



Inside Pretreatment Newsletter

June 26, 2009

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Hi everyone,

Our last 3-Day Local Limits Training is scheduled July 28-30, 2009, in North Chelmsford, Massachusetts. This is outside of Boston near Lowell. You can check out more information on the website. I will be looking for more opportunities to hold this training. In addition, I am developing training on legal authority, permitting, IU inspections and enforcement. I will be surveying your training needs soon.

I have attempted to keep the discussion on IU permits to a reasonable length. I always seem to apologize for the length of some of my newsletters. Never really intend to put you to sleep at your desk!

EPA Takes Notice of the Michigan Bill to Limit Local Pretreatment Program Authority

The previous couple of newsletters discussed the Michigan dental amalgam law that would limit a POTW's ability to implement and enforce its pretreatment program for mercury. What EPA does here (or does not do) will determine if this approach will be incorporated throughout the country to limit the reach of your pretreatment program (and perhaps to other pollutants/industrial sectors).

If you have not requested to be kept-up-to-date on this matter, I would plead with you to do so. EPA really needs to know you are interested.

You could simply email a statement similar to (shortened even more):

“I would like to take this opportunity to request that I be fully informed about EPA Region 5 and EPA Headquarters actions as they relate to the review of the Michigan Amalgam Separator Law (House Bill 6307) that was effective January 13, 2009.

Please include me on all mailing lists (including email lists) regarding this issue. I understand that there may be significant issues related to limiting the legal authority of pretreatment programs when it comes to regulating mercury in dental discharges.”

I would send the email to the following Agency personnel (copy and paste these addresses):
neugeboren.steven@epa.gov; frank.joyce@epa.gov; Shapiro.mike@epa.gov; hanlon.jim@epa.gov;
boornazian.linda@epa.gov; mathur.bharat@epa.gov ; kaplan.robert@epa.gov ;
hyde.tinka@epa.gov; Sajjad.Ash@epa.gov; traub.richard@epa.gov ; yedavalli.sreedevi@epa.gov ;
opie.jodie@epa.gov

IU Permits and Permit Fact Sheets

I get a lot of questions from programs on this topic. It is way beyond a newsletter to address all of the technical issues. Some Approval Authorities may have other requirements, but it is up to the POTW to determine if it is guidance or there are specific regulations to support these other requirements. However, a few items are worthy of discussion.

1. EPA (state) regulations establish the requirement for POTWs to issue permit (or similar) – 40 CFR Section 403.8(f)(1)(iii). The POTW must be able to control industrial users through permits (or an enforceable control mechanism) to “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”. Further, the POTW must be able to “Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users”. This authority must be available for all industrial users.

For Significant Industrial Users, the permit (or other enforceable control mechanism) must contain:

- ✓ A statement of duration for a maximum issuance period to not exceed 5 years. Note: EPA and states have adopted administrative extension authority for NPDES permits that allow a permit to be extended beyond 5 years if certain conditions are met – see 40 CFR Section 122.6. The lesson from this is that you need to have this as a part of your legal authority if you intend to do it. Also, an administratively extended permit may not be modified (same as with State and EPA issued NPDES permits).
- ✓ Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator.
- ✓ Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards, Categorical Pretreatment Standards, local limits, and State and local law.
- ✓ Self-monitoring, sampling, reporting, notification, recordkeeping requirements, sampling location, sampling frequency, and sample type (and additional information regarding pollutant waivers under the Streamlining regulation changes).
- ✓ Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule.

Each Approval Authority will have a checklist of what they look for in a permit (yea, they have to give this to you). Anything beyond what is specified in Federal or state regulations are generally guidance and recommended.

In the 4th bullet above, the term “notification” will refer to a number of items, including change in discharge notifications, immediate notification of a slug discharge, hazardous waste notification, 24 hour notification of a violation, additional monitoring to be reported, etc.

Additional items a POTW may include in its legal authorities on what shall/may be in a permit:

- ✓ A statement that indicates the permit’s issuance date, expiration date and effective date. Note there is an issuance and effective date, in addition to, the expiration date.
- ✓ A statement that the permit is nontransferable. More stringent. Does not allow a permit to be transferred (recommended).
- ✓ Closure requirements to ensure if facility closes wastes shall be properly disposed of, raw materials, and requirements to protect the sanitary and storm sewers. (Recommended)
- ✓ Requirement to reapply for a new permit within ninety (90) days prior to expiration of the existing permit.
- ✓ The General and Specific Prohibitions.
- ✓ Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
- ✓ Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- ✓ Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
- ✓ Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.
- ✓ Other conditions as deemed appropriate by the POTW.

There are more examples, but these are the most common. Remember, some of these would be in the POTW legal authority as required items in industrial user permits and some may be designated as optional (case-by-case).

Fact Sheet, Rationale, Statement of Basis

There is no specific requirement in 40 CFR Part 403 for a POTW to develop and use a permit fact sheet. Even though State NPDES permits are required to use fact sheets (40 CFR Section 124.8), there is no equivalent requirement for IU permits issued under the pretreatment program (unless your State slipped this into their regulations).

Remember, a permit (not the fact sheet), should be a standalone, enforceable document. Yes, this means that incorporation by reference of conditions/requirements from your legal authority is not the ideal approach. Your POTW attorney would need to make that call.

Fact sheets are definitely recommended to document information where:

- ✓ The IU permit has specific items that need to be documented at the time of permit issuance (IU maximum flow that the permit is based upon, calculations when using the combined wastestream formula or mass-based limits, specific wastestreams allowed and/or prohibited from discharge, and the IU's regulated business activity). ***Important note: Some of these items would be important to include in the permit rather than just the fact sheet.*** Does your legal authority establish the fact sheet as a component of your IU permit? If not, would the present a problem when trying to use it as an enforceable document or basis for the permit?
- ✓ You use information other than what is in the permit application to establish enforceable permit Pretreatment Standards and Requirements. The EPA document "Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits, July 1, 1994." Your EPA Regional Coordinator can get you this document. The "Change in Discharge" notification requirement could hinge on data that you are relying on to define "A change from what?" that was contained in information that was based upon information outside of the permit application.

Other reasons you may use a Fact Sheet:

- ✓ You do not expect to be around when the next permit is issued.
- ✓ Your memory is getting really questionable.

All-in-all, fact sheets are useful but should not be used in lieu of having the permit clearly (and without conflict) specifying all enforceable standards and requirements. Yes, I can conceive of a permit that requires no fact sheet.

A Potential Downside of Detailed Fact Sheets

As I teach in my local limits class, there is always a cost when you do something more complex. Using a fact sheet is no different. I have seen really detailed, complex fact sheets. Remember: You are using the fact sheet to document the basis for the permit for items that may not be readily apparent (beyond the existing regulations or legal authority or to address something unique to that industrial user). If you put tremendous detail into the fact sheet, then when any of that information cited as the basis for that permit changes, you would have to modify the fact sheet (and in reality the permit) to update that information (see your permit modification language).

Now, you could argue that while the fact sheet had to be updated, the changes were not significant (do you define significant?). Again, are you going to have to rely on the fact sheet if enforcement is undertaken? Are you providing the updated fact sheet to the IU?

There is absolutely no need to describe in detail every process they perform (that information should more appropriately be in the permit application and your inspections). Listing the regulated

wastestreams that are being permitted to be discharged to the POTW would be more appropriate. Of course, you would have the specific business activity (categorical standard) that the business' discharge is regulated under cited in the permit (and your legal authority cite).

There is always debate and discussion with Approval Authorities over adequate permit quality. The regulations are the minimum and sometimes regulators want more than the minimum, but find it difficult to find regulatory support for what they want.

I love detailed permit fact sheets. However, show me a fact sheet with a lot of detail (I have seen some that are over 30 pages) and I will show you a permit program that either ignores updating those fact sheets as conditions at the IU change, has way too many resources allocated to permit management or tends to duplicate a lot of what it does (compare inspections with permit fact sheets).

Just strike a balance. I think that most Approval Authorities would be open to working with POTWs to define this issue so there is state-wide or regional consistency.

Clean Water Act Reauthorization?

The White House and Congress begin looking at reauthorization of the Clean Water Act (many years since this Law was last updated). This is very significant and something you want to keep track of. This will reopen the CWA, though much of the concern is over recent Supreme Court rulings dealing with Waters of the United States. Who knows what could be included (last time they tried this, silver was exempted as a pollutant under the CWA – thankfully this reauthorization died in committee). There is some information showing up on the Congressional (House websites). You can go to my website (home page) and view a letter dated May 20, 2009, from several of the Administration's departments and agencies on this matter.

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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