



Inside Pretreatment Newsletter

September 20, 2009

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Local Limits Training
Salt Lake City, UT
October 7-8, 2009
Registration deadline is October 1, 2009
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Methylmercury – Update

I hear EPA may be anticipating an October 2009 release for the “*really final*” water quality criteria document and the very important guidance for implementing the Methylmercury water quality criterion through NPDES permits and pretreatment program requirements. For the implementation document (this is where pretreatment programs will be impacted if and when states adopt the methylmercury criteria).

I will provide those that are interested, a summary of this information when it is finalized.

The Pacific Northwest Pretreatment Conference

I just got back from the Pacific Northwest Source Control Workshop (September 15-17, 2009). This is a great conference for the Region 10 pretreatment programs (and anyone else who wants to attend). Their agenda was diverse and many topics of interest were covered. You can access the talks from the Associations website (talks to be posted): www.pnscta.org . I always suggest that where travel resources allow, pretreatment staff should try to attend workshops that are outside of their EPA region. A different perspective is always good. And thanks for the hospitality at the meeting..... the trivia social event was a lot of fun!

Enforceability: Pretreatment Related Documents

I get a lot of questions from programs asking if I know the legal basis for some of the actions that EPA and states are including in their audit and Pretreatment Compliance Inspection (PCI) reports. Sometimes it is challenging to identify a legal basis for some of the requirements. Remember that a required action is enforceable, a recommended action is not.

I always caution POTWs to make sure to review required actions carefully. However, this issue of enforceability goes way beyond inspection reports. This subject goes to the heart of the EPA-state-local POTW flow of information and requirements. More on audit reports (and PCIs) below. It is important to understand the general enforceability of documents and other information we use in the pretreatment program (please read footnotes for some of the items):

Type of Document	Enforceability
Clean Water Act	Yes
EPA or state regulations	Yes
Policy	If public noticed for comment, an agency may seek to compel compliance. If not public noticed for comment, it is not enforceable (must afford due process to take someone's property).
Strategy	No
Guidance	No
Approved Pretreatment Program	Yes ⁽¹⁾
POTW Legal Authority	Yes ⁽²⁾

Local Limits	Yes ⁽³⁾
Industrial User Permits	Yes ⁽²⁾⁽³⁾⁽⁴⁾
Inspection Required Actions	Yes. Enforcement Action to compel compliance. Required actions must be based upon enforceable requirements.
Inspection Recommended Actions	No
Sector Control Programs, SOPs, etc. adopted by POTWs outside of legal authority.	Maybe ⁽⁴⁾

(1) The POTW should keep the original program up-to-date.

(2) The POTW has the responsibility to keep its legal authority up-to-date. This is one aspect of due diligence that is part of implementing and enforcing a pretreatment program. The POTW must be certain that all revisions to its legal authority follow the proper POTW (city or district) administrative procedures. For approved programs, this includes submittal to EPA or the state for approval (in addition to the local process).

(3) As with the legal authority, POTWs are required to keep local limits up-to-date. This is another aspect of due diligence. The POTW must continue to update those limits as conditions change (POTW operations, water quality standards, MAIL changes, etc). These limits must be public noticed (opportunity to comment) in all cases. This is typically achieved by the city council or board approval process – at least 30 days public comment. For approved programs, EPA or the state will also public notice. Remember, mistakes here could impact current and past permits and enforcement actions.

(4) As a general concept: If you are going to enforce (may issue penalties for non-compliance), the requirement or limits must be public noticed to allow comment. Where you have program requirements in your legal authority, you probably met this requirement. If you developed enforceable requirements and did not allow for a formal public comment period, you may be compromising your ability to enforce, or worse. You should sit down with your attorney and discuss.

OK, back to the original question that was submitted:

It is important for the POTW to make sure that only those required actions that have a legal basis are included in an audit or PCI report. These EPA or state inspection reports are part of the record for your POTW and the POTW should review all reports to make sure they are accurate. EPA or the

state may enforce these reports much further down the road where you fail to address concerns and keep your program up-to-date. There is an expectation that the POTW address the deficiencies (another due diligence expectation). No formal follow-up on the audit or PCI is required by EPA or the state, nor should you expect it. You are professionals, so it is not a good idea to argue that you were never told a second, third or fourth time to correct a problem. EPA and state auditors will typically use the following as the basis for development of a required action:

1. Regulatory (or Statutory) support.

If the required action is based upon a direct requirement in federal or state regulation, you are probably well advised to immediately implement the required action (may mean updating your legal authority, too).

2. Latest approved POTW Pretreatment Program (includes all updates).

When a POTW adopts a program they are bound by it and EPA or the state can and will compel compliance. Approval by EPA or the state does not protect you from external challenges to your local limits or ordinance (it would be nice if their approval guaranteed these items were correct). Attorneys at EPA and the state will generally not allow your EPA or state pretreatment coordinator to testify in your defense.

The appropriate response to an audit may be to revise the legal authority to remove or revise the problem language (rather than implement or enforce a questionable requirement or standard). Some POTWs want to believe that there is an affirmative defense if the POTW did not keep its legal authority, local limits, and program up-to-date because EPA or state never told them to (I have heard this one several times). Don't go down this road. Approved programs are expected to comply with the regulations and Clean Water Act independent of EPA or the state identifying every deficiency and telling you to address them. Due diligence.

3. Best Professional Judgment (BPJ). I am using this term as a more general term and not the BPJ found in federal effluent guidelines.

Best Professional Judgment (BPJ). This is really hard to define. Some EPA and state auditors use formalized BPJ (policy/guidance) when developing required actions. BPJ, unless the Agency is willing to enforce it and affords due process during development of that additional requirement, should be treated as a recommended action. That is why permits are often public noticed where they contain requirements or standards that have not been previously adopted through a formal public participation process.

4. EPA or the state wants you to do something they believe is a good idea.

EPA or state wants you to do something they believe is a good idea. While these should not be discounted, these items should be included only in the recommended actions section, allowing the POTW to decide whether or not the action is appropriate to implement.

Implications to POTW pretreatment programs: Your enforcement actions are also based upon the underlying enforceability of the basis for your actions. It is not just the EPA or state inspection reports where you could use this guidance. Maybe in the inspection reports you issue to industrial users.

Local Limits Tip #5

When revising local limits, keep all data and assumptions and public participation records for at least 3 years beyond the date that local limit is no longer in effect. CWACS recommends 5 years because that is the statute of limitations for prosecuting environmental violations. For some POTWs, this means the information may have to be kept for many years! An electronic version (especially pdf) is a good way to archive records (scan all records). That way, when your records are stored in the basement and if floods or there is a fire, you will have an archival copy (a couple of copies stored off-site). The general thinking is that this document format will be accessible for many years into the future (many government records use pdf format).

EPA updates Water Quality Criteria for Acrolein

National Recommended Final Water Quality Criteria for Acrolein
Federal Register / Vol. 74, No. 174 / Thursday, September 10, 2009

Water Quality Criteria:

Freshwater Acute: Not to exceed 3.0 µg/l more than once every three years on the average

Freshwater Chronic: Not to exceed 3.0 µg/l more than once every three years on the average.

Salt Water: Saltwater criteria cannot be derived for acrolein at this time because of a lack of acute and chronic toxicity data.

Acrolein (human health protection):

Water and Organisms: 6 µg/L

Organisms only: 9 µg/L

Acrolein <http://www.epa.gov/waterscience/criteria/acrolein/hhc-final.htm>

EPA updates Water Quality Criteria for Phenol

Water and Organisms: 10,000 µg/L

Organisms Only: 860,000 µg/l

Phenol <http://www.epa.gov/waterscience/criteria/phenol/index.htm>

Recent Airport De-Icing Effluent Guidelines

EPA Proposes Airport Deicing Effluent Guidelines ([Federal Register: August 28, 2009 (Volume 74, Number 166)] [Proposed Rules] [Page 44675-44718]. Comments due by December 28, 2009.

No categorical standards are being proposed. Please decide if you want to make comments. Will this drive airports to discharge to POTWs? My memory of the Industrial Laundry Effluent Guidelines (no categorical standards) makes me really interested in the decision making pressures.

I have started reviewing the language. Don't let the convoluted language regarding applicability discourage you.

Industrial Launderer Will Pay \$525,000 for Clean Water Act Violations

EPA Press Release dated: 08/25/2009

Contact Information: David Deegan (617) 918-1010

(Boston, Mass. – Aug. 25, 2009) – AmeriPride Service, Inc., an industrial launderer with a facility in Hartford, Connecticut, will pay a \$525,000 penalty under the terms of a settlement for alleged violations of federal and state clean water laws and a government-issued permit. The settlement was announced jointly by Nora R. Dannehy, United States Attorney and Ira Leighton, Acting Regional Administrator for the U.S. Environmental Protection Agency's New England Office.

A civil Complaint and Consent Decree were simultaneously filed yesterday in U.S. District Court in New Haven. According to the EPA Complaint, AmeriPride violated a federal environmental law by discharging low pH wastewater to the sewer system that flows into the Metropolitan District Commission's Hartford wastewater treatment facility. The complaint also alleges that AmeriPride violated a discharge permit issued by the State of Connecticut that set industrial discharge limits for a number of pollutants.

"EPA remains committed to protecting the environment and public treatment works from harmful industrial discharges. The case also serves to help level the playing field by showing that EPA will pursue industrial violators of federal and state environmental laws," said Ira Leighton, acting regional administrator of EPA's New England Office.

"The U.S. Attorney's Office is committed to vigorously enforcing federal environmental laws in Connecticut," stated U.S. Attorney Nora R. Dannehy. "We believe that this agreement represents a fair and just resolution of this matter and, hopefully, will serve as a warning to all businesses that generate wastewater that they must abide by all requirements of their discharge permits."

From July of 2001 through March of 2008, AmeriPride's wastewater discharge repeatedly violated the "National Pretreatment Standard" prohibiting the discharge of wastewaters with a pH lower than 5.0 Standard Units in violation of the Clean Water Act. AmeriPride's wastewater discharges also frequently violated industrial discharge limitations for pH, oil and grease, and total zinc, total lead and total copper imposed in a May 31, 2001 industrial discharge permit that the State of Connecticut

issued to AmeriPride. Despite years of numerous violations, AmeriPride did not fully resolve its wastewater violations until March of 2008 when AmeriPride completed the installation of a new industrial wastewater treatment system.

The effects of introducing acidic and/or alkaline industrial wastewaters into sewer systems and wastewater treatment plants are well documented. The introduction of acidic and/or alkaline industrial wastewaters into a sanitary sewer system has the potential to corrode piping and equipment in both the wastewater collection system and the treatment plant itself and to create a dangerous working environment for sewage treatment plant workers. Sewer pipe corrosion from the introduction of acidic and or alkaline industrial wastewaters can cause disruptions in service, leakage of raw sewage to ground and surface waters, require the replacement of sewer lines and pumping stations, and result in casualties to sewer workers.

The effects of the discharge of excessive amounts of oil and grease into a sanitary sewer system can be detrimental and costly to a municipality. If excessive amounts of oil and grease enter the wastewater collection system, it readily adheres to the inner surface of piping materials. The accrued layers harden into a crust as tough as baked clay, becoming a primary cause for clogs, backups, overflows and equipment failure, ultimately requiring replacement of the pipes. EPA estimates that there are over 40,000 sanitary sewer overflows nationally each year, the majority of which are caused by grease buildup.

AmeriPride rents and sells work apparel and also provides industrial and commercial laundering services. AmeriPride, a privately held corporation, has its headquarters in Minnetonka, Minnesota. AmeriPride has over 190 production facilities and service centers throughout the United States and Canada. AmeriPride has approximately 6,000 employees nationwide and in Canada.

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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