

Chapter NR 211

GENERAL PRETREATMENT REQUIREMENTS

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Note: Chapter NR 211 as it existed on July 31, 1983 was repealed and a new chapter NR 211 was created effective August 1, 1983.

NR 211.01 Purpose. The purpose of this chapter is to establish, under s. 147.07 (2), Stats., the responsibilities of industrial users and of publicly owned treatment works in preventing the discharge into publicly owned treatment works of pollutants which will interfere with the operation of the POTW, which will pass through the POTW treatment works insufficiently treated, or which will impair the use or disposal of POTW sludge.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.02 Applicability. The provisions of this chapter apply to industrial users and to publicly owned treatment works which receive or may receive wastewater from such industrial users.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.03 Definitions. The following special definitions are applicable to terms used in this chapter. Definitions of other terms are set forth in ch. NR 205 and ch. 147, Stats.

(1) "Average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values.

(2) "Categorical pretreatment standard" means any standard specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by industrial users in specific industrial categories.

(3) "Consistent removal rate" means a rate of consistent removal as calculated in accordance with s. NR 211.13 (2).

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(4) "Control authority" means the POTW in relation to POTW's which have a pretreatment program and means the department in relation to POTW's which do not have a pretreatment program.

(5) "Existing source" means any source which is not a new source.

(6) "Indirect discharge" means the introduction of pollutants into a POTW from any point source other than residential or commercial sources that discharge only domestic waste. Method of introduction includes, but is not limited to, by pipe, truck, or rail car.

(7) "Industrial user" means any source of indirect discharge.

(8) "Interference" means the inhibition or disruption of a POTW's sewer system, treatment processes, or operations by an indirect discharge which causes or significantly contributes to a violation or to an increase in the magnitude or duration of a violation of any requirement of its WPDES permit, including the impairment of the use or disposal of POTW sludge under chs. 144 and 147, Stats.

(9) "New source" means any building, structure, facility, or installation which discharges or may discharge pollutants, the construction of which commenced after the publication of proposed pretreatment standards in the federal register which will be applicable to such source if such standards are promulgated in accordance with s. 307 (c) of the federal clean water act; 33 U.S.C. 1251 et seq.

(10) "Pass-through" means the discharge of pollutants through the POTW to the POTW receiving waters in quantities or concentrations which cause or significantly contribute to a violation of any requirement of the POTW's WPDES permit, including an increase in the magnitude or duration of a violation.

(11) "POTW" or "Publicly owned treatment works" means a treatment works which is owned by a municipality and any sewers that convey wastewater to such a treatment works. This definition includes any devices or systems used by a municipality in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes. The term also means the municipality or local unit of government which has jurisdiction over the indirect discharges to, and the discharges from, such a treatment works.

(12) "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.

(13) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to, or in lieu of, discharging such pollutants into a POTW.

(14) "Pretreatment program" means a program administered by a POTW that meets the criteria established in subch. II and which has been approved by the department in accordance with subch. III.

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

(16) "Pretreatment standard" means any regulation which applies to industrial users and which contains pollutant discharge limits promulgated by the department in accordance with s. 147.07 (2) (a), Stats. This term includes both prohibited discharge standards set forth in or established under s. NR 211.10 and categorical pretreatment standards set forth in s. NR 211.11 and in chs. NR 221 through 297.

(17) "Prohibited discharge standard" means any standard specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by industrial users regardless of industrial category.

(18) "Regulated stream" means a stream regulated by a categorical pretreatment standard.

(19) "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of a pollutant during treatment at the POTW. The reduction or alteration may be physical, chemical or biological and may be the result of designed POTW capabilities or incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW.

(20) "Sludge requirements" means the following statutory provisions and regulations or permits issued pursuant to them: s. 405 of the federal clean water act; 33 U.S.C. 1251 et seq.; the solid waste disposal act (SWDA), 42 U.S.C. 6901 et seq.; the federal clean air act, 42 U.S.C. 1857 et seq.; the toxic substances control act, 15 U.S.C. 2601 et seq.; the marine protection, research and sanctuaries act, 33 U.S.C. 1401 et seq.; and ch. 144, Stats.

(21) "Unregulated stream" means a stream not regulated by a categorical pretreatment standard.

(22) "WPDES permit" means a permit issued to a POTW under s. 147.02, Stats., for the purposes of controlling pollutant discharge.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. (6), renum. (1) to (5) and (7) to (15) to be (2), (4), (6) to (8) and (10) to (17) and (22), cr. (1), (3), (5), (9) and (18) to (21), Register, September, 1986, No. 369, eff. 10-1-86.

NR 211.04 Severability. History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. under s. 18.93 (2m) (b), 16, Stats. Register, September, 1986, No. 369, eff. 10-1-86.

Subchapter I -- Industrial User Requirements

NR 211.10 Prohibited discharge standards. (1) Industrial users may not discharge pollutants into a POTW which pass through or interfere with the operation or performance of the POTW, and thereby cause or significantly contribute to a violation of the POTW's WPDES permit.

(a) An industrial user significantly contributes to pass-through and the consequent permit violation whenever such user:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by federal, state, or local law;
2. Discharges wastewater which is substantially different in nature or constituents from the user's average discharge;

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3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a violation of the POTW's WPDES permit; or

4. Knows or has reason to know that the POTW is, for any reason, violating the final effluent limitations of its WPDES permit and that the industrial user's discharge, either alone or in conjunction with discharges from other sources, increases the magnitude or duration of the POTW's violation.

(b) An industrial user significantly contributes to interference and the consequent permit violation whenever such user:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by federal, state, or local law;

2. Discharges wastewater which is substantially different in nature or constituents from the user's average discharge; or

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a violation of the POTW's WPDES permit or would prevent municipal sludge use or disposal by the POTW's selected method of sludge disposal in accordance with chs. 144 and 147, Stats.

(2) The following pollutants may not be introduced into a POTW:

(a) Pollutants which create or contribute to a fire or explosion hazard in the POTW.

(b) Pollutants which will cause or contribute to corrosive structural damage to the POTW but in no case discharges with a pH lower than 5.0, unless the POTW is specifically designed to accommodate such discharges.

(c) Solid or viscous pollutants in amounts which will cause or contribute to obstruction to the flow in sewers or other interference with the operation of the POTW.

(d) Any pollutant, including oxygen demanding pollutants, released in a discharge of such volume or strength as to cause or contribute to interference in the POTW.

(e) Heat in amounts which will inhibit or contribute to the inhibition of biological activity in the POTW treatment plant resulting in interference or causing damage to the POTW but in no case heat in such quantities that the temperature exceeds 40°C (104°F) at the influent to the POTW treatment plant unless the department, at the request of the POTW, has approved alternate temperature limits.

(3)(a) POTWs developing pretreatment programs under subchapter II shall develop specific prohibited discharge standards to enforce the general prohibitions of subs. (1) and (2). All other POTWs shall, where the contributions of industrial users result in pass-through or interference and the resulting permit violation is likely to recur, develop and enforce specific prohibited discharge standards which, together with appropriate POTW facility or operation changes, are necessary to ensure continued compliance with the POTW's WPDES permit.

(b) This subsection is not intended to require pretreatment as a substitute for adequate municipal treatment.

(c) Specific prohibited discharge standards may not be developed and enforced by the POTW without giving prior notice to persons or groups who have requested notice and an opportunity to respond.

(d) Where specific prohibited discharge standards are developed by a POTW under this subsection, they shall be deemed pretreatment standards for the purposes of s. 147.07 (2), Stats.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.11 Categorical pretreatment standards. (1) Categorical pretreatment standards for specific point source categories and subcategories are set forth in chs. NR 221 through 297. Limits in categorical pretreatment standards shall apply to the effluent from the process regulated by the standard, unless otherwise specified in the standard. Industrial users shall comply with applicable categorical pretreatment standards, in addition to complying with the general prohibitions established in s. NR 211.10, unless specifically noted otherwise in the categorical pretreatment standard.

(2) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user may increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical pretreatment standard. The control authority may impose mass limitations on industrial users where appropriate to account for dilution.

(3) All industrial users except new sources shall comply with applicable categorical pretreatment standards within the time period specified in the applicable standard. New sources shall comply with applicable categorical pretreatment standards upon the beginning of discharge. A direct discharger which becomes an industrial user after promulgation of an applicable categorical pretreatment standard may not be considered a new source unless it falls within the definition of a "new source" contained in s. NR 211.03 (6).

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.12 Combined wastestream formula. (1) Where effluent from a process regulated by a categorical pretreatment standard is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be established by the control authority or by the industrial user with the written concurrence of the control authority. These alternative limits shall apply to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standards and an alternative consecutive sampling day average value using the long-term average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and long-term average limits approved by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative

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limits for the regulated pollutant. An industrial user shall immediately report any such material or significant change to the control authority. New alternative categorical limits shall be calculated within 30 days.

(2) **ALTERNATIVE LIMIT CALCULATION.** The alternative limit for a specified pollutant shall be derived by either of the following formulas:

(a) Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where:

C_T = The alternative concentration limit for the combined wastestream.

C_i = The categorical pretreatment standard concentration limit for a pollutant in the regulated stream i .

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

F_D = The average daily flow (at least a 30-day average) from:

1. Boiler blow down streams and non-contact cooling streams. However, where such streams contain a significant amount of a pollutant, and the combination prior to treatment of such streams, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon industrial user application, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user shall provide engineering, production, sampling and analysis and other information necessary for the control authority to make its determinations, or

2. Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard,

Note: F_D also includes the average daily flow from any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the *NRDC v. Costle Consent Decree (12 ERC 1833)* for one or more of the following reasons:

a. The pollutants regulated by the categorical pretreatment standard used in the formula are not detectable in the effluent from the industrial user (paragraph (8) (a) (iii));

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

c. The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator of the United States Environmental Protection Agency (paragraph (8) (a) (iii)); or

d. The wastestream contains only pollutants which are compatible with the POTW (paragraph (8) (a) (i)).

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

N = The total number of regulated streams.

(b) Alternative mass limit.

$$M_T = \left(\begin{array}{c} N \\ \sum_{i=1} M_i \\ i=1 \end{array} \right) \left(\begin{array}{c} F_T - F_D \\ N \\ \sum_{i=1} F_i \\ i=1 \end{array} \right)$$

where:

M_T = The alternative mass limit for a pollutant in the combined wastestream.

M_i = The categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

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

F_D = The average daily flow (at least a 30-day average) from:

1. Boiler blow down streams and non-contact cooling streams: provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user shall provide engineering, production, sampling and analysis and such other information so that the control authority can make its determinations, or

2. Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard,

Note: F_D also includes the average daily flow from any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the *NRDC v. Coslle Consent Decree (12 ERC 1333)* for one or more of the following reasons:

- a. The pollutants of concern are not detectable in the effluent from the industrial user (paragraph (8) (a) (iii));
- b. The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8) (a) (iii));
- c. The pollutants of concern are present only in trace amounts too small to be effectively reduced by technologies known to the administrator of the United States Environmental Protection Agency (paragraph (8) (a) (iii));
- d. The wastestream contains only pollutants which are compatible with the POTW (paragraph (8) (b) (i)).

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

N = The total number of regulated streams.

(3) ALTERNATE LIMITS BELOW DETECTION LIMIT. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(4) **SELF-MONITORING.** Self-monitoring to insure compliance with the alternative categorical limit shall be as follows:

(a) The type and frequency of sampling, analysis and flow measurement shall be the self-monitoring requirements of the appropriate categorical pretreatment standards, or as approved by the control authority.

(b) Where the self-monitoring schedules for the appropriate standards differ, monitoring shall be done according to the most frequent schedule:

(c) Where flow determines the frequency of self-monitoring in a categorical pretreatment standard, the sum of all regulated flows (F_i) shall be used to determine self-monitoring frequency.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

Note: On April 30, 1988 the United States court of appeals for the third circuit concluded that "EPA's 1984 removal credit rule fails to meet the requirements mandated by statute", and returned the removal credit provisions of the Federal General Pretreatment Regulations, 40 CFR 403.7, to the U.S. environmental protection agency for review. The 1984 provisions of 40 CFR 403.7 are incorporated in s. NR 211.13 of the Wisconsin Administrative Code. Until the federal removal credit regulations are reinstated or revised, in whole or in part, the department will suspend implementation of the provisions of s. NR 211.13 and will publish this notice of intent in the Wisconsin Administrative Register.

NR 211.13 Removal credits. (1) (a) Any POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, subject to the conditions of this section, grant removal credits for removal by the POTW of pollutants specified in the categorical pretreatment standard. The POTW may grant a removal credit equal to or less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with par. (c).

(b) A POTW may give removal credits only if:

1. The POTW applies for and receives authorization from the department to give a removal credit in accordance with the requirements and procedures specified in sub. (5). Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment standard so specifies.

2. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with sub. (2).

3. Except as provided in sub. (7), the POTW has an approved pretreatment program as required by this chapter; however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in sub. (4).

4. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the department that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its modified categorical pretreatment standard.

5. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the department that even though it is not presently in

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compliance with applicable limitations and conditions in its WPDES permit, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its modified categorical pretreatment standard.

(c) Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

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

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard.

r = removal credit for that pollutant as established under sub. (2) (percentage removal expressed as a proportion, i.e., a number between 0 and 1).

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

(2) **DEMONSTRATION OF CONSISTENT REMOVAL.** In order to demonstrate consistent removal, the POTW shall, for each pollutant which removal credit authorization is sought, collect influent and effluent data and calculate consistent removal in accordance with the following requirements:

(a) At least 12 representative samples of influent and effluent shall be taken at approximately equal intervals throughout one full year. Upon concurrence of the department, a POTW may utilize a historical data base either in lieu of or as a supplement to these 12 samples. In order to be approved, the historical data base shall represent the yearly and seasonal conditions to which the POTW is subject and the POTW's performance for at least one year. Alternatively, a POTW, upon approval of the department, may utilize an alternative sampling design, if the samples to be taken represent the POTW's normal operating conditions and the different seasonal conditions to which the POTW is subject.

(b) The POTW shall use the composite sampling method unless the grab sampling method is more appropriate.

1. Composite method. a. Influent and effluent operational data should be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites shall be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots shall be combined in the laboratory immediately before analysis.

b. Effluent sample collection need not be delayed to compensate for hydraulic detention. However, the POTW may elect to include detention time compensation or the department may require detention time compensation. The department may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample if necessary to represent actual POTW operation. The de-

tention period shall be based on a 24-hour average daily flow value. The average daily flow shall be based on the average of the daily flows during the same month of the previous year.

2. Grab method. If composite sampling is not an appropriate technique, grab samples shall be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples shall precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary to appropriate. The detention period shall be based on a 24-hour average daily flow value. The average daily flow shall be based upon the average of the daily flows during the same month of the previous year. Grab sampling shall be employed where the pollutants being evaluated are those which may not be held for an extended period because of biological, chemical or physical interaction after sample collection which affects the results.

Examples: Cyanide and phenol.

(c) The POTW shall analyze the samples for pollutants in accordance with the analytical techniques prescribed in ch. NR 219. If ch. NR 219 does not contain analytical techniques for the pollutant in question, or if the department determines that ch. NR 219 analytical techniques are inappropriate, the analysis shall be performed using validated analytical methods or any other applicable analytical procedures approved by the department including procedures suggested by the POTW.

(d) 1. For purposes of this paragraph "measurable" refers to the ability of the analytical method to quantify as well as identify the presence of the pollutant in question. "Limit of detectability" refers to the lowest limit at which the analytical method can quantify the pollutant in question.

2. The consistent removal, (r), for a specific pollutant shall be the difference between the average concentrations of the pollutant in the influent of the POTW, (I), and the average concentrations of the pollutant in the effluent of the POTW, (E), divided by I as follows:

$$r = \frac{I-E}{I}$$

The average concentrations of the pollutant in the influent and effluent shall be calculated by taking the arithmetic average of all influent and effluent data, respectively. In calculating consistent removal under this subdivision, all sample data shall be used.

3. If a pollutant is only measurable in some of the influent and effluent samples (including the situation where it is not measurable in any effluent samples) and the POTW elects to calculate consistent removal in accordance with subd. 2, influent and effluent observations below the limit of detectability shall be assigned a value equal to the limit of detectability. In calculating consistent removal under subd. 2 all sample data, including those set at the limit of detectability, shall be used.

4. If a pollutant is only measurable in some influent and effluent samples (including the situation where it is not measurable in any effluent

samples) and the POTW elects not to calculate consistent removal in accordance with subd. 2 or if a pollutant is not measurable in any of the influent samples (in which case the sample data may not be used to calculate consistent removal in accordance with subd. 2), the POTW may:

a. Use historical data as provided in par. (a) to calculate consistent removal, or

b. Upon the concurrence of the department, the POTW may use data from treatability studies, demonstrated removal at similar treatment facilities or provide some other alternative means to demonstrate its consistent removal.

(3) **PROVISIONAL CREDITS.** For pollutants which are not discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal for the first 18 months of discharge shall be based on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Eighteen months after initial discharge of pollutants, consistent removal shall be demonstrated pursuant to the requirements of sub. (2). If the POTW cannot demonstrate consistent removal pursuant to the requirements of sub. (2), the authority to grant provisional removal credits shall be terminated by the department. All industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the department.

(4) **TERMS AND CONDITIONS FOR POTW GRANTING AND CONTINUING CONDITIONAL REMOVAL CREDITS.** A POTW required to develop a local pretreatment program by s. NR 211.20 may give removal credits pending approval of the program under the following terms and conditions:

(a) All industrial users who are currently subject to a categorical pretreatment standard and who apply for a conditional removal credit shall submit to the POTW the information required in s. NR 211.15 (1) (a) to (h). However, new or modified industrial users shall only submit the information required by s. NR 211.15 (1) (a) to (f), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standard as modified by the removal credit;

(b) The POTW shall have submitted to the department an application for pretreatment program approval meeting the requirements of subch. 2 of ch. NR 211 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's WPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(c) The POTW shall:

1. Compile and submit data demonstrating its consistent removal in accordance with sub. (2);

2. Comply with the conditions specified in sub. (1) (b); and

3. Submit a complete application for removal credit authority in accordance with sub. (5);

(d) If a POTW receives authority to grant conditional removal credits and the department subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in pars. (b) and (c), the authority to grant conditional removal credits shall be terminated by the department. All industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department.

(e) If a POTW grants conditional removal credits and the POTW or the department subsequently makes a final determination, after appropriate notice, that the industrial user failed to comply with the conditions in par. (a), the conditional credit shall be terminated by the POTW or the department for the non-complying industrial user. The industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department. The conditional credit may not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or the industrial user had demonstrated substantial compliance.

(f) The department may decide not to review an application for conditional removal credit authority, in which case the conditionally revised discharge limits shall become effective and remain in effect until reviewed by the department. This review shall be conducted in accordance with the procedures of s. NR 211.30 before any pretreatment program approval or any WPDES permit reissuance pursuant to the pretreatment program approval.

(5) POTW APPLICATION FOR AUTHORIZATION TO GIVE REMOVAL CREDITS. (a) Any POTW that wants to give removal credits or modify existing ones shall apply for authorization from the department. Such application may be submitted at any time and shall include the following information:

1. A list of pollutants for which removal credits are proposed;
2. The data required pursuant to sub. (2);
3. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with sub. (1) (c);
4. A certification that the POTW has an approved local pretreatment program or qualifies for the exceptions to this requirement found in subs. (4) and (7);
5. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in sub. (1) (b) 4; and

6. A certification that the granting of removal credits will not cause a violation of the POTW's WPDES permit limits and conditions as required in sub. (1) (b) 5.

(b) The department shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of s. NR 211.30 within 180 days from public notice of an application to complete review.

(c) Nothing in these regulations precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(6) CONTINUATION AND WITHDRAWAL OF AUTHORIZATION. (a) A POTW authorized to grant removal credits for a pollutant regulated in a categorical pretreatment standard may extend that removal credit to the same pollutant when it is regulated in other categorical standards. If a POTW elects to extend removal credits to a new categorical standard, industrial subcategory, or one or more industrial users that were not granted removal credits, it shall notify the department. A POTW may extend removal credits if granting the removal credit will not cause the POTW to violate the sludge requirements identified in sub. (1) (b) 4, or its WPDES permit limits and conditions as required by sub. (1) (b) 5.

(b) Removal credits shall be included in the authorized POTW's WPDES permit as soon as possible and shall become an enforceable requirement of the POTW's WPDES permit. The removal credits shall remain in effect for the term of the POTW's WPDES permit, provided the POTW maintains compliance with the conditions specified in par. (d).

(c) A POTW authorized to give removal credits shall monitor and report on the POTW's removal capabilities. The reporting period shall be specified by the department and may not be less than once per year. A minimum of one sample per month during the reporting period is required, and all sampling data shall be included in the POTW's compliance report. As a condition of retaining removal credit authorization, the POTW's consistent removal shall continue to be equal to or greater than the removal credit.

(d) 1. Compliance with the conditions in sub. (1) (b) 3 to 5 may be reviewed by the department whenever it elects and shall, at the very least, be reviewed whenever the POTW's WPDES permit is reissued. If the department determines, on the basis of compliance monitoring reports or other information available to it, that the conditions specified in sub. (1) (b) 3 to 5 are not being met, the department shall withdraw the POTW's authority to grant removal credits or modify those credits in accordance with the procedures specified in subd. 3.

2. If, during the term of the POTW's WPDES permit, the department determines that the POTW's consistent removal rate is consistently and substantially lower than the removal credit specified in the POTW's WPDES permit, the department shall either withdraw the POTW's authority to grant removal credits or modify those credits in accordance with the procedures specified in subd. 3.

3. If the department tentatively determines, under subd. 1 or 2, to withdraw a POTW's authority to grant removal credits or modification of those credits, the department shall, in accordance with the procedures

specified in s. NR 211.30, issue a public notice, provide a public comment period of at least 30 days and provide an opportunity for interested persons to request a public hearing. The mailing list for the public notice shall include, at a minimum, the POTW and industrial users to whom revised discharge limits have been applied. If the department finally determines to withdraw the POTW's authority to grant removal credits or to modify those removal credits the POTW is authorized to grant, it shall notify the POTW, all industrial users to whom revised limits have been applied and each person who has requested individual notice of its decision and the basis for that decision. Notice shall also be published in the same newspaper that published the notice of the tentative determination. Following such notice and modification or withdrawal, all industrial users to whom revised discharge limits have been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standard. The industrial users shall comply with such limits within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department.

(7) Where the department has not required the POTW to develop a pretreatment program, the POTW may not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW shall, however, be required to comply with the other conditions of sub. (1) (b).

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

NR 211.14 Fundamentally different factors variances. (1) Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user, and that the existence of those factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard may request a fundamentally different factors variance under this section. Such a variance request may be initiated by EPA.

(2) (a) A request for a fundamentally different factors variance may be approved only if:

1. Factors relating to the industrial user which would be affected by the variance are fundamentally different from the factors considered in establishing the applicable categorical pretreatment standard;
2. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been proposed; and
3. The procedural requirements of this section have been met.

(b) A request for a fundamentally different factors variance to establish limits less stringent than required by the categorical pretreatment standard may be approved only if:

1. The alternative limit requested is no less stringent than justified by the fundamental difference; and
2. The alternative limit will not result in a violation of any prohibited discharge standard set forth in or established under s. NR 211.10;

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3. The alternative limit will not result in an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during development of the categorical pretreatment standard; and

4. Compliance with the applicable categorical pretreatment standard would result in either a removal cost wholly out of proportion to the removal cost considered during development of the standard or an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during development of the standard.

(c) A request for a fundamentally different factors variance to establish limits more stringent than required by the categorical pretreatment standard may be approved only if:

1. The alternative limit requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative limit would not result in either a removal cost wholly out of proportion to the removal cost considered during development of the standard or an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during the development of the standard.

(3) Factors considered fundamentally different are:

(a) The nature or quality of pollutants contained in the industrial user's raw process wastewater;

(b) The volume of the industrial user's process wastewater and the volume of effluent discharged;

(c) The environmental impact, other than that related to water quality, of control and treatment of the industrial user's raw process wastewater;

(d) The energy requirements of the application of control and treatment technology;

(e) Age, size, and configuration of the industrial user's equipment, facilities, production processes and process changes, availability of land, and engineering aspects of the application of control technology; and

(f) The cost of compliance with required control technology.

(4) Factors which may not be considered fundamentally different are:

(a) The feasibility of installing the required pretreatment equipment within the time allowed by the categorical pretreatment standard;

(b) The assertion that the standard cannot be achieved with the appropriate pretreatment equipment installed, if such assertion is not based on factors listed in sub. (3);

(c) The industrial user's ability to pay for the required pretreatment equipment; or

(d) The impact of a discharge on the quality of the POTW's receiving water.

(5) Requests for a variance shall be submitted in writing to the department within 180 days after the effective date of the federal categorical pretreatment standard. If the industrial user has requested a categorical determination under s. NR 211.33, the request for a fundamentally different factors variance may be delayed to within 30 days after the final decision on the category determination has been made. Variance requests shall include the following:

- (a) The name and address of the person making the request;
- (b) Identification of the interest of the person making the request;
- (c) Identification of the POTW receiving the indirect discharge from the industrial user for which the variance is requested;
- (d) Identification of the categorical pretreatment standards applicable to the industrial user;
- (e) A list of each pollutant for which an alternative discharge limit is sought;
- (f) The alternative discharge limits being proposed for each pollutant identified in par. (e);
- (g) A description of the industrial user's existing pretreatment equipment;
- (h) A schematic flow chart of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and
- (i) A statement of facts clearly establishing why the variance request should be approved, including detailed supporting data, documentation and evidence necessary to fully evaluate the merits of the request.

(6) The department will act only on written requests for variances which contain all of the information required in sub. (5). Persons who submit incomplete requests will be notified that the requests are deficient and will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days, or within an extended period if allowed by the department, the request for the variance shall be denied.

(7) The department shall publish a notice of its receipt of a request for a fundamentally different factors variance and shall mail copies of the notice to the affected industrial user and any other interested party. The public notice shall be published as a Class I notice under ch. 985, Stats., in a newspaper of general circulation in the area in which the industrial user is located. The department shall allow a 30-day period for public review and comment.

(8) If the department finds that fundamentally different factors do not exist, the department shall deny the request. If the department finds that fundamentally different factors do exist, the request and findings shall be forwarded to EPA for EPA's approval, disapproval, or revision and approval of the variance. A copy of the final determination shall be sent to the person requesting the variance, and to the affected industrial user and POTW.

NR 211.15 Monitoring and reporting requirements. (1) Within 180 days after the effective date of a categorical pretreatment standard as published in the federal register, or 180 days after the final decision in a request for category determination under s. NR 211.33, whichever is later, industrial users subject to that standard which are not new sources and which are currently discharging or scheduled to discharge into a POTW shall submit to the control authority a report containing the information listed in pars. (a) through (g). New sources shall submit a report to the control authority which at a minimum contains the information listed in pars. (a) through (e). The control authority may require the industrial user to submit any additional information which the control authority finds is necessary to determine the industrial user's ability to meet the applicable pretreatment standards.

(a) The name, address, and location of the industrial user and the name of the owner or operator.

(b) A list of any environmental control permits held by or for the industrial user.

(c) The nature and average rate of production and the standard industrial classification of the processes carried out by the industrial user. This description shall include a schematic diagram which indicates points of discharge to the POTW from the processes regulated by the applicable categorical pretreatment standard.

(d) The measured average and maximum flows from the industrial user to the POTW, in gallons per day, from regulated process streams and other streams as necessary to allow use of the combined wastestream formula of s. NR 211.12. When approved by the control authority based on considerations of cost or accessibility, the average and maximum flow of the discharge may be estimated by verifiable techniques.

(e) The nature and concentration of pollutants in the discharge from each of the industrial user's regulated processes and an identification of applicable categorical pretreatment standards and pretreatment requirements. The nature and concentration of pollutants in each discharge shall be determined in accordance with subds. 1. through 6.

1. Sampling and analysis shall be performed to identify the concentration (or mass where required by the applicable categorical pretreatment standard or by the control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average values shall be reported. Samples shall be representative of daily operations and shall be flow proportional composites. Where composite sampling is not feasible, grab sampling may be used.

2. Where the flow of the stream being sampled is 950,000 liters per day (250,000 gallons per day) or less, the industrial user shall take 3 samples within a 2 week period. Where the flow of the stream being sampled is greater than 950,000 liters per day, 6 samples shall be taken within a 2 week period.

3. Samples shall be taken at the discharge from the regulated process, or at the discharge from pretreatment facilities provided that wastewaters that are not regulated by the applicable categorical pretreatment standard are not mixed with the regulated wastestream prior to the sampling point. Where sampling according to this provision is not feasible, the department may consider allowing alternative means of sampling to

be used to determine compliance with the applicable categorical pretreatment standard at the point of discharge from the regulated process. If streams which are not regulated by the applicable categorical pretreatment standard are mixed with the regulated stream prior to the sampling point, the industrial user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of s. NR 211.12 in order to evaluate compliance with the pretreatment standards. Where an alternative concentration or mass limit has been calculated in accordance with s. NR 211.12 this adjusted limit along with the supporting data shall be submitted to the control authority.

4. Representative historical data may be used with the approval of the control authority.

5. The report shall indicate the time, date, and place of sampling, method of analysis, and shall certify that sampling and analysis are representative of normal work cycles and expected pollutant discharges to the POTW.

(f) A statement indicating whether the applicable categorical pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance, or additional pretreatment, or both, is required in order for the industrial user to meet the applicable categorical pretreatment standards. The statement shall be reviewed by an authorized representative of the industrial user and certified by a qualified professional.

(g) If additional pretreatment or operation and maintenance is needed, the industrial user shall submit the shortest schedule by which additional treatment or operation and maintenance can be provided. The completion date resulting from this schedule may not be later than the compliance date established for the applicable categorical pretreatment standard. The schedule shall specify dates for the commencement and completion of the major events necessary to provide the additional pretreatment or operation and maintenance. The length of time between any 2 dates may not exceed 9 months.

(h) Where the industrial user's discharge limit has been modified by a fundamentally different factors variance (s. NR 211.14), a removal credit (s. NR 211.13), or the combined wastestream formula (s. NR 211.12) at the time the report is submitted, the information required in pars. (f) and (g) shall pertain to the modified limit. Revisions to the information submitted under pars. (f) and (g) may be required by the department where the industrial user's discharge limit is modified at a later date.

(2) Not later than 14 days following each date in the schedule required in sub. (1) (g), the industrial user shall submit to the control authority a progress report, including at a minimum a statement of whether the required event was completed by the specified date and if not, the reason for delay, the steps being taken to return to the schedule, and the date on which the required event will be completed.

(3) A report shall be submitted to the control authority within 90 days after the date for final compliance with applicable categorical pretreatment standards or, for new sources, the date on which wastewater is first discharged to the POTW. The report shall indicate the nature and concentration of pollutants in the industrial user's discharge that are regu-

lated by the applicable categorical pretreatment standards, and the average and maximum daily flow for processes regulated by the applicable categorical pretreatment standards. The report shall state whether or not the applicable categorical pretreatment standards are being met on a consistent basis. The report shall also include a statement of what steps must be taken to achieve compliance with the categorical pretreatment standards if these standards are not being met. The statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

(4) After the compliance date for a categorical pretreatment standard, industrial users shall submit semi-annual reports to the control authority. New sources shall submit the semi-annual reports to the control authority after commencement of discharge to the POTW. The report shall indicate the nature and concentration of pollutants in the effluent that are regulated by the categorical pretreatment standard and, where requested by the control authority, production data and the mass of pollutants in the discharge which are limited by the categorical pretreatment standards. This report shall also include a record of measured or estimated average and maximum daily flows for the reporting period. Flows shall be reported in gallons per day. These reports shall be submitted during June and December unless otherwise specified by the control authority. Industrial users shall submit reports more frequently if required to do so by the control authority, or the department, or the applicable categorical pretreatment standards.

(5) In order to provide the data required to complete the reports specified in subs. (3) and (4), the industrial user shall sample and analyze regulated pollutants and pollutant properties at least one operating day during each reporting period. Sampling shall be performed during full facility production when substances subject to regulation, including those in batch or periodic discharges, are likely to be present in maximum concentrations or quantities for the reporting period.

(6) The industrial user shall notify the POTW immediately of any slug loading in violation of s. NR 211.10 (2).

(7) All reports required by this section shall be signed by:

(a) A principal executive officer of at least the level of vice president if the industrial user is a corporation;

(b) A general partner if the industrial user is a partnership;

(c) The proprietor if the industrial user is a sole proprietorship; or

(d) A duly authorized representative of the individual designated in pars. (a) through (c) if such representative is responsible for the overall operation of the facility producing the indirect discharge.

(8) (a) Analysis of the samples required by this section shall be performed in accordance with ch. NR 219. Laboratory test results for radiological samples submitted by the industrial user to the department shall be performed by a laboratory approved by the department of health and social services. Other laboratory test results submitted by the industrial user to the department shall be performed by a laboratory certified or registered under ch. NR 149. Sample results submitted by the industrial user to the POTW need not be from a certified or registered laboratory. The following tests are excluded from this requirement:

1. Temperature,
2. Turbidity,
3. Bacteria tests in wastewater effluent,
4. pH,
5. Chlorine residual,
6. Specific conductance,
7. Flow measurements.

(b) Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from all monitoring activities. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
2. The dates the analyses were performed;
3. The name of the person who performed the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(c) Any industrial user subject to the reporting requirements established in this section shall retain for a minimum of 3 years all records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by EPA, the department, and the receiving POTW. This period for retaining records shall be extended during the pendency of any litigation to which the industrial user or the POTW into which the industrial user discharges is a party, or when requested by the department or EPA.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. (1) (e) 4., renum. (1) (e) 5. and 6., (8) (a) and (b) to be (1) (e) 4. and 5., (8) (b) and (c), am. (5), cr. (8) (a), Register, April, 1986, No. 364, eff. 8-28-86; am. (1) (d), (e) 3. and (h), Register, September, 1986, No. 369, eff. 10-1-86.

Subchapter II — POTW Requirements

NR 211.20 Establishment of pretreatment programs. The department may require any POTW with a design flow greater than 5 MGD which receives indirect discharges which pass through or interfere with the POTW's operations or are subject to pretreatment standards to establish a POTW pretreatment program in accordance with the provisions of ss. NR 211.21 through 211.26. In addition, the department may require any POTW with a design flow of 5 MGD or less to establish such a program or part of such a program if the nature or volume of industrial user contributions, treatment process upsets, violations of POTW effluent limits, contamination of municipal sludge, or other circumstances warrant such a program in order to prevent interference with POTW treatment operations or the pass-through of untreated pollutants or in order to improve opportunities for disposal of municipal sludge. The pretreatment program shall be developed in accordance with a compliance schedule established by the department in the POTW's WPDES permit which Register, September, 1986, No. 369

calls for the completion by specific dates of major events leading to the development and implementation of the pretreatment program.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.21 Compliance dates. A POTW shall receive approval for a pretreatment program no later than 3 years after the reissuance or modification of its existing WPDES permit to require the development of a pretreatment program, but in no case later than July 1, 1983. In order to receive such approval the POTW must meet the requirements of ss. NR 211.22 through 211.26.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.22 Legal authority requirements. Where the department requires a POTW to develop a pretreatment program under this subchapter, the POTW shall operate under legal authority, enforceable in federal or state courts, which at a minimum enables the POTW to perform the following functions:

(1) Deny or condition new or increased discharge of pollutants, or changes in the nature of pollutants, discharged to the POTW by industrial users where such discharges do not meet applicable pretreatment standards and requirements or where such discharge causes the POTW to violate its WPDES permit.

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

(3) Control through permit, contract, order, or similar means the discharge to the POTW by each industrial user.

(4) Require the development by industrial users of the compliance schedules required under s. NR 211.15 (1) (g).

(5) Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements.

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, whether industrial users are complying with applicable pretreatment standards and requirements. Representatives of the POTW must be authorized to enter any premises of any industrial user in which an affluent source or treatment system is located or in which records are required to be kept, under s. NR 211.15 (8), to assure compliance with pretreatment standards and requirements.

(7) Obtain remedies for noncompliance by any industrial user with any pretreatment standard or requirement. All POTWs must be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. In cases in which the POTW has the power to enact ordinances or rules, the POTW shall pass ordinances or rules giving it the authority to seek or assess civil or criminal penalties for noncompliance by industrial users with pretreatment standards and requirements. POTWs without such authority shall enter into contracts with industrial users to assure compliance by industrial users with pretreatment standards and requirements. All contracts shall provide for liquidated damages for violation of pretreatment standards and requirements and shall include an agreement by the industrial user to submit to

the remedy of specific performance for breach of contract. Pretreatment requirements which will be enforced through the remedies set forth above shall include but not be limited to, the duty of the industrial user to allow the POTW to enter and to carry out inspections and monitoring activities; the duty of the industrial user to comply with all rules, regulations, and orders issued by the POTW; and the duty of the industrial user to comply with all reporting requirements imposed by the POTW or by this chapter.

(8) After informal notice to the industrial user, immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appear to present an imminent danger to the health or welfare of persons.

(9) After notice to the industrial user and an opportunity to respond, halt or prevent any discharge to the POTW which endangers the environment or which threatens to interfere with the operation of the POTW.

(10) Comply with the confidentiality requirements of s. NR 211.26.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.23 Procedural requirements. (1) Where the department requires a POTW to develop a pretreatment program under this subchapter the POTW shall have procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

(a) Identify and locate all possible industrial users who might be subject to the pretreatment program.

(b) Identify the character and volume of pollutants contributed to the POTW by industrial users.

(c) Notify industrial users of applicable pretreatment standards and requirements including those relating to user charges and solid or hazardous waste disposal.

(d) Receive and analyze self-monitoring reports and other notices submitted by industrial users.

(e) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independently of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards.

(f) Investigate instances of noncompliance by collecting and analyzing samples and other information with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

(g) Annually publish, in the largest daily newspaper published in the municipality in which the POTW is located, a list of the industrial users which, during the previous 12 months, significantly violated applicable pretreatment standards or requirements. The notification shall also summarize the enforcement actions taken by the POTW in the same 12-month period. The the purposes of this provision, a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance, which is part of a pattern of noncompliance over a 12-month period, or which involves a failure to accurately report noncom-

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pliance or which resulted in the POTW exercising its emergency authority as required by s. NR 211.22 (8) and (9).

(h) Information obtained under pars. (a) through (f) shall be made available to the department or EPA upon request.

(2) The POTW shall have sufficient resources and qualified personnel to carry out the authority and procedures described in this section and s. NR 211.22, unless conditional approval of the pretreatment program is requested under s. NR 211.24 (2).

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.24 Requests for pretreatment program approval. (1) A POTW requesting approval of its pretreatment program shall submit to the department in triplicate a description of the pretreatment program containing the following:

(a) A statement from the POTW's attorney that the POTW has adequate legal authority to carry out the pretreatment program. This statement shall identify the POTW's source of those legal powers required under s. NR 211.22, and shall identify the manner in which the POTW will implement the requirements of s. NR 211.23.

(b) A copy of all statutes, ordinances, regulations, contracts, agreements, and other written legal authority relied upon by the POTW for its administration of the pretreatment program.

(c) A statement reflecting approval of the POTW's pretreatment program by the local governmental bodies responsible for supervising and funding the pretreatment program.

(d) A brief description, including organizational charts, of the POTW or other governmental bodies which will administer the pretreatment program, and their respective responsibilities.

(e) A description of the funding for the pretreatment program and full and part-time positions available to implement the program.

(2) The department may grant conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program provided that the conditions of pars. (a) through (c) are met. The POTW must submit a written request for conditional approval containing, in addition to the information required in sub. (1), facts to support a conclusion that the conditions set forth in pars. (a) through (c) are met. The conditional approval of the POTW pretreatment program may be withdrawn if funding and personnel are not acquired by a date established by the department.

(a) The delayed funding and hiring of personnel is directly related to an aspect of the program which the POTW is not required to implement immediately.

(b) The POTW has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately.

(c) Funding and personnel for those aspects of the program to be implemented at a later date will be available when needed. The POTW shall describe the mechanism by which the funding will be acquired.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.25 Reporting requirements. (1) The POTW shall submit interim program development documents to the department as required by the compliance schedule in its WPDES permit. If a required interim document has not been submitted on time, the POTW shall indicate the date by which it expects to complete the document, the reasons for delay, and the steps taken to return to the established schedule.

(2) Documents submitted in accordance with this section shall be signed by a principal executive officer, ranking elected official, or a duly authorized employe if the employe is responsible for the overall operation of the POTW.

(3) (a) Analysis of monitoring samples taken by any POTW operating a pretreatment program shall be performed in accordance with ch. NR 219. Laboratory test results for radiological samples submitted by the POTW to the department shall be performed by a laboratory approved by the department of health and social services. Other laboratory test results submitted by the POTW to the department shall be performed by a laboratory certified or registered under ch. NR 149. The following tests are excluded from this requirement:

1. Temperature,
2. Turbidity,
3. Bacteria tests in wastewater effluent,
4. pH,
5. Chlorine residual,
6. Specific conductance,
7. Flow measurements.

Note: The requirement in this section to submit data from a certified or registered laboratory is effective on December 28, 1986.

(b) Any POTW operating a pretreatment program shall maintain records of information resulting from all monitoring activities. These records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
2. The dates the analyses were performed;
3. The name of the person performing the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(c) Records and results from all monitoring activities, whether required by this section or not, shall be retained for a minimum of 3 years. This time period shall be extended at the department's request or during Register, September, 1986, No. 369

the pendency of any litigation to which the POTW or any industrial user discharging to the POTW is a party. These records shall be made available for inspection or copying to the department and EPA upon request.

(d) All POTW's receiving reports from industrial users are required under s. NR 211.15, shall retain those reports for a minimum of 3 years. This period shall be extended during the pendency of any litigation to which the POTW or any industrial user discharging to the POTW is a party or at the request of the department or EPA. These reports shall be made available for inspection or copying to the department and EPA.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; renum. (3) (Intro.) (a) to (e) and (4) and (5) to be (3) (b), (3) (b) 1. to 6. and (3) (c) and (d), cr. (3) (a), Register, April, 1986, No. 364, eff. 8-28-86; am. (3) (a), Register, September, 1986, No. 369, eff. 10-1-86.

NR 211.26 Confidentiality. Effluent data submitted to the control authority under this chapter shall be a public record within the meaning of s. 19.21, Stats. All other information submitted to the control authority under this chapter shall be a public record unless the information is entitled to confidential treatment under s. 147.08(2), Stats., and s. NR 2.19 as a trade secret. POTWs operating a pretreatment program must enact ordinances or rules giving them the authority to treat as confidential information which is a trade secret.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Subchapter III — Department Activities

NR 211.30 Pretreatment program approval and removal credit authorization. (1) Upon receipt of a request from a POTW for pretreatment program approval or removal credit authorization, the department shall perform an initial review to determine the completeness of the submittal. If the submittal is not complete, the department shall notify the POTW of the deficiencies and shall suspend review until the submittal is complete.

(2) Within 30 days after making the initial determination that the POTW submittal meets the requirements of ss. NR 211.22 through 211.26 for pretreatment program approval, and s. NR 211.13 for removal credit authorization, the department shall publish a public notice of receipt of the request or authorization. The notice shall provide an opportunity for the POTW or any interested person to submit written comments or to request a public hearing under s. 147.13, Stats., with respect to the submittal. The public notice shall provide a period of not less than 30 days following the date of public notice during which time written comments and requests for public hearing shall be filed. All written comments received during this time shall be considered in determining whether or not to approve the POTW's request. The comment period may be extended at the department's discretion.

(3) The department shall hold a hearing if the requirements of s. 147.13, Stats., are met. Public notice of the hearing shall be provided under s. 147.13, Stats.

(4) The department shall have 90 days from the date of public notice of receipt of any request for approval or authorization submitted in compliance with the requirements of s. NR 211.24 for pretreatment program approval and s. NR 211.13 for removal credit authorization, to review the request for compliance with the requirements of ss. NR 211.22

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through 211.26 and s. NR 211.13. The department may have up to 90 days more to complete its review if the comment period provided for in sub. (2) is extended beyond 30 days or if a public hearing is held under s. 147.13, Stats. In no event shall the total time for evaluation exceed 180 days from the date of public notice of receipt of a request for approval or authorization.

(5) At the end of this evaluation and comment period the department shall either approve or disapprove the request for approval or authorization. The department shall publish a notice of determination to approve or disapprove the pretreatment program or removal credit authorization and shall mail copies of the notice to the POTW and to each person who submitted a written comment or participated in the public hearing or who requested a copy of the notice. If the pretreatment program is not approved or if the removal credit authorization is not granted, the notice of disapproval or denial shall state the modifications and revisions necessary to bring the pretreatment program or removal credit request into compliance with applicable requirements.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. Register, September, 1986, No. 369, eff. 10-1-86.

NR 211.31 Department activities in the absence of a pretreatment program. (1) In the absence of a pretreatment program, the department may:

(a) Identify and locate all possible industrial users which might be subject to pretreatment standards or requirements.

(b) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under par. (a).

(c) Notify industrial users identified under par. (a) of applicable pretreatment standards and of any applicable solid or hazardous waste disposal requirements under ch. 144, Stats.

(d) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements of s. NR 211.15.

(e) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independently of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards.

(f) Investigate instances of noncompliance with pretreatment standards and requirements indicated in the reports and notices required under s. NR 211.15.

(g) Annually publish in the largest daily newspaper published in the municipality in which the POTW is located, the names of industrial users which during the previous 12 months significantly violated applicable pretreatment standards or requirements. The notification shall summarize enforcement actions taken by the control authority during the same 12 months. For the purposes of this provision a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance, which is part of a pattern of noncompliance over a 12-month period, or which involves a failure to accurately report noncompliance.

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(2) At the discretion of the department, portions of the pretreatment program responsibility may be delegated to the POTW, with the department implementing those portions not delegated to the POTW.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.32 Supplemental compliance monitoring and enforcement activities. (1) In cases where a POTW has a pretreatment program the department may perform such activities as are necessary to ensure that pretreatment standards and requirements are being properly implemented and enforced by the POTW. These activities may include but are not limited to:

(a) Review of monitoring reports submitted by the industrial users and POTW as required by ss. NR 211.15 and 211.25; and

(b) Periodic inspection, surveillance, and monitoring of POTW and industrial user operations.

(2) In cases in which the POTW has failed to seek judicial relief for violations of its ordinances or rules by industrial users or where the department deems such action or penalty to be insufficient, the department may seek civil and criminal penalties and injunctive relief from the industrial user or POTW, as necessary, under this chapter and ch. 147, Stats.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.33 Certification of industrial user category. (1) Within 60 days after the effective date of categorical pretreatment standard or within 60 days after notice in the federal register of the availability of the technical development document for a subcategory under which an industrial user believes itself to be included, whichever is later, the industrial user may request the department to provide written certification that the industrial user does or does not fall within that particular subcategory. New sources desiring certification must request this certification prior to commencing discharge.

(2) A POTW may file a request for certification under sub. (1) relating to an industrial user discharging into the POTW. Where a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of such submission. The industrial user may provide written comments on the POTW submission to the department within 30 days after the date of notification.

(3) Each request for certification shall be submitted to the department and shall contain a statement describing which subcategories might be applicable and citing facts and reasons why a particular subcategory is applicable and why others are not applicable. Each such statement shall contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his or her information and belief. The oath shall be attested to by a notary public.

(4) The department will act only on written requests for certification which contain all the information required. Persons who have made incomplete requests will be notified by the department that their requests are deficient and will be given at least 30 days to correct the deficiency. If the deficiency is not corrected within 30 days, or within an extended per-

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iod allowed by the department, the request for certification shall be denied.

(5) Upon receipt of a request for certification the department shall, after determining that it contains all of the information required in sub. (3), consider the request, any additional information that the department may have requested, and any other available information relevant to the request. The department shall make a written determination of the applicable subcategory and state the reasons for its determination. This determination shall be forwarded to EPA which will make the final determination. EPA may approve, disapprove, or revise and approve the department's determination. A copy of the final determination shall be sent to the applicant by the department.

(6) The final determination shall apply only to the industry and to the facts that are presented at the time of the request for certification. Any changes in processes, raw materials, or other particulars may result in the invalidation of the certification.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.34 Pretreatment standards and requirements based upon federally promulgated regulations. (1) In the event that federal regulations establishing pretreatment standards or requirements are promulgated for any point source to which the provisions of this chapter apply, the department may implement and enforce these pretreatment standards and requirements based upon the federal regulations after publishing a notice of its intent to do so in the Wisconsin administrative register.

(2) The department shall, as soon as possible after the promulgation of any federal regulation establishing pretreatment standards or requirements as described in sub. (1), adopt appropriate pretreatment standards or requirements for point sources subject to this chapter in the Wisconsin administrative code.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.