

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Environmental Management

**DIVISION:** Water Resources

**RULE IDENTIFIER:** 250-RICR-150-10-2; ERLID #: 959

**REGULATION TITLE:** Rhode Island Pretreatment Regulations

**RULEMAKING ACTION:** Direct Final

**Direct Final:** If no formal objection is received on or before Friday, May 25 Department of Environmental Management will file the amendment without opportunity for public comment.

**TYPE OF FILING:** Amendment

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Public Notice:** Thursday, April 26, 2018.

**End of Comment Period Date:** Friday, May 25, 2018.

**SUMMARY OF PROPOSED RULE:** These regulations establish a state and local pretreatment system in conjunction with the National Pretreatment Standards in order to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge. These regulations implement R.I. Gen. Laws Chapter 46 12 in conformance with the Clean Water Act and those regulations and standards promulgated by the United States Environmental Protection Agency (EPA). It imposes responsibilities on the state, local government, industry and the public to help implement pretreatment standards.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **Friday, May 25, 2018**, to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Robert DiSaia  
Department of Environmental Management  
Office of Water Resources  
235 Promenade Street  
Providence, RI 02908

**Email Address:** [robert.disaia@dem.ri.gov](mailto:robert.disaia@dem.ri.gov)

**WHERE COMMENTS AND PROPOSED REGULATION MAY BE INSPECTED:**

**Mailing Address:** Department of Environmental Management  
Office of Customer and Technical Assistance, 2<sup>nd</sup> Floor  
235 Promenade Street  
Providence, RI 02908  
(401) 222-6822

**FOR FUTHER INFORMATION CONTACT:**

Robert DiSaia  
Department of Environmental Management  
Office of Emergency Response  
235 Promenade Street  
Providence, RI 02908  
[robert.disaia@dem.ri.gov](mailto:robert.disaia@dem.ri.gov)

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:** N/A

**Authority for This Rulemaking:** R.I. Gen. Laws Chapters 46-12, 42-17.1, 42-17.6, and 42-35

**Regulatory Findings:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Amendment:** The purpose of this amendment is to reformat the regulation in accordance with the RICR, to remove non-regulatory language, and to add an Incorporated Materials section.

The Department of Environmental Management proposes to amend 250-RICR-150-10-2. Electronic copies of the proposed rulemaking are available at the Secretary of State and DEM's website at the following web addresses:

<http://sos.ri.gov/ProposedRules/>

<http://www.dem.ri.gov/documents/regulations/index.php>

250-RICR-150-10-2

## TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### CHAPTER 150 - WATER RESOURCES

#### SUBCHAPTER 10 - WASTEWATER AND STORMWATER

PART 2 - Rhode Island Pretreatment Regulations

#### 2.1 Purpose and Objectives

- A. These regulations establish a state and local pretreatment system in conjunction with the National Pretreatment Standards in order to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge. These regulations implement R.I. Gen. Laws Chapter 46-12 ~~of the General Laws of Rhode Island~~ in conformance with the Clean Water Act and those regulations and standards promulgated by the United States Environmental Protection Agency (EPA). It imposes responsibilities on the state, local government, industry and the public to help implement pretreatment standards.
- B. These regulations are intended to fulfill three objectives:
1. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;
  2. To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and,
  3. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

#### 2.2 Legal Authority

~~These regulations are adopted pursuant to Chapters 46-12, 42-17.1 and 42-35 of the General Laws of Rhode Island.~~

The authority for these regulations is vested in the Director by R.I. Gen. Laws Chapter 46-12, Water Pollution, Chapter 42-17.1, Environmental Management and Chapter 42-17.6, Administrative Penalties for Environmental Violations ~~of the General Laws of Rhode Island, as amended~~. These Rules and Regulations are further promulgated pursuant to the requirements and provisions of all Chapters of the R.I. Gen. Laws General Laws of Rhode Island relating to the duties and responsibilities of the Director for the waters of the State, and in accordance

with the requirements of Chapter 42-35, Administrative Procedures Act, and Public Laws Chapters 09-198 and 09-199.

## **2.3 Incorporated Materials**

A. These regulations hereby adopt and incorporate 40 C.F.R. § 403 (20187), including Appendices A through G, by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

## **2.4 Definitions**

A. The definitions found at 40 C.F.R. § 403.3 (2018), incorporated above at § 2.3(A) of this Part, are hereby amended to include the following definitions:

1. "Department" means the Rhode Island Department of Environmental Management.
2. "Director" means the Director of the Department or any subordinate or subordinates to whom he/she has delegated the powers and duties vested in him/her by these regulations.

## **2.4 Severability**

~~If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of these rules and regulations.~~

## **2.45 Application**

~~A. These regulations shall be liberally construed to permit the Department to effectuate the purposes of the State law and shall be construed in harmony with the Clean Water Act and accompanying Federal regulations.~~

~~—The terms and provisions of these Rrules and Rregulations shall be liberally construed in conjunction with the Clean Water Act and accompanying Federal Regulations to allow the Department to effectuate the purposes of state law.~~

B. Upon adoption by EPA or the State of additional or more stringent regulations affecting the Rhode Island Pollutant Discharge Elimination System Permit Program or the pretreatment standards, these rules shall be revised to comply with such new regulations following the notice, hearing and public comment provisions of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

C. These regulations apply to:

1. ~~P~~pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in ~~Rule 5~~ Section 2.46(A) of this Part;
2. POTWs which receive wastewater from sources subject to National Pretreatment Standards; and,
3. ~~A~~any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

## 2.56 Definitions

~~For the purpose of this regulation:~~

~~Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.~~

~~The term "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.~~

~~The term "Approval Authority" means the Director.~~

~~The term "Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in this regulation (Rules 5 and 11) and which has been approved by a Regional Administrator or State Director in accordance with Rule 13 of this regulation.~~

~~The term "Department" means the Rhode Island Department of Environmental Management.~~

~~The term "Director" means the Director of the Department of Environmental Management or any subordinate or subordinates to whom he has delegated the powers and duties vested in him by these regulations.~~

~~The term "effluent data" means with reference to the discharge (direct or indirect) of pollutants from any source:~~

1. ~~Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;~~

- ~~2. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and~~
- ~~3. A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).~~

~~Notwithstanding the above, the following information shall be considered to be "effluent data" only to the extent necessary to allow the Department to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the Department to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:~~

- ~~a. Information concerning research, or the result of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and~~
- ~~b. Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.~~

~~The term "Enforcement Division Director" means one of the Directors of the Enforcement Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.~~

~~The term "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b),(c) or (d) of the Clean Water Act.~~

~~The term "Industrial User" or "User" means a source of Indirect Discharge.~~

~~The term "Interference" means an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to either a violation of any requirement of the POTW's RIPDES permit (including an increase in the magnitude or duration of a violation) or to the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Sections 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA) and including Rhode Island Rules and Regulations Pertaining to the Disposal and Utilization of Wastewater Treatment Facility Sludge), the Clean Air Act, and the Toxic Substance Control Act. An Industrial User significantly~~

~~contributes to such a permit violation or prevention of sludge use or disposal in accordance with above-cited authorities whenever such User:~~

- ~~1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State or local law;~~
- ~~2. Discharges wastewater which substantially differs in nature or constituents from the User's average Discharge; or~~
- ~~3. Knows or has reason to know that its Discharge, alone or in conjunction with Dischargers from other sources, would result in a POTW permit violation or prevent sewage sludge use of disposal in accordance with the above-cited authorities as they apply to the POTW's selected method of sludge management.~~

~~The term "Municipality" means a city, town, borough, county, parish, district, quasi-governmental corporation, association or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of the Clean Water Act.~~

~~The term "National Pretreatment Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Rule 7.~~

~~The term "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act which will be applicable to such sources if such Standards are thereafter promulgated in accordance with that section.~~

~~The terms "NPDES Permit" or "Permit" means a permit issued to a POTW pursuant to Section 402 of the Clean Water Act.~~

~~The term "Pass Through" means the Discharge of pollutants through the POTW into navigable waters in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). An Industrial User significantly contributes to such permit violation where it:~~

- ~~1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State, or local law;~~
- ~~2. Discharges wastewater which substantially differs in nature and constituents from the User's average Discharge;~~

- ~~3. Knows or has reason to know that its Discharge, alone or in conjunction with Dischargers from other sources, would result in a permit violation; or~~
- ~~4. Knows or has reason to know that the POTW is, for any reason, violating its final effluent limitations in its permit and that such Industrial User's Discharge from other sources, increases the magnitude or duration of the POTW's violations.~~

~~The term "Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by Section 212 of the Clean Water Act, which is owned by a State or municipality. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyance only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined herein, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.~~

~~The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.~~

~~The term "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 POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Rule 8(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 POTW. 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 Rule 8(e).~~

~~The term "Pretreatment Requirements" means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.~~

~~The term "Regional Administrator" means the appropriate EPA Regional Administrator.~~

~~The term "Rhode Island Pollutant Discharge Elimination System (RIPDES)" means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits and imposing and enforcing pretreatment requirements pursuant to Title 46, Chapter 12 of the General Law of Rhode Island and the Clean Water Act.~~

~~The term "Submission" means: 1) a request by a POTW for approval of a Pretreatment Program to the Director; or, 2) a request by a POTW to the Director for authority~~

~~to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals.~~

~~The Definitions found at 40 C.F.R. § 403.3 (20187), incorporated above at § 2.3(A) of this Part, are hereby amended to include the following definitions:~~

~~"Department" means the Rhode Island Department of Environmental Management.~~

~~"Director" means the Director of the Department or any subordinate or subordinates to whom he/she has delegated the powers and duties vested in him/her by these regulations.~~

## **2.667 Local Law**

~~Nothing in this regulation 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 Pretreatment Standards, or any other requirements or prohibitions established under [this regulation](#), the Clean Water Act, or 40 CFR 403 (20187) or [this regulation](#), incorporated above at § 2.3(A) of this Part.~~

## **2.778 National Pretreatment Standards: Prohibited Discharges**

~~A. Industrial A. General prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not Pass Through the POTW or Interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.~~

~~B. Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:~~

- ~~1. Pollutants which create a fire or explosion hazard in the POTW;~~
- ~~2. Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accomodate such Discharges;~~
- ~~3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;~~
- ~~4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.~~

~~5. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceed 40 degrees Celsius (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approved alternate temperature limits.~~

~~C. When Specific Limits Must be Developed by POTW.~~

~~1. POTWs developing POTW Pretreatment Programs pursuant to Rule 10 shall develop and enforce specific limits to implement the prohibitions listed in Rule 7a & b.~~

~~2. All other POTWs shall, in cases where pollutants contributed by User(s) result in Interference of Pass Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure renewed and continued compliance with the POTWs RIPDES permit and sludge use or disposal practices.~~

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

~~D. Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of Section 307(d) of the Act.~~

~~E. EPA and State Enforcement Actions. If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA or the Department to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA or the Department may take appropriate enforcement action.~~

Users shall not discharge any substances that are not consistent with the National Pretreatment Standards, as set forth in 40 C.F.R. § 403.5 (2018~~7~~), incorporated above at § 2.3(A) of this Part. In addition, the following specific prohibition shall also apply:

**B.** Legend Drugs (Non-Controlled Prescription Drugs) shall not be discharged to the sewer, unless specifically required by ~~HEALTH~~Department of Health ~~the Rules and Regulations Governing the Disposal of Legend Drugs~~ or FDA guidance ~~HEALTH()~~, incorporated above at § 2.3(B) of this Part.

## ~~2.889~~ National Pretreatment Standards: Categorical Standards

~~National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be Discharged to a POTW 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 the general prohibitions established in Rule 7 of this regulation.~~

### ~~A. Category Determination Request.~~

- ~~1. Application Deadline. Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, or within 60 days after the Federal Register notice, announcing the availability of the technical development for that subcategory, whichever is later, the POTW may request that the Director provide written certification on whether the Industrial User falls within that particular subcategory. A new source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Director within 30 days of notification.~~
- ~~2. Contents of Application. Each request shall contain a statement:~~
  - ~~a. Describing which subcategories might be applicable; and~~
  - ~~b. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Each such statement shall contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his information and belief. The oath shall be that set forth in Rule 9(b)(2)(ii), except that the phrase "Rule 9" shall be replaced with "Rule 8(a)."~~
- ~~3. Deficient Requests. The Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Director that their requests are deficient, and unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Director, the request for a determination shall be denied.~~
- ~~4. Final Decision.~~
  - ~~a. When the Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any~~

~~other available information relevant to the request. The Director will then make a written determination of the applicable subcategory and state the reasons for the determination.~~

- ~~b. Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Enforcement Division Director who may make a final determination. The Enforcement Division Director may waive receipt of these determinations. If the Enforcement Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Enforcement Division Director waives receipt of the determination, the Director's decision is final.~~
- ~~c. Where the request is submitted by the Industrial User of POTW to the Enforcement Division Director or where the Enforcement Division Director elects to modify the Director's decision, the Enforcement Division Director's decision will be final.~~
- ~~d. The Enforcement Division Director, or the Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Enforcement Division Director, he or she shall send a copy of the determination to the Director.~~
- ~~5. Requests for Hearing and/or Legal Decision. Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.~~
- ~~B. Deadlines for Compliance With Categorical Standards. Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct Dischargers with NPDES or RIPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Clean Water Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in Rule 5. Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.~~
- ~~C. Concentration and Mass Limits. Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits~~

~~in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the Standard.~~

~~D. Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable categorical Pretreatment Standard, no Industrial User shall ever 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 categorical Pretreatment Standard. The Control Authority (as defined in Rule 14(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or in other cases where the imposition of mass limitations is appropriate.~~

~~E. Combined Wastestream Formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in Rule 14(a), or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the long-term average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and long-term average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.~~

~~1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:~~

~~a. Alternative Concentration Limit:~~

~~————N~~

~~————CiFi FT - FD~~

~~CT =  $\sum_{i=1}^n$~~

~~————N~~

$$\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \leq C_T$$

$$\sum_{i=1}^N F_i = F_T$$

where

$C_T$  = the alternative concentration limit for the combined wastestream

$C_i$  = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream  $i$ .

$F_i$  = the average daily flow (at least a 30-day average) of stream  $i$  to the extent that it is regulated for such pollutant.

$F_D$  = the average daily flow (at least a 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12-ERC-1833) for one or more of the following reasons (see Appendix D):

- (1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
- (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
- (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
- (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

$F_T$  = the average daily flow (at least a 30-day average) through the combined treatment facility (includes  $F_i$ ,  $F_D$  and unregulated streams).

$N$  = the total number of regulated streams.

b. Alternative Mass Limit:

$$\sum_{i=1}^N M_i \leq M_T$$

$$\sum_{i=1}^N M_i = M_T - M_D$$

$$M_T = \sum_{i=1}^N M_i$$

$$\sum_{i=1}^N M_i$$

$$\sum_{i=1}^N M_i$$

~~—————  $i=1$~~

~~MT = the alternative mass limit for a pollutant in the combined wastestream.~~

~~Mi = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).~~

~~Fi = the average flow (at least 30-day average) of stream i to the extent that it is regulated for such pollutant.~~

~~FD = the average flow (at least 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12-ERC-1833) for one or more of the following reasons (see Appendix D):~~

~~(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));~~

~~(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));~~

~~(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or~~

~~(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).~~

~~FT = the average flow (at least 30-day average) through the combined treatment facility (includes Fi, FD and unregulated streams).~~

~~N = the total number of regulated streams.~~

~~2. Alternate Limits Below Detection Limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.~~

~~3. Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be as follows~~

~~a. The type and frequency of sampling, analysis and flow measurement shall be determined by reference to the self-monitoring requirements of the appropriate categorical Pretreatment Standard(s);~~

- b. ~~Where the self-monitoring schedules for the appropriate Standards differ, monitoring shall be done according to the most frequent schedule;~~
- c. ~~Where flow determines the frequency of self-monitoring in a categorical Pretreatment Standard, the sum of all regulated flows (Fi) is the flow which shall be used to determine self-monitoring frequency.~~

All Users shall comply and all Rhode Island Industrial Pretreatment Programs shall include requirements to ensure that Industrial Users comply with pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories that are consistent with National Pretreatment Standards, as set forth in 40 C.F.R. § 403.6 (20187), incorporated above at § 2.3(A) of this Part.

## **2.9910 Revision of Categorical Pretreatment Standards to Reflect POTW Removal of Pollutants**

~~This section provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical Pretreatment Standards to reflect Removal of pollutants by the POTW.~~

A. ~~Definitions. For the purpose of this section:~~

~~"Removal" shall mean a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or it may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW. The demonstration of Removal shall consist of data which reflect the Removal achieved by the POTW for those specific pollutants of concern included on the list, developed pursuant to Section 307(a) of the Clean Water Act. Each categorical Pretreatment Standard will specify whether or not a Removal Allowance may be granted for indicator or surrogate pollutants regulated in that Standard.~~

~~"Consistent Removal" shall mean the average of the lowest 50 percent of the removals measured according to paragraph (d)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (d)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Director. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the~~

~~limit of measurement, the Director may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in questions.~~

~~"Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant.~~

- ~~B. Revision of Categorical Pretreatment Standards to Reflect POTW Pollutant Removal. Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard applies may, subject to the conditions of this section, revise the discharge limits for a specific pollutant(s) covered in the categorical Pretreatment Standard applicable to that User. Revisions will only be made where the POTW demonstrates Consistent Removal of each pollutant for which the discharge limit in a categorical Pretreatment Standard is to be revised at a level which justifies the amount of revision to the discharge limit. In addition, revision of pollutant discharge limits in categorical Pretreatment Standards by a POTW may only be made provided that:~~
- ~~1. Application. The POTW applies for, and receives, authorization from the Regional Administrator and/or Director to revise the discharge limits in Pretreatment Standards, for specific pollutants, in accordance with the requirements and procedures set out in this section and Rules 11 and 13; and~~
  - ~~2. POTW Pretreatment Programs. The POTW has a Pretreatment Program approved in accordance with Rules 10, 11 and 13; provided, however, a POTW may conditionally revise the discharge limits for specific pollutants, even though a Pretreatment Program has not been approved, in accordance with the following terms and conditions. These provisions also govern the issuance of provisional authorizations under Rule 9(d)(2)(vii):~~
    - ~~a. All Industrial Users who wish to receive a conditional or provisional revision of categorical Pretreatment Standards must submit to the POTW the information required in Rule 14(b)(1)-(7) pertaining to the categorical Pretreatment Standard as modified by the conditional or provisional removal allowance, except that the compliance schedule required by Rule 14(b)(7) is not required where a provisional allowance is requested. The submission shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standards as revised by the POTW.~~
    - ~~b. The POTW must compile and submit data demonstrating removal in accordance with the requirements of paragraphs (d)(1)-(7) of this section. The POTW shall submit to the Director a removal report which comports with the signatory and certification requirements of Rule 14(1) and (m). This report shall contain a certification by any of the persons specified in Rule 14 or by an independent engineer containing the following statement: "I have personally examined and am familiar with the information submitted in the attached document, and I~~

hereby certify under penalty of law that this information was obtained in accordance with the requirements of Rule 9(d). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment";

- e. ~~The POTW must submit to the Director an application for pretreatment program approval meeting the requirements of Rules 10 and 11(a) or (b) in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's RIPDES permit;~~
- d. ~~If a POTW grants conditional or provisional revision(s) and the Director subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions in paragraphs (b)(2)(ii) or (iii) of this section, or that its sludge use or disposal practices are not in compliance with the provisions of paragraph (b)(4) of this section, the revision shall be terminated by the Director and all Industrial Users to whom the revised discharge limits has been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s)) as specified by the Director. However, the revision(s) shall not be terminated where the POTW has not made a timely application for program approval if the POTW has made demonstrable progress towards and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed one year, established by the Director.~~
- e. ~~If a POTW grants conditional or provisional revision(s) and the POTW or Director subsequently makes a final determination, after notice and an opportunity for a hearing, that the Industrial User(s) failed to comply with conditions in paragraph (b)(2)(i) of this section, including in the case of a conditional revision, the dates specified in the compliance schedule required by Rule 14(b)(7), the revision shall be terminated by the POTW or the Director for the non-complying Industrial Users and all non-complying Industrial Users to whom the revised discharge limits has been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within the time period specified in such Standard(s). The revision(s) shall not be terminated where a violation of the provisions of this subparagraph results from causes entirely outside of the control of the Industrial User or the Industrial User has demonstrated substantial compliance; and~~
- f. ~~The POTW shall submit to the Director by December 31 of each year the name and address of each Industrial User that has received a conditionally or provisionally revised discharge limit. If the revised discharge limit is revoked, the POTW must submit the information in paragraph (b)(2)(i) above to the Director.~~

~~3. Compensation for overflow. POTWs which at least annually overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraphs (b)(3)(i) or (ii) below. However, this subsection shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;~~

~~a. The Industrial User provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Director evidence that:~~

~~(1) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur. Discharges from the regulated processes which contain pollutants for which an allowance is requested;~~

~~(2) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (b)(3)(i)(C) herein to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and~~

~~(3) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available upon request by the POTW, State Director or EPA Regional Administrator daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or~~

~~b. The Consistent Removal claimed is reduced pursuant to the following equation:~~

~~————— 8760-Z~~

~~rc = — rm — 8760~~

~~Where:~~

~~rm = POTWs Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (d)(2) of this section~~

~~rc = —removal corrected by the Overflow factor~~

~~Z = —hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current RIPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and~~

~~c. —After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum-61" (same document) published on December 16, 1975 by EPA Office Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.~~

~~d. —If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Director, may continue to be claimed according to the formula in paragraph (b)(3)(ii)(A) above so long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Removal may, subject to the approval of the Director, continue to be claimed according to the formula in paragraph (b)(3)(iii)(A) above where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its RIPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Director shall consider the availability of funds, cost-of-control measures, and seriousness of the water quality problem); and~~

~~4. —Compliance with applicable sludge requirements. Such revision will not contribute to the POTW's inability to comply with its RIPDES permit or with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations) as they apply to the sludge management methods being used: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and including Rhode Island Rules and Regulations Pertaining to the Disposal and Utilization of Wastewater Treatment Facility Sludge), the Clean Water Act and the Toxic Substances~~

~~Control Act. The POTW will be authorized to revise discharge limits only for those pollutants that do not contribute to the violation of its RIPDES permit or any of the above statutes.~~

~~C. POTW application for authorization to revise discharge limits.~~

- ~~1. Application for authorization to revise discharge limits for Industrial Users who are in the future may be subject to categorical Pretreatment Standards, or approval of discharge limits conditionally or provisionally revised for Industrial Users by the POTW pursuant to paragraphs (b)(2) and (d)(2)(vii) shall be submitted by the POTW to the Director;~~
- ~~2. Each POTW may submit such an application no more than once per year with respect to either:
  - ~~a. any categorical Pretreatment Standard promulgated in the prior 18 months;~~
  - ~~b. any new or modified facilities or production changes resulting in the Discharge of pollutants which were not previously discharged and which are subject to promulgated categorical Standards; or~~
  - ~~c. any significant increase in Removal efficiency attributable to specific identifiable circumstances or corrective measures (such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW Treatment Plant).~~~~
- ~~3. The Director may, however, elect not to review such application(s) upon receipt, in which case the POTWs conditionally or provisionally revised discharge limits will remain in effect until reviewed by the Director. This review may occur at any time in accordance with the procedures of Rule 13, but in no event later than the time of any pretreatment program approval or any RIPDES permit reissuance thereafter.~~
- ~~4. If the Consistent Removal claimed is based on an analytical technique specified for the applicable categorical Pretreatment Standard, the Director may require the POTW perform additional analyses.~~

~~D. Contents of application to revise discharge limits. Requests for authorization to revise discharge limits in categorical Pretreatment Standards must be supported by the following information:~~

- ~~1. List of Pollutants. A list of pollutants for which discharge limit revisions are proposed.~~
- ~~2. Consistent Removal Data. Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (a)(2) of this section, which demonstrates Consistent Removal of the pollutants for which~~

~~discharge limit revisions are proposed. This data shall meet the following requirements:~~

- ~~a. Representative Data: Seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.~~
- ~~b. Representative Data: Quality and Quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (a)(2) of this section.~~
- ~~c. Sampling Procedures: Composite.~~
  - ~~(1) The influent and effluent operational data shall be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flowproportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to either stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.~~
  - ~~(B)(1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the Director determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.~~
  - ~~(2) In addition, upon the Director's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provided that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.~~
  - ~~(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Director requires detention time compensation. The Director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.~~

- d. ~~Sampling Procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.~~
- e. ~~Analytical methods. The sampling referred to in paragraphs (d)(2)(i)-(iv) and (d)(5) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.~~
- f. ~~Calculation of removal. All data acquired under the provisions of this section must be submitted to the Director. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Director as provided for in paragraph (a)(2) of this section.~~
- g. ~~Exception to sampling data requirement: provisional removal demonstration. For pollutants which are not currently being discharged (new or modified facilities, or production changes) application may be made by the POTW for provisional authorization to revise the applicable categorical Pretreatment Standard prior to initial discharge of the pollutant. Consistent Removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. In calculating and applying for provisional removal allowances, the POTW must comply with the provisions of paragraphs (b)(1)-(4) of this section. Within 18 months after the commencement of Discharge of the pollutants in question, Consistent Removal must be demonstrated pursuant to the requirements of paragraphs (a)(2) and (d)(2)(i)-(vi) of this section.~~

~~(3) List of industrial subcategories. A list of the industrial subcategories for which discharge limits in categorical Pretreatment Standards will be revised, shall include the number of Industrial Users in each subcategory and an identification of which of the pollutants on the list prepared under paragraph (d)(1) of this section are Discharged by each subcategory.~~

~~(4) Calculation of revised discharge limits. Proposed revised discharge limits for each of the subcategories of Industrial Users identified in paragraph (d)(3) of this section shall be calculated in the following manner:~~

~~(AA) The proposed revised discharge limit for a specified pollutant shall be derived by use of the following formula:~~

$$Y = \frac{x}{1-r}$$

Where:

~~x = pollutant discharge limit specified in the applicable categorical Pretreatment Standard~~

~~r = POTWs Consistent Removal rate for that pollutant as established under paragraphs (a)(2), (d)(2) and, if appropriate, (b)(3)(ii)(A) of this section. (percentage expressed as a decimal)~~

~~Y = revised discharge limit for the specified pollutant (expressed in same units as x)~~

~~(BB) In calculating revised discharge limits, such revision for the POTW Removal of a specified pollutant shall be applied equally to all existing and new Industrial Users in an industrial subcategory subject to categorical Pretreatment Standards which discharge that pollutant to the POTW.~~

~~(5) Data on sludge characteristics. Data showing the concentrations and amounts in the POTWs sludge of the pollutants for which discharge limit revisions are proposed and for which EPA, the State or locality have published sludge disposal or use criteria will be applicable to the POTWs current method of sludge use or disposal. These data shall meet the following requirements:~~

~~(AA) The data shall be obtained through a composite sample taken during the same sampling periods selected to measure Consistent POTW Removals in accordance with the requirements of paragraph (d)(2) of this section. Each composite sample will contain a minimum of 12 discrete samples taken at equal time intervals over a 24-hour period. Where a composite sample is not an appropriate sampling technique, grab samples shall be taken.~~

~~(BB) Sampling and analysis of the samples referred to in paragraph (d)(5)(i) of this section shall be performed in accordance with the sampling and analytical techniques described previously in paragraph (d)(2)(v) of this section.~~

~~(6) Description of sludge management. A specific description of the POTW's current methods of use or disposal of its sludge and data demonstrating that the current sludge use or disposal methods shall comply and will continue to comply with the requirements of paragraph (b)(4) of this section.~~

~~(7) Certification statement. The certification statement required by paragraph (b)(2)(ii) of this section shall state that the pollutant Removals and associated revised discharge limits have been or will be calculated in accordance with this regulation and any guidelines issued by EPA under Section 304(g) of the Clean Water Act.~~

~~E. Procedure for authorizing modification of standards.~~

~~1. Application for authorization to revise National Pretreatment Standards shall comply with Rule 11(d) and paragraphs (c) and (d) of this section. Notice, public comment, and review by the Director shall comply with Rule 13.~~

~~2. POTWs which have received a construction grant from funds authorized for any fiscal year beginning after September 30, 1978, will only be considered for authorization to modify National Standards after they have completed the analysis required by Section 201(g) of the Clean Water Act and demonstrated that modification of the discharge limits in National Standards will not preclude the use of innovative or alternative technology. In addition, where sludge disposal or treatment technology is or will be acquired or constructed with construction grant funds, POTWs should refer to 35.917(d)(6) and Appendix A of Part 35 of Title 40 of the Code of Federal Regulations to determine the funding eligibility of sludge disposal or treatment facilities.~~

~~3. The Director shall, at such time as it elects to review the Submission under paragraph (c) of this section, or at the time of POTW pretreatment program approval or RIPDES permit reissuance thereafter, authorize the POTW to revise Industrial User discharge limits, as submitted pursuant to paragraph (d)(4) of this section, which comply with the provisions of this section.~~

~~4. Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization to revise categorical Pretreatment Standards.~~

~~F. Continuation and withdrawal of authorization.~~

~~1. Monitoring and reporting of consistent removal. Following authorization to revise the discharge limits in Pretreatment Standards, the POTW shall continue to monitor and report on (at such frequencies and over such intervals as may be~~

~~specified by the Director, but in no case less than two times per year) the POTWs Removal capabilities for all pollutants for which authority to revise the Standards was granted. Such monitoring and reporting shall be in accordance with Rule 14(i) and (j) pertaining to pollutant removal capability reports.~~

- ~~2. Reevaluation of revisions. Approval of authority to revise Pretreatment Standards will be reexamined whenever the POTWs RIPDES permit is reissued, unless the Director determines the need to reevaluate the authority pursuant to paragraph (f)(5) of this section. In order to maintain a removal allowance, the POTW must comply with all federal, State and local statutes, regulations and permits applicable to the POTWs selected method of sludge use or disposal. In addition, where Overflows of untreated waste by the POTW continue to occur the Director may condition continued authorization to revise discharge limits upon the POTW performing additional analysis and/or implementing such additional control measures as is consistent with EPA policy on POTW Overflows.~~
- ~~3. Inclusion in POTW permit. Once authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for Industrial Users of the system as well as the Consistent Removal documented by the POTW for that pollutant and the other requirements of paragraph (b) of this section, shall be included in the POTWs RIPDES Permit upon the earliest reissuance or modification (at or following Program approval) and shall become enforceable requirements of the POTWs RIPDES Permit.~~
- ~~4. Modification or withdrawal of revised limits.~~
  - ~~a. Notice to POTW. The Director shall notify POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(1) of this section or other information available to it, the Director determines:
    - ~~(1) that one or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this section, or~~
    - ~~(2) that such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTWs RIPDES Permit. A revised discharge limit is significantly contributing to a violation of the POTW permit if it satisfies the definition set forth in Rule 5(j) or (o).~~~~
  - ~~b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Director shall either withdraw such discharge limits or require modifications in the revised discharge limits.~~
  - ~~c. Public notice of withdrawal or modification. The Director shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an~~

~~opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Director.~~

~~G. Removal allowances in pretreatment programs administered by DEM. Where DEM elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program (see Rule 12) the POTW shall nevertheless be responsible for demonstrating Consistent Removal as provided for in this section. The POTW will not, however, be required to develop a pretreatment program as a precondition to obtaining approval of the allowance as required by paragraph (b)(2) of this section. Instead, before a removal allowance is approved, the Department will be required to demonstrate that sufficient technical personnel and resources are available to ensure that modified discharge limits are correctly applied to affected Users and that Consistent Removal is maintained.~~

All Rhode Island Industrial Pretreatment Programs shall include pretreatment standards that allow for the revision of Categorical Pretreatment Standards to reflect POTW removal credit, as set forth in the requirements found at 40 C.F.R. § 403.7 (20187), incorporated above at § 2.3(A) of this Part.

## **2.40101 POTW Pretreatment Programs: Development and Implementation by POTW**

~~A. A. POTWS required to develop a pretreatment program. Any POTW (or combination or POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the Department exercises its option to assume local responsibilities as provided for in Rule 12. The Director may require that a POTW with a design flow of 5mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludges, or other circumstances warrant, in order to prevent Interference with the POTW or Pass Through. In addition, any POTW desiring to modify categorical Pretreatment Standards for pollutants Removed by the POTW (as provided for by Rule 9) must have an approved POTW Pretreatment Program prior to obtaining final approval of a removal allowance. POTWs may receive conditional approval of a removal allowance, as provided for by Rule 9(b)(2), prior to obtaining POTW Pretreatment Program Approval. A POTW may receive Rule 9(g) authority to revise Pretreatment Standards without being required to develop a POTW Pretreatment Program where the Department~~

~~has assumed responsibility for running a local program in lieu of the POTW in accordance with Rule 12.~~

- ~~B. Deadline for Program Approval. A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing RIPDES permit. POTWs whose RIPDES permits are modified under Section 301(h) of the Clean Water Act shall have a Pretreatment Program within less than 3 years as provided for in 40 CFR Part 125, Subpart G (44 FR34783 (1979)). The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and will be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.~~
- ~~C. Incorporation of approved programs in permits. A POTW may develop an approvable POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section and the RIPDES permit will be reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit.~~
- ~~D. Cause for reissuance or modification of permits. Under the authority of Section 402(b)(1)(C) of the Clean Water Act, the Director may modify, or alternatively, revoke and reissue a POTWs Permit in order to:~~
- ~~1. put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;~~
  - ~~2. coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;~~
  - ~~3. incorporate a modification of the permit approved under Sections 301(h) or 301(i) of the Clean Water Act;~~
  - ~~4. incorporate an approved POTW Pretreatment Program in the POTW permit; or~~
  - ~~5. incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.~~
- ~~E. POTW pretreatment program requirements. A POTW Pretreatment Program shall meet the following requirements:~~
- ~~1. Legal Authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Clean Water Act and any regulations implementing these sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint~~

~~powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:~~

- ~~a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its RIPDES permit;~~
- ~~b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;~~
- ~~c. Control, through permit, contract, order or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements;~~
- ~~d. 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 submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in Rule 14.~~
- ~~e. Carry out 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 POTW 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 Rule 14(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under Section 308 of the Clean Water Act;~~
- ~~f.(1) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirements. All POTWs shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. In cases where State law has authorized the municipality or POTW to pass ordinances or other local legislation, the POTW shall exercise such authorities by passing legislation to seek and assess civil or criminal penalties for noncompliance by Industrial Users with Pretreatment Standards and Requirements. POTWs without such authorities shall enter into contracts with Industrial Users to assure compliance by Industrial Users with Pretreatment Standards and Requirements. An adequate contract will provide for liquidated damages for violation of Pretreatment Standards and Requirements and will include an agreement by the Industrial User to submit to the remedy of specific performance for breach of contract.~~

~~(2) Pretreatment Requirements which will be enforced through the remedies set forth in paragraph (e)(1)(vi)(A) will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any Discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW 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 POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Director shall have authority to seek judicial relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Director finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision; and~~

~~g. Comply with the confidentiality requirements set forth in Rule 16.~~

~~2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:~~

~~a. Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;~~

~~b. Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under Rule 10(e)(2)(i). This information shall be made available to the Regional Administrator or Director upon request;~~

~~c. Notify Industrial Users identified under Rule 10(e)(2)(i) of applicable Pretreatment Standards and any applicable requirements under Section 204(b) and 405 of the Clean Water Act and Subtitles C and D of the Resource Conservation and Recovery Act.~~

~~d. Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in Rule 14;~~

~~e. Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing~~

~~noncompliance with Pretreatment Standards. The results of these activities shall be made available to the Regional Administrator upon request;~~

- ~~f. Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under Rule 14, or indicated by analysis, inspection, and surveillance activities described in paragraph (e)(2)(v) of this section. Sample taking 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; and~~
- ~~g. Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, during the previous 12 months, were significantly violating applicable Pretreatment Standards or other Pretreatment Requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected 45 days after notice of noncompliance; which is part of a pattern of noncompliance; or which resulted in the POTW exercising its emergency authority under Rule 10(e)(1)(iv)(B).~~
- ~~3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (e)(1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately.~~

All POTWs required to develop a Pretreatment Program shall include pretreatment standards that meet the requirements for Pretreatment Programs by POTWs, as set forth in the requirements found at 40 C.F.R. § 403.8 (2018~~7~~), incorporated above at § 2.3(A) of this Part, which are hereby amended to include the following additional requirement:

- B. Zero Discharge Permits shall be issued for Categorical Industrial Users that do not discharge industrial process wastewater to the sewer and that generate over 100 gallons per day of industrial process wastewater. Further, all such industries shall be inspected by the POTW at least annually to verify zero discharge status. Certification of zero discharge must also be submitted by the Industry to the Pretreatment Program a minimum of annually.

## **2.41112 POTW Ppretreatment Pprograms and/or Authorization to Revise Ppretreatment Standards: Submission for Approval**

- ~~A. Who Approves Program. A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the~~

~~information set forth in paragraphs (b)(1)-(4) of this section. This description shall be submitted to the Director who will make a determination on the request for program approval in accordance with the procedures described in Rule 13.~~

~~B. Contents of POTW program submission. The program description must contain the following information:~~

~~1. A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in Rule 10. This statement shall:~~

~~a. Identify the provision of the legal authority under Rule 10(e)(1) which provides the basis for each procedure under Rule 10(e)(2).~~

~~b. Identify the manner in which the POTW will implement the program requirements set forth in Rule 10 including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, contract, etc.); and,~~

~~c. Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;~~

~~2. A copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW 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 and/or funding the POTW Pretreatment Program if approved;~~

~~3. A brief description (including organization charts) of the POTW 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~~

~~4. A description of the funding levels and full and part-time manpower available to implement the Program;~~

~~C. Conditional POTW program approval. The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) may be relaxed if the Submission demonstrates that:~~

~~1. A limited aspect of the Program does not need to be implemented immediately;~~

- ~~2. The POTW has adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and~~
  - ~~3. Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Director 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 POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.~~
- ~~D. Content of removal allowance submission. The request for authority to revise categorical Pretreatment Standards must contain the information required in Rule 9(d).~~
- ~~E. Approval authority action. Any POTW requesting POTW Pretreatment Program approval shall submit to the Director three copies of the Submission described in paragraph (b), and, if appropriate, (d) of this section. Upon a preliminary determination that the Submission meet the requirements of paragraph (b) and, if appropriate, (d), of this section, the Director shall:~~
- ~~1. Notify the POTW that the Submission has been received and is under review; and~~
  - ~~2. Commence the public notice and evaluation activities set forth in Rule 13.~~
- ~~F. Notification where submission is defective. If, after review of the Submission as provided for in paragraph (e) of this section, the Director determines that the Submission does not comply with the requirements of paragraphs (b) or (c), and, if appropriate, (d), of this section, the Director shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c), and, if appropriate, (d) of this section.~~
- ~~G. Consistency with water quality management plans.~~
- ~~1. In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR Part 403. In order to assure such consistency the Director shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in Rule 13(b)(1)(ii) prior to approval or disapproval of the Program.~~

~~2. Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Director shall nevertheless solicit the review and comment of the appropriate 208 planning agency.~~

All POTWs required to develop a Pretreatment Program shall include pretreatment standards that that meet the requirements for POTW pretreatment programs and/or authorization to revise pretreatment standards and submission for approval, as set forth in the requirements found at 40 C.F.R. § 403.9 (20187), incorporated above at § 2.3(A) of this Part, and the requirements of these regulations.

## **2.12~~23~~ State Program in lieu of POTW Program**

~~Notwithstanding the provision of § Rule 10(a)2.104 of this Part, the Department may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in Rule 10(e)§ 2.104 of this Part, in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTWs from independently developing Pretreatment Programs.~~

## **2.13~~34~~ Approval Procedures for POTW Pretreatment Programs and -POTW Revision of Categorical Pretreatment Standards**

~~The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and revising Categorical Pretreatment Standards, including requests for authorization to grant conditional revised discharge limitations and provisional limitations:~~

- ~~A. Deadline for review of submission. The Director shall have 90 days from the date of public notice of any Submission complying with the requirements of Rule 11(b) and, where removal allowance approval is sought, with Rule 9(d) and 11(d), to review the Submission. The Director shall review the Submission to determine compliance with the requirements of Rule 10(b) and (e), and, where removal allowance approval is sought, with Rule 9(a)-(e) and (g). The Director may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of Rule 11(b) and, in the case of removal allowance application, Rules 9(d) and 11(d).~~
- ~~B. Public notice and opportunity for hearing. Upon receipt of a Submission the Director shall commence its review. Within 5 days after making a determination that a Submission meets the requirements of Rule 11(b), and, where removal allowance approval is sought, Rules 9(d) and 11(d), or at such later time under~~

~~Rule 9(c) that the Director elects to review the removal allowance Submission, the Director shall:~~

- ~~1. Issue a public notice of request for approval of the Submission;~~
  - ~~a. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:
    - ~~(1) Mailing notices of the request for approval of the Submission to designate 208 planning agencies, Federal and State fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and~~
    - ~~(2) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.~~~~
  - ~~b. The public notice shall provide a period of not less than 30 days following the date of the public notice during which interested persons may submit their written views on the Submission.~~
  - ~~c. All written comments submitted during the 30 day comment period shall be retained by the Director and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Director; and~~
- ~~2. Provide an opportunity for the applicant, any affected State, any interested State or federal agency, person or group of persons to request a public hearing with respect to the Submission.~~
  - ~~a. This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.~~
  - ~~b. The Director shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.~~
  - ~~c. Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.~~

3. ~~Whenever the Director elects to defer review of a Submission which authorizes the POTW to grant conditional revised discharge limits under Rule 9(b)(2) and 9(c), the Director shall publish public notice of its election in accordance with paragraph (b)(1) of this section.~~
- C. ~~Director's decision. At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Director shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Director makes a determination to deny the request, the Director shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Director may allow the requestor additional time to bring the Submission into compliance with applicable requirements.~~
- D. ~~EPA objection to Director's decision. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section the and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. 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 his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.~~
- E. ~~Notice of decision. The Director shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval of the Submission. In addition, the Director shall cause to be published a notice of approval in the same newspaper as the original notice of request for approval of the Submission was published. The Director shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with Rule 9 for removal of pollutants subject to Pretreatment Standards.~~
- F. ~~Public access to submission. The Director shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.~~ All POTWs required to develop a Pretreatment Program shall include procedures that meet the requirements for approval of POTW Pretreatment Programs and revision of Categorical Pretreatment Standards, as set forth in the requirements found at 40 C.F.R. § 403.11 (20187), incorporated above at § 2.3(A) of this Part.

## 2.1445 Reporting Requirements for POTWs and Industrial Users

~~A. A. Definition. The term "Control Authority" as it is used in this section refers to:~~

- ~~1. The POTW if the POTW's Submission for its pretreatment program has been approved in accordance with the requirements of Rule 13; or~~
- ~~2. the Director, if the Submission has not been approved.~~

~~B. Reporting requirement for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under Rule 8(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraph (b)(1)-(7) of this section. Where reports containing this information already have been submitted to the Director or Regional Administrator in compliance with the requirements of 40 CFR 128.140(b), (38 Federal Register 30984, November 8, 1973), the Industrial user will not be required to submit this information again. New sources shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)-(5) of this section:~~

- ~~1. Identifying information. The User shall submit the name and address of the facility including the name of the operator and owners;~~
- ~~2. Permits. The User shall submit a list of any environmental control permits held by or for the facility;~~
- ~~3. Description of operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.~~
- ~~4. Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
  - ~~a. regulated process streams; and~~
  - ~~b. other streams as necessary to allow use of the combined waste stream formula of Rule 8(e). (See paragraph (b)(5)(v) of this section.) The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.~~~~

5. ~~Measurement of Pollutants~~

- a. ~~The user shall identify the Pretreatment Standards applicable to each regulated process;~~
- b. ~~In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;~~
- c. ~~Where feasible, samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard. Where composite sampling is not feasible, a grab sample is acceptable;~~
- d. ~~Where the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd), the User must take three samples within a two-week period. Where the flow of the stream being sampled is greater than 950,00 liters/day (approximately 250,000 gpd), the User must take six samples within a two-week period;~~
- e. ~~Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewaters prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of Rule 8(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with Rule 8(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;~~
- f. ~~Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis should be performed by using validated analytical methods or any other applicable sampling and analytical procedures suggested by the POTW or other parties, approved by the Director.~~
- g. ~~The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;~~
- h. ~~The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is~~

representative of normal work cycles and expected pollutant Discharge to the POTW;

- ~~6. Certification. A statement, reviewed by an authorized representative off the Industrial User (as defined in subparagraph (k) of this section) and certified to be a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and~~
- ~~7. Compliance Schedule. If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; then the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M shall be required. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.~~
  - ~~a. Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (Rule 9), the combined wastestream formula (Rule 8(e)) and/or a Fundamentally Different Factors variance (Rule 15) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.~~
  - ~~b. If the categorical Pretreatment Standard is modified by a removal allowance (Rule 9), the combined wastestream formula (Rule 8(e)) and/or a Fundamentally Different Factors variance (Rule 15) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (B)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.~~
- ~~C. Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:~~
  - ~~1. 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.).~~
  - ~~2. No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.~~
  - ~~3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to~~

~~comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.~~

- ~~D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report indicating the nature and concentration of all pollutants in the Discharge from the regulated process which are limited by Pretreatment Standards and requirements and the average and maximum daily flow for these process units in the Industrial User which are limited by such Pretreatment Standards and Requirements. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O and M and/or pretreatment is necessary to bring the Industrial User into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by an authorized representative of the Industrial User, as defined in paragraph (k) of this section, and certified to by a qualified professional.~~
- ~~E. Periodic reports on continued compliance.~~
- ~~1. Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Director, a report indicating the nature and concentration of pollutant in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge report in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.~~
  - ~~2. Where the Control Authority User has imposed mass limitations on Industrial Users as provided for by Rule 8(d), the report required by paragraph (e)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.~~

- ~~F. Notice of slug loading. The Industrial User shall notify the POTW immediately of any slug loading, as defined by Rule 7(b)(4), by the Industrial User.~~
- ~~G. Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (b)(5), (d), (e), of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and the mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. The frequency of monitoring shall be that prescribed in the applicable Pretreatment Standard. All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(g) of The Clean Water Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Director. Sampling shall be performed in accordance with the techniques approved by the Director. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses should be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Director.~~
- ~~H. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by Rule 10.~~
- ~~1. 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 POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);~~
  - ~~2. No increment referred to in paragraph (h)(1) of this section shall exceed nine months;~~
  - ~~3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Director including, as minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director.~~
- ~~I. Initial POTW report on compliance with approved removal allowance. A POTW which has received authorization to modify categorical Pretreatment Standards for pollutants removed by the POTW in accordance with the requirements of Rule 9 must submit to the Director within 60 days after the effective date of a Pretreatment Standard for which authorization to modify has been approved, a~~

~~report which contains the information required by Rule 9(d)(2), (d)(5) and (d)(6). A minimum of one sample per month during the reporting period is required.~~

- ~~J. Periodic reports by the POTW to demonstrate continued compliance with removal allowance. The reports referred to in paragraph (i) of this section will be submitted to the Director at 6-month intervals beginning with the submission of the initial report referred to in paragraph (i) of this section unless required more frequently by the Director.~~
- ~~K. Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e), of this section must be signed by an authorized representative of the Industrial User. An authorized representative may be:
  - ~~1. A principal executive officer of at least the level of vice president, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation.~~
  - ~~2. A general partner or proprietor if the Industrial User submitting the report required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.~~
  - ~~3. A duly authorized representative of the individual designated in subparagraph (1) or (2) of this paragraph if such representative is responsible for the overall operation of the facility from which the Indirect Discharge originates.~~~~
- ~~L. Signatory requirements for POTW reports. Reports submitted to the Director by the POTW in accordance with paragraphs (h), (i) and (j) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.~~
- ~~M. Provisions governing fraud and false statements. The reports required by paragraphs (b), (d), (e), (h), (i), and (j) of this section shall be subject to the provisions of 18 U.S.C. section 1001 relating to fraud and false statements and the provisions of R.I.G.L. 46-12-14 and section 309(c)(2) of the Clean Water Act governing false statements, representations or certifications in reports in reports required under the Act.~~
- ~~N. Record-keeping requirements.
  - ~~1. Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:
    - ~~a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;~~~~~~

- b. ~~The dates analyses were performed;~~
  - c. ~~Who performed the analyses;~~
  - d. ~~The analytical techniques/methods used; and~~
  - e. ~~The results of such analyses.~~
2. ~~Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.~~
3. ~~Any POTW to which reports are submitted by an Industrial User Pursuant to paragraphs (b), (d), and (e) of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.~~

All POTWs required to develop a Pretreatment Program shall include procedures that meet the reporting requirements for POTWs and Industrial Users, as set forth in the requirements found at 40 C.F.R. § 403.12 (20187), incorporated above at § 2.3(A) of this Part, which are hereby amended to include the following additional requirement:

B. Rhode Island Industrial Pretreatment Programs shall develop a definition of "substantial change" in Industrial User discharge and shall implement procedures that require the Department to be notified of these substantial changes in discharge prior to acceptance.

## **2.1556 Variances from Categorical Pretreatment Standards for Fundamentally Different Factors**

- ~~A. Definition. The term "Requester" means an Industrial User or POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.~~
- ~~B. Purpose and scope. In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these~~

~~Pretreatment Standards may not be available, or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standard, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit from that specified in the applicable categorical Pretreatment Standard, may, with respect to non-toxic pollutants request a fundamentally different factors variance request may be initiated by the EPA.~~

~~C. Criteria.~~

~~1. General criteria. A request for a variance based upon fundamentally different factors shall be approved only with respect to non-toxic pollutants and only if:~~

~~a. There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and~~

~~b. Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and~~

~~c. The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.~~

~~2. Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:~~

~~a. The alternative limit requested is no less stringent than justified by the fundamental difference;~~

~~b. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under Rule 7.~~

~~c. The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and~~

~~d. Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:~~

- ~~(1) — A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or~~
- ~~(2) — A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.~~
- ~~3. — Criteria applicable to more stringent limits. A variance request for the establishment of the limits more stringent than required by the Standards shall be approved only if:~~
  - ~~a. — The alternative limit request is no more stringent than justified by the fundamental difference, and~~
  - ~~b. — Compliance with the alternative limit would not result in either:~~
    - ~~(1) — A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or~~
    - ~~(2) — A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.~~
- ~~D. — Factors considered fundamentally different. Factors which may be considered fundamentally different are:~~
  - ~~1. — The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;~~
  - ~~2. — The volume of the User's process wastewater and effluent discharged;~~
  - ~~3. — Non-water quality environmental impact of control and treatment of the User's raw waste load;~~
  - ~~4. — Energy requirements of the application of control and treatment technology;~~
  - ~~5. — Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;~~
  - ~~6. — Cost of compliance with required control technology.~~
- ~~E. — Factors which will not be considered fundamentally different. A variance request or portion of such a request under this section may not be granted on any of the following grounds:~~

- ~~1. The feasibility of installing the required waste treatment equipment within the time the Act allows;~~
  - ~~2. The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;~~
  - ~~3. The User's ability to pay for the required waste treatment; or~~
  - ~~4. The impact of a Discharge on the quality of the POTWs receiving waters.~~
- ~~F. Local law. Nothing in this section shall be constructed to impair the right of any locality under section 510 of the Clean Water Act to impose more stringent limitations than required by Federal or State law.~~
- ~~G. Application deadline~~
- ~~1. Requests for a variance and supporting information must be submitted in writing to the Director.~~
  - ~~2. In order to be considered, request for variance must be submitted within 180 days after the effective date of the categorical Pretreatment Standard unless the User has requested a categorical determination pursuant to Rule 8(a).~~
  - ~~3. Where the User has requested a categorical determination pursuant to Rule 8(a), the User may elect to await the results of the categorical determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to Rule 8(a)(4).~~
- ~~H. Contents of submission. Written Submissions for variance request, whether made to the Director must include:~~
- ~~1. The name and address of the person making the request;~~
  - ~~2. Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;~~
  - ~~3. Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;~~
  - ~~4. Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;~~
  - ~~5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;~~

- ~~6. The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in item (5) of this paragraph;~~
- ~~7. A description of the Industrial User's existing water pollution control facilities;~~
- ~~8. A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and~~
- ~~9. A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.~~
- ~~I. Deficient requests. The Director will only act on written requests for variances that contain all of the information required.  
  
Persons who have made incomplete Submissions will be notified by the Director that their requests are deficient and unless the time period is extended, will be given up to 30 days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the Director, the request for a variance shall be denied.~~
- ~~J. Public notice. Upon receipt of a complete request, the Director or Enforcement Division Director will provide notice of receipt, opportunity to review the Submission, and opportunity to comment.
  - ~~1. The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of the public notice shall include mailing notices to:
    - ~~a. The POTW into which the Industrial User requesting the variance discharges;~~
    - ~~b. Adjoining States whose waters may be affected; and~~
    - ~~c. Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.~~~~
  - ~~2. The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested person may review the request and submit their written views on the request.~~
  - ~~3. Following the comment period, the Director or Enforcement Division Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the~~~~

~~Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.~~

~~K. Review of requests by state.~~

- ~~1. Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.~~
- ~~2. Where the Director finds that fundamentally different factors do exist, he shall forward the request, and a recommendation that the request be approved, to the Enforcement Division Director.~~

~~L. Review of request by EPA.~~

- ~~1. Where the Enforcement Division Director finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the Requester (and to the Industrial User, where they are not the same).~~
- ~~2. Where the Enforcement Division Director finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Enforcement Division Director will:~~
  - ~~a. Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;~~
  - ~~b. Provide the following information in his written determination:~~
    - ~~(1) the recommended alternative discharge limits for the Industrial User concerned;~~
    - ~~(2) the rationale for the adjustment of the Pretreatment Standard (including the Enforcement Division Director's reason for recommending that a fundamentally different factor variance be granted) and an explanation, of how the Enforcement Division Director's alternative discharge limits were derived;~~
    - ~~(3) the supporting evidence submitted to the Enforcement Division Director; and~~
    - ~~(4) other information considered by the Enforcement Division Director in developing the recommended alternative discharge limits;~~
  - ~~c. Notify the Director and POTW of his or her determination; and~~

d. ~~Send the information described in paragraphs (1)(2)(i) and (ii) above to the Requester (and to the Industrial User where they are not the same).~~

M. ~~Request for hearing.~~

1. ~~Within 30 days following the date of receipt of notice of the Enforcement Division Director's decision on a variance request, the Requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.~~

2. ~~If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the Enforcement Division Director's findings, the Requester may submit a petition for a hearing to the Administrator within 30 days of the Regional Administrator's decision.~~

All POTWs required to develop a Pretreatment Program shall include procedures that meet the requirements for variances from Categorical Pretreatment Standards for fundamentally different factors, as set forth in the variance requirements found at 40 C.F.R. § 403.13 (20187), incorporated above at § 2.3(A) of this Part.

## **2.1667 Confidentiality**

A. The Confidentiality provisions found at 40 C.F.R. § 403.14 (20187), incorporated above at § 2.3(A) of this Part, are hereby incorporated and amended to include the following:

1A. In accordance with R.I. G.L. Gen. Laws § 46-12-19 and the RIPDES permit regulations, "ef, effluent data", permits, or permit application forms submitted to the Director or to a POTW shall be available to the public without restriction.

2B. All other information submitted to the Director or the POTW shall be available to the public at least to the extent provided by the R.I. G.L. Section Gen. Laws § 46-12-19.

## **2.1778 Net/Gross Calculation**

~~Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with EPA regional approval pursuant to 40 CFR 403.15.~~

All POTWs required to develop a Pretreatment Program shall include procedures that meet the requirements for net/gross calculation of Categorical Pretreatment

Standards, as set forth in the requirements found at 40 C.F.R. § 403.15 (20187), incorporated above at § 2.3(A) of this Part.

## **2.1889 Upset Provision**

- ~~A. Definition. For the purposes of this section, "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. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.~~
- ~~B. Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.~~
- ~~C. Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:~~
- ~~1. An Upset occurred and the Industrial User can identify the specific cause(s) of the Upset;~~
  - ~~2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;~~
  - ~~3. The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within 5 days):~~
    - ~~a. A description of the Indirect Discharge and cause of the noncompliance;~~
    - ~~b. The period of noncompliance, including exact dates and times of or, if not corrected, the anticipated time the noncompliance is expected to continue;~~
    - ~~c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.~~
- ~~D. Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.~~
- ~~E. Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Department enforcement personnel should review any claims that noncompliance was caused by an Upset. No determinations made in~~

~~the course of the review constitute final Departmental action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.~~

~~F. User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.~~

All POTWs required to develop a Pretreatment Program shall include procedures that meet the requirements for upset provisions, as set forth in the requirements found at 40 C.F.R. § 403.16 (20187), incorporated above at § 2.3(A) of this Part.

## ~~2.19 Incorporation by Reference~~

~~The following Federal regulations which are cited in whole or in part by these regulations along with all Federal categorical effluent guidelines and standards are hereby incorporated by reference. In the event that any of requirements contained in Rule 1 through 18 shall conflict with the following Federal regulations, then the more stringent standard shall apply. All future additions or amendments to these Federal regulations and Standards are also hereby incorporated by reference in so far as they may be necessary to assure that Rhode Island maintains an approved RIPDES and Pretreatment Program and to assure that Rhode Island continues to secure to the State the benefits of these programs.~~

~~40 CFR Parts 25, 125, 128, 130, 131, 136, 403~~

## ~~2.20 Superseded Rules and Regulations~~

~~On the effective date of these rules and regulations, the Wastewater Pretreatment Approval rules and regulations, adopted on July 1, 1980 shall hereby be revoked.~~

~~Appendix A. ---United States Environmental Protection Agency~~

~~December 16, 1975~~

~~Program Guidance Memorandum---61~~

~~Subject: ---Grants for Treatment and Control of Combined Sewer Overflow and Stormwater Discharges.~~

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

To: Regional Administrator, Regions I-X This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

## **2.1920      Modification of Pretreatment Programs**

All Rhode Island Industrial Pretreatment Programs shall include procedures for modification of pretreatment programs, as set forth in the requirements found at 40 C.F.R. § 403.18 (20187), incorporated above at § 2.3(A) of this Part.

## **2.21      Superseded Regulations**

Upon adoption, these Rules and Regulations will supersede the "Rhode Island Pretreatment Regulations" dated June 26, 1984 and re-filed with the Secretary of State on December 31, 2001.

## **2.2012      Appendix A - G**

Appendix A through G found at 40 C.F.R. § 403 (20187), incorporated above at § 2.3(A) of this Part, are hereby incorporated.