended 1973, 1987.*

6. What does the rulemaking require and how does it produce benefits?

The more restrictive provisions are required to be adopted by the State of Missouri and the POTWs with approved pretreatment programs. These are as follows:

- 1) Updated removal credits provisions related to overflows [§ 403.7 (h)].
- 2) Slug control requirements must be included in Significant Industrial User (SIU) control mechanisms (i.e. permits) [§ 403.8 (f) (1) (iii) (B) (6)].
- 3) SIUs must be evaluated for the need for a plan or other action to control slug discharges within a year from the final rule's effective date or from becoming an SIU [§ 403.8 (f) (2) (vi)].
- 4) SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for a slug discharge [§ 403.8 (f) (2) (vi)].
- 5) The Significant Noncompliance (SNC) definition is expanded to include additional types of Pretreatment Standards and Requirements [§ 403.8 (f) (2) (viii) (A-C)].
- 6) SIU reports must include Best Management Practice (BMP) compliance information [§ 403.12 (b), (e), (h)].

- 7) SIU control mechanisms must contain any BMPs required by a Pretreatment Standard, local limits, state, or local law [§ 403.8 (f) (1) (iii) (B) (3)].
- 8) Documentation of compliance with BMP requirements must be maintained as part of the SIU's and POTW's record-keeping requirements [§ 403.12 (o)].
- 9) Control Authorities which perform sampling for SIUs must perform any required repeat sampling and analysis within 30 days of becoming aware of a violation [§ 403.12 (g) (2)].
- 10) Require periodic compliance reports to comply with sampling requirements, require Control Authority to specify the number of grab samples necessary in periodic and non-categorical SIU reports and require non-categorical SIUs to report all monitoring results [§ 403.12 (g) (3), (4), (6)].
- 11) Non-Categorical SIUs are required to provide representative samples in their periodic monitoring reports [§ 403.12 (g) (3)].
- 12) Require notifications of changed discharge to go to the Control Authority and the POTW, where the POTW is not the Control Authority [§ 403.12 (j)].
- 13) How and when the POTW can designate a "duly authorized employee" to sign POTW reports [§ 403.12 (m)].

Some provisions of 40 CFR 403 are less restrictive than current state regulations and may be beneficial to industries. A pretreatment program modification (i.e. a new city ordinance) must be submitted to and approved by the State of Missouri for these to be implemented by the city. Several of these are:

- Water conservation efforts in an industrial facility may concentrate pollutants in the wastewater discharge. The conditional use of equivalent mass limits in lieu of concentration-based limits [§ 403.6 (c) (5)] would provide the flexibility to allow an industry to implement water conservation.
- There is a new class of dischargers, the "non-significant categorical Industrial User", which never discharge more than 100 gallons per day of categorical wastewater. This new class has reduced reporting requirements [§ 403.3 (v) (2), 403.8 (f) (2) (v), and 403.12 (e), (g), (i), (q)].
- Sampling may be waived under certain conditions. Categorical Industrial users have monitoring requirements in federal regulations. The control authority (city) may waive or reduce the monitoring requirement if the pollutant is neither present or expected to be present [§ 403.8(f)(2)(v) and 403.12(e)].

7. Who is most likely affected by the rulemaking?

The rule amendment affects industries that discharge process wastewater to POTWs and, those POTWs that receive the wastewater. These facilities are subject to the State of Missouri's General Pretreatment regulations in 10 CSR 20-6.100.

There are currently 43 POTWs which range from small towns with one industrial facility to the St. Louis Metropolitan Sewer District with over 200 industries that discharge to the sewer system.

The significant industrial users regulated by the POTW include categorical industrial users. An estimate of the number of industries in the categories with most industries in the state of Missouri are listed in the table below

**Regulated Industries in the State of Missouri**

Code of Federal Regulations (CFR)	Description	Number of Facilities
40 CFR 433	Metal Finishing	156
40 CFR 413	Metal Plating (Newer facilities are § 433)	31
40 CFR 439	Pharmaceutical	28
40 CFR 417	Soap, Detergent	18
40 CFR 414	Organic Chemical	14
40 CFR 464	Metal Casting	10
Other categories	Various	85
Non-categorical SIU*	Various	<u>228</u>
Total regulated		~584

\*Non-categorical Significant Industrial Users are facilities that discharge wastewater that may affect the treatment plant, but are not subject to Categorical Pretreatment Standards.

8. What impact will the rulemaking have on small businesses? (A small business is defined by statute as a for-profit enterprise with fewer than 100 full or part-time employees.)

The industrial facilities which are defined as small businesses could potentially have lower costs as a result of the adoption of these rules by the State of Missouri. For example, if the discharge of categorical wastewater is always less than 100 gallons per day, then the facility may be designated a non-significant categorical Industrial User and be required to monitor and report less frequently.

9. What are the probable costs for the Department or any other public agency in the implementation and enforcement of the rulemaking?

Implementation costs to the Department will be the cost to do the rule making and then to review and approve the pretreatment program (city ordinance) modifications. Rulemaking costs are minimal and the cost to the Department to approve the program is estimated \$48,000.

There is an initial cost to the POTWs to modify the city sewer ordinance. After this, it is expected that the POTWs and industries will have a cost savings due to the reduced monitoring requirements at some industries. The EPA estimated the cost savings nationally in 2005 (re: 70 FR 60188) and for 1,464 POTWs surveyed, the cost savings is \$10.1 million dollars per year. Using the EPA's estimate, the total cost savings to the State of Missouri's 43 cities (POTWs) and to private industry (approximately 570), is \$354,000.

10. What is the anticipated effect of the rulemaking on state revenue?

The proposed rulemaking will have a neutral effect on state revenue.

11. Who was/will be involved in developing the rulemaking?

The stakeholders are the POTWs with active and approved pretreatment programs, the approximately 580 regulated industries, and possibly others that are to be identified.

The Department intends on holding a stakeholders group meeting to introduce the proposed rule changes, with follow-up meetings if necessary. Invitations to join the stakeholder group will be sent to 43 POTWs, 30 industries in non-pretreatment cities, and the Missouri Coalition for the Environment.

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

The federal rules have been available to regulated entities and the public since October 14, 2005. The interested parties will be invited to a stakeholders meeting. It is expected that several cities and industries will be interested in adopting the rule changes to take advantage of the potential cost savings offered by the federal rules.

13. Who may I contact to either ask questions or provide input on this rulemaking?

For information or to provide input on this rulemaking, contact Walter Fett, Environmental Engineer, by mail at P.O. Box 176, Jefferson City, MO 65101; by telephone at (573) 526-4589, or by e-mail at [Walter.Fett@dnr.mo.gov](mailto:Walter.Fett@dnr.mo.gov).

14. What are the expected dates for the comment period and public hearing?

Stakeholder meetings will include discussions concerning the existing federal requirements and the need for changes to the Department's current regulation with this rulemaking. A draft of the proposed rulemaking and a finding of necessity will be presented to the Clean Water Commission. Rulemaking for this proposed amendment will include any cost savings within the public and private entity fiscal notes. \*

A revised schedule may be developed following internal coordination, the Department's decision to proceed, or other appropriate actions.

The Public Notice of the Regulatory Impact Statement (RIR) is scheduled for May 27, 2011 to July 26, 2011.

The Department anticipates a publication of the proposed amendment in the *Missouri Register* April 15, 2012. A public hearing is scheduled for March 7, 2012.

The expected comment period for this rule begins on Dec. 15, 2011 and ends on March 14, 2012.

\*Rulemaking schedules are developed or revised through internal coordination, the Department's decision to proceed, or other appropriate actions. The scheduling for this rulemaking coincides with CWC meetings occurring every other month.

Meetings with Stakeholders	October 15, 2010 as needed
Interagency Coordination	May 27, 2011 thru publication
RIR Public Notice	May 27, 2011 thru July 26, 2011
Request Finding of Necessity Supported by substantial evidence on record	November 2, 2011 Finding of Necessity submitted to Commission
Filing period with Small Business Regulatory Fairness Board, Joint Committee on Administrative Rules and Secretary of State	November 3 thru 15, 2011 - plan to file by November 10
Publication in the <i>Missouri Register</i>	December 15, 2011
Public Comment Period	December 15, 2011- March 14, 2012
Public Hearing	March 7, 2012
End of Comment	March 14, 2012
Response to Comment & Adoption	May 2, 2012
Order of Rulemaking Filed with the Joint Committee on Administrative Rules	May 3 thru May 11 2012 - plan to file May 10 (May. 11 (Friday) = 58 <sup>th</sup> day May 13 (Sun. = 60)
Order of Rulemaking Filed with Secretary of State - 30 days must exist from JCAR filing -	June 15, 2012 publication deadline June 12 = 90 days. File June 11, 2012
Order of Rulemaking Published in <i>Missouri Register</i>	July 16, 2012
Rule Published in <i>Code of State Regulations</i>	July 31, 2012
Rule Effective	August 31, 2012

---