

Pretreatment Program Modifications

Region 8 Guidance on Defining and Processing Approved Program Modifications

USEPA Region 8 Pretreatment Program

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DISCLAIMER

This is intended as a working document. The statements in this document are intended to provide draft framework on the definition and submittal of Pretreatment Program modifications to implement the Pretreatment Program in EPA Region 8. This document is not intended, nor can it be relied on, to create any rights enforceable by any party in litigation with the United States.

As the science improves and additional information becomes available, this document will be modified. This document may be revised without public notice to reflect EPA policy and regulations. Updates to this document will be made available at the EPA Region 8 Pretreatment website: <http://www.epa.gov/region8/water/pretreatment/index.html>. For further information, you may contact:

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EPA thanks all of the reviewers from Local, State, and Federal agencies for their technical review and input in the revision of this document.

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

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

1.0 – SUBSTANTIAL MODIFICATIONS

The following program changes are considered substantial modifications:

- Modifications that relax POTW legal authorities unless the modifications directly reflect revisions to 40 CFR Part 403;
- Modifications that relax the numeric local limits or the Maximum Allowable Industrial Loadings, except modifications to pH to the pH 5 minimum or reallocations of MAIL;
- Changes to type or form of control mechanisms used by the POTW for SIUs (e.g.; order vs. permit);
- A decrease in the frequency of self-monitoring or reporting for industrial users from that approved by the Approval Authority;
- A decrease in the frequency of industrial user inspections or sampling by the POTW ;
- Changes to the POTW’s confidentiality procedures;
- Changes to the legal authority that change the regulatory status of industrial users (e.g, adoption or deletion of specific prohibitions)
- Any other modification that the Approval Authority deems substantial on the basis that it could have a significant impact on the POTW; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on the industrial users of the POTW.

All substantial modifications shall be submitted to the Approval Authority. EPA Region 8 typically evaluates, public notices, and approves legal authorities (ordinances or rules and regulations) and local limits that meet the criteria of substantial program modifications. These legal authorities and local limits are implemented in the permit templates, enforcement response plans, and other Pretreatment implementation documents. However, enforcement response plans that establish new legal authorities or permits that establish new limits, not in existing

ordinance/rules and regulations or local limits, may meet the criteria of a substantial program modification. EPA recommends you contact your Approval Authority to determine if these meet the criteria of a substantial modification.

To ensure the local programs submit the necessary information, the submittals of legal authorities and local limits should include the following:

1.1 – Requirements for Legal Authority Submittals

1. A statement of basis for the proposed modification;
2. An attorney’s statement that confirms the modified legal authority will:
 - a. Allow the municipality to fully implement and enforce Pretreatment Standards and Requirements,
 - b. Be processed and adopted by administrative procedures established in local laws and regulations and will include an opportunity for the public to participate,
 - c. Assure the changes will be in compliance with state laws and established standards and requirements in the municipality’s NPDES discharge permit.
3. A copy of the draft legal authority that shows additions (by means of **CAPITALIZATION AND BOLDING**) and deletions (by means of ~~strikethroughs and bolding~~) at a minimum;
4. A copy of the draft legal authority showing all changes as they will look in final format;
5. A copy of any new forms/procedures affected by this modification;
6. Any other documentation required by the Approval Authority.

1.2 – Requirements for Local Limits Submittals – *must include the information in 1.1 as well as the following:*

1. Data for local limits inputs (INF, EFF, Biosolids, Commercial, Residential, Industrial, Trucked/Hauled Waste)
2. Source of standards used in developing local limits
 - a. Permit limits
 - b. Water quality standards
 - c. Biosolids standards
 - d. Other standards
3. Removal efficiencies - type of removal efficiency calculation
 - a. Sources of default values
4. Assumptions and local decisions
5. Identification of Pollutants of Concern
6. Calculations of Allowable Headwork loadings and Identification of MAHL
7. Calculations of MAIL from MAHL
8. Determination of Allocation of MAIL and appropriate calculations.

9. A description of the Allocation method used;
 - a. For Non-uniform allocations (including mass allocations):
 - i. Description of allocation method, including listing of IUs and mass of each pollutant that will be allocated,
 - ii. Description of the tracking/methodology to demonstrate that the MAIL is not exceeded.
10. Other data, as requested by the Approval Authority.

1.3 – Substantial Modification Process

Section 101(e) of the Clean Water Act helps to achieve its objectives by declaring that consistent with the provisions of the Act, “Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State shall be provide for, encourage and assisted by EPA and the states...” Public participation is a vital component of program modifications.

To ensure the program modifications are legally-defensible, approval by the local agencies city council or board with adequate public participation is necessary. In addition, approval and public notice by the Approval Authority is required. It is highly recommended that you contact your Approval Authority to determine the appropriate timing to formally submit the program modification.

Approval Authorities shall public notice the substantial modifications in a paper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users. No further public notice is required if the original public notice provides for only one public notice **AND** no comments are received **AND** the requested modification can be approved without change. The public notice may be performed by the POTW if the Approval Authority agrees **AND** the public notice language is approved by the Approval Authority. The decision on what party will perform the actual public notice is decided by the Approval Authority. The Approval Authority is responsible for all public notice in any case.

2.0 – NON-SUBSTANTIAL MODIFICATIONS

Non-substantial modifications include changes to the approved program and legal authority not defined as substantial modifications. Submittals to EPA Region 8 require an attorney’s statement for any non-substantial modification including a change to a Pretreatment Standard, excluding a change that mirrors a change in the Federal regulations.

When requesting a non-substantial modification, the approved program should submit to the Approval Authority the same documents listed above for substantial modifications, unless otherwise directed. The POTW shall submit the non-substantial modification at least 45 days prior to implementation by the POTW. The submittal should be sent by certified mail to ensure

that the 45 day requirement is met. POTWs are discouraged from sending in multiple non-substantial modifications. It is strongly recommended that non-substantial modifications be grouped or combined into a single request. In addition, non-substantial modifications may be submitted as part of a substantial modification request.

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

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

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

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