

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-63**

**REGULATION NO. 63**

**PRETREATMENT REGULATIONS**

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**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-63**

**REGULATION NO. 63**

**PRETREATMENT REGULATIONS**

**63.1 AUTHORITY**

These regulations were originally promulgated pursuant to the Colorado Water Quality Control Act, sections 25-8-101 through 25-8-703 C.R.S.. In particular, they are promulgated and amended under the following sections: 25-8-202; 25-8-205; and 25-8-508.

**63.2 PURPOSE**

The purpose of these regulations is to fulfill the following objectives:

- A. To prevent the introduction of pollutants into POTW's which interfere with the operation of a POTW, including interference with its use or disposal of sludge;
- B. To prevent the introduction of pollutants into POTW's which will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works; and
- C. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

**63.3 APPLICABILITY**

These regulations apply to:

- A. Industrial users, either new or existing, which discharge either by direct connection to a POTW or indirectly by truck or rail or otherwise introduce pollutants into a POTW; and
- B. POTW's which receive or may receive discharges of non-domestic wastes from industrial users either by direct connection or via truck, rail, or otherwise.

These regulations do not apply to industrial users which discharge to a sewer which is not connected to a POTW.

**63.4 IMPLEMENTATION**

These regulations will be implemented directly by the Division. POTW's and Industrial Users will be expected to know of these regulations and comply with them.

Requirements for POTW's will be incorporated in their CDPS permits. Industrial Users must follow the requirements of the POTW they discharge into as well as these regulations. If an Industrial User discharges to a POTW without an approved program, the Control Authority is the Division.

## **63.5 STANDARDS INCORPORATED BY REFERENCE**

Throughout these regulations, pretreatment standards and requirements promulgated by the United States Environmental Protection Agency found in Parts 405 through 471, Chapter I, subchapter N, Title 40, of the Code of Federal Regulations have been adopted and incorporated by reference. These are from the Code of Federal Regulations dated November 14, 2005. These incorporations do not include later amendments to, or editions of the incorporated material.

Future amendments to this regulation will be necessary to keep the regulation in conformance with Federal regulations. Such amendments will need to be adopted by the Commission.

All materials incorporated by reference may be examined at any state publication depository library. Requests for public inspection of materials incorporated by reference in this regulation should be made to Staff Assistant, Colorado Department of Public Health and Environment, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530

## **63.6 ENFORCEMENT**

Violations of these regulations will result in action being taken as provided for in Part 6 of the Water Quality Control Act.

## **63.7 DEFINITIONS**

The following definitions are applicable to these regulations:

- A. "Act" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101 C.R.S., 1973, et seq.
- B. "Approval Authority" means the Director of the Water Quality Control Division at such time that Colorado has an approved State pretreatment program, and until such time, the EPA Region 8 Administrator.
- C. "Approved POTW Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that has been approved by the Director in accordance with 40 CFR 403.11, or a program previously approved by EPA as described in the approved program document.
- D. "Approved Program Document" means the approved pretreatment program. The approved program document describes in detail the steps necessary for adequate implementation of the POTW's industrial pretreatment program including, but not limited to the level of effort appropriate for monitoring, permitting and enforcement.
- E. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
- F. "Commission" means the Water Quality Control Commission created by section 25-8-201, C.R.S., 1973, as amended.
- G. "Composite sample" means multiple samples collected at equally spaced intervals or proportioned according to flow.

- H. "Control Authority" means the Director of the Water Quality Control Division or in the case of a POTW with an approved POTW Pretreatment Program, the POTW.
- I. "Daily Maximum" means a limitation not to be exceeded by either a composite sample or the arithmetic average of grab samples taken within a 24 hour period.
- J. "Director" means the Director of the Water Quality Control Division or his/her authorized representative.
- K. "Discharge" or "Indirect 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.
- L. "Domestic Wastewater" includes:
- (1) wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities,
- or
- (2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities. Specifically *excluded* from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.
- M. "Enforcement Division Director" means one of the directors of the Enforcement Division within the Regional VIII offices of the EPA or this persons delegated representative.
- N. "EPA" means the federal Environmental Protection Agency.
- O. "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.)
- P. "Grab Sample" means a single "dip and take" sample collected over a period of time not exceeding 15 minutes, so as to be representative of the parameter being monitored.
- Q. "Industrial User" or "User" means a source of indirect discharge which contains non-domestic wastewater.
- R. "Industrial User Permit" means a permit issued pursuant to paragraph 63.12(A) of this regulation.
- S. "Interference" means a discharge which alone or in conjunction with a discharge or discharges from other sources, both:
- (1) Inhibits or disrupts the POTW, its treatment process or operations, or its sludge processes, use or disposal; and
  - (2) Therefore is a cause of a violation of any requirement of the POTW's permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Federal Clean Water Act, the Solid Waste Disposal Act (SWDA) which includes Title II known as the Resource Conservation and Recovery Act, the Division's

Domestic Sewage Sludge Regulations, the Federal Clean Air Act, or the Toxic Substance Control Act.

- T. "Monthly Average" means a monthly average determined by the arithmetic mean of all samples collected during a calendar month unless otherwise defined in the regulations except that split samples shall be averaged as a single value. Samples may not be used for more than one reporting period.
- U. "National Pretreatment Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the Environmental Protection Agency in accordance with section 307 (b) and (c) of the Clean Water Act, including prohibitive discharge limits established pursuant to 40 CFR 403.5 and which applies to Industrial Users.
- V. "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 source if such standards are thereafter promulgated in accordance with that section, provided that:
- (1) The building, structure, facility or installation is constructed at a site at which no other wastewater source is located; or
  - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (3) The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing wastewater source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (2) and (3) above but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (a) Begun or caused to begin as part of a continuous onsite construction program;
  - (i) Any placement, assembly, or installation of facilities or equipment; or
  - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

- W. "Non-domestic wastewater" means wastewater which does not meet the definition of domestic wastewater above.
- X. "Notice of Discharge Requirements" means the control mechanism issued by the Director that contains terms and conditions that must be met in order to achieve compliance with applicable pretreatment standards and requirements.
- Y. "Permit" means a CDPS permit issued pursuant to state and federal law.
- Z. "Pass-through" means an indirect discharge that exits the POTW into waters of the state in quantities or concentrations that, alone or in conjunction with an indirect discharge or indirect discharges from other sources, is a cause of a violation of any requirement of the POTW's permit (including an increase in the magnitude or duration of a violation).
- AA. "Publicly Owned Treatment Works" or "POTW" means a publicly owned domestic wastewater treatment facility. This includes any publicly owned devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage or treatment of industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances if they are publicly owned or if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharge from such a treatment works.
- BB. "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.
- CC. "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.
- DD. "Pretreatment Requirements" means any substantive or procedural requirement related to pretreatment other than a National Pretreatment Standard, imposed on an Industrial User.
- EE. "Regional Administrator" means the EPA Region 8 Administrator.
- FF. Except as provided in paragraph 3 and 4 of this section, "Significant Industrial User" means:
- (1) All Industrial Users subject to categorical pretreatment standards found in Table I at section 63.12, and
  - (2) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, as defined in 63.7(Q), on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW'S operation or for violating any pretreatment standard or requirement.
  - (3) The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- (a) the Industrial User, prior to Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
  - (b) the Industrial User annually submits the certification statement required in 40 CFR 403.12(q) together with any additional information necessary to support the certification statement; and
  - (c) the Industrial User never discharges any untreated concentrated wastewater.
- (4) Upon a finding that an Industrial User meeting the criteria in subsection (2) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW determine, that such Industrial User is not a significant Industrial User.

GG. "Submission" means:

- (1) A request by a POTW for approval of a Pretreatment Program to the Director;
- (2) A request by a POTW to the Director for authority to revise the discharge limits in a categorical Pretreatment Standard to reflect POTW pollutant removals.

### **63.8 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 those requirements are not less stringent than any set forth by the state or federal regulations.

### **63.9 POTW PRETREATMENT PROGRAM REQUIREMENTS**

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

### **63.10 POTW MONITORING AND REPORTING REQUIREMENTS**

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

#### **A. Provisions Governing Fraud and False Statement**

This section incorporates 40 CFR 403.12(n) by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

### **63.11 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES**

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

A. Division Enforcement Actions

## (1) POTWs and Industrial Users of Approved Programs

If, within 30 days after notice by the Director of a violation of Regulation 63, 40 CFR 403, applicable Pretreatment Standards and Requirements, or the POTW's CDPS permit to a POTW and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Director may take appropriate enforcement action against the POTW, the User or Users who caused the violation, or both.

The Director may seek judicial relief and may exercise administrative penalty authority when the POTW has sought a monetary penalty which the Director determines to be insufficient.

## (2) POTWs and Industrial Users of Non-Approved Programs

When the Director finds that an industrial user has violated, or continues to violate, any provision of Regulation 63, 40 CFR 403, applicable Pretreatment Standards and Requirements, or the Industrial User's Authorization to Discharge, the Director may take appropriate enforcement action against the User to correct the violation.

POTWs without an approved pretreatment program are required by their CDPS permit to prevent pass through or interference at their POTW. Failure to prevent pass through or interference may cause the Director to initiate an enforcement action against the POTW and/or industrial user or users causing or contributing to the violation(s).

## **63.12 NATIONAL CATEGORICAL PRETREATMENT STANDARDS: GENERAL REQUIREMENTS**

Categorical 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 have been established by EPA and are hereby incorporated by reference in this regulation, in accordance with the provisions of section 63.5. The specific limits for each subcategory must be met by all significant industrial users that fall within the industrial categories set forth in Table I of these regulations. Unless otherwise specified Categorical Pretreatment Standards shall be in addition to all applicable pretreatment standards and requirements set forth in this regulation. Failure to meet the limitations established is a violation of this regulation and will result in the necessary enforcement action.

Table 1 – Effluent Guidelines and Standards	
40 CFR 405	Dairy Products Processing
40 CFR 406	Grain Mills Point
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing
40 CFR 408	Canned and Preserved Seafood Processing
40 CFR 409	Sugar Processing
40 CFR 410	Textile Mills
40 CFR 411	Cement Manufacturing



## 63.12 NATIONAL CATEGORICAL PRETREATMENT STANDARDS: GENERAL REQUIREMENTS

40 CFR 412	Concentrated Animal Feeding Operations (CAFO)
40 CFR 413	Electroplating
40 CFR 414	Organic Chemicals, Plastics, and Synthetic Fibers
40 CFR 415	Inorganic Chemicals Manufacturing
40 CFR 417	Soap and Detergent Manufacturing
40 CFR 418	Fertilizer Manufacturing
40 CFR 419	Petroleum Refining
40 CFR 420	Iron and Steel Manufacturing
40 CFR 421	Nonferrous Metals Manufacturing
40 CFR 422	Phosphate Manufacturing
40 CFR 423	Steam Electric Power Generating
40 CFR 424	Ferroalloy Manufacturing
40 CFR 425	Leather Tanning and Finishing
40 CFR 426	Glass Manufacturing
40 CFR 427	Asbestos Manufacturing
40 CFR 428	Rubber Manufacturing
40 CFR 429	Timber Products Processing
40 CFR 430	The Pulp, Paper, and Paperboard
40 CFR 432	Meat Products
40 CFR 433	Metal Finishing
40 CFR 434	Coal Mining
40 CFR 435	Oil and Gas Extraction
40 CFR 436	Mineral Mining and Processing
40 CFR 437	Centralized Waste Treatment
40 CFR 439	Pharmaceutical Manufacturing
40 CFR 440	Ore Mining and Dressing

40 CFR 442	Transportation Equipment Cleaning
40 CFR 443	Paving and Roofing Materials (Tars and Asphalt)
40 CFR 444	Waste Combustors
40 CFR 445	Landfills
40 CFR 446	Paint Formulating
40 CFR 447	Ink Formulating
40 CFR 454	Gum and Wood Chemicals Manufacturing
40 CFR 455	Pesticide Chemicals
40 CFR 457	Explosives Manufacturing
40 CFR 458	Carbon Black Manufacturing
40 CFR 459	Photographic
40 CFR 460	Hospital
40 CFR 461	Battery Manufacturing
40 CFR 463	Plastics Molding and Forming
40 CFR 464	Metal Molding and Casting
40 CFR 465	Coil Coating
40 CFR 466	Porcelain Enameling
40 CFR 467	Aluminum Forming
40 CFR 468	Copper Forming
40 CFR 469	Electrical and Electronic Components
40 CFR 471	Nonferrous Metals Forming and Metal Powders

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

A. Significant Industrial Users in Non-Approved Programs - Procedure for Implementation of Pretreatment Standards and Requirements

Pretreatment Standards and Requirements shall be implemented for those Significant Industrial Users as defined at 63.7(FF)(2) for which the Director is the Control Authority.

- (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's status as a significant Industrial User by a letter of notification of applicable discharge requirements.
- (2) Significant Industrial Users and/or the POTWs to which the Industrial User discharges may petition the Director pursuant to 63.7(FF)(4) at any time requesting de-designation. Upon the Director's finding that an Industrial User meeting the criteria of Section 63.7(FF)(2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director may de-designate the Industrial User.
- (3) Notice of Discharge Requirements shall contain, at a minimum;
  - (a) A statement of prohibitive discharge standards as defined in 40 CFR 403.5(a)(b).
  - (b) Effluent limits based on applicable general pretreatment standards found at 40 CFR 403.5(a) and in local limits developed pursuant to 40 CFR 403.5(c)(2);
  - (c) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards found at 40 CFR 403.12(b) and in local limits developed pursuant to 40 CFR 403.5(c)(2);
  - (d) A statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
  - (e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and
  - (f) Other pertinent requirements of the regulations.

**B. Procedure for Implementation of the Categorical Pretreatment Standards**

The following implementation procedure is to be followed for those Industrial Users subject to categorical discharge requirements for which the Director is the Control Authority. Industrial Users discharging to POTW's with approved programs are to follow those procedures established by the POTW.

- (1) Submission of the Baseline Monitoring Report (BMR) as required in 40 CFR 403.12(b) shall be to the Director by the required deadline as specified in 40 CFR 403.12(b);
- (2) Upon receipt of the BMR, the Director shall evaluate it for completeness. If the Director determines it to be incomplete, he will notify the Industrial User in writing of the deficiencies and require that they be corrected as soon as possible;
- (3) Once a BMR is judged to be complete the Director will commence his review. The review will be done to certify that:
  - (a) The Industrial User does belong in the suggested category;
  - (b) The categorical standards determined by the Industrial User are applicable to the process in question;

- (c) The calculations for the limitations have been done correctly by using the proper data in the proper equation;
- (d) The sampling data that has been submitted by the facility demonstrates that they can (or cannot) meet the categorical standards, and substantiates its claim of compliance (or non-compliance);
- (e) Any compliance schedule proposed for facility modifications to meet categorical standards is reasonable and meets the deadlines as specified by the applicable categorical standard;

The Director may request additional information if needed to support the statements above.

- (4) Once the Director finds that the BMR is complete, he will notify the Industrial User of such via a letter of notification of applicable discharge requirements. This letter will also inform the Industrial User of its obligations under these regulations. These include, but may not be limited to:
  - (a) The parameters to be sampled, sampling frequency, and sample types;
  - (b) The equivalent limitations along with the production and flow rates used to calculate these limits;
  - (c) The reporting requirements for the Industrial User;
  - (d) Any compliance schedules required; and
  - (e) Other pertinent requirements of the regulations.

Failure of the Director to include a requirement of the regulations in the letter does not constitute a waiver of the requirement. The Industrial User will be expected to comply with all applicable portions of the regulations.

### **63.13 INDUSTRIAL USER MONITORING AND REPORTING REQUIREMENTS**

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated November 14, 2005, and does not include later amendments to, or editions of the incorporated material.

- A. Monitoring and Reporting requirements for Significant Industrial Users in non-approved pretreatment programs.
  - (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's status as a significant Industrial User by the Director's issuance of a Notice of Discharge Requirements.
  - (2) Significant non-categorical Industrial Users and/or the POTW's to which the Industrial User discharges may petition the Director pursuant to 63.7(FF)(4) at any time requesting de-designation. Upon the Director's finding that an Industrial User meeting the criteria of Section 63.7(FF)(2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director may de-designate the Industrial User.

- (3) A Notice of Discharge Requirements shall contain, at a minimum;
- (a) A statement of prohibitive discharge standards as specified at 40 CFR 403.5(b);
  - (b) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in 40 CFR 403, categorical Pretreatment Standards, local limits, and any other applicable limits established by the Director;
  - (c) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency and sample type. For sampling and reporting frequency, the minimum frequencies are set forth in the Table below;
  - (d) A statement of non-transferability without, at a minimum, prior notification to the POTW, and provision of a copy of the existing control mechanism to the new owner or operator;
  - (e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and
  - (f) Other requirements as appropriate.

FLOW OF REGULATED PROCESS (GPD)*	REPORTING PERIOD	REPORT DUE DATE
0 - 10,000	January – June	July 31
	July – December	January 31
Over 10,000	January	February 28
	February	March 31
	March	April 30
	April	May 31
	May	June 30
	June	July 31
	July	August 31
	August	September 30
	September	October 31
	October	November 30

November	December 31
December	January 31

\* Where there are multiple regulated flows, sampling frequency is determined by the sum of all regulated flows.

(g) Sampling Frequencies. The following chart lists the required sampling frequencies:

FLOW OF REGULATED PROCESS (GPD)*	CONVENTIONAL POLLUTANTS**, INORGANICS (METALS INCLUDED), CYANIDE, AND PHENOL	ORGANICS (TTOs)
0 - 10,000	1/quarter	2/year
over 10,000	12/year	2/year

\* Where there are multiple regulated flows, sampling frequency is determined by the sum of all regulated flows.

\*\* This includes pollutants such as BOD<sub>5</sub>, TSS, Oil and Grease, and Metals.

- (h) TTO. Monitoring for TTO (other than for BMRs and 90 day compliance reports) need only be done when an Industrial User does not certify as allowed in the individual categorical standard, or such certification is not allowed under the industrial category.
- (i) Batch Discharges. Industrial Users that batch discharge are to sample when they discharge but need not sample more frequently than specified in paragraph (e).
- (j) The Approval Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

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

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

In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater

prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed, and include the certification statement in 40 CFR 403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA-approved method from 40 CFR 136 with the lowest minimum detection level for that pollutant was used in the analysis.

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

Upon approval of the monitoring waiver and revision of the User's control mechanism by the Approval Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

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

In the event that a waived pollutant is found to be present or is expected to be immediately: Comply with the monitoring requirements listed above or other more frequent monitoring requirements imposed by the Approval Authority and notify the Approval Authority.

### **63.14 PRETREATMENT FEES**

- A. Pretreatment fees are to be assessed to both POTW's and to Significant Industrial Users as defined at 63.7(CC). Pretreatment fees shall be paid in accordance with the schedule set forth in 25-8-502(1)(b.5), C.R.S.
- B. POTW's with approved local pretreatment programs may, upon notification to the Director, be afforded the opportunity to pay pretreatment fees that would otherwise be assessed to Industrial Users subject to such local pretreatment programs.
- C. The annual pretreatment fee must be paid within thirty days of receipt of the Director's billing statement. All fees assessed shall be made payable to the Colorado Department of Public Health and Environment, Water Quality Control Division. All fees collected by the Director shall be credited to the Industrial Pretreatment Program account of the Water Quality Control fund as provided in 25-8-502(1)(b.5), C.R.S.

The annual pretreatment fee shall be used to support the expenses of the Industrial Pretreatment Program.

- D. Failure of the Industrial User or the POTW to pay the annual pretreatment fee as required by 25-8-502(b.5) is a violation of these regulations and is subject to enforcement pursuant to Section 63.6 of these regulations and Part 6 of the Act.
- E. The pretreatment fee assessed the Industrial Users shall be prorated in the following instances:

- (1) Commencement of discharge by the Industrial User to a POTW within the fiscal year;
- (2) Termination of discharge by the Industrial User to a POTW, unless termination is the result of enforcement action by either the POTW or the state.

The prorated fee shall be based on the period of time discharge is occurring for the fiscal year during which discharge is commenced or terminated.

### **63.15 SEVERABILITY**

The provisions of these regulations are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provisions to other circumstances and the remainder of these regulations shall not be affected thereby.

### **63.16-63.69 RESERVED**

### **63.70 STATEMENT OF BASIS AND PURPOSE (July 1, 1989)**

This is a statement of Basis and Purpose for adopting the regulations entitled: "Pretreatment Regulations".

#### **A. PURPOSE**

These regulations apply to non-domestic sources of pollutants, including those in the industrial categories promulgated by EPA, which discharge such pollutants to a publicly owned treatment works (POTW), transport them to the plant by truck or rail, or otherwise introduce them into the POTW. Non-domestic pollutants are those pollutants in wastewater from any process or activity of industry, manufacturing, trade or business, from the development of any natural resource, from animal operations, from contaminated stormwater, or leachate from solid waste facilities. The regulations also apply to POTW's which receive wastewater from these non-domestic sources. These regulations do not apply to non-domestic sources of pollutants which discharge to a sewer system not connected to a POTW.

The goal of the pretreatment program is to protect municipal treatment plants and the environment from adverse impacts that may occur when hazardous or toxic wastes are discharged to a sewage system. This goal is achieved through regulating the substances discharged to POTW's. These regulations are designed to prevent the pass-through of pollutants, interference of pollutants with treatment plant operations, contamination of sludge, and the exposure of POTW workers to chemical hazards.

#### **B. NEED FOR PRETREATMENT**

A pretreatment program is needed to eliminate or prevent several serious problems that can occur when industrial wastewater is discharged into a treatment plant designed to treat domestic sewage. Problems include:

- (1) Pass-Through

A problem of major concern is the pass-through of toxic pollutants through a treatment plant and into the receiving stream. Since domestic wastewater treatment plants are not normally designed for treatment of toxics, they only partially treat them and the toxics may then be discharged by the POTW to the receiving stream at levels that could cause a violation of stream standards. This could result in degradation of the stream, injury to classified uses, and even render the stream unsuitable as a drinking water source in some cases. EPA estimates that 37 percent of the toxic industrial compounds entering the surface waters of the country do so via a domestic sewage system. Implementation of a pretreatment program, which regulates industry, could drastically reduce pass-through.



(2) Interference

Another concern is the possibility of toxic pollutants from industrial discharges interfering with unit processes at a treatment facility and causing violations of the POTW's permit. Toxic or hazardous wastes, in relatively small concentrations, can "kill" the biomass used to stabilize and biodegrade the sewage resulting in the plant being unable to treat the sewage. Violations of limits for conventional and/or toxic type parameters could occur leading to a degradation in stream quality. Toxic pollutants which are removed via deposition in the sludge can also cause upsets in digesters resulting in an inadequately digested sludge which may not be acceptable for disposal using cost-effective methods.

(3) Sludge Contamination

Most pollutants removed in a domestic facility can be found in the sludge. Pretreatment is needed to assure that toxic or hazardous pollutants do not make their way back to the environment via disposal of sludge. This is of special concern since the toxic pollutants will accumulate in higher concentrations in the sludge. A study by Feilder (1979) showed significant concentrations of priority pollutants in the sludge of a POTW even though these pollutant concentrations were below detectable limits in the plant's influent. If these sludges were disposed of in a sanitary landfill these pollutants may leach out and contaminate adjacent surface and groundwaters. These "toxic" sludges can not be applied under the beneficial use regulations since the crops or pasture grasses produced may not be safe for human or animal consumption, and would need to be disposed of in a hazardous waste disposal site. Through pretreatment these pollutants can be limited prior to entrance into the plant to levels which will not contaminate the sludge. This would save POTW's the cost of landfilling and allow the beneficial reuse of the POTW's sludge. The quality of the sludge disposed of will become more important to communities as they face additional restraints on sludge quality when EPA proposes sludge regulations this fall. EPA will address, among other disposal processes, beneficial use, landfilling and incineration. Regulation of industrial discharges to POTW's via the pretreatment program is a vital tool needed to assist in preventing contamination of sludge.

(4) Corrosion

Another problem of concern which the pretreatment program can address is corrosion. Highly acidic industrial wastes can corrode piping and equipment in lift stations and sewer lines, as well as in the plant itself. The replacement of these items can be costly. This problem can be greatly reduced by controlling the pH of the wastewater. The Department of Health does not know of any instances of corrosion which can be tied directly to an Industrial User. This does not mean that it is not occurring. The Washington Suburban Sanitary Commission of Maryland has had to replace several thousand feet of sewer line due to corrosion problems from acidic industrial discharges. Implementation of a pretreatment program has enabled the Commission to identify and control these sources (EPA, 1986). The pretreatment regulations, through the specific prohibitions, would limit the likelihood of corrosion and thus save communities money.

(5) Explosions

Some toxic pollutants contained in industrial wastes may volatilize in the plant or sewer line. It is possible that the resulting gases can explode causing damage and injuries. The most famous example of this is an incident in Louisville, Kentucky in February of 1981. An accidental discharge of hexane into the sewer system resulted in an explosion which destroyed more than three miles of sewer line and resulted in more than \$20 million in damages (EPA, 1986). Pretreatment regulations could limit the likelihood of this occurring in Colorado.

(6) POTW Worker Safety

Pretreatment can also be a means of preventing serious injury or death to workers at the POTW. When industrial wastes are mixed with domestic sewage poisonous gases can be released. Electroplating

waste containing cyanide, if discharged to acidic sewage in the system, can result in cyanide gas being released. Sulfides from leather tanning, if combined with acidic sewage can generate poisonous hydrogen sulfide gas. This occurred in Chicago, Illinois in the early 1970's. The gas caused nausea and dizziness among the POTW workers. Subsequently the Metropolitan Sanitary District of Greater Chicago implemented sulfide and pH controls and thus put an end to the illnesses (EPA, 1986).

### C. NEED FOR A STATE PROGRAM

#### (1) Assistance

The main goal of a state-run system is to provide assistance to POTW's and industries. It is the Division's intent to act as a resource for any questions concerning toxic pollutants and hazardous wastes and their impacts on POTW's and receiving streams even without implementation of these regulations. All but the largest POTW's will not need to undergo the expense of maintaining pretreatment expertise on their staff since they will be able to contact the Division for technical assistance. Under a state program the POTW's without programs will not be required to monitor an industry yet they can be assured that the industry's effluent meets some basic standards.

EPA, as they are currently structured, does not have the personnel to provide this assistance. The Clean Water Act's intent was to have the states assume delegation of pretreatment program responsibilities and have EPA act in an oversight role. Because of the lack of sufficient personnel, EPA must deal with problem industries or POTW's as quickly as possible. This usually means taking an enforcement action rather than working with the facility to solve its problem. The Division has a better working relationship with communities, as is evident in the state-delegated NPDES program. This relationship is enhanced by the fact that the state has delegation of the NPDES program and EPA must allow the Division to address a problem before it can step in. The Division can, and often does, bring the permittee into compliance without enforcement action. EPA rarely interferes with the state-community relationship by issuing an enforcement order to a permittee for NPDES violations. It is expected that this working relationship will carry over to the pretreatment program as well.

#### (2) Regulation of Industries

Industries will be regulated regardless of whether the State of Colorado assumes delegation of pretreatment responsibilities or not. If the state does not assume delegation, the industries of Colorado will continue to be regulated by EPA. The decisions regarding pretreatment requirements for industries located in Colorado will be based on policies dictated from Washington, D.C. With a state pretreatment program, these decisions will be made by people who are directly accountable to the state.

#### (3) Toxics Control

In addition to environmental concerns, the pretreatment program can be used as an administrative tool to complement the NPDES program. With the present emphasis toward control of toxics which enter streams, the pretreatment program can be a valuable tool in dealing with domestic treatment plant effluents which are found to have toxic pollutants. As previously stated, industries are a major source of such pollutants which enter and pass-through the POTW. These regulations would give the Division the ability to assist the POTW in developing local limits to control these toxic pollutants. If violations of pretreatment standards were occurring the Division would have the ability to work with the industry to abate the problem. Without these regulations the Division would have to request EPA to take the needed action and thus it would have to fit in with EPA's other priorities. Assistance would not then be as timely or as helpful since EPA does not have the resources to completely administer the pretreatment programs in all the Region VIII States.

#### (4) Coordination With RCRA

The pretreatment program is also needed to fill the gap between the RCRA and NPDES programs. RCRA has a domestic sewage exemption which excludes any waste discharged to a sanitary sewer as long as the receiving POTW has a NPDES permit. This exemption includes waste trucked directly to a POTW. In a Waste Management Division memo it was estimated that conservatively the quantity of hazardous wastes discharged into Colorado sewer systems is equal to that regulated under RCRA. The coordination between these two programs is needed to ensure that hazardous wastes are not finding ways into state waters via domestic sewage treatment plant discharges. The U.S. Congress has cited the pretreatment program as the appropriate means for filling in this gap between programs. These regulations will assist the Division in controlling harmful discharges of these hazardous wastes into state waters. Without a state pretreatment program coordination would be awkward since EPA would be responsible for coordination of two state run programs.

(5) Delegation

These regulations are required in order for the state to assume delegation of the pretreatment program from EPA. The Clean Water Act in section 402(b)(9) requires, as part of the NPDES program that the state have the authority "To insure that any Industrial User of any publicly owned treatment works will comply with sections 204(b), 307 and 308". Part 402(c)(3) states that EPA can withdraw the NPDES program if the state does not comply with 402(b)(9).

D. DISCUSSION OF REGULATIONS

These regulations are consistent with 40 CFR Part 403 and 40 CFR Subchapter N as promulgated by EPA which were in effect on July 1, 1987. They contain a few additional requirements and details which will enhance implementation of the program in Colorado.

These regulations can be viewed as having three parts. These are POTW Requirements, Industrial User requirements, and categorical standards. The first part deals with pretreatment requirements for POTW's. Section 4.3.9 discusses the requirements for Division approval of a pretreatment program, including which POTW's are required to develop and maintain programs. Any POTW wishing to regulate its own industries may develop a program and obtain approval provided the program satisfies the requirements in that section. The POTW would then be the Control Authority. The Division would act in an oversight role. These requirements are basically unchanged from the federal regulations; however, additional detail was added to clarify the federal requirements. When a POTW is required to develop a program, they will have one year from formal notification to develop it. Other requirements include an annual report which summarizes the actions taken by a POTW with an approved program. This part of the regulations does not add any requirements beyond those already required by EPA.

The second part of these regulations deals with requirements for Industrial Users. Sections 4.3.11 and 4.3.12 will impose requirements on categorical industries, of which there are several types. Section 4.3.12 describes the procedures and required information for calculating pretreatment standards. Acceptable flow and production rate data requirements are included as well as other items. Additional detail to the federal requirements has been added to this section so that the industry will be aware of the exact requirements. Included in this part of the regulations are procedures the Division will use in regulating industries which discharge to POTW's without approved pretreatment programs. Additionally section 4.3.11 (C) allows for an industry to have an affirmative defense if they meet the criteria outlined in this section. The Commission has included in this section a phrase which allows the POTW to claim an affirmative defense for the same incident in question when an Industrial User successfully uses such a defense. It is the Commission's belief that the POTW should not be held responsible for a violation of its discharge permit if the Industrial User itself did not know or have reason to know that its discharge could cause a violation of the POTW's discharge permit. It is the Commission's intent that if a POTW knows or has reason to know that local limits it has developed are inadequate then the POTW should not be allowed to avail itself of the affirmative defense.

Industrial Users' monitoring and reporting requirements are covered in Section 4.3.13. The self-monitoring report section has no counterpart in the federal regulations. The Division has added

reporting periods and submittal dates for self-monitoring reports and sampling frequencies for industries. They were thus not changed. It is necessary to include these requirements in the regulations so that industries will be aware of what is required of them. The sampling frequencies were developed with assistance from an EPA manual entitled "Pretreatment Compliance Monitoring and Enforcement Guidance". The required frequencies will also provide uniformity. The submittal dates for self-monitoring reports were changed from those in the federal regulations. The Division felt that, for the larger industrial facilities, more frequent reports were needed to assure compliance. POTW's with approved programs are given the option of developing more stringent requirements.

In addition a requirement has been added for all Industrial Users to perform a priority pollutant scan at a frequency determined by the Control Authority but no less frequent than every five years. This requirement is included to complement the Division's overall toxic control strategy. Its purpose is to insure that the POTW is not receiving toxics which may pass-through its treatment plant to the receiving stream. All categorical industries as listed in sections 4.3.14 through 4.3.50 are required to perform the scan. However those in categories in which a total toxic organic standard is not included may be exempt if they can comply with the certification requirements. Other Industrial Users may be required to perform a scan if the Control Authority determines that the User's discharge contains priority pollutants which may impact the POTW or the receiving waters. The Control Authority has been given flexibility for implementing this requirement by the optional submittal of a plan of implementation of this requirement in lieu of following the time schedules listed in the regulations. It is thought that this will assist the larger communities in the implementation of this regulation.

The final part of the regulations are comprised of standards for categorical industries. These standards regulate the maximum level of pollutants which can be discharged to the sewer system from different types of industries. These standards place restrictions on the 126 toxic pollutants, along with non-conventional and conventional pollutants which present a threat to the environment or human health. These standards have been adopted unchanged from the federal regulations.

The regulations also provide for variances from categorical pretreatment standards if it can be shown that there exist factors which are fundamentally different than those considered by EPA in development of the standards. These factors include, among others, items such as cost of compliance with required control technology, non-water quality environmental impact of control and treatment technology, and the nature or quantity of pollutants contained in the raw wasteload of the user's process wastewater. These regulations do not allow for the state to permit such a variance, since this must be done by EPA, however the state can deny such a variance. Procedures for a Fundamentally Different Factor variance are included in Section 4.3.12(B) of the regulations and are taken from the federal regulations.

The federal pretreatment regulations do allow for adjustment of categorical standards on a case by case basis if a POTW shows continual removal of a pollutant. This is commonly known as Removal Credits. The U.S. Circuit Court ruled these invalid in 1986 (National Resources Defense Council vs. EPA, 790 F. 2d 289 (3d Cir. 1986), cert. denied, 107 S. Ct. 1285 (1987)) and EPA will need to revise them before they can be used. Therefore the Commission will reserve the adoption of a method for calculating removal credits until EPA promulgates such revised requirements.

#### E. IMPLEMENTATION

This regulation will be applied to POTW's and Industrial Users directly. Pretreatment requirements will be included in NPDES permits for the POTW. This will take the form of compliance schedules for development and implementation of pretreatment programs and permit requirements for program implementation. The Division has no present plans to expand the number of POTW's with approved programs beyond those currently required by EPA. Decisions to require additional POTW programs in the future will be based on the design capacity of the plant, the percentage of industrial flow it treats, its operating history, and the ability of the POTW to control its industrial contributors. Programs approved under the federal regulations will be considered approved programs under the state regulations.

Since this is a control regulation there will be no other mechanism used to tie the regulations to the POTW or Industrial User. To inform industries subject to these regulations of the requirements and their need to comply with them the Division will publicize their promulgation and seek possibly uninformed industries out. Currently a survey is being done to locate some of these industries. It is the Division's intent to educate those industries about the regulations. Additionally it will notify those organizations whose membership consists of industries possibly subject to pretreatment of the regulations so they may educate their membership. As the Division locates these industries they will need to submit baseline monitoring reports if they have not already done so. The report will supply the information upon which limitations are based. Those Industrial Users for which the Division is the Control Authority will be informed of the requirements and limits the discharge must meet via a letter from the Division Director after submittal of a complete baseline monitoring report. Once the Industrial User and Division agree on the limits the Industrial User will need to monitor and report to the Division per the regulations. If the Industrial User can not comply with the limits a compliance schedule will be instituted. However, in instances when the federal compliance deadline has passed for the category, the schedule will need to be part of an enforcement action since the Division can not modify a federal regulation.

It is the Divisions intent to bring an industry or POTW into compliance by working with them. When this fails enforcement action will be considered. The Water Quality Control Act allows the Division to take enforcement action such as issuing a Notice of Violation and Cease and Desist Order as well as collection of a civil penalty. An enforcement strategy will have to be developed to account for violations of these control regulations.

#### F. References

- (1) Feilder, Howard D.; Vernick, Arnold S.; Starch, Paul J; "Fate of Priority Pollutants in POTW's" as published in the Proceedings of Eighth National Conference on Municipal Sludge Management, March 19-21, 1979.
- (2) Patterson, James W.; Industrial Wastewater Treatment Technology, Second Edition; 1985 Butterworth, Boston, Mass
- (3) U.S. EPA, Technology Transfer; Environmental Regulations and Technology, "The National Pretreatment Program." July 1986, EPA/625/10-86/005.
- (4) Interoffice Memorandum, entitled, "Briefing Paper on Pretreatment/Hazardous Waste Discharge," from Randy Jones to Dr. Arnott, dated July 16, 1984.

#### Fiscal Impact Statement for the Pretreatment Regulations

These regulations establish a state program for the control of discharges of toxic pollutants to publicly owned treatment works (POTW's) which originate from industrial facilities. They are based on the federal pretreatment regulations. The federal regulations were promulgated in 1979 and modified in 1981. The requirements for the POTW's and industries in these regulations are, for the most part, the same as those in the federal regulations and the fiscal impact on the POTW's and industries for items such as program development, sampling, and putting in treatment systems was accounted for when the general pretreatment regulations and categorical standards were promulgated by EPA. This evaluation can be found in the preambles to these regulations. Thus these proposed regulation's main fiscal impact will consist of development and maintenance of a state program.

#### Cost

Implementation of this program by the Water Quality Control Division will include overseeing POTW pretreatment programs, assisting POTW's in developing programs, and monitoring industries for compliance with the categorical standards. The Division will ensure adequate implementation of the pretreatment programs developed by POTW's by conducting inspections of the POTW's, and periodic

audits of the approved programs, by sampling the POTW's effluent, and by evaluating annual pretreatment reports submitted by POTW's with approved programs. Compliance of Industrial Users will be determined through inspections and sampling of the facilities and by evaluating self-monitoring reports. In cases of non-compliance by either a POTW or an industry the Division will take suitable enforcement action. Miscellaneous items such as assisting POTW's in dealing with RCRA/NPDES requirements and coordination will also be handled as a part of the pretreatment program. The Division estimates that the minimum personnel requirement for a state pretreatment program is 2.5 FTE. In addition to personnel, money must be available for operating expenses, travel and sampling of industries. The Division estimates a first year cost for all of these items of \$134,000 per year. A significant increase in the number of industries to be directly regulated by the state would require an increase in this budgeted amount. The Division hopes to obtain this funding through a portion of funds realized from a proposed increase in the CDPS annual permit fees and from federal 106 funds.

Since partial funding will be obtained from annual fees all permit holders will experience an impact. The exact increase in the fees has yet to be determined, therefore the exact impact on the permittees can not be calculated.

A portion of the fiscal impact from these regulations on industries, beyond that determined by EPA, could be from POTW's passing on the permit fee increase to these industries. Industries may also incur additional monitoring costs from the requirements for self-monitoring analyses and the priority pollutant scans. The exact impact of these requirements is unknown, although for most industries it will result in little or no additional costs on an annual basis over those experienced under the federal regulations.

### **Benefits**

The benefits to be received from a state pretreatment program are many. For POTW's they include such things as lower plant maintenance costs and lower sludge disposal costs because of better sludge quality. Pretreatment requirements may encourage industries to recycle their process waters rather than to discharge them, which in the long run would save the industries money. These benefits, along with others, have been evaluated by EPA previously. The benefits of a state-run program are addressed in this statement.

The main benefit of a state-run program will be in the amount of assistance the state will be able to provide to POTW's and industries. It is the Division's intent to act as a resource for these individuals on questions concerning toxic and hazardous waste pollutants and their impacts on POTW's and state waters, therefore, small POTW's will not need to undergo the expense of maintaining pretreatment expertise on their staff. In addition the POTW's without programs will benefit when the state regulates the industries which discharge into their systems in that the POTW will not have to bear the cost of regulating the industries (monitoring, legal, etc.), yet the POTW can be assured that the industries' effluent will meet some basic standards.

## **63.71 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (July 30, 1990 amendments)**

The provisions of 25-8-202(1)(c) and (2); and 25-8-205(1)(b) to (d) C.R.S. provide the specific statutory authority for this amendment to the Colorado Pretreatment Regulations adopted by the Commission. The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

### **BASIS AND PURPOSE:**

The Colorado Pretreatment Regulations were adopted by the Commission on April 5, 1988. These regulations represent a major component in the State's effort to secure delegation of the federal pretreatment program from EPA. These regulations, in conjunction with a description of the State program's structure, policies and procedures, and the Attorney General's evaluation of the State's

statutory authority comprise the State's pretreatment delegation application. A draft program submittal was forwarded to EPA in September of 1988. Comments from that agency followed in August of 1989. These revisions are intended to remedy a number of deficiencies which were identified in the course of the EPA review process.

Subsequent to the submittal of the draft delegation package, the EPA promulgated amendments to the federal pretreatment regulations. These amendments appeared in the October 17, 1988 Federal Register. The revisions to the Colorado Pretreatment Regulations are also intended to bring the state regulations into conformance with the requirements of the 1988 amendments.

Legislation was introduced during the 1989 legislative session which was intended to establish a funding mechanism for the state pretreatment program. That legislation failed to gain passage and has been re-introduced in 1990. Due to the absence of funding, as well as issues discussed earlier, the Commission convened an emergency rulemaking on May 1, 1989 to delay implementation of the regulations. The effective date of the pretreatment regulations was pushed back one year, from July 1, 1989 to July 1, 1990. Additional rulemaking is required within a year of an emergency rulemaking to ratify modifications made in emergency rulemaking. A second emergency hearing was required to maintain the July 1, 1990 effective date. This hearing was held on May 8, 1990 and the July 1, 1990 effective date remains in place. As a result of this hearing, the regulations as revised will become effective as a permanent rule on July 30, 1990.

Finally, there are a number of minor corrections or clarifications which are clarified by these revisions. Those revisions which are most substantive are discussed in greater detail below.

Federal pretreatment regulations require the development of local pretreatment programs by POTW's which meet certain criteria. A compliance schedule placed in the POTW's discharge permit is the mechanism through which this requirement is implemented. Section 4.3.9 (D) provides for the incorporation of compliance schedules in permits. Previously, specific timeframes and interim reporting requirements had been lacking. The amended requirements appearing at 4.3.9(D)(3) detail compliance schedule elements, durations and reporting requirements, thereby achieving conformance with the federal requirements.

The federal and state regulations identify those elements which are necessary components of local pretreatment programs. There has been a mechanism in place by which the adequacy of local program submittals is evaluated prior to approval. Problems have arisen, however, due to the lack of a review and approval process which addresses local program modifications subsequent to initial approval. The October 17, 1988 amendments to the federal pretreatment requirements broadly define those circumstances when local program modification requires prior approval and clarify procedures by which approval is pursued. Conforming amendments to the state regulations now appear at 4.3.9(H).

The language contained in both the federal pretreatment regulations and that which appears at 4.3.9(H) of the state's proposed amendments has generated public comment to the effect that the categories of program modifications which require approval authority approval are not entirely clear. EPA has recognized this problem and has chosen to deal with it through via policy. EPA Region VIII has issued an interim policy which narrows the scope of program modifications requiring approval authority review and approval. The state proposes to proceed in a similar manner. In general, the review and approval process is intended to focus on those program changes which affect a POTW's ability to carry out the program in a manner consistent with the program as approved.

Section 4.3.12(H) contains procedures for adjustments to a categorical industry's discharge limits in instances where the presence of a regulated constituent in intake water compromises the industry's ability to comply with its effluent limitations. Previously the ability to award these "net/gross" credits was EPA's alone. However, this restriction was relaxed by the October 17, 1988 amendments such that net/gross adjustments may now be approved by the "control authority". The control authority is the POTW if it has an approved program or the state once it has assumed delegation.

The October 17, 1988 amendments to the federal pretreatment regulations also contain provisions for notification of the control authority in the event of a bypass and specify requisite circumstances under which a bypass may be allowed. Parallel bypass provisions have been incorporated into the state pretreatment regulations at 4.3.12(J). This section also describes conditions under which bypass is prohibited and specifies that such prohibited discharges may serve as a basis for enforcement action.

Sections 4.3.51, categorical discharge standards applicable to fertilizer manufacturers and 4.3.52, standards applicable to manufacturers of organic chemicals, plastics, and synthetic fibers are added. The former were omitted from the state regulation through oversight. The latter were promulgated by EPA on November 5, 1987.

The Environmental Protection Agency, in addition to the October 17, 1988 revisions to the federal pretreatment regulations, published proposed amendments to the pretreatment regulations on November 23, 1988. Both parties to this hearing have suggested that elements of the November 23, 1988 proposed amendments be incorporated into the Colorado Pretreatment Regulations as part of this rulemaking. Specifically, the parties request that a definition of the term "significant industrial user" be inserted and that monitoring and reporting requirements which are applicable to significant industrial users be identified as such. A definition of the significant industrial user has been added. This definition is the same as that contained in the November 23, 1988 proposal. EPA policy has utilized this same definition since the mid-1980s. The Division does not anticipate any change in the definition with final promulgation of the November 23 proposal.

Significant industrial users include all users subject to categorical discharge requirements, industrial users discharging more than 25,000 gallons per day of process wastewater, industrial users which contribute more than five percent of a POTW's average dry weather hydraulic or organic load, or any other industrial user with the potential to adversely affect POTW operation. Thus, an industry which might be significant if discharging to a relatively small facility may not be so designated if discharging to a larger POTW. Any industry which is not categorical, but which meets one or more of the flow or waste strength criteria, may be designated to be non-significant by the control authority if it is found that the user does not have the potential to adversely affect the POTW.

The significant industrial user is the focus of the POTW's pretreatment activities. Program requirements include limitations imposed upon wastewater discharges from significant industrial users via a control mechanism (permit), imposition of self-monitoring and reporting schedules on significant industries, monitoring and inspection by the POTW of these industries, and follow-up enforcement as required. Although this emphasis has existed since the inception of the federal program, the federal regulations have discussed these requirements in terms of "industrial users" and not "significant industrial users". The resultant ambiguity has been a long standing source of concern for POTW's charged with program implementation.

Discussions with the parties have also led to the inclusion of a definition of the "approved program document". The approved program document includes a detailed description of the POTW's program. Development of the program document is required in order to obtain local program delegation. Enforcement actions which EPA has initiated against POTW's for failure to adequately enforce pretreatment requirements have historically been based upon a POTW's failure to execute the program as described in the program document. The approved program document serves as the benchmark by which local program adequacy is to be evaluated. The inclusion of the "approved program document" definition clarifies this relationship. Again, the approach chosen by the State is consistent with that of the EPA, the difference being that EPA's has been embodied in policy rather than regulation.

References to the significant industrial users and to the approved program document have been inserted into the regulation where necessary to clarify specific requirements.

**63.72 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (July 30, 1990 amendments)**



The provisions of 25-8-202(1)(c) and (2); and 25-8-205(1)(b) to (d) C.R.S. provide the specific statutory authority for this amendment to the Colorado Pretreatment Regulations adopted by the Commission. The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

**BASIS AND PURPOSE:**

The Colorado Pretreatment Regulations were adopted by the Commission on April 5, 1988. These regulations represent a major component in the State's effort to secure delegation of the federal pretreatment program from EPA. These regulations, in conjunction with a description of the State program's structure, policies and procedures, and the Attorney General's evaluation of the State's statutory authority, comprise the State's pretreatment delegation application. A draft program submittal was forwarded to EPA in September of 1988. EPA's review of the draft program submittal raised a number of issues which were addressed when the Commission, on June 4, 1990, adopted amendments to these regulations. The June 4 amendments also incorporated changes mandated by October 17, 1988 amendments (the PIRT amendments) to the federal pretreatment regulations at 40 CFR Part 403.

Shortly after publication of the PIRT amendments, the EPA proposed additional modifications to the federal pretreatment regulations. These modifications were proposed on November 23, 1988 and are referred to as the Domestic Sewage Exclusion Study (DSES) amendments. The DSES amendments were finalized with their publication in the July 24, 1990 Federal Register. The Commission anticipated some of the DSES modifications and included them in the June 4 amendments to the Colorado regulations. However, the DSES amendment contains several additional modifications not incorporated into the June 4, 1990 amendments. This proposal addresses those additional items.

The previous amendments to the federal pretreatment regulations (October 17, 1988) required that the POTW regulate significant industrial users through a permit or a permit equivalent control mechanism. The Colorado regulations were modified in June, 1990 to incorporate this mandate. The DSES amendments expand this requirement, stipulating specific items which must be addressed or included in the control mechanism. Incorporation of these items into POTW issued control mechanisms is addressed in sections 4.3.9(E)(1)(c)(i) through (v) of the Colorado regulations.

The November 23, 1988 proposal of the DSES amendments extended the permit requirements to include permit issuance by the control authority (the EPA or delegated state if there is no approved local program in place). Although this requirement was eliminated from the July 24, 1990 amendments, it is the Commission's intent that significant industrial users which are not regulated under a local POTW program be issued a control mechanism by the state. Division issuance of control mechanisms to significant industrial users subject to categorical discharge requirements has been a requirement of the regulations since their inception (4.3.12(E)). Expansion of that requirement to include state issuance of control mechanisms to non-categorical significant industrial users is required by this amendment (4.3.11(F)). One party questioned the applicability of section 4.3.11(F) to POTW's. It is the Commission's intent that 4.3.11(F) address only the Division's regulation of non-categorical significant industrial users. Section 4.3.11(F) does not require POTW issuance of control mechanisms to non-categorical significant industrial users (although this is required of POTW's with approved local programs (4.3.9(E)(10)(c)) nor does it limit a POTW's ability to regulate industries discharging into the POTW's system. A definition of "industrial user permit" has been added at 4.3.7(P) to create a distinction between such permits and Division issued CDPS/NPDES permits.

Several parties raised concerns relative to the application of the significant industrial user definition by the Division. These concerns have been addressed by the expansion of the definition of significant industrial user to specify that a reasonable potential must exist for that industry's discharge to impact the POTW's operation or for the industry to violate pretreatment standards or requirements. This language appears in the July 24 amendments to the federal pretreatment regulations. The Division will also establish an advisory group to assist the Division in the development of pretreatment policy such as criteria for the identification of significant industrial users.

The DSES amendments also address additional specific discharge prohibitions (incorporated at 4.3.11(B)), the compilation of significant industrial user lists by POTW's (4.3.9(E)(4)), the development of enforcement response plans by POTW's (4.3.9(E)(3)), the POTW's' authority to require the development of slug control plans by the industrial user (4.3.9(E)(2)(e)), and criteria for the determination of instances of significant industrial noncompliance (4.3.9(E)(2)(g)).

The definition of "Publicly Owned Treatment Works" (4.3.7(W)) is modified to clarify the applicability of the regulations in instances where a municipally owned and maintained collection system conveys wastewater to a privately owned domestic wastewater treatment works. This modification is added to specifically address situations such as that which exists in Golden, where the City's collection system is connected to the Coors owned General Wastewater Treatment Plant.

The Colorado Water Quality Control Act was amended during the 1990 legislative session to clarify the state's authority relative to pretreatment and to provide a mechanism to fund program implementation. House Bill 1094 directs that fees be assessed to POTW's and to industrial users regulated by the program. A fee schedule is set forth in the legislation. Section 4.3.53 contains the regulatory provisions for the billing procedure.

Additionally, there are less significant modifications which are made so as to correct several inconsistencies between the Colorado regulations and the federal requirements. These changes appear at 4.3.9(E)(1)(g) and 4.3.12(C)(1).

### **63.73 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (March 2, 1991 amendments)**

The provisions of 25-8-202(1) (c) and (2); and 25-8-205(1) (b) to (d) C.R.S. provide the specific statutory authority for this amendment to the Colorado Pretreatment Regulations adopted by the Commission. The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

#### **BASIS AND PURPOSE:**

The Colorado Pretreatment Regulations were adopted by the Commission on April 5, 1988. These regulations represent a major component in the State's effort to secure delegation of the federal pretreatment program from EPA. These regulations, in conjunction with a description of the State program's structure, policies and procedures, and the Attorney General's evaluation of the State's statutory authority, comprise the State's pretreatment delegation application. A draft program submittal was forwarded to EPA in September of 1988. EPA's review of the draft program submittal raised a number of issues which were addressed when the Commission, on June 4, 1990, adopted amendments to these regulations. The June 4 amendments also incorporated changes mandated by October 17, 1988 amendments (the PIRT amendments) to the federal pretreatment regulations at 40 CFR Part 403.

Shortly after publication of the PIRT amendments, the EPA proposed additional modifications to the federal pretreatment regulations. These modifications were proposed on November 23, 1988 and are referred to as the Domestic Sewage Exclusion Study (DSES) amendments. The DSES amendments were finalized with their publication in the July 24, 1990 Federal Register. The Commission anticipated some of the DSES modifications and included them in the June 4 amendments to the Colorado regulations. However, the DSES amendment contains several additional modifications not incorporated into the June 4, 1990 amendments. This proposal addressed those additional items.

The previous amendments to the federal pretreatment regulations (October 17, 1988) required that the POTW regulate significant industrial users through a permit or a permit equivalent control mechanism. The Colorado regulations were modified in June, 1990 to incorporate this mandate. The DSES amendments expand this requirement, stipulating specific items which must be addressed or included in

the control mechanism. Incorporation of these items into POTW issued control mechanisms is addressed in sections 4.3.9(E)(1)(c)(l) through (v) of the Colorado regulations.

The November 23, 1988 proposal of the DSES amendments extended the permit requirements to include permit issuance by the control authority (the EPA or delegated state if there is no approved local program in place). Although this requirement was eliminated from the July 24, 1990 amendments, it is the Commission's intent that significant industrial users which are not regulated under a local POTW program be issued a control mechanism by the state. Division issuance of control mechanisms to significant industrial users subject to categorical discharge requirements has been a requirement of the regulations since their inception (4.3.12(E)). Expansion of that requirement to include state issuance of control mechanisms to non-categorical significant industrial users is required by this amendment (4.3.11(F)). One party questioned the applicability of section 4.3.11(F) to POTW's. It is the Commission's intent that 4.3.11(F) address only the Division's regulation of non-categorical significant industrial users. Section 4.3.11(F) does not require POTW issuance of control mechanisms to non-categorical significant industrial users (although this is required of POTW's with approved local programs discharging into the POTW's system. A definition of "industrial user permit" has been added at 4.3.7(P) to create a distinction between such permits and Division issued CDPS/NPDES permits.

Several parties raised concerns relative to the application of the significant industrial user definition by the Division. These concerns have been addressed by the expansion of the definition of significant user to specify that a reasonable potential must exist for that industry's discharge to impact the POTW's operation or for the industry to violate pretreatment standards or requirements. This language appears in the July 24 amendments to the federal pretreatment regulations. The Division will also establish an advisory group to assist the Division in the development of pretreatment policy such as criteria for the identification of significant industrial users.

The DSES amendments also address additional specific discharge prohibitions (incorporated at 4.3.11(B)), the compilation of significant industrial user lists by POTW's (4.3.9(E)(4)), the development of enforcement response plans by POTW's (4.3.9(E)(3)), the POTW's authority to require the development of slug control plans by the industrial user (4.3.9(E)(2)(e)), and criteria for the determination of instances of significant industrial noncompliance (4.3.9(E)(2)(g)).

The definition of "Publicly Owned Treatment Works" (4.3.7(W)) is modified to clarify the applicability of the regulations in instances where a municipally owned and maintained collection system conveys wastewater to a privately owned domestic wastewater treatment works. This modification is added to specifically address situations such as that which exists in Golden, where the City's collection system is connected to the Coors owned General Wastewater Treatment Plant.

The Colorado Water Quality Control Act was amended during the 1990 legislative session to clarify the state's authority relative to pretreatment and to provide a mechanism to fund program implementation. House Bill 1094 directs that fees be assessed to POTW's and to industrial users regulated by the program. A fee schedule is set forth in the legislation. Section 4.3.53 contains the regulatory provisions for the billing procedure.

Additionally, there are less significant modifications which are made so as to correct several inconsistencies between the Colorado regulations and the federal requirements. These changes appear at 4.3.9(E)(1)(g) and 4.3.12(C)(1).

## **63.74 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (August 31, 1993 amendments)**

### **SPECIFIC STATUTORY AUTHORITY**

The provisions of Colorado Revised Statute sections 25-8-202(1)(c) and (2); 25-8-205(1)(b) to (d); and 25-8-508 (1989 Repl. Vol. and 1992 Supp.) provide the specific statutory authority for this amendment to

the Colorado Pretreatment Regulations adopted by the Commission. The Commission has also adopted, in compliance with Colorado Revised Statute section 24-4-103(4) (1988 Repl. Vol. and 1992 Supp.), the following Statement of Basis and Purpose.

### **BASIS AND PURPOSE**

The Colorado Pretreatment Regulations were adopted by the Commission on April 5, 1988. These regulations represent a major component in the State's effort to secure delegation of the federal pretreatment program from EPA. Amendments to the regulations have been adopted on June 4, 1990 and on January 8, 1991. In both instances the amendments were intended to incorporate revisions which had been made to the federal pretreatment regulations into the Colorado Pretreatment Regulations. These previous amendments have also addressed issues raised by EPA as that agency has reviewed the State's draft delegation package.

The Water Quality Control Division provided EPA with a supplemental draft submittal in May, 1992. These current amendments to the regulations are intended to address those remaining issues identified in EPA's response to the 1992 submittal.

Section 4.3.10(A) is amended to require submittal of a POTW's Industrial Users list, or any additions or deletions to the list, as a portion of the POTW's annual pretreatment report.

A specific statement of state and federal provisions governing fraud and false statements as related to reporting requirements has been added to section 4.3.10(c) in lieu of a general reference to the state act. The federal act had not been previously cited relative to this section. Section 4.3.13(F)(2), formally (G)(2), contains an expanding reference to the federal provisions applicable to fraud and false statements.

Sections 4.3.11(D)(2) allows the Division to require a POTW which has no approved local program to develop local limits. Previously the regulation allowed the Division to require local limit development only after instances of pass-through or interference had occurred. This amendment extends that authority so as to allow local limit development to be required in instances where reasonable potential for pass-through or interference exists.

EPA had raised a concern relative to the Division's ability to enforce local limits developed as a result of the mechanism described above. Section 4.3.11(A) is amended to stipulate that industrial users must comply with Division approved local limits and is intended to ensure that the Division can enforce directly against industrial users for violations of local limits. Section 4.3.11(A) is also amended to clarify that under 25-8-508, 25-8-103(16.5), and section 4.3.9.D(1)(b), the Division can enforce against Industrial Users for violations of pretreatment requirements and standards described in 4.3.11.A and B.

Section 4.3.12(B)(7) identifies the procedures for review and approval of a Fundamentally Different Factor variance. This process involves review by both the Division and the Regional EPA office. Subsection (I) reproduces the portion of the federal regulation which sets forth the procedures governing EPA's portion of the review process. This section has been amended to identify the Regional Administrator or his delegate as the position within EPA responsible for the review and approval of Fundamentally Different Factor variances. A change relative to the position responsible for this function within EPA will no longer necessitate a concomitant amendment to the state regulation. Similar revisions have been incorporated at section 4.3.13(D)(7)(d). This section addresses approval procedures for alternative sampling and analytical methods.

The provisions concerning Net/Gross adjustments to categorical discharge standards which appear at section 4.3.12(H) have been amended to include a stipulation that Net/Gross adjustments to categorical discharge limitations are available only when the categorical standard specifically provide for such adjustments.

Section 4.3.13 addresses monitoring and reporting requirements for industrial users. Subsection A identifies requirements for contents of Baseline Monitoring Reports including sampling protocols. These requirements correspond with the requirements which appear at section 403.12(b)(5)(iii) of the federal regulation. However, the federal regulation is silent with respect to sampling techniques associated with monitoring undertaken to demonstrate continuing compliance. The state regulation incorporates requirements for ongoing monitoring in section 4.3.13(D)(5). The state requirements are consistent with federal policy concerning such sampling in that composite sampling is required when feasible. Grab samples are required for parameters where holding times or analytical requirements rule out composite sampling. This also is consistent with federal requirements (as described relative to monitoring associated with BMRs). The state regulation also allows grab samples in instances where the duration of the discharge is such that composite sampling is infeasible. Use of grab samples in these instances must now be approved by the Control Authority. This allowance is not inconsistent with the federal regulation which requires the use of composite samples "where feasible".

Requirements for the reporting of slug discharges contained in section 4.3.13(D)(6) have been revised. The previous cross reference required notification only when a slug discharge resulted in pass-through or interference at the receiving POTW. Immediate notification would therefore not be possible because pass-through or interference could not be evaluated until the slug actually reached the POTW and impacted its operation. The revised language reflects the true intent of the notification requirement; the POTW must be immediately notified of any non-routine discharge which might potentially impact its operation.

Section 4.3.13(D)(7)(d) has been amended to clarify the circumstances under which a POTW or the Division may waive monitoring for a parameter.

A new section 4.3.13(D)(7)(f) has been added to require that an Industrial User submit any monitoring data accumulated for a regulated parameter, regardless of whether the data results from sampling undertaken more frequently than specified by the POTW or the Division.

Section 4.3.13(F) has been deleted. This section contained requirements for priority pollutant monitoring by selected Industrial Users and was intended to implement, in part, the Division's Interim Policy on Human Health Toxicity (December 10, 1987). That policy was intended to serve as the initial framework for implementation of the "Free from toxics" section of the Colorado Basic Standards and Methodologies (Section 3.1.11). The policy has been rescinded effective March 20, 1991 as a result of several actions by the Commission relative to biomonitoring rulemakings. The Commission has therefore determined that continued imposition of priority pollutant monitoring through the Pretreatment Regulations is inappropriate. It should be noted, however, that POTW's and the Division retain the authority to impose additional monitoring (over and above the minimum specified in the Categorical Pretreatment Standards) as specified at sections 4.3.11(E) and (F), and 4.3.13(D)(3) of the regulations.

Section 4.3.40, National Categorical Standards for Organic Chemicals Manufacturing has been deleted. These standards are superseded by the Categorical Standards for Organic Chemicals, Plastics and Synthetic Fibers, Section 4.3.51. The standards which had appeared at 4.3.40 should have been deleted when the Commission adopted the Organic Chemical, Plastics and Synthetic Fibers standards but were inadvertently retained.

These amendments are also intended to correct several incorrect cross-references within the regulation and to correct a number of minor inconsistencies between the federal regulation and the Colorado Pretreatment Regulation.

These minor revisions are as follows:

Section 4.3.1 was amended so as to incorporate additional statutory authorities developed under section 25-8-508 of the Colorado Water Quality Control Act.

Section 4.3.5, has been amended so as to conform with the requirements of the Colorado Administrative Procedures Act.

Sections 4.3.9(D)(1)(b), 4.3.12(B)(5)(c), 4.3.12(B)(7)(I)(I), 4.3.12(H), 4.3.12(J)(2), 4.3.13(D)(1)(c) have been amended to correct inconsistencies between the state and federal regulations.

Sections 4.3.9(E)(4), 4.3.9(F)(2)(f), 4.3.9(G)(1), 4.3.9(G)(2), 4.3.9(H)(1), 4.3.11(A), 4.3.11(F), 4.3.12(B)(7)(I), 4.3.13(D)(7), 4.3.13(D)(7)(e), 4.3.13(D)(8) and 4.3.52 (formally 4.3.53) have been amended to provide correct cross-references within the regulation.

A comment was received during the Public Notice period concerning the intent of new language inserted at section 4.3.12.B(5)(c). Section 4.3.12.B addresses requirements for administration of Fundamentally Different Factor variances. Factors which are eligible for consideration as part of a Fundamentally Different Factor variance request are identified at section 4.3.12.B. Previous to this amendment that section read "Non-water quality environmental impact of control treatment and technology." This amendment replaces the term "technology" with the phrase "of the user's raw waste load". The amended language is consistent with that which appears in the federal pretreatment regulations at 40 CFR 403. The intent of the section is to allow consideration of the impact of control and treatment of the categorical wastestream upon air emissions from the process, the quality of any residual sludges resulting from the process, or any other environmental impact beyond what could be considered to be water quality related.

## **63.75 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; (April 4, 1994)**

### **SPECIFIC STATUTORY AUTHORITY**

The provisions of Colorado Revised Statutes Section 25-8-202(1)(c) and (2), 25-8-205(1)(b) to (d); and (2), and 25-8-508 C.R.S., (1989 Repl. Vol. And 1993 Supp.) provide the specific statutory authority for this amendment to the Colorado Pretreatment Regulations adopted by the Commission. The Commission has also adopted, in compliance with Colorado Revised Statute section 24-4-103(4) (1988 Repl. Vol. And 1992 Supp.), the following Statement of Basis and Purpose.

### **BASIS AND PURPOSE**

The Colorado Department of Health, Water Quality Control Division has proposed amendments to the Regulations for the State Discharge Permit System, 6.1.0 to be heard at the Commission's March 7, 1994 meeting.

Section 4.3.13.D(7)(d) of the Pretreatment Regulations requires industries subject to categorical discharge standards to perform self-monitoring for conventional pollutants, inorganics (including metals) cyanide, and phenol on a monthly or quarterly basis dependant upon discharge volume (at a minimum; the POTW may specify more frequent monitoring if it so chooses. The federal Pretreatment Regulations at 40 CFR Part 403 require only that industrial user self-monitoring be performed no less frequently than semi-annually. The proposed revisions to section 4.3.13.D(7)(d) would allow local municipalities and districts with approved pretreatment programs to relax industrial user self-monitoring for individual parameters when documentation is provided indicating the absence of that pollutant. Monitoring may not be performed less frequently than semi-annually as per federal; pretreatment requirements.

## **63.76 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; (JULY, 1997 RULEMAKING)**

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

### **63.77 FINDINGS REGARDING BASIS FOR EMERGENCY RULE AMENDMENTS ADOPTED ON OCTOBER 6, 1997**

The Commission has previously included incorporation by reference provisions in both the Pretreatment Rules, Regulation #63 (5 CCR 1002-63) and the Confined Animal Feeding Operations Control Regulation, Regulation #81 (5 CCR 1002-81). As a part of its statutorily required review of regulations adopted by state agencies, staff in the Office of Legislative Legal Services brought to the Commission's attention an inconsistency between the incorporation by reference language in these two regulations and the requirements of the State Administrative Procedure Act, 24-4-103(12.5) C.R.S. To eliminate this inconsistency, the Commission is adding a statement to each rule that all material incorporated by reference may be examined at any state publications depository library. Both of these regulations are an important part of Colorado's overall water quality management system. Therefore, in order to avoid any interruption in the applicability of these regulations and to avoid the time and expense that would be required for the Committee on Legal Services to conduct a formal hearing to consider this matter, the Commission finds that adoption of these amendments is imperatively necessary to preserve public health, safety and welfare.

### **63.78 STATEMENT OF BASIS AND PURPOSE, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; (FEBRUARY, 1998 RULEMAKING)**

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

## **BASIS AND PURPOSE**

After the triennial review of the Colorado Pretreatment Regulations in January 1997, areas were discovered where corrections of typographical errors, clarifications, and updates needed to be made. Changes involving more than clarifications or corrections of typographical errors were made to the following areas:

Section 63.7.J: The section gives a definition of "domestic wastewater". The definition was shortened to include "...kitchen, bath and laundry wastes from residences' instead of from residences, in establishments or other places". This change was made so that there will be no question that establishments such as industrial laundries, which are a potential sources of toxic or otherwise harmful pollutants, will not be mistakenly considered domestic wastewater and excluded from the pretreatment regulations.

Section 63.9(A)(2): Since pretreatment is a preventative program, designation of an industrial user as significant should be done, if possible, before an industrial user causes environmental harm. This section was changed to make it clear that an industrial user can be considered significant based on *potential* to have harmful impacts on the environment.

Section 63.10: This section was changed so that unneeded information was not unnecessarily requested in pretreatment annual reports. This section is now consistent with the minimum federal requirements.

Section 63.13.D(5): This section, as previously written, was not technically sound. As written previously, grab samples could be taken in situations where grab samples were not actually representative of the discharge. The section was changed to simply state that samples have to be representative of the discharge. The section now also references sampling guidelines which were already present in Section 63.12.A(2)(e)(iii) - (vi).

Section 63.13.I: The following sentence was added for clarity and to make the section more consistent with federal regulation: "If no claim is made at the time of the submission, the Director will make the information available to the public without further notice."

Section 63.53: This section incorporates by reference pretreatment standards for new sources and pretreatment standards for existing sources which were promulgated in September 1993. Addition of these standards is required in order for the state pretreatment regulations to be at least as stringent as the federal regulation.

#### Changes Made After Public Notice:

General: Throughout the document, a @ symbol was inadvertently placed where a "(c)" symbol should have appeared. This typographical error was corrected.

#### Sections 63.3 and 63.7:

Comments were received from Metro Wastewater Reclamation District ("Metro") in a letter dated December 8, 1997 regarding the definition of "domestic wastewater". Metro expressed concern that: "Eliminating reference to all establishments except residences from the definition of domestic wastewater may subject commercial users to pretreatment program requirements even though they may discharge only domestic wastewater." The Division agrees that this point merits clarification of the definition of "domestic wastewater".

As a result of these comments, the definition of "domestic wastewater" was expanded so that domestic wastewater from non-residential buildings would be included. Consequently, the definition of "non-domestic wastewater" was also changed so that it would be compatible with the new definition of "domestic wastewater".

In addition, Section 63.3, "Applicability" was also revised to make it compatible with the new definition of domestic wastewater. Previously, the  Applicability  sections pertain to "industries". However, there are many non-industrial entities which can discharge non-domestic wastewater which may be problematic to a POTW. For example, restaurants can cause obstructions of collection lines due to grease accumulation. Cooling tower blowdown from commercial, non-industrial buildings can and have interfered with POTW's sludge disposal options. Therefore, the "Applicability" section no longer refers to "industries" and instead refers to "industrial users" which is already defined in terms of domestic/non-domestic discharge.

#### Section 63.9(A) (2):

Comments from Metro noted a typographical error in this section. This has been corrected.

#### Section 63.10.A:

Metro suggested changes to this language that clarifies it and makes it more consistent with the federal language. Previous deviations from the federal language made no difference in the meaning of the regulation and thus the changes were made in the interest of clarification.

#### Section 63.13.D(5):



Metro commented that requiring a minimum of 4 grab samples for periodic compliance sampling for certain parameters (pH, cyanide, total phenols, oil & grease, sulfide and volatile organic compounds) is excessive. Metro suggested that the Division's Pretreatment Regulations should, instead, be consistent with the language proposed for 40 CFR Section 403.12(g)(3) & (4) by EPA in their May 30, 1997 letter to stakeholders. This letter states that, for these limited parameters, periodic compliance sampling shall be conducted at the frequency "necessary to assess and assure compliance...."

The Division's proposed requirement that all sampling must follow the guidelines of Section 63.13.A(2)(e)(iii) -(vi) does effectively require 4 grabs for periodic compliance monitoring for these parameters. This was an unintentional result of requiring adherence to those guidelines. The Division was primarily attempting to address issues of sample type (i.e., flow proportional vs. time proportional vs. grab samples) for metals and conventional pollutants. Although adoption of EPA's language may seem like a reasonable solution, the language is not yet finalized and is more extensive than is appropriate to include at this point in this rulemaking. Therefore the requirement for sampling to be consistent with Section 63.13.A(2)(e)(iii) -(vi) was struck and new language will be considered once the federal language is finalized.

### **63.79 FINDINGS REGARDING BASIS FOR EMERGENCY RULE AMENDMENTS ADOPTED ON OCTOBER 14, 1998**

The Commission previously included incorporation by reference provisions in the Pretreatment Rules, Regulation #63 (5 CCR 1002-63). As a part of its statutorily required review of regulations adopted by state agencies, staff in the Office of Legislative Legal Services brought to the Commission's attention an inconsistency between the incorporation by reference language in this regulation and the requirements of the State Administrative Procedure Act, 24-4-103(12.5) C.R.S. To eliminate this inconsistency, the Commission added in an emergency rulemaking on October 6, 1997 a statement to the rule that all materials incorporated by reference may be examined at any state publication depository library. The Commission made this language permanent in a rulemaking in February 1998. However, the statement did not appear in the rule as published in the Code of Colorado Regulation. The Office of Legislative Legal Services staff raised this concern to Commission staff on October 14, 1998. In order to correct this problem, the Commission again adopted this statement by emergency rule on October 14, 1998.

The Pretreatment Regulation is an important part of Colorado's overall water quality management system. Therefore, in order to avoid any interruption in the applicability of this regulation and to avoid the time and expense that would be required for the Committee on Legal Services to conduct a formal hearing to consider this matter, the Commission finds that adoption of this amendment is imperatively necessary to preserve public health, safety and welfare.

### **63.80 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JANUARY, 1999 RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

#### **BASIS AND PURPOSE**

The Commission held this rulemaking hearing to make permanent changes adopted in an Emergency Rulemaking Hearing that was held on October 14, 1998.

These changes add incorporation by reference language to assure compliance with the requirements of the State Administrative Procedure Act, 24-4-103(12.5) C.R.S.

**63.81 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE: JULY, 2000 RULEMAKING**

The provisions of sections 25-8-202(1); 25-8-205(1)(B); AND 25-8-401, C.R.S, provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

**BASIS AND PURPOSE**

The Commission adopted the changes proposed by the Water Quality Control Division. These changes include:

- (1) Corrections to spelling and numerical references at several points in the regulation;
- (2) Revisions to sections 63.29 and 63.9 to reflect the most current language in the federal pretreatment regulations; and
- (3) An update to the incorporation by reference provisions to reflect the most recent published version of the Code of Federal Regulations.

These changes are appropriate to make sure that the Colorado pretreatment program continues to be consistent with federal requirements.

**63.82 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; (September, 2003 Hearing)**

The provisions of sections 25-8-202(1); 25-8-205(1)(B); AND 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The commission also adopted, in compliance with section 24-4-103(4) C.R.S, the following statement of basis and purpose.

**BASIS AND PURPOSE**

The Commission adopted the changes proposed by the Water Quality Control Division. These changes include:

- (1) Corrections of various typographical errors.
- (2) Remove and replace sections 63.14 through 63.52 and incorporate by reference the federally promulgated categorical standards found at 40 CFR 405 through 40 CFR 471. The Commission would like to reserve sections 63.16 through 63.52 for future use.
- (3) An update to the incorporation by reference provisions to reflect the most recent published version of the Code of Federal Regulations. This includes the addition of 2 new categorical standards that are found at 40 CFR 437, Centralized Waste Treatment, and 40 CFR 442, Transportation Equipment Cleaning.

These changes are appropriate to make sure the Colorado Industrial Pretreatment Program continues to be consistent with federal requirements.

**63.83 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; (February 12, 2007 Hearing, Effective April 1, 2007)**

The provisions of sections 25-8-202(1); 25-8-205(1)(B); and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S, the following statement of basis and purpose.

### **BASIS AND PURPOSE**

The Commission adopted the changes proposed by the Water Quality Control Division. These changes include:

1. Corrections of various typographical errors.
2. Addition of definitions for the following terms to provide greater clarity: Approval Authority, Best Management Practices, and Notice of Discharge Requirements, clarification of the definition for Grab Sample, and expansion of the definition for Significant Industrial User.
3. An incorporation by reference of federal regulations, specifically, various provisions of 40 CFR 403, into Sections 63.9 A–H, 63.10 A–D, 63.11 A–E, 63.12 A–J, and 63.13 A–D, E(2 – 9), and F–I.
4. Addition of language to include the enforcement authority the Division has over POTWs and Industrial Users in Non-Approved Pretreatment Programs.
5. Addition of language that further clarifies the Division’s authority to issue control mechanisms to Significant Industrial Users in Non-Approved Programs.
6. Addition of Monitoring and Reporting requirements for Significant Industrial Users in Non-Approved Programs. This defines the requirements for those facilities that are regulated solely by the Division.
7. Elimination of the reporting period requirements for facilities with flows between 10,001 – 50,000 gallons per day. This will make the reporting and sampling requirements consistent with each other.
8. Addition of the ability of a significant industrial user to request a waiver for pollutants not present in their effluent.

These changes are appropriate to ensure that the Colorado Industrial Pretreatment Program continues to be consistent with federal requirements, specifically the 40 CFR 403 “Streamlining Regulation” promulgated by EPA on November 14, 2005.

The Commission found that incorporating the Streamlining Regulation by reference will help facilitate a seamless transition from EPA to State oversight when the Division obtains delegation of the pretreatment program.