CHAPTER 33.1-16-01.1
PRETREATMENT REGULATIONS

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33.1-16-01.1-01. Definitions.

The definitions in section 33.1-16-01-01 apply to this chapter unless defined differently below.

1. "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended [33 U.S.C. 1251, et seq.].

2. "Approval authority" means the department.

3. "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

4. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

5. "Categorical industrial user" means an industrial user that is subject to a categorical pretreatment standard or categorical standard.

6. "Categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by the environmental protection agency in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR chapter I, subchapter N, parts 405 through 471.

7. "Control authority" means either:

   a. The publicly owned treatment works, if the publicly owned treatment works which receives the indirect discharge administers an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08; or

   b. The department, if the publicly owned treatment works which receives the indirect discharge does not administer an approved pretreatment program in accordance with sections 33.1-16-01.1-06 and 33.1-16-01.1-08.

8. "Director" means the department.

9. "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

10. "Industrial user" or "user" means a source of indirect discharge.

11. "Interference" means an indirect discharge which, alone or in conjunction with any other indirect discharges, both:

   a. Inhibits or disrupts the publicly owned treatment works processes or operations, or its sludge processes, use, or disposal; and

   b. Causes a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation or prevents sewage sludge use or disposal in compliance with federal or state law or statute.

12. "New source" means:

   a. Any building, structure, facility, or installation for which construction commenced after the publication of proposed pretreatment standards which will apply to such source after promulgation, from which there is or may be an indirect discharge, provided that:

      (1) The building, structure, facility, or installation is constructed at a site at which no other source is located;

      (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the indirect discharge at an existing source; or

      (3) The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

   b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs 2 and 3 of subdivision a, but otherwise alters, replaces, or adds to existing process or production equipment.

   c. Construction of a new source as defined under this subsection has commenced if the owner or operator has:

      (1) Begun, or caused to begin, as part of a continuous onsite construction program:

(a) Any placement, assembly, or installation of facilities or equipment; or

(b) Significant site preparation work which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

13. "Passthrough" means a discharge which exits the publicly owned treatment works into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation.

14. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the publicly owned treatment works. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

15. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

16. "Pretreatment standards" means any regulation which applies to industrial users that contains pollutant discharge limits promulgated by the environmental protection agency in accordance with the Federal Water Pollution Control Act, including prohibitive discharge limits established pursuant to section 33.1-16-01.1-02.

17. "Publicly owned treatment works" or "POTW" means a treatment works as defined by section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality, including any devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes, as well as sewers, pipes, and other conveyances that convey wastewater to a publicly owned treatment works treatment plant. This term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.

18. "Publicly owned treatment works treatment plant" means that portion of the publicly owned treatment works which is designed to provide treatment of municipal sewage and industrial waste.

19. "Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

20. "Significant industrial user" means:

a. All industrial users subject to categorical pretreatment standards under sections 33.1-16-01-31 and 33.1-16-01.1-04;

b. Any other industrial user that meets at least one of the following criteria:

(1) Discharges an average of twenty-five thousand gallons [94,635 liters] per day or more of process wastewater to the publicly owned treatment works, excluding sanitary wastewater, noncontact cooling water, and boiler blowdown wastewater;

(2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or

(3) Is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.

c. The control authority may determine that an industrial user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

(1) The industrial user, prior to the control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

(2) The industrial user annually submits the certification statement required in 40 CFR 403.12(q) together with any additional information necessary to support the certification statement; and

(3) The industrial user never discharges any untreated concentrated wastewater.

d. Upon a finding that an industrial user which meets the criteria of subdivision b has no reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement, the control authority may, at any time, determine that the industrial user is not a significant industrial user.

21. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. Upset does not include noncompliance to the extent caused by operational error, inadequate or improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation.

22. "Water management division director" means the director of the water management division of the regional office of the United States environmental protection agency or this person's delegated representative.

History: Effective, January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-01.1. Purpose and applicability.

1. This chapter establishes responsibilities of state and local government, industry, and the public to implement the national pretreatment standards to control pollutants, which pass

through or interfere with treatment processes in publicly owned treatment works or which contaminate sewage sludge.

2. The regulations in this chapter apply:

   a. To pollutants from nondomestic sources covered by pretreatment regulations, which are indirectly discharged into or transported by truck or rail or otherwise introduced into publicly owned treatment works;

   b. To publicly owned treatment works which receive wastewater from sources subject to pretreatment regulations; and

   c. Any new or existing sources subject to pretreatment regulations. Pretreatment regulations do not apply to sources which discharge to a sewer which is not connected to a publicly owned treatment works treatment plant.

History: Effective, January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-02. Prohibited discharges.

The following prohibitions apply to each industrial user whether or not the user is subject to other pretreatment standards or any national, state, or local pretreatment requirements:

1. **General prohibitions.** An industrial user may not introduce into a publicly owned treatment works any pollutant which causes passthrough or interference.

2. **Affirmative defenses.** A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subsection 1 and the specific prohibitions in subdivisions c through g of subsection 3 where the user can demonstrate that:

   a. The user did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause passthrough or interference; and

   b. (1) A local limit designed to prevent passthrough or interference, or both, as the case may be, was developed in accordance with section 33.1-16-01.1-03 for each pollutant in the user's discharge that caused passthrough or interference, and the user was in compliance with each such local limit directly prior to and during the passthrough or interference; or

      (2) If a local limit designed to prevent passthrough or interference, or both, as the case may be, has not been developed in accordance with section 33.1-16-01.1-03 for the pollutant that caused the passthrough or interference, the user's discharge directly prior to and during the passthrough or interference did not change substantially in nature or constituents from the user's prior discharge activity when the publicly owned treatment works was regularly in compliance with the publicly owned treatment work's North Dakota pollutant discharge elimination system permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

3. **Specific prohibitions.** In addition, the following pollutants may not be introduced into a publicly owned treatment works from any source:

a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works, including wastestreams with a closed cup flashpoint of less than sixty degrees Celsius [140 degrees Fahrenheit] using the test methods specified in 40 CFR 261.21.

b. Pollutants which will cause corrosive structural damage to the publicly owned treatment works, but in no case discharges with pH lower than 5.0, unless the publicly owned treatment works is specifically designed to accommodate such discharges.

c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the publicly owned treatment works resulting in interference.

d. Any pollutant released in a discharge at a flow rate or pollutant concentration which will cause interference.

e. Heat in amounts which will inhibit biological activity in the publicly owned treatment works resulting in interference, but in no case heat in such quantities that the temperature at the publicly owned treatment works treatment plant exceeds forty degrees Celsius [104 degrees Fahrenheit], unless the department, upon request of the publicly owned treatment works, approves alternate temperature limits.

f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or passthrough.

g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the publicly owned treatment works in a quantity that may cause acute worker health and safety problems.

h. Any trucked or hauled pollutants, except at discharge points designated by the publicly owned treatment works.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04, 61-28-06

33.1-16-01.1-03. Local limits.

1. Each publicly owned treatment works developing an approved pretreatment program shall develop and enforce specific limits to implement the prohibitions of section 33.1-16-01.1-02. Each publicly owned treatment works with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

2. All other publicly owned treatment works shall, if pollutants contributed by a user or users result in interference or passthrough and such violation is likely to recur, develop and enforce specific effluent limits for indirect discharges which, together with appropriate changes in the publicly owned treatment works treatment plant facilities or operation, are necessary to ensure renewed and continued compliance with the publicly owned treatment works North Dakota pollutant discharge elimination system permit or sludge use or disposal practices.

3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups that have requested such notice and an opportunity to respond.

4. Publicly owned treatment works may develop best management practices to implement subsections 1 and 2. Such best management practices shall be considered local limits and pretreatment standards for the purposes of this chapter and section 307(d) of the Act.

5. When specific prohibitions or limits on pollutants are developed by a publicly owned treatment works in accordance with this section, the limits shall be deemed pretreatment standards.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04, 61-28-06

33.1-16-01.1-03.1. Local law.

Nothing in this chapter is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in national or state pretreatment standards or regulations, or any other requirements or prohibitions established by the department.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-04. Categorical pretreatment standards.

1. Industrial users shall comply with all applicable pretreatment standards and requirements.

2. Pretreatment standards and regulations specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a publicly owned treatment works by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this regulation.

3. Category determination request, 40 CFR 403.6(a), is incorporated into this chapter by reference.

4. Categorical industrial users shall comply with the following deadlines for compliance with categorical pretreatment standards:

   a. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective, unless a shorter compliance time is specified in the specific standard.

   b. New sources shall have all pollution control equipment required to meet applicable pretreatment standards installed and operational before beginning to discharge. Within the shortest feasible time, but within ninety days, new sources shall meet all applicable pretreatment standards.

   c. An existing source which becomes an industrial user after the promulgation of an applicable categorical pretreatment standard shall be considered an existing industrial user, unless the existing source is a new source.

5. Concentration and mass limits, 40 CFR 403.6(c), is incorporated into this chapter by reference.

6. Except when expressly authorized to do so by an applicable pretreatment standard or pretreatment requirement, an industrial user may not increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or pretreatment requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or pretreatment requirements, or in other cases when the imposition of mass limitations is appropriate.

7. Combined wastestream formula, 40 CFR 403.6(e), is incorporated into this chapter by reference. When wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or wastewater from another regulated process, the effluent from the equalization facility shall meet the adjusted pretreatment limit or limits calculated using the combined wastestream formula.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-05. Publicly owned treatment works pretreatment programs - Development by publicly owned treatment works.

1. The following publicly owned treatment works shall develop and submit for department approval a pretreatment program within one year after receiving notice that program development is required:

   a. Any publicly owned treatment works with a total design flow of greater than five million gallons [18,927,058 liters] per day that receives from any industrial user pollutants which pass through or interfere with the treatment process or are otherwise subject to pretreatment standards.

   b. Any other publicly owned treatment works for which the department determines a pretreatment program is warranted.

2. Upon development or modification of a pretreatment program, the publicly owned treatment works North Dakota pollutant discharge elimination system permit shall be modified to incorporate the approved or modified program conditions as enforceable conditions of the North Dakota pollutant discharge elimination system permit.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-06. Publicly owned treatment works pretreatment program requirements.

1. Each publicly owned treatment works pretreatment program shall satisfy the program element requirements described in appendix A.

2. The publicly owned treatment works may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The publicly owned treatment works shall describe in the submission the mechanism by which the funding will be acquired. The request for conditional approval must satisfy the requirements of section 33.1-16-01.1-07, except that the requirements may be relaxed if the submission demonstrates that:

   a. A limited aspect of the program does not need to be implemented immediately;

   b. The publicly owned treatment works has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

   c. Funding and personnel for the program aspects to be implemented at a later date will be available when needed.

3. Upon receipt of a request for conditional approval, the department will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date,

the conditional approval of the pretreatment program and any removal allowances granted to the publicly owned treatment works may be modified or withdrawn.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-07. Publicly owned treatment works pretreatment program submission packages.

The submission package for publicly owned treatment works pretreatment program approval must include each of the items described in appendix B. Three copies of the submission package shall be submitted to the department as a formal request for approval.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-08. Approval process for publicly owned treatment works pretreatment programs and requests for authority to grant removal credits.

1. Within sixty days after receiving a request for publicly owned treatment works pretreatment program approval or a request for authority to grant removal credits, the department shall make a preliminary determination of whether the submission is complete.

2. If the submission is determined to be incomplete, the department shall notify the publicly owned treatment works and each person who has requested individual notice, in writing, of the defects identified and of the means by which the publicly owned treatment works can amend its submission package.

3. If the submission is determined to be complete, the department shall:

   a. Notify the publicly owned treatment works that the submission has been received and is under review;

   b. Commence public notice activities as prescribed in sections 33.1-16-01.1-09 and 33.1-16-01.1-10; and

   c. Evaluate the submission for compliance with applicable requirements.

4. The department shall have ninety days from the date of public notice of any complete submission to review the submission to determine compliance with the applicable requirements of sections 33.1-16-01.1-05 and 33.1-16-01.1-14 and appendix A. The department may have up to an additional ninety days to complete the evaluation if the public comment period is extended beyond thirty days or if a public hearing or public meeting is held. The evaluation period for any submission shall not exceed a total of one hundred eighty days from the date of public notice of any complete submission.

5. Departmental procedures shall allow the transmittal of such documents and data to and from the environmental protection agency and to other appropriate governmental agencies as may be necessary.

6. After the public comment period has ended, and prior to the deadline contained in subsection 4, the department shall approve or deny the submission based upon departmental evaluation and consideration of any comments received.

7. If the submission is denied, the department shall notify the publicly owned treatment works and each person who requested individual notice. The notification shall include suggested modifications and the department may allow the publicly owned treatment works additional time to bring the submission into compliance with applicable requirements.

8. No publicly owned treatment works pretreatment program or request for authorization to grant removal credit allowances shall be approved if, following the public notice period and any hearing or meeting held pursuant to section 33.1-16-01.1-09, the regional administrator sets forth in writing objections to the approval and the reasons for the objection. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on the objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a publicly owned treatment works pretreatment program or authorization to grant removal allowances ninety days after the date the objections are issued.

9. The department shall provide notice of the decision by:

    a. Notifying those persons who submitted comments and participated in the public hearing or public meeting, if held; and

    b. Causing to be published a notice of approval or disapproval in the same newspapers as the original notice of request for submission approval was published. The notice shall identify any removal credit authority which was granted as part of the pretreatment program approval.

10. The submission and any comments upon such submission shall be available to the public for inspection and copying.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-09. Public notice.

1. Within twenty days of determining that a submission for publicly owned treatment works pretreatment program approval or removal credit authorization is complete, the department shall issue a public notice of request for approval of the submission.

2. The public notice shall be circulated in a manner designed to inform interested persons of the submission. Procedures for the circulation of public notice shall include at least the following:

    a. Notice shall be mailed to state and federal fish, shellfish, and wildlife agencies, unless such agencies have asked not to be sent the notices.

    b. Notice shall be mailed to any other person or group that has requested individual notice, including those on appropriate mailing lists.

    c. Notice shall be published in local newspapers and periodicals or, if appropriate, in a daily newspaper of general circulation.

3. The public notice shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the submission. All written comments submitted during the public comment period shall be retained by the department and shall be considered in the decision on whether to approve the submission.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-10. Opportunity for hearing.

1. An applicant for publicly owned treatment works pretreatment program approval or removal credit authorization, affected state, interested state agency or federal agency, or interested person or group of persons may request a public hearing or public meeting with respect to the submission.

2. The request for public hearing or public meeting shall be filed within the public comment period specified in the public notice pursuant to section 33.1-16-01.1-09 and shall indicate the interest of the person filing the request and the reasons why a hearing or meeting is warranted.

3. The department shall hold a hearing or meeting if the publicly owned treatment works so requests. In addition, a hearing or meeting shall be held if there is significant public interest in issues relating to whether or not the submission should be approved.

4. The department shall publish notice of a hearing or meeting to consider a submission in the same newspaper or newspapers as the notice of the original request for publicly owned treatment works pretreatment program approval or removal credit authorization. In addition, notice of the hearing or meeting shall be sent to those persons requesting individual notice. The notice shall inform interested parties of the nature of the hearing or meeting and the right to participate.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-11. General monitoring and reporting requirements.

1. Publicly owned treatment works that are required to develop a pretreatment program and industrial users which are subject to pretreatment standards shall install, calibrate, use, and maintain the monitoring equipment or methods, including if appropriate, biological monitoring methods, necessary to determine continued compliance with pretreatment standards and requirements.

2. All reports submitted by a user or publicly owned treatment works shall conform to the signatory requirements of section 33.1-16-01-05.

3. In addition to the requirements of sections 33.1-16-01.1-12 and 33.1-16-01.1-13, industrial users and publicly owned treatment works shall submit any other information and reports required under the North Dakota pollutant discharge elimination system or pretreatment regulation or under state law.

4. All information submitted to the state or publicly owned treatment works shall be available to the public at least to the extent provided by 40 CFR 2.302. Monitoring data and other such data as is necessary to determine whether a user is in compliance with applicable pretreatment standards shall be available to the public without restriction.

5. All records of monitoring activity pursuant to sections 33.1-16-01.1-12 and 33.1-16-01.1-13 shall conform to the requirements of section 33.1-16-01-22. The monitoring record shall also include the sampling methods used. The period of retention shall be extended during the course of any unresolved litigation regarding an indirect discharge or the operations of the publicly owned treatment works pretreatment program, or when requested by the department

or the administrator of the environmental protection agency. Such records shall be made available for inspection and copying for a reasonable fee by the department and the regional administrator.

6. Any publicly owned treatment works to which reports are submitted by industrial users pursuant to section 33.1-16-01.1-12 shall make such reports available for inspection and copying by the department and the regional administrator. The publicly owned treatment works shall retain such reports for a minimum of three years. The retention period shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the publicly owned treatment works pretreatment program, or when requested by the department or the administrator of the environmental protection agency.

7. Provisions governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

   a. The provisions of 18 U.S.C. 1001 relating to fraud and false statements;

   b. The provisions of section 309(c)(4) of the Act, governing false statements, representation or certification; and

   c. The provisions of section 309(c)(6) of the Act, regarding responsible corporate officers.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-12. Industrial user monitoring and reporting requirements.

1. Each categorical industrial user shall submit a complete baseline monitoring report to the control authority.

   a. The baseline monitoring report shall be submitted on the appropriate baseline monitoring reporting form, in accordance with 40 CFR 403.12(b).

      In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine with the standard.

      Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the control authority.

   b. For existing industrial users, the report shall be due one hundred eighty days after the effective date of the applicable categorical pretreatment standard or the final administrative decision made upon a category determination submission, whichever is later.

   c. For new sources and sources that become industrial users after the promulgation of an applicable categorical pretreatment standard, the report shall be due ninety days prior to the commencement of the indirect discharge.

2. If a baseline monitoring report contains a compliance schedule for meeting categorical pretreatment standards, the industrial user shall submit compliance schedule progress reports to the control authority. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable

categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No increment of the compliance schedule shall exceed nine months.

a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.

b. Each compliance schedule progress report shall include:

(1) A statement whether the user achieved the scheduled action on the applicable date; and

(2) If the user has not achieved the scheduled action, the date on which the user expects to achieve the action, the reason for delay, and the steps being taken to return the construction to the established schedule.

c. In no case shall more than nine months elapse between compliance schedule progress report submittals.

3. Each categorical industrial user shall submit to the control authority a complete ninety-day compliance report for each applicable pretreatment standard, in accordance with 40 CFR 403.12(d). For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

a. For facilities covered when the department is the control authority, each ninety-day compliance report shall be submitted on a ninety-day compliance reporting form, which can be obtained from the department.

b. For existing industrial users, each report shall be due ninety days after the date for final compliance with the applicable categorical pretreatment standard.

c. For new sources and sources that become industrial users after the date for final compliance with the applicable categorical pretreatment standard, each report shall be due thirty days after commencement of the indirect discharge.

4. Each categorical industrial user shall submit complete periodic compliance reports to the control authority.

a. Periodic compliance reports submitted to the department shall be submitted on a periodic compliance reporting form, which will be supplied to the user by the department. If the publicly owned treatment works is the control authority, periodic compliance reports shall require, at a minimum, the data listed in 40 CFR part 403.12(e) and part 403.12(g).

(1) In cases where the pretreatment standard requires compliance with a best management practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance of the user.

(2) The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be

present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

(a) The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

(b) The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

(c) In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with subsection 12 and include the certification statement in 40 CFR 403.6(a)(2)(ii). Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the environmental protection agency-approved method from 40 CFR part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(d) Any grant of the monitoring waiver by the control authority must be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

(e) Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard 40 CFR _____ [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).

(f) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: comply with the monitoring requirements of this subdivision or other more frequent monitoring requirements imposed by the control authority: and notify the control authority.

(g) This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

(3) The control authority may reduce the requirement in this subdivision to a requirement to report no less frequently than once a year, unless required more

frequently in the pretreatment standard or by the approval authority, where the industrial user meets all of the following conditions:

(a) The industrial user's total categorical wastewater flow does not exceed any of the following:

[1] 0.01 percent of the design dry weather hydraulic capacity of the publicly owned treatment works, or five thousand gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

[2] 0.01 percent of the design dry weather organic treatment capacity of the publicly owned treatment works; and

[3] 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a publicly owned treatment works in accordance with subsections 1 through 5 of section 33.1-16-01.1-03;

(b) The industrial user has not been in significant noncompliance, as defined in appendix A procedure 7, for any time in the past two years;

(c) The industrial user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period pursuant to this subdivision;

(d) The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subparagraph a or b of this paragraph. Upon notification, the industrial user must immediately begin complying with the minimum reporting in this subdivision; and

(e) The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under this paragraph for a period of three years after the expiration of the term of the control mechanism.

(4) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by this subdivision must contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by this subdivision must include the user's actual average production rate for the reporting period.

b. Periodic compliance reports shall be submitted in accordance with a reporting schedule prescribed by the control authority. Reporting schedules shall be consistent with any applicable pretreatment standard requirements. In no case shall the reporting frequency be less than twice per year.

5. Each industrial user shall notify the publicly owned treatment works immediately of all discharges that could cause problems to the publicly owned treatment works, including any slug loadings.

6. 40 CFR 403.12(p), which concerns hazardous waste notification, is incorporated into this chapter by reference.

7. All industrial users shall promptly notify the control authority and the publicly owned treatment works in advance of any substantial change in the volume or characteristic of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the user has submitted initial notification under subsection 6.

8. The indirect discharge from each industrial user shall be sampled and analyzed in accordance with a monitoring schedule prescribed by the control authority. The monitoring schedule shall be adequate to allow assessment of the indirect discharge. All analyses shall be performed in accordance with the procedures contained in 40 CFR 136 or with any other test procedure approved by the administrator of the environmental protection agency.

9. Each noncategorical significant industrial user of a publicly owned treatment works which administers an approved pretreatment program shall submit to the publicly owned treatment works, at least semiannually, on dates specified by the publicly owned treatment works, a description of the discharge, including self-monitoring results as required by the publicly owned treatment works. In cases where a local limit requires compliance with a best management practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user.

10. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 40 CFR 403.3(v)(2) must annually submit the following certification statement, singed in accordance with the signatory requirements in subsection 12. This certification must accompany any alternative report required by the control authority:

    Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____ to _____ [months, days, year]:

    a. The facility described as [facility name] met the definition of a nonsignificant categorical industrial user as described in 40 CFR 403.3(v)(2);

    b. The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

    c. The facility never discharged more than one hundred gallons of total categorical wastewater on any given day during this reporting period.

    This compliance certification is based upon the following information: [Insert the information].

11. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR part 3 (electronic reporting).

12. Signatory requirements for industrial user reports. The reports required in this chapter must include the certification statement as set forth in 40 CFR 403.6(a)(2)(ii), and must be signed as follows:

    a. By a responsible corporate officer, if the industrial user submitting the reports is a corporation, including a limited liability company. A responsible corporate officer means:

(1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policymaking or decisionmaking functions for the corporation; or

(2) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. By a general partner or proprietor if the user submitting the reports is a partnership, or sole proprietorship respectively.

c. By a duly authorized representative of the individual designated in subdivision a or b if:

(1) The authorization is made in writing by the authorized representative defined in this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(3) The written authorization is submitted to the control authority.

d. If an authorization of this section is no longer accurate because a different individual or position has responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-13. Publicly owned treatment works reporting requirements.

1. Publicly owned treatment works with approved pretreatment programs shall submit to the department on an annual basis a report describing the program activities. Reports shall be due March twenty-eighth. Each report shall include, at a minimum:

a. An updated list of the publicly owned treatment works industrial users, including the name and address of each user, and identifying the categorical standards applicable to each user. The list shall indicate which users are subject to local standards that are more stringent than the categorical pretreatment standards and shall also include users that are subject only to local requirements. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under paragraph 3 of subdivision a of subsection 4 of section 33.1-16-01.1-12, and identify which industrial users are nonsignificant categorical industrial users. The publicly owned treatment works shall provide an explanation for each deletion from the previous list;

b. A summary of the status of industrial user compliance over the reporting period;

c. A summary of compliance and enforcement activities, including inspections, conducted by the publicly owned treatment works during the reporting period;

d. A summary of changes to the publicly owned treatment works pretreatment program that have not been previously reported to the department; and

e. Any other relevant information requested by the department.

2. If a publicly owned treatment works is under a compliance schedule for pretreatment program development, the publicly owned treatment works shall submit compliance schedule progress reports to the department.

The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a publicly owned treatment works pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.

b. Each compliance schedule progress report shall include:

(1) A statement whether the publicly owned treatment works achieved the scheduled action on the applicable date; and

(2) If the publicly owned treatment works has not achieved the scheduled action, the date on which the publicly owned treatment works expects to achieve the action, the reason for delay, and the steps being taken to return to the established schedule.

c. In no case shall more than nine months elapse between compliance schedule progress report submittals.

3. Signatory requirements for publicly owned treatment works reports. Reports submitted to the department by the publicly owned treatment works in accordance with this section shall be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-14. Removal credits.

1. Removal credits, 40 CFR 403.7, is incorporated into this chapter by reference.

2. Pollutants eligible for a removal credit, appendix G to 40 CFR 403, is incorporated into this chapter by reference.

3. The department shall utilize the procedure prescribed in section 33.1-16-01.1-08 to evaluate and approve or deny requests for authority to grant removal credits.

History: Effective January 1, 2019.

General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-15. Variances from categorical pretreatment standards for fundamentally different factors.

Variances from categorical pretreatment standards for fundamentally different factors, 40 CFR 403.13, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-16. Net/gross adjustments.

Net/gross calculation, 40 CFR 403.15, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-17. Upset.

1. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the following criteria are demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence:

    a. An upset occurred and the user can identify the cause or causes;

    b. The facility was at the time being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures; and

    c. The user has submitted the following information to the publicly owned treatment works and to the control authority within twenty-four hours of becoming aware of the upset. If the information is submitted orally, a written submission shall be provided within five days:

        (1) A description of the indirect discharge and the cause of noncompliance;

        (2) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

        (3) Steps being taken or being planned to reduce, eliminate, and prevent recurrence of the noncompliance.

2. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

3. No determination made during administrative review of claims, that noncompliance with categorical pretreatment standards was caused by upset, is final administrative action.

4. The industrial user shall control production or all indirect discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 61-28-04, 61-28-07

33.1-16-01.1-18. Bypass.

1. An industrial user may allow any bypass to occur which does not cause pretreatment standards or pretreatment requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. Such bypasses are not subject to subsections 2 and 3.

2. The industrial user shall provide notification to the control authority of a bypass under the following circumstances:

   a. If the user knows in advance of the need for a bypass, prior notice shall be submitted, at least ten days before the date of the bypass, if possible.

   b. The user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four hours from the time the user becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

   c. The written submission shall contain the following items:

      (1) A description of the bypass and its cause;

      (2) The duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and

      (3) The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

3. Bypasses are prohibited unless the following conditions are met. The control authority may approve an anticipated bypass, if the following conditions are met:

   a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

   b. There were no feasible alternatives to the bypass. This condition is not satisfied if adequate backup equipment was not installed to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

   c. The user submitted the notification required in subsection 2.

4. The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in subsection 3.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-19. Pretreatment program modifications.

Modification of publicly owned treatment works pretreatment programs, 40 CFR 403.18, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-20. Right of entry.

1. Each publicly owned treatment works and industrial user shall permit an authorized representative of the department, upon presentation of the representative's credentials:

   a. To enter the premises of a publicly owned treatment works or of an industrial user of a publicly owned treatment works in which an effluent source is located or in which any records are maintained;

   b. To have access to and copy any records required to be maintained;

   c. To inspect any monitoring equipment or method which is required; and

   d. To have access to and sample any discharge of pollutants to waters of the state or to a publicly owned treatment works which result from the activities or operation of the publicly owned treatment works or industrial user.

2. An industrial user of a publicly owned treatment works with an approved pretreatment program shall permit an authorized representative of the publicly owned treatment works, upon presentation of the representative's credentials, the access detailed in subsection 1.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01.1-21. Enforcement.

The department shall evaluate all reports, notifications, and data submitted to or obtained by the department in compliance with this chapter and shall investigate and follow up all apparent violations for possible enforcement action pursuant to North Dakota Century Code section 61-28-08. The department shall have authority to seek judicial relief and may also use administrative penalty authority when the publicly owned treatment works has sought a monetary penalty which the approval authority believes to be insufficient.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04, 61-28-08

APPENDIX A

REQUIRED PUBLICLY OWNED TREATMENT WORKS PRETREATMENT PROGRAM ELEMENTS

Legal authority. The publicly owned treatment works shall operate pursuant to legal authority enforceable in federal, state, or local courts, which authorizes or enables the publicly owned treatment works to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Federal Water Pollution Control Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, joint powers agreements, or similar mechanisms which the publicly owned treatment works is authorized to enact, enter into, or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the publicly owned treatment works to accomplish each of the following actions:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the publicly owned treatment works by industrial users if such contributions do not meet applicable pretreatment standards and requirements or if such contributions would cause the publicly owned treatment works to violate its North Dakota pollutant discharge elimination system permit.

2. Require compliance with applicable pretreatment standards and requirements by industrial users.

3. Control through permit, order, or similar means the contribution to the publicly owned treatment works by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of significant industrial users, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user.

    a. At the discretion of the publicly owned treatment works, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

        (1) Involve the same or substantially similar types of operations;

        (2) Discharge the same types of wastes;

        (3) Require the same effluent limitations;

        (4) Require the same or similar monitoring; and

        (5) In the opinion of the publicly owned treatment works, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

    b. To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 40 CFR 403.12(e)(2) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the publicly owned treatment works deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the publicly owned treatment works has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 40 CFR 403.12(e)(2). The publicly owned treatment works must retain a copy of the general control mechanism, documentation to support the publicly owned treatment works' determination that a specific significant industrial user meets the criteria in paragraphs 1

through 5 of subdivision a of this subsection, and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A publicly owned treatment works may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the combined wastestream formula or net/gross calculations 40 CFR 403.6(e) and 40 CFR 403.15.

Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of nontransferability without, at a minimum, prior notification to the publicly owned treatment works and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits, include best management practices, based on applicable general pretreatment standards in chapter 33.1-16-01.1, categorical pretreatment standards, local limits, and state and local law;

(4) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 40 CFR 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in chapter 33.1-16-01.1, categorical pretreatment standards, local limits, and state and local law; and

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(6) Requirements to control slug discharges, if determined by the publicly owned treatment works to be necessary.

4. Require:

   a. The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

   b. The submissions of all notices and self-monitoring reports from industrial users as are necessary to assess and assure their compliance with pretreatment standards and requirements, including the reports required in section 33.1-16-01.1-12.

5. Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the publicly owned treatment works shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection 5 of section 33.1-16-01.1-11 to assure compliance with pretreatment standards and requirements. Such authority shall be at least as extensive as the authority provided under section 308 of the Federal Water Pollution Control Act.

6. a. Obtain remedies for noncompliance by any industrial user with any pretreatment standards and requirements. All publicly owned treatment works shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All publicly owned treatment works shall also have authority to seek or assess civil or criminal penalties in at least the amount of one thousand dollars a day for each violation by industrial users of pretreatment standards and requirements.

   b. Pretreatment standards and requirements which will be enforced through these remedies will include the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the publicly owned treatment works; any requirements set forth in individual control mechanisms issued by the publicly owned treatment works; or any reporting requirements imposed by the publicly owned treatment works or state or federal regulations. The publicly owned treatment works shall have authority and procedures after informal notice to the discharger immediately and effectively to halt or prevent any discharge of pollutants to the publicly owned treatment works which reasonably appears to present an imminent endangerment to the health or welfare of persons. The publicly owned treatment works shall also have authority and procedures which shall include notice to the affected industrial users and an opportunity to respond to halt or prevent any discharge to the publicly owned treatment works which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the publicly owned treatment works.

7. Comply with the confidentiality requirements set forth in subsection 4 of section 33.1-16-01.1-11.

Procedures. The publicly owned treatment works shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the publicly owned treatment works to accomplish each of the following actions:

1. Identify and locate all possible industrial users which might be subject to the publicly owned treatment works pretreatment program. Any compilation, index, or inventory of industrial users made under this subsection shall be made available to the department or regional administrator upon request.

2. Identify the character and volume of pollutants contributed to the publicly owned treatment works by the industrial users which are subject to the publicly owned treatment works pretreatment program. This information shall be made available to the department or regional administrator upon request.

3. Notify industrial users which are subject to the publicly owned treatment works pretreatment program of applicable pretreatment standards and any applicable requirements under sections 204(b) and 405 of the Federal Water Pollution Control Act and subtitles C and D of the Resource Conservation and Recovery Act. Within thirty days of departmental approval of a significant industrial user's list (see "Significant industrial users"), notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

4 Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in section 33.1-16-01.1-12.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year, except as otherwise below:

a. Where the publicly owned treatment works has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 40 CFR 403.12(e)(3), the publicly owned treatment works must sample for the waived pollutant at least once during the term of the categorical industrial user's control mechanism. In the event that the publicly owned treatment works subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the publicly owned treatment works must immediately begin at least annual effluent monitoring of the user's discharge and inspection.

b. Where the publicly owned treatment works has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the publicly owned treatment works must evaluate, at least once per year, whether an industrial user continues to meet the criteria in 40 CFR 403.3(v)(2).

c. In the case of industrial users subject to reduced reporting requirements under 40 CFR 403.12(e)(3), the publicly owned treatment works must randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in 40 CFR 403.12(e)(3), the publicly owned treatment works must immediately begin sampling and inspecting the industrial user at least once per year.

6. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including an accidental spill or a noncustomary batch discharge. The results of such activities shall be available to the department upon request. If the publicly owned treatment works decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

   a. Description of discharge practices, including nonroutine batch discharges;

   b. Description of stored chemicals;

   c. Procedures for immediately notifying the publicly owned treatment works of slug discharges, including any discharge that would violate a prohibition under subsection 2 of section 33.1-16-01.1-02, with procedures for followup written notification within five days; and

   d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.

7. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under section 33.1-16-01.1-12, or indicated by analysis, inspection, and surveillance activities. Sample collecting and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

8. Comply with the public participation requirements of 40 CFR 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the publicly owned treatment works is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements.

For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed by any magnitude a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

b. Technical review criteria violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l) limit multiplied by the applicable technical review criteria (equal to 1.4 for five-day biochemical oxygen demand, total suspended solids, fats, oil, and grease, and 1.2 for all other pollutants except pH);

c. Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority determines has caused, alone or in combination with other discharges, interference, or passthrough (including endangering the health of the publicly owned treatment works' personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the publicly owned treatment works' exercise of its emergency authority to halt or prevent such a discharge;

e. Failure to meet, within ninety days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within thirty days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and compliance schedule progress reports;

g. Failure to accurately report noncompliance; or

h. Any other violation or group of violations, which may include a violation of best management practices, which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Funding. The publicly owned treatment works shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in "Legal authority" and "Procedures." In some limited circumstances, funding and personnel may be delayed when the publicly owned treatment works has adequate legal authority and procedures to carry out these pretreatment program requirements, and a limited aspect of the pretreatment program does not need to be implemented immediately (see subsection 2 of section 33.1-16-01.1-06).

Local limits. The publicly owned treatment works shall develop local limits as required in section 33.1-16-01.1-03 or demonstrate that they are not necessary.

Enforcement response plan. The publicly owned treatment works shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a publicly owned treatment works will investigate and respond to instances of an industrial user noncompliance. The plan shall, at a minimum:

1. Describe how the publicly owned treatment works will investigate the instances of noncompliance;

2. Describe the types of escalating enforcement responses the publicly owned treatment works will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3. Identify (by title) the official(s) responsible for each type of response; and

4. Adequately reflect the publicly owned treatment works primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in "Legal authority" and "Procedures."

Significant industrial users. The publicly owned treatment works shall prepare a list of its significant industrial users. The list shall identify the criteria in subsection 17 of section 33.1-16-01.1-01 applicable to each industrial user and, for industrial users meeting the criteria in subdivision b of subsection 17 of section 33.1-16-01.1-01, shall also indicate whether the publicly owned treatment works has made a determination pursuant to subdivision c of subsection 17 of section 33.1-16-01.1-01 that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the department as a nonsubstantial modification pursuant to section 33.1-16-01.1-19. Modifications to the list shall be submitted to the department pursuant to subdivision a of subsection 1 of section 33.1-16-01.1-13.

A publicly owned treatment works that chooses to receive electronic documents must satisfy the requirements of 40 CFR part 3 (electronic reporting).

History: Effective January 1, 2019.

APPENDIX B

PUBLICLY OWNED TREATMENT WORKS
PRETREATMENT PROGRAM SUBMISSION PACKAGES

A publicly owned treatment works requesting approval of a publicly owned treatment works pretreatment program shall develop a program description, which includes the following information:

A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those publicly owned treatment works which have independent legal counsel) that the publicly owned treatment works has authority adequate to carry out the programs described in Appendix A. This statement must:

1. Identify the provision of legal authority which provides the basis for each procedure described in "Procedures" in Appendix A;

2. Identify the manner in which the publicly owned treatment works will implement the program requirements set forth in Appendix A, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the publicly owned treatment works intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the publicly owned treatment works for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the publicly owned treatment works pretreatment program, or both, if approved;

A brief description, including organization charts, of the publicly owned treatment works organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

A description of the funding levels and full-time and part-time manpower available to implement the program.

History: Effective January 1, 2019.