



Inside Pretreatment Newsletter

November 4, 2009

In this Issue: EPA Clean Water Enforcement Action Plan. You will read about this Plan and wonder if EPA is serious. I believe they are (the enforcement side of the house always wanted to do enforcement to protect the environment). At sometime in the near future, I will provide a great case study on a worst case scenario (EPA-state-POTW pretreatment enforcement case). I wonder if this Plan will really result in enhanced enforcement and oversight.

Please forward this Newsletter to Other POTWs. Subscribe at www.CWACS.com
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Michigan Amalgam Separator Law - Update

I have some updated information from EPA regarding their review of this anti-pretreatment (see previous newsletters). EPA's latest information (thanks Region 5).

EPA Region 5 is still conducting internal discussions and, as needed, consultations with EPA Headquarters regarding this law. We anticipate concluding discussions with the State of Michigan near the end of the calendar year or soon thereafter. We will provide you with an update at that time. Thank you for your patience.

I was not patient, so here is a follow-up from Region 5 to my next email (edited, but context maintained):

At the State level, there are a couple obstacles that need to be surmounted before this issue can be resolved. First, there was a recent reorganization in Michigan resulted in the fusion of MDNR and MDEQ into one unit. Second, as per the State legislature, the Agency cannot develop any new rules, so its hands are tied until it regains that authority.

I am hoping that Region 5 supports the State pretreatment programs (and the State pretreatment staff) by providing, in writing, a legal analysis of the Law. However, I do believe that it will take until the end of the year for EPA to get this done.

Even though EPA-HQ management and legal have been asked questions and for updates, these requests have all gone unanswered.

Local Limits Software Available

Are you going to do local limits in the next year? CWACS has now released its Local Limits Spreadsheet for purchase by local governments. You can check out the software at the CWACS website. 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 is used for my clients in their local limits projects and provides the POTW with the tools to organize and evaluate input data. [Download a brochure here.](#) or go to the CWACS website to learn more.

EPA's Clean Water Enforcement Action Plan

On October 14, 2009, EPA released this document to its regional enforcement staff. You can download a copy of this document at: <http://www.epa.gov/oecaerth/civil/cwa/cwaenfplan.html>

EPA has focused its Plan on three broad areas:

1. Target enforcement to the most important water pollution problems
2. Strengthen oversight of the states
3. Improve transparency and accountability

I have provided some excerpts for your reading pleasure from “the Plan” that should be of most interest to pretreatment programs (you should download and read the entire document). My editorial comments are shown: *[brackets, bold and italicized]*. Much of the document focuses (appropriately) on point source dischargers that have not been adequately regulated (or enforced against). I have shown some of the excerpts and tried to indicate the nexus with pretreatment where existing pretreatment enforcement policy seems to be supported.

From a pretreatment program perspective, who will have the most exposure to enforcement?

1. POTWs that are in SNC for failure to implement or enforce their programs (yes, EPA has always had criteria to evaluate these items).
2. Industrial users that chronically violate Pretreatment Standards or Requirements.
3. Industrial users that have failed to install required treatment (and lack of POTW enforcement has allowed this to continue).

Clean Water Act Water Quality and Enforcement Challenges

While EPA and states have made notable improvements to water quality, challenges remain as we strive to meet the CWA's goal of providing fishable and swimmable waters and protecting the sources of our nation's drinking water. There are significant water quality problems facing too many communities; there are expanding universes of diffuse pollution sources, many which are not effectively regulated by the CWA; and there are significant limitations that affect EPA's ability to identify serious problems quickly and take prompt action to correct them.

[The following paragraph establishes the “Enforcement Philosophy” that Congress intended EPA to implement]

EPA established the NPDES program after the enactment of the CWA in 1972. With only a few exceptions, EPA has authorized states to implement and enforce these programs across the country ***[e.g. the pretreatment program]***. EPA retains independent enforcement authority in authorized states and has responsibility to ensure that state programs are nationally consistent in writing quality permits and enforcing them. To secure the public health and environmental benefits of our regulations, enforcement programs must consistently apply the law and pursue vigorous, effective and fair actions to address violations and to protect water quality. Effective enforcement programs create incentives for compliance by penalizing those who do not follow the law. They establish a level playing field between those members of the regulated community who comply and those who do not ***[this includes POTWs, as well as, industrial users]***. Enforcement ensures fair treatment of companies that compete against each other should not face wide disparities in treatment across the country, such as mandatory minimum penalties for a violation in one state and no enforcement in another.

Ultimately, enforcement is critical to ensure that the public receives the services and protections promised by our laws. Unfortunately, data shows us that we are not getting the compliance envisioned by our laws to protect clean water. While many states have strong NPDES programs, EPA needs to take prompt actions where a state is not acting to issue protective permits or taking effective enforcement. EPA’s goal in taking these actions is to ensure equal protection, to strengthen those state programs, and hold states accountable for needed improvements.

Enforcement across states in responding to SNC violations is another important gauge of performance. Both the Permitting for Environmental Results and the State Review Framework found that enforcement levels across states varied considerably. Some states rarely take enforcement action against facilities in significant noncompliance, while other states do pursue timely and appropriate formal enforcement actions. Still, state and EPA data indicate that formal enforcement action was taken against only approximately 26 percent of the facilities in SNC in 2008. State enforcement response to serious violations, whether at large or smaller facilities, is not what it should be.

Target Enforcement to the Most Important Water Pollution Problems: Specific Actions

EPA will develop and implement a new approach for ensuring appropriate responses to water quality problems and related violations of NPDES permits across the full universe of regulated facilities ***[Remember, local limits are the part of the pretreatment program that is designed to protect water quality. Permits are issued to apply local limits. Violations of local limits are the enforcement responsibility of your program. local limits =environmental protection]***.

Strengthen Oversight of Clean Water Enforcement Performance

Although EPA has authorized 46 states to run the NPDES program, including enforcement of its requirements, EPA retains the responsibility to ensure that states are protecting water quality and consistently applying the law through vigorous enforcement. In those states where EPA retains primary enforcement responsibility, the Agency will set the same expectations for its own compliance and enforcement programs as those for authorized states.

Many authorized states have strong water quality protection programs. As envisioned by Congress, states are the first line of environmental defense. States take the lion's share of inspection and enforcement actions in the programs they implement. However, where states are not acting to issue protective permits or are not taking enforcement actions to achieve compliance and remove economic incentives to violate the law, EPA needs to act to strengthen those programs to protect public health and the environment.

EPA must consistently respond to these issues and press states and ourselves to make the appropriate improvements in order to achieve equitable protection to the public, a level playing field for competing businesses, and fairness across states in how our environmental laws are enforced. EPA needs to clearly articulate where the bar is set for acceptable state clean water programs, and hold states and ourselves accountable for achieving it. ***[This will be an interesting item to watch for specific examples].***

EPA needs to set clear expectations for what acceptable performance is and how performance will be measured ***[this has been pretty well defined for pretreatment, just not implemented – in example is the lack of EPA oversight to assure that technically-based local limits are being appropriately developed, adopted and approved].***

While new approaches and expectations are being designed, ongoing oversight can work to raise the bar of performance under our current system. Strong enforceable permits are the cornerstone for effective enforcement, and the two work together to protect the nation's waters ***[Similarly, for pretreatment, you can read that strong enforceable industrial user permits are the cornerstone for effective enforcement....].***

Where a state is underperforming, EPA will disapprove permits ***[read “veto” here. If vetoed and the state fails to issue the permit, EPA may issue the permit]*** that are not protective of water quality and initiate enforcement actions against dischargers to address serious violations and protect public health and the environment ***[some EPA regions have disinvested in review of many state issued permits in the last several years – this is an Office of Water (not enforcement) issue/problem].***

EPA will also explore the concerns of citizen groups that some state enforcement actions have not been effective in achieving compliance. In their input into this Action Plan, some citizen groups voiced concern that in some cases when they provided a state notice of intent to file suit,

some states would move to block their suit by issuing an administrative order that did not bring about compliance. To examine this issue, EPA will look into places where this practice is alleged to be widespread and determine if federal action is necessary.

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](#).

Could not find this on EPA or DOJ's website!

Feds allege scam to dump thousands of gallons of grease into Mobile's sewer system

By Brendan Kirby of the Mobile Press-Register October 30, 2009, 1:36PM Excerpt provided.

MOBILE, Ala. -- A former Roto-Rooter employee has pleaded guilty to dumping thousands of gallons of grease into the city's sewer system, and two company officials face criminal charges. Michael L. Edington entered his guilty plea on Thursday in U.S. District Court in Mobile as part of a deal with prosecutors that includes an offer of leniency in exchange for his cooperation against DHS Inc., which owns the local Roto-Rooter franchise.

The indictment also names the company's president, Donald Gregory Smith, and manager William Wilmoth Sr. Lawyers for DHS Inc. said the company, Smith and Wilmoth did nothing wrong. Attorney Charles Potts said Smith fired Edington as soon as he learned in February 2006 about his conduct. "Roto-Rooter will welcome the opportunity to set the record straight at the appropriate time," attorney Warren Butler said in a prepared statement. "That being said, Roto-Rooter categorically denies the allegations of the indictment and will vigorously defend itself against all charges."

A federal grand jury this week issued a 43-count indictment accusing the defendants of numerous violations of the Clean Water Act, fraud and conspiracy. The indictment recites Mobile's history of years of sewage overflows caused in large part of grease buildups in the sewer pipes.

The case revolves around allegations that DHS Roto-Rooter failed to adequately dispose of grease removed from grease traps and area restaurants from 1997 to last year and falsified records to indicate that it had.

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

Curt McCormick
CWA Consulting Services, LLC

www.CWACS.com
Curt@CWACS.com

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