



# Inside Pretreatment Newsletter

February 8, 2010 (Number 33)

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Please forward this Newsletter to Other POTWs. Over 900 subscribers.

## Up-to-Date News Items

Go to the CWACS website and click on the “News and Meetings” tab at the top of the page. I have listed upcoming conferences and workshops. If you know of other meetings hosted by non-profits or government agencies, please let me know. Also, if you know of job openings, I want to include those on this webpage.

**New POTW support:** I have added downloadable documents for POTWs that wish to get more information on contract support for local limits modifications, legal authority reviews and updates, permit support, etc. Go to [www.CWACS.com](http://www.CWACS.com) and see a link to this on the main page.

## Upcoming Training for POTW Pretreatment Staff

Scottsdale, Arizona, **February 23-24, 2010:** Local Limits and Inspecting Industrial Users

Fort Smith, Arkansas, April 6-7, 2010: Local Limits and Inspecting Industrial Users

Grand Junction, Colorado, May 24, 2010: POTW Enforcement

Minneapolis, Minnesota, June 22-23, 2010: Local Limits (2 day course)

All training is limited to POTW representatives and smaller groups (generally 30 or less) to facilitate discussion. For more information and registering, please go to the CWACS website and click on the Training Courses tab.

## Enforcement Case Study

Remember my newsletter on EPA’s CWA Enforcement Action Plan (November 4, 2009)? I decided that it would be good to find a pretreatment program example and track EPA’s implementation of this new Plan. Does EPA intend to support the good pretreatment programs and enforce against the bad pretreatment programs? I happened across a “worst-case” scenario (January 13, 2010 newsletter). I decided to track what happens to this POTW pretreatment

program as a case study. All of the documents or information for this case study are publicly available on the web or requested under the various freedom of information requests.

I thought it would be instructive to evaluate this case (worst case) against other past and ongoing enforcement actions for pretreatment violations. Remember, some POTWs may be targeted for substantial enforcement for relatively minor deficiencies. Consistency and perspective are important when trying to evaluate fairness. Since this is “real-time”, the information in the forthcoming newsletters may vary in detail. But, I will keep you updated. I will not be using the name of the city or identifying the state or EPA region involved (unless the City wants me to identify them). That would not add much to the case study.

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Here are the general criteria that states and EPA uses to evaluate whether or not a POTW is in Reportable or Significant Non-Compliance:

**Violate one of these = SNC**

- Failure to enforce against Pass Through and/or Interference.
- Failure to submit required reports within 30 days (annual reports, inspection required action reports).
- Failure to meet compliance schedule milestone date within 90 days (e.g. inspection due dates).

**Violate two of these = SNC**

- Failure to issue /reissue control mechanisms to 90% of SIUs.
- Failure to inspect or sample 80% of SIUs within the last 12 months.
- Failure to enforce Pretreatment Standards and reporting requirements.
- Other violations of concern.

EPA and states always refine how they evaluate non-compliance, but these are the general criteria that are used (refinement generally is implemented through “Other Violations of Concern”. SNC example, if you have 45 SIUs and find five more out there that are not permitted or permitted appropriately, then you may be half-way to SNC (Maybe you did not even know they were out there). If you did not inspect those 5 SIUs plus another 5, you may have another problem. Any failure to enforce your program is a problem (violation of a local limit and not follow-up by the City). Slug discharges that interfere with operations (POTW permit violation) coupled with a failure to enforce is a real problem. Not complying with past compliance schedules (old audit report required actions) is also really bad. That is why you always want to review and correct audit/PCI reports. I have also discussed “due diligence” in past newsletters. This SNC determination is how EPA/states define reasonable and appropriate implementation (due diligence). *Note: EPA has been working on criteria for defining pretreatment program performance for a number of years. This could impact these SNC criteria. Watch for publication in the Federal Register of any policy regarding this topic.*

### **Example Case Study: Audit Findings**

Below are some background data and a summary of the audit findings. *Where I have included additional information or comments, I have shown those in an italicized format. I am very experienced in NPDES and pretreatment enforcement (administrative, civil and criminal).*

The audit report was pretty long. The state pretreatment person did a good job in the limited amount of time they had on-site during the audit (4 days). I have performed audits where the problems were so pervasive it was hard to characterize all of the deficiencies adequately during an audit. That was why EPA uses its authority under Section 308 of the Clean Water Act to collect all records and information to further development of enforcement actions.

Audit Conducted: August 10 - 13, 2009

Date of Report: December 31, 2009

State representatives present: 3

City representatives: 9 (most only attended the opening or closing conferences)

Chronic violations are identified by the State going back to at least the year 2000 (report references audit reports going back to 2001).

Background: The City has approximately 180,000 residents. The State-issued NPDES permit includes standard language for the pretreatment program. The City's pretreatment program was approved in 1982 by EPA and currently has 47 SIUs, of which 31 are CIUs. The City also reports approximately 19 permitted non-SIUs. POTW flow: Design 56 mgd, actual POTW flow approximately 33 mgd. *(Some information taken from the 2008 Annual Pretreatment Report or website information).*

#### **Major findings of the Audit:**

Resources: Four FTEs. It appears that the staffs are overwhelmed. Staff has not been provided adequate training and oversight to carry out their duties. Additional training in inspections, permitting, and enforcement are needed to comply with 40 CFR 403. *(Author's note: Similar sized pretreatment programs in this EPA region have about 7-8 FTE dedicated to the pretreatment program. It really is true that inadequate resources result in poor performance.)*

Legal Authority not Adequate: The City legal authority must be updated to comply with State regulations and 40 CFR Part 403 and the required Streamlining changes (and optional ones that are chosen). *Author's note: In addition to the extensive review conducted by the State, CWACS also looked at the Ordinance and found other, substantial changes that should be made. These changes would filter down to permits, the Enforcement Response Plan and throughout the program operating procedures.*

Local Limits: The Audit Report dated August 7, 2003 required that local limits must be reevaluated and submitted to the State. The City did not submit the local limits as required. *(Author's note: A quick review of the program documents indicate that the technical basis for the existing local limits may be hard to defend. Further, the local limits are not included in the legal authority, so it would be interesting to review the public participation process used in adopting and enforcing the local limits).*

Failure to complete on-going Industrial Waste Survey: Written industrial waste survey procedures are good. City has failed to implement procedures. A City engineer and the business manager for the POTW review IWS forms and flag ones needing pretreatment follow-up for the pretreatment staff. Quality of reviews was inconsistent *(Author's note: Shouldn't the pretreatment people be doing this? This appears that the City intentionally kept the pretreatment staff out of the process of identifying and targeting IUs for regulation).* Potential IUs/SIUs/CIUs for follow-up were identified by the State during the Audit.

Failure to Issue Permits/Adequate Permits: In as early as 2000, the City identified an existing, discharging metal finishing facility. The City decided that a permit would not be issued nor compliance required of this facility. Recently, this facility was found to have pH violations (City and Federal). Facility not permitted. Permits do not have appropriate language and requirements for permittees (e.g. appropriate limits, appropriate sampling requirements for TTOs, spill containment/slug plan requirements). Not having appropriate language and/or requirements in permits has been a finding in the following past audit reports dated September 17, 2007, November 4, 2005, July 1, 2002 and August 7, 2001. There may be many more IUs in the service area that should have been permitted as SIUs/CIUs. Existing permittees may be incorrectly classified (not identified as CIUs). The City is not consistently requiring permit applications to be submitted.

Failure to Inspect: The City have failed to comply with 40 CFR 403.8(f)(2)(v) to inspect all SIUs once per year. This has been identified in past audit reports (September 17, 2007 and October 20, 2004). The City is using multiple forms and inconsistent procedures to conduct inspections and not all information is being reviewed or documented as cited in previous audit reports dated September 12, 2007, November 4, 2005, and October 20, 2004. The City is failing to implement TTO and TOMP requirements per 40 CFR sections 413.03, 433.11 and 433.12.

Failure to perform compliance monitoring: The City has failed to sample SIUs at least once per year as required in 40 CFR 403.8(f)(2)(v). This has been a finding in the following past audit reports dated September 17, 2007, November 4, 2005, October 20, 2004, July 1, 2002 and August 7, 2001.

Failure to Enforce: The City appears to have failed to enforce or follow-up on violations by industrial users as required. The City has failed to follow its Enforcement Response Plan. The City is failing to enforce its program (e.g. requirements for the submittal of reports by the IUs, PU-1 forms, BMR, 90-day reports, TTO/TOMP plans, re-application forms, spill/slug plans, slug discharge violations, failure to monitor by IUs, etc.). The City was failing to enforce requirements for the 24-hour notification and a 30-day re-sampling. These issues were also

findings in the following past audit reports dated September 17, 2007, November 4, 2005, October 20, 2004, July 1, 2002 and August 7, 2001. One industry review was classified as an Electroplater under 40 CFR Part 413. This IU has had violations of pH, cyanide (103 mg/L!), and TTOs. *(Author's note: cyanide that high should be a red flag. If they have poor control over pH, what happens if acid and cyanide are mixed? In addition, it appeared that the pollutant causing the TTO violation was not included in the retest performed. That seems like an interesting way to return to compliance).*

The pretreatment files and data management need to be reevaluated. The City is required to submit all substantial and non-substantial modifications of the pretreatment program to the State. The City is allowing reporting via email by industrial users (not requiring signatory certification).

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Well, that is a condensed summary of a much longer report. What do you think? Is that a report you want to get? Is there a pattern of chronic, long-term noncompliance suggested in the report? If I was a POTW, would I be trying to evaluate what was common in the pretreatment program over at least the previous 10 years that led to the conclusions cited in this and earlier audit reports? *Author's note: This POTW has had several pretreatment coordinators over this period, so don't get distracted.*

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I did inquire with EPA about their evaluation of the SNC status of this pretreatment program. This is the (correct) response I received:

“As you know, information pertaining to compliance evaluations and enforcement actions is typically enforcement sensitive and not subject to FOIA (the old audit reports would be available if the records still exist). In regards to your question about the review of this particular pretreatment audit, there is no real time table set due to the fact that this is a state audit report not an EPA report, there for it is the state's responsibility to appropriately address the violations identified. If the State requests assistance, EPA will always help as much as our time and resources allow on evaluating the audit report. However, since the State is delegated the pretreatment program, EPA will get involved as oversight of the states response to address the violations or if the state officially refers the case. At this point, if violations are identified as SNC in the database the facility will be placed on the Quarterly Non-compliance Report (QNCR) for EPA to monitor and evaluate the states actions to address all SNC violations. In most circumstances, EPA expects SNC violations at a Major facility to be formally addressed by the next running of the QNCR from which it appeared (the following quarter).”

This is a standard response. Most interestingly is the lack of apparent consistency with the state oversight process recently identified as a primary focus by EPA in the CWA Enforcement Action Plan. The Plan has probably not filtered down to the EPA regions. EPA will generally evaluate a state's action and determine whether or not it was timely and appropriate (just as they do for municipal pretreatment enforcement actions against industrial users).

Nest steps: Evaluate the City response to the audit report (due at the end of January) and find out about the SNC determination by the State. I also am putting together a summary of past EPA pretreatment enforcement actions. If I can find state summary information for pretreatment enforcement actions/penalties, I will include that. States: if you have this, please forward to me.

### **Local Limits Software Available**

Want to view this software being used? You can check out the software at the CWACS website and see [videos](#) of it being used. The software allows POTWs maximum flexibility to develop local limits for sectors of industrial users that the POTW chooses (e.g. Significant Industrial Users (SIUs) only, SIUs and Permitted Non-SIUs, etc). This spreadsheet provides the POTW with the tools to organize and evaluate input data. [Download a brochure here.](#)

### **Employee charged with dumping electroplating wastes to POTW**

1/14/10. Portsmouth Herald ran a story on this (Elizabeth Dinan).

An employee (chemist) for an electroplating company is charged with knowingly and willfully falsifying reports on what was dumped to the Seabrook POTW. This comes from the U.S. Attorney's office (US Attorney Robert Kinsella). The individual covered up by trick, scheme and device, the amount of cadmium, copper, nickel and zinc that was discharged to Seabrook's POTW between August of 2004 and August of 2008. That is terminology used in criminal cases. The chemist is employed by Aero Dynamics, who provides electroplating and metal finishing services to major defense contractors (e.g. Boeing, G E Aircraft, Honeywell, Lockheed Martin, Rolls Royce, General Dynamics, Ratheon and Bell Helicopter).

*I have requested the charging document/indictment from the US Attorney's Office. I have not received it as of today. When I do, I will post it on the News and Meetings Page.*

### **Terryville Manufacturer Who Violated The Federal Clean Water Act Is Sentenced**

Nora R. Dannehy, United States Attorney for the District of Connecticut, announced that Phoenix Products Company of Terryville, Connecticut, was sentenced today to three years of probation for knowingly discharging a pollutant into the Town of Plymouth sewer system, in violation of the federal Clean Water Act. The Company pleaded guilty to the charge on January 4, 2010. Phoenix Products is required to pay a \$50,000 federal criminal fine, a \$25,000 civil penalty to the State of Connecticut, and a payment of \$75,000 into the DEP Supplemental Environmental Project (SEP) Account. Phoenix Products also must make an additional SEP payment of up to \$100,000 if the business is sold.

Phoenix Products Company, which provides formulation, blending and packaging services for a variety of personal care and swimming pool products, had a contract with a customer to blend and package a drain opener product. The Company generated six 250 gallon totes (some

partially full) filled with off-specification product (black colored liquid with a pH of less than 1). This waste was dumped, in part, illegally into the Town's sewer system. For more information: <http://www.justice.gov/usao/ct/Press2010/20100201-1.html>

**CWACS** offers a full range of pretreatment program support activities. Please ask us for a bid on your next project and include us on your list for future Request for Proposals (RFPs). CWACS offers support on an hourly and project basis. Visit our website or download a [brochure here](#).

Newsletters reflect the opinions of CWACS. They are not intended to change what a specific POTW, state or EPA may require.

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