Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 128—PRETREATMENT STANDARDS

On July 19, 1973, notice was published in the FEDERAL REGISTER that the Environmental Protection Agency was proposing standards for pretreatment of pollutants introduced into publicly owned treatment works pursuant to section 307(b) of the Federal Water Pollution Control Act Amendments of 1972 (the Act). Written comments on the proposed rulemaking were invited and received from interested parties and the public. In addition, a public hearing was held in Washington, D.C., on September 26, 1973. The Environmental Protection Agency has carefully considered all comments received and the record of the public hearing. All written comments and a transcript of the public hearing are on file with the Agency. As indicated below, the regulation has been modified in response to some of the comments. The following discussion also outlines the reasons why other suggested changes were not made.

Under section 307(b) of the Act, Federal pretreatment standards are designed to achieve two purposes: (1) To protect the operation of publicly owned treatment works, and (2) to prevent the discharge of pollutants which pass through such works inadequately treated.

Section 128.131 sets forth a number of prohibitions designed to protect the operation of publicly owned treatment works. The prohibitions are self-explanatory. One commenter suggested that § 128.131 is deficient in that it fails to impose specific numerical limitations on the discharge of pollutants that interfere with the operation of publicly owned treatment works. However, the Agency has been unable to formulate such specific numerical limitations. In the first place, the data that are presently available are not considered sufficient to support uniform national standards prescribing permissible concentrations of particular pollutants in publicly owned treatment works. Moreover, the degree that any pollutant interferes with the operation of a publicly owned treatment works depends on the concentration of pollutant in the treatment works itself, rather than the concentration in each user's effluent. But for a national pretreatment standaard to be workable and enforceable, it must prescribe the quality of the user's effluent; otherwise, the user will not know what steps he must take to comply with the standard. It is impossible in a uniform national pretreatment standard to relate the quality of the user's effluent to the concentration of various pollutants in the publicly owned treatment works, since this relationship will vary in each sewer system depending on the quantity of the user's effluent as compared with the quantity of other effluents in the system.

Section 128.133 is based on the premise that pollutants which pass through publicly owned treatment works in amounts greater than would be permitted as a minimum treatment requirement for similar industrial sources discharging directly to navigable waters should be considered adequately treated. The fact that a discharger chooses to use a municipal sewer system, rather than discharging his wastes directly to the navigable waters, should not as a matter of general principle involve a penalty to the environment.

On the basis of this premise, § 128.133 requires users in industrial categories subject to effluent guidelines issued under section 304(b) of the Act, which are discharging incompatible pollutants to publicly owned treatment works, to adopt best practicable control technology currently available, as defined by the Administrator pursuant to section 304 (b) of the Act.

During the public comment period, questions were raised as to whether the effluent limitations guidelines would be appropriate in all cases for application to users of publicly owned treatment works. The Agency recognizes that for some industrial categories it may be necessary to further refine the effluent limitations guidelines to deal with problems that may arise in the application of such guidelines to users of publicly owned treatment works. However, the Agency believes that any adjustments required for particular industrial categories should be considered in connection with the promulgation of the individual effluent guidelines, rather than in the national pretreatment standard. Accordingly, when effluent limitations guidelines are promulgated for individual industrial categories, the Agency will also propose a separate provision for their application to users of publicly owned treatment works. Additional language has been added to § 128.133 to clarify this intent.

It was unclear whether § 128.133 as proposed covered sources that would be new sources if they were discharging directly into the navigable waters. Section 307(c) of the Act requires promulgation of separate pretreatment standards for such sources. Pursuant to section 307(c), the Agency has proposed pretreatment standards for such sources in connection with its proposal of new source performance standards under Section 306 of the Act. Accordingly, § 128.133 has been modified to make it clear that it covers only sources that are not subject to section 307(c) of the Act.

Section 128.133 allows a credit for the percentage removal of an incompatible pollutant to which the publicly owned treatment works is committed in its permit. To insure the basis for allowing such credit, a commitment with respect to a percentage removal of an incompatible pollutant will be included in the permit at the request of a municipality where a basis for such commitment can be demonstrated.

Some commenters suggested that the credit in § 128.133 for removal at the joint treatment works, where there is a commitment to such removal in the NPDES permit, is unrealistic, since municipalities will be unwilling to enter into such commitments. However, in order to achieve the goal of preventing the discharge of incompatible pollutants through municipal systems in amounts greater than the minimum requirements if the discharge were directly into the navigable waters, it is necessary that the required reduction be contained in an enforceable commitment either on the part of the industrial user or the joint treatment works. The industrial user should not be relieved of the commitment to achieve the required degree of reduction except to the extent that the joint treatment works is able to assume a commitment to remove the pollutant.

One commenter suggested that users should be required to comply with toxic effluent standards under section 307(a) of the Act, as well as the requirement of best practicable control technology currently available under section 301(b) and 304(b) of the Act. However, toxic effluent standards will be designed to protect aquatic life in the receiving body of water from both acute and chronic effects. Acute effects will be covered by concentration standards while chronic effects will be covered by weight limitations. Both types of standards will be applicable to the discharge from the publicly owned treatment works. Toxic effluent standards will not be designed to protect sewer systems, and thus it would not be appropriate to apply them to discharges into the system. To the extent that toxic materials in the users' discharges interfere with the operation of publicly owned treatment works, the problem can be otherwise addressed under these standards (§ 128.131) or under local standards using the pretreatment guidelines issued under section 304(f) of the Act. While toxic materials in the users' discharge may appear in the sludge generated by the publicly owned treatment works, the Agency has no basis for making a national determination that the resultant sludge disposal problem is any worse than the problem that would be created if the individual users removed the toxics from their effluent and disposed of the resultant materials individually. This is a factor which must be determined by State and local authorities, taking into account the capabilities of their sludge disposal system and the pollutants present in the wastes from industrial users.

The presence of toxic pollutants in toxic amounts is utilized in the regulation in order to identify "major contributing industries" for purposes of the pretreatment requirements for incompatible pollutants. The purpose here is to identify industrial users whose effluent is significant enough to warrant the imposition of controls based on best practicable control technology currently available without undue administrative burden, rather than to indicate that it is appropriate to impose toxic effluent standards on industrial users.

The definition of "compatible pollutant" has been broadened to recognize the fact that some joint treatment works are designed to achieve substantial removal of pollutants other than the four pollutants listed in the definition in the proposed regulation (BOD, suspended solids, pH, and fecal coliform bacteria). Where the joint treatment works was designed to and does achieve substantial removal of a pollutant, it is not appropriate to require the industrial user to achieve best practicable control technology currently available, since this would lead to an uneconomical duplication of treatment facilities. While the term "substantial removal" is not subject to precise definition, it generally contemplates removals in the order of 80 percent or greater. Minor incidental removals in the order of 10 to 30 percent are not considered "substantial".

There was a diversity of comments on the length of the time for compliance and its relation to the promulgation of the definition of best practicable control technology currently available. The Act requires that pretreatment must specify a time for compliance not to exceed three years from the date of promulgation. The Agency has concluded that a period not greater than three years from the date of promulgation is appropriate for compliance for § 128.131. For Section 128.133 the same period is also considered an appropriate time for compliance. However, the standard set forth in § 128.133 will not be complete until promulgation of the separate provision, as required by Section 128.133, setting forth the application to pretreatment of the effluent limitations guideline for a given industrial category.

Accordingly, § 128.140 provides that the period of compliance with § 128.133 will not commence for any particular category of user until promulgation of that separate provision. Section 128.140 has been further modified to establish an interim requirement for commencement of construction, and a requirement for compliance reports. It was concluded that without such requirements, timely compliance with the pretreatment standard might be unenforceable as a practical matter.

Some commenters questioned the need for these pretreatment standards or the relationship between these standards and local pretreatment programs. It is important to note the clear requirements in the Act that there be both national pretreatment standards, Federally enforceable, and EPA pretreatment guidelines to assist States and municipalities in developing local pretreatment programs. The Agency recognizes that in some cases, these pretreatment standards may not be sufficient to protect the operation of a publicly owned treatment works or to enable the treatment works to comply with the terms of its NPDES permit. This may be the case, for example, when the terms of the permit for the publicly owned treatment works are dictated by water quality standards or toxic standards. In such cases, the State or municipality may have to impose more stringent pretreatment standards under State or local laws than are specified in these regulations to enable compliance with NPDES permits issued to publicly owned treatment works. The agency considers it essential that such local pretreatment requirements be established for each system where necessary to ensure compliance with the NPDES permit.

Pretreatment guidelines will be published, pursuant to section 304(f) of the Act, to assist the States and municipalities in establishing their own pretreatment requirements.

Effective date. This regulation will become effective December 10, 1973.

JOHN QUARLES,
Acting Administrator.

NOVEMBER 1, 1973.

NOTE.—The EPA pamphlet, Pretreatment of Discharges to Publicly Owned Treatment Work, is filed as part of the original document.

Sec.

AUTHORITY: Sec. 307(b) Pub. L. 92-500; 86 Stat. 857 (33 U.S.C. 1317).

§ 128.100 Purpose.

The provisions of this part implement section 307(b) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) hereinafter referred to as "the Act".

§ 128.101 Applicability.

The standards set forth in § 128.131 apply to all non-domestic users of publicly owned treatment works. The standard set forth in § 128.133 applies only to major contributing industries.

§ 128.110 State or local law.

Nothing in this part shall affect any pretreatment requirement established by any State or local law not in conflict with any standard established pursuant to this Part. In particular cases, a State or municipality, in order to meet the effluent limitations in a NPDES permit for a publicly owned treatment works may find it necessary to impose pretreatment requirements stricter than those contained herein.

§ 128.120 Definitions.

Definitions of terms used in this part are as follows:

§ 128.121 Compatible pollutant

For purposes of establishing Federal requirements for pretreatment, the term "compatible pollutant" means biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree. Examples of such additional pollutants may include:

Chemical oxygen demand.
Total organic carbon.
Phosphorus and phosphorus compounds.
Nitrogen and nitrogen compounds.
Fats, oils, and greases of animal or vegetable origin except as prohibited under § 128.131(c).

§ 128.122 Incompatible pollutant.

The term "incompatible pollutant" means any pollutant which is not a compatible pollutant as defined in § 128.121.

§ 128.123 Joint treatment works.

Publicly owned treatment works for both non-industrial and industrial wastewater.

§ 128.124 Major contributing industry.

A major contributing industry is an industrial user of the publicly owned treatment works that: (a) Has a flow of 50,000 gallons or more per average work day; (b) has a flow greater than five percent of the flow carried by the municipal system receiving the waste; (c) has in its waste, a toxic pollutant in toxic amounts as defined in standards issued under section 307(a) of the Act; or (d) is found by the permit issuance authority, in connection with the issuance of an NPDES permit to the publicly owned treatment works receiving the waste, to have significant impact, either singly or in combination with other contributing industries, on that treatment works or upon the quality of effluent from that treatment works.

§ 128.125 Pretreatment.

Treatment of wastewaters from sources before introduction into the joint treatment works.

§ 128.130 Pretreatment standards.

The following sections set forth pretreatment standards for pollutants introduced into publicly owned treatment works.

§ 128.131 Prohibited wastes.

No waste introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(a) Wastes which create a fire or explosion hazard in the publicly owned treatment works.

(b) Wastes which will cause corrosive structural damage to treatment works, but in no case wastes with a pH lower than 5.0, unless the works is designed to accommodate such wastes.

(c) Solid or viscous wastes in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(d) Wastes at a flow rate and/or pollutant discharge rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

§ 128.132 Pretreatment for compatible pollutants.

Except as required by § 128.131, pretreatment for removal of compatible pollutants is not required by these regulations. However, States and municipalities may require such pretreatment pursuant to section 307(b)(4) of the Act.

§ 128.133 Pretreatment for incompatible pollutants.

In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guideline defining best practicable control technology currently available pursuant to sections 301(b) and 304(b) of the Act: *Provided,* That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that when the effluent limitations guideline for each industry category is promulgated, a separate provision will be proposed concerning the application of such guideline to pretreatment.

§ 128.140 Time for compliance.

(a) Any owner or operator of any source to which the pretreatment standards required by this Part are applicable, shall be in compliance with such standards within the shortest reasonable time but not later than three years from the date of their promulgation; except that for § 128.133, the three year compliance period for any user shall commence with the date of promulgation of a provision, as required by § 128.133, setting forth the application to pretreatment of the effluent limitations guidelines for the applicable industrial category.

(b) In order to ensure such compliance, each such owner or operator shall commence construction of any required pretreatment facilities within 18 months from the date of final promulgation of the provision required by § 128.133, setting forth the application to pretreatment of the effluent limitations guidelines. By the time construction is required to be commenced, each such owner or operator shall furnish to the Regional Administrator (or to any State agency with an approved NPDES permit program) a report, on a form to be prescribed by the Administrator, which shall set forth the effluent limits to be achieved by such pretreatment facilities and a schedule for the achievement of compliance with such limits by the required date. A copy of such report shall be furnished to the municipality or agency operating the publicly owned treatment works into which such pollutants are discharged. Thereafter, each such owner or operator shall furnish the Regional Administrator or his designee with such additional information or reports (including information relating to compliance with effluent limits and schedules for completion of pretreatment facilities) as he may request.

(c) Nothing contained herein shall prevent any municipality or other agency from requiring more stringent pretreatment standards or a more stringent compliance schedule, than as set forth in this part.

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