

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

June 27, 1985

MEMORANDUM

SUBJECT: Applicability of Categorical Pretreatment Standards to Industrial Users of Non-Discharging POTWs

FROM: William P. Diamond, Chief
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TO: Permit Branch Chiefs, Regions I-X

At the recent National Branch Chiefs Meeting, a question was raised regarding the applicability of categorical pretreatment standards promulgated by EPA pursuant to section 307(b) of the Clean Water Act ("CWA") to industrial facilities sending their wastewaters to POTWs that do not discharge to waters of the United States (hereafter referred to as "non-discharging POTWs"). Because there is no "discharge of pollutants" (as defined in section 502(12) of the CWA) from these POTWs, they are not required to obtain NPDES permits; nor are they subject to the requirement, in section 402(b)(8) of the CWA, to develop a local pretreatment program, since this requirement is tied to the existence of an NPDES permit. As explained below, however, industrial users discharging into these POTWs must nonetheless comply with applicable categorical pretreatment standards. This memorandum also discusses how these industrial users can be regulated in the absence of a federally required local pretreatment program.

Under the CWA, categorical pretreatment standards apply to industrial users of all POTWs, including those that do not discharge to waters of the United States. Section 307(b) of the Act directs EPA to promulgate pretreatment standards "to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works." The definition of 'treatment works' in section 212 of the CWA is not limited to facilities that discharge into waters of the United States and in fact makes explicit reference to land-based systems (see §212(2)(A)). Moreover, the statutory goal of preventing interference with the treatment works, which includes protection of the resulting sludge from contamination that would limit disposal alternatives* is applicable to all POTWs, regardless of whether there is any discharge to waters of the United States.

Because non-discharging POTWs are not NPDES permittees and therefore are not required to develop pretreatment programs, the primary responsibility for enforcing pretreatment requirements in these cases falls upon those States with approved pretreatment programs and EPA. Since these POTWs do not hold NPDES permits,

EPA enforcement is limited to direct enforcement of categorical standards against the industrial users.** Of course, the fact that federal law does not require non-discharging POTWs to develop pretreatment programs does not prevent States from requiring these facilities to develop such programs under State law.*** Moreover, even where State law does not require them to do so, individual non-discharging POTWs may agree to develop pretreatment programs. In any of these cases, the developed programs may provide for enforcement of categorical standards by the POTW.**** However, it must be noted that because these POTWs are not NPDES permittees, EPA cannot enforce any requirements of their programs. This, if a non-discharging POTW whose pretreatment program involves enforcement of categorical standards does a poor job of enforcing these standards, EPA's only recourse is to take direct action against the violating industrial user.

I hope this memorandum answers your questions on this subject. If you have any further questions or comments, please call me at (FTS) 426-4793 or have your staff contact Hans Bjornson at (FTS) 426-7035.

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