



Pretreatment Permitting

Does State Delegation Control?

What is Pretreatment?

“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 pollutants into a POTW. 40 C.F.R. §403.3.

Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.

National Pretreatment Program

The national pretreatment program is a component of the NPDES program. It is a cooperative effort of federal, state, and local environmental regulatory agencies established to protect water quality. Similar to how EPA authorizes the NPDES permit program to state, tribal, and territorial governments to perform permitting, administrative, and enforcement tasks for discharges to surface waters (NPDES program), EPA and authorized NPDES state pretreatment programs approve local municipalities to perform permitting, administrative, and enforcement tasks for discharges into the municipalities' [publicly owned treatment works](#) (POTWs).

The national pretreatment program is designed to:

- protect POTW infrastructure, and
- reduce conventional and toxic pollutant levels discharged by industries and other nondomestic wastewater sources into municipal sewer systems and into the environment.

STATE AND TERRITORY PROGRAM AUTHORIZATION STATUS

State or territory	Approved NPDES permit program	Approved pretreatment program
Alabama	10/19/1979	10/19/1979*
Alaska	10/31/2008	10/31/2008
American Samoa	--	--
Arizona	12/05/2002	12/05/2002
Arkansas	11/01/1986	11/01/1986
California	05/14/1973	09/22/1989
Colorado	03/27/1975	--
Connecticut	09/26/1973	06/03/1981*
Delaware	04/01/1974	--
District of Columbia	--	--
Florida	05/01/1995	05/01/1995
Georgia	06/28/1974	03/12/1981
Guam	--	--
Hawaii	11/28/1974	08/12/1983
Idaho	06/05/2018	07/01/2018
Illinois	10/23/1977	--
Iowa	08/10/1978	06/03/1981
Johnson Atoll	--	--
Kansas	06/28/1974	--
Kentucky	09/30/1983	09/30/1983
Louisiana	08/27/1996	08/27/1996
Maine	01/12/2001	01/12/2001
Maryland	09/05/1974	09/30/1985
Massachusetts	--	--
Michigan	10/17/1973	06/07/1983
Midway Island	--	--
Minnesota	06/30/1974	07/16/1979
Mississippi	05/01/1974	05/13/1982*
Missouri	10/30/1974	06/03/1981
Montana	06/10/1974	--
Nebraska	06/12/1974	09/07/1984*
Nevada	09/19/1975	--
New Hampshire	--	--
New Jersey	04/13/1982	04/13/1982
New Mexico	--	--

State or territory	Approved NPDES permit program	Approved pretreatment program
New York	10/28/1975	--
North Carolina	10/19/1975	06/14/1982
North Dakota	06/13/1975	09/16/2005
Northern Mariana Islands	--	--
Ohio	03/11/1974	07/27/1983
Oklahoma	11/19/1996	11/19/1996
Oregon	09/26/1973	03/12/1981
Pennsylvania	06/30/1978	--
Puerto Rico	--	--
Rhode Island	09/17/1984	09/17/1984
South Carolina	06/10/1975	04/09/1982
South Dakota	12/30/1993	12/30/1993
Tennessee	12/28/1977	08/10/1983
Texas	09/14/1998	09/14/1998
Utah	07/07/1987	07/07/1987
Vermont	03/11/1974	03/16/1982*
Virgin Islands	06/30/1976	--
Virginia	03/31/1975	04/14/1989
Wake Island	--	--
Washington	11/14/1973	09/30/1986
West Virginia	05/10/1982	05/10/1982
Wisconsin	02/04/1974	12/24/1980
Wyoming	01/30/1975	--

*Denotes state implementation in accordance with provisions expressed in 40 CFR 403.10(e).
Table is current as of December 2024.

40 C.F.R. § 403.10
Development and submission of NPDES State
pretreatment pro-
grams.

(e) *State Program in lieu of POTW Program.* Notwithstanding the provision of §403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in §403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

40 C.F.R. 403.10(e)

In lieu of POTW developing
a Pretreatment Program

§ 403.8

40 CFR Ch. I (7-1-02 Edition)

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

(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 5 million gallons per day (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 will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in § 403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she 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) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modifica-

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA to incorporate the approved Program 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 procedure in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

(d) *Incorporation of compliance schedules in permits.* [Reserved]

(e) *Cause for reissuance or modification of Permits.* Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority 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 a POTW Pretreatment Program where the addition of pollutants into a 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 see

(f) POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(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 and any regulations implementing those sections. 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:

(i) 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 violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) 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 § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.

(A)(I) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

- (i)** Involve the same or substantially similar types of operations;
- (ii)** Discharge the same types of wastes;
- (iii)** Require the same effluent limitations;
- (iv)** Require the same or similar monitoring; and

(v) 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 § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi)

(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTW's shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. 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 Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in § 403.14.

MODIFICATION TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF VERMONT AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION I

→ 705W

I. Introduction

The Memorandum of Agreement approved March 11, 1974, by the Administrator of the United States Environmental Protection Agency between the Vermont Agency of Environmental Conservation (State) and the United States Environmental Protection Agency (U.S. EPA), Region I, is hereby modified to define State and U.S. EPA responsibilities for the establishment and enforcement of National Pretreatment Standards for existing and new sources under Section 307 (b) and (c) of the Clean Water Act (Act) as follows:

II. Scope of State Responsibilities

A. General

The State has primary responsibility for: (1) enforcing against discharges prohibited by 40 C.F.R. Section 403.5; (2) applying and enforcing any National Pretreatment Standards established by the U.S. EPA in accordance with Section 307 (b) and (c) of the Act; (3) reviewing and approving modification of categorical pretreatment standards to reflect removal of pollutants by a Publicly Owned Treatment Works (POTW) and enforcing related conditions in the POTWs National Pollutant Discharge Elimination System Permit. U.S. EPA

The State shall carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance

with pretreatment standards. The number of inspections to determine compliance shall be agreed upon as part of the annual Section 106 program plan process.

(4) State and Local Pretreatment Requirements

Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions, established by State or local law as long as the State or POTW requirements are not less stringent than any set forth in the National Pretreatment Standards, or other requirements or prohibitions established under the Act or regulations issued thereunder.

(b) In the case of discharges to publicly owned treatment works, the Secretary may enter an agreement with the public owner thereof to perform any or all of the Secretary's duties under this section with respect to said works. To the extent ascribed by the agreement, the public owner shall have the same authority as the Secretary under this section. Without limiting the foregoing, the public owner shall have authority to set its own application and other fees by ordinance or resolution in connection with duties assumed. In addition, and notwithstanding any provision of any charter or other statute applicable to the public owner, said owner also shall have such authority as may be necessary or convenient to establish civil, criminal, and administrative penalties and other remedies for failure to obtain a discharge permit when required, or for any violation of any such permit, consistent with part 403 of title 40 of the Code of Federal Regulations and other applicable laws, as the same may be amended, renumbered, or superseded from time to time.

BIG QUESTION

Small Answer: I Don't Know

Can ANR Delegate Primary or Sole Pretreatment Permitting, Inspection, and Enforcement to a Municipality When 403.10(e) Memorandum Provides that State has “Primary Responsibility”?