



Inside Pretreatment Newsletter

July 6, 2010 (Number 37)

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Please forward this Newsletter to Other POTWs. Over 925 subscribers.

Up-to-Date News Items

There are four job openings posted. If you have job announcements or other interesting pretreatment news, send them to me or go to www.CWACS.com and email them to me. See the "News and Meetings" webpage.

Upcoming CWACS Training for POTW/State Pretreatment Staff

Portland, Oregon, August 18-19, 2010: Local Limits and Inspecting Industrial Users.
Registration closes August 10, 2010 or when class fills (filling fast).

Have States Forgotten to Update their Sludge Regulations?

I emailed a couple of EPA sludge people to ask them about states that have not removed the Chromium Standard for sludge (land application) and have not updated the Table 3 value for Selenium. In a lawsuit (*Leather Industries of America, Inc. v. EPA*, 40 F.3d 392 (D.C.Cir. 1994), the Court ruled that sludge application numbers must be based upon the requirement in the Clean Water Act. This directed EPA to "identify those toxic pollutants which ... may be present in sewage sludge in concentrations which may adversely affect public health or the environment," and to specify management practices and numerical criteria "adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant." The Court held that the CWA required risk-based sludge limits. In losing that lawsuit, EPA was forced to remove the Chromium Standard from 40 CFR Part 503 and revise the Selenium Standard to 100 mg/Kg from the previous 36 mg/Kg. The underlying basis for some local limits may be compromised: Selenium local limits were often based upon the 36 mg/Kg. There is a court case from 2008 that found a pretreatment program should have changed its local limit to reflect the new Selenium Standard ten years earlier (this adversely impacted a Federal criminal case). I will let you know what EPA says when they answer my question. If your state still has the old numbers, you need to ask them what to do (get a letter from the State AG). I recommend clients stick with the Federal sludge land application limits. I do not think that using Standards that have been remanded and are not supported is due diligence.

EPA's New Methylmercury NPDES (and Pretreatment) Implementation Guidance

EPA is looking at a new approach for controlling pollutants: Best Management Practices and a lot of reliance on pretreatment programs where the source of a pollutant is from non-domestic sources. The new approach was published final in April 2010 for the pollutant Methylmercury. The document reference is: Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, Final. EPA, Office of Science and Technology (4305T), EPA-823-R-10-001, April 2010. <http://www.epa.gov/waterscience/criteria/methylmercury/>

I will attempt to explain this as a Pretreatment 101/201 type discussion.

Currently: States have adopted the EPA Water Quality Criterion (some variation) in most cases and these standards are Total Mercury and provided in mg/L (or µg/L). The standards are included in the municipality's NPDES permit usually through a waste load allocation or TMDL. Pretreatment programs have used these numbers (the NPDES permit limit and/or state water quality standard) as the underlying basis for their mercury local limits.

Methylmercury standard concept: A state-wide standard for Methylmercury would be adopted. Since it is not feasible with available resources for states to do site specific (stream segment, reach, etc) standards in most cases, states will incorporate enforceable Best Management Practices (BMPs) into the municipality's NPDES permit (I am only focusing in municipalities since this is a pretreatment newsletter). The BMPs will require that the POTW (pretreatment program if you have one) control non-domestic sources of mercury to the POTW through applying enforceable BMPs.

Driving forces for this approach: I worked on the draft of this NPDES implementation guidance document while at EPA. I believe that most of the people had their own reasons for preferring this approach. Some of the reasons I heard were: It was impractical for states to do site specific translators or TMDLs; the large number of variances being approved in the Great Lakes states were being done so without a requirement to enforce BMPs on mercury dischargers (dentists); Methylmercury is the most significant threat to human health (fish consumption); more fisheries are showing mercury contamination and there needed to be a focus on reduction (from all sources) and BMPs for dentists that only required amalgam separators and not further treatment was something that the ADA agreed to (the ADA adoption of amalgam separators into their BMPs coincidentally happened around the time this Guidance was finalized and was first issued final).

Items of Interest to municipalities:

1. When states adopt the Fish Tissue Criterion, existing state water quality standards for mercury may go away (unless the state decides on its own to maintain the existing standard).

Implication: If the state gets rid of the existing mercury numeric standards, the municipality would avoid permit violations of a numeric standard and have to develop and enforce mercury BMPs. The mercury local limits would no longer have underlying support and would likely have

to be removed and enforceable BMPs included in the pretreatment program or other approved wastewater implementation documents (the latter for non-approved programs).

2. States would be encouraged to adopt mercury goals or trigger levels for NPDES permits to use as a measure as to whether or not the BMP was being effectively implemented and enforced. What is the technical basis for trigger values? Are they related to the Methylmercury water quality standard? If trigger levels are not met, is this a violation of the NPDES permit, subjecting the POTW to enforcement?

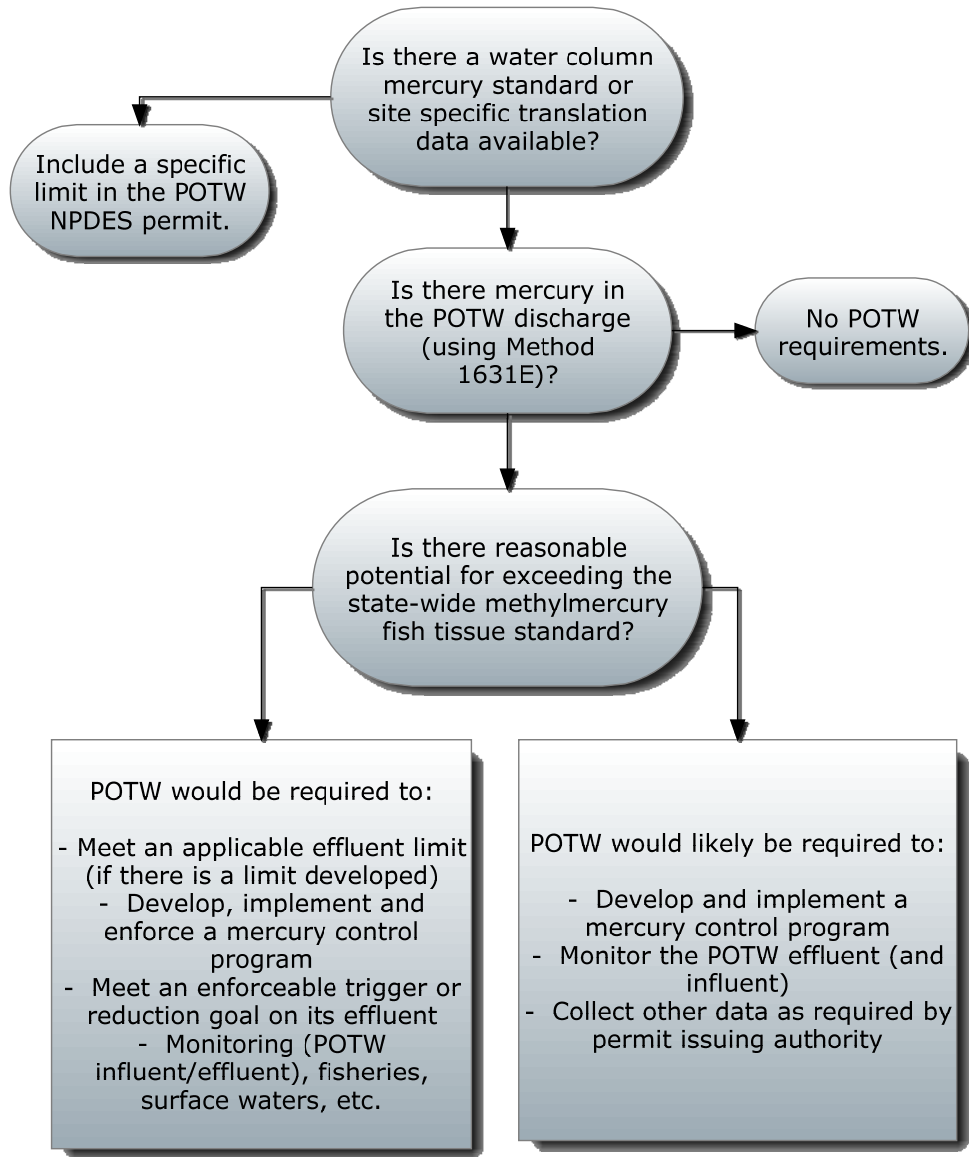
3. EPA has established a policy requiring POTWs to use Method 1631 for analyzing mercury (see the August 2007 EPA memo on this posted on my website in the Newsletters section). If mercury is detected or above some “trigger level”, the BMP requirements would be included in NPDES permits for the municipality.

As a note: The Methylmercury guidance uses “recommends” or “should” or “may” throughout the document (EPA cannot create requirements through guidance). This will certainly create inconsistency across the country (e.g. our trigger level is 0.00077 mg/L..... but yours is 0.000012 mg/L).

5. EPA uses the concept of Mercury Minimization Plans (MMPs) to denote BMPs for mercury in this guidance (why not stick with term BMP that is consistent with Pretreatment Streamlining rather than feel it necessary to create a new type of BMP?). There is probably an interesting story here that I do not have the space to recap. Hopefully, states will stick with the term defined in 40 CFR Part 403 (Best Management Practices) rather than try to create more terminology. EPA had a chance to make this Guidance consistent with the legal terms used in Part 403 but declined.

The process simplified: Please go to the document for a more detailed flow chart. I have condensed some of the EPA guidance material. There are many unknowns, a few of which I mentioned above.

Implementation for Mercury Control Programs



States and municipalities: You need to work together where this approach is being considered or adopted by states. The implementation procedures are critical. There are many areas that allow states to customize. These include adoption procedures, what happens to existing mercury standards, antidegradation, what NPDES permit language would include, and what pretreatment programs would be required to do to comply with 40 CFR Part 403.

Is this happening anywhere else? In a previous newsletter, I covered a draft regulation in Oregon that proposed to adopt a similar approach for a laundry list of pollutants that may or may not be discharged by non-domestic sources. The draft regulation is now final. The Oregon regulation is consistent with the Pretreatment Streamlining regulation changes made by EPA regarding Best Management Practices: Yes, if BMPs involve non-domestic users and are enforceable, they are

part of the pretreatment program. Read the preamble to the Streamlining regulations and the guidance subsequently provided by EPA. Some areas of interest are: What environmental criteria are the trigger levels based on? What is enforceable under the regulation? Are my BMPs enforceable against non-domestic users? What about pollutants from domestic sources? If a trigger level is exceeded, does the POTW need to enforce a zero discharge prohibition from non-domestic users? What level of resources does my pretreatment program need to commit? I will summarize this law and get some feedback from the programs on this approach in a future newsletter. I will also look for FAQs to these questions and get feedback from the State.

Conclusion: Do not be misled about the impact to a pretreatment program from the implementation of the Methylmercury standard just because EPA only devotes a few pages to controlling mercury and implementing BMPs (see Chapter 7 of the Guidance). For those that have required amalgam separators for dentists, they may not be good enough (see my last newsletter). Work with your state on this issue. Everyone wants less mercury discharged to surface waters. The technical information (science) appears to be good on Methylmercury.

<p>Consortium for Research and Education on Emerging Contaminants (CREEC) RSVP Required and bring Gov't ID. July 8, 2010: Golden, Colorado. For more information: www.CREEC.net</p>	<p>EPA Region 6 Pretreatment Association Annual Pretreatment Workshop August 2-6, 2010 Dallas/Ft Worth, TX www.RegionVIPretreatmentAssociation.org/</p>
<p>Pacific Northwest Pretreatment Workshop September 14-16, 2010 www.pnscta.org/training.html</p>	<p>North Carolina Pretreatment Consortium Annual Conference October 3-5, 2010 www.NCPretreatment.org</p>
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