

ATTACHMENT B
GUIDANCE ON PREPARING COMPLIANCE SCHEDULES FOR
DEVELOPING POTW PRETREATMENT PROGRAMS

GENERAL COMMENTS:

Section 403.8(d) of the general pretreatment regulation (40 CFR part 403) requires that NPDES permits for POTWs which are required to develop a POTW pretreatment program incorporate a compliance schedule for the development of such a program. In some cases, this compliance schedule will be incorporated into affected POTW permit upon reissuance at the end of its existing term.

In many cases, however, the compliance schedule will be incorporated into the POTW permit in mid-term through a permit modification. It is anticipated that in many instances this pretreatment compliance schedule will be inserted into the NPDES permit for applicable POTWs when the permit is modified or reissued in mid-term in connection with a 301(i)(1) determination (i.e., the determination as to whether or not the schedule for development of secondary treatment should be extended under the provisions of section 301(i)(1) of the Act, see 40 CFR 124.104). Similarly, a POTW which is required to develop a pretreatment program will have a pretreatment compliance schedule inserted in its NPDES permit if that permit is modified or reissued in order to grant a waiver of secondary treatment requirements under the provisions of section 301(h) of the Act. (See proposed 40 CFR Part 233.) In addition, a POTW permit will be modified in mid-term to incorporate a schedule for the development of a POTW pretreatment program, where the operation of a POTW without a pretreatment program poses significant public health, environmental or related concerns, or where a pretreatment program compliance schedule must be developed to coordinate with construction grant awards.

The compliance schedule will require that the permittee develop the authorities, procedures and resources, as defined by 40 CFR 403.8 and 403.12, which comprise an approvable POTW pretreatment program. The activities listed in the attached model compliance schedule summarize the more detailed requirements found in sections 403.8 and 403.12 of the pretreatment regulation. It is recommended that the permit-issuance authority review the more detailed requirements set forth in the regulation before developing the pretreatment compliance schedule, and insert additional schedule activities where appropriate.

There are several time limitations imposed by the pretreatment regulation and the construction grant regulation (40 CFR part 35) which should be considered in establishing compliance schedule dates. The pretreatment regulation provides that the compliance schedule will require the development and approval of a POTW pretreatment program as soon as reasonable and within 3 years after the schedule is incorporated

into a POTW's permit but in no case later than July 1, 1983 (see §403.8). Since up to 6 months must be allowed for the program approval process according to section 403.11 of the pretreatment regulation, the compliance schedule date for submission of a pretreatment program for approval (activity 8 of the compliance schedule) should be 2-1/2 years from the incorporation of a compliance schedule or January 1, 1983, whichever is sooner.

Provisions of the construction grants regulations impose what may be in some cases stricter time constraints on the development of an approvable program. For example, section 35.920-3 of the construction grants regulation provides that no grantee may receive a Step 3 grant after December 31, 1980, until it has developed an approvable pretreatment program. Thus, a permittee which is scheduled to receive a Step 3 construction grant in January 1981 will be required to develop an approvable program at the outside by January 1981. However, if that same permittee received a compliance schedule for the development of a pretreatment program in December 1978 it would be allowed, by the pretreatment regulation, an outside date of June 1981 (i.e., 2-1/2 years from the incorporation of the compliance schedule) to develop an approvable program. In this case, the more stringent time limitation, i.e., that posed by the construction grant regulation, would apply.

As the example above indicates, in developing the schedule date for the submission of an approvable pretreatment program, the permit-issuance authority must use that date prescribed by either the pretreatment regulation or the construction grants regulation which provides the shortest time for the development of the program. In addition, the permit-issuance authority may impose reasonable time limitations which are more restrictive.

DEVELOPMENT OF THE PRETREATMENT COMPLIANCE SCHEDULE

It is apparent from the general discussion above that several different regulatory provisions influence the development of the schedule date for submitting a POTW pretreatment program for approval (compliance schedule activity 8). Regulatory limitations on the time frame for developing a program can be summarized as follows:

- o approval within 3 years from the incorporation of a pretreatment compliance schedule in the municipal permit (application for approval within 2-1/2 years). See 40 CFR 403.8.
- o approval by July 1, 1983 (application for approval by January 1, 1983). See 40 CFR 403.8.

- o approval prior to payment of grants beyond 90% of the Step 3 funding (application for approval 6 months before this date). See 40 CFR 35.935-19.
- o development of an approvable pretreatment program by the end of the Step 2 grant for certain permittees. See 40 CFR 35.920-3.
- o approval by whatever more stringent time limit is imposed by the permit-issuance authority.

In addition, the construction grant regulation imposes an interim time limitation on the development of compliance schedule activities 1-3. According to this regulation, grantees with amended Step 1 grants must have completed activities 1-3 by the time of application for the Step 2 grant if the Step 2 is to be awarded after June 30, 1980.

Facilities required to develop a POTW pretreatment program can generally be divided into 4 groups depending upon the applicability of the time limitations discussed above. See attached Chart A.

GROUP 1 Facilities which will have received Step 1 and 2 construction grants or amendments before June 30, 1980, and a Step 3 construction grant before December 31, 1980.

If a grantee is scheduled to receive its Step 2 and 3 construction grants before June 30, 1980 and December 31, 1980, respectively, the construction grant regulation (40 CFR 35.935-19) requires that, in most cases, the grantee have an approved POTW pretreatment program before it receives the last 10% of its Step 3 grant funding. This means that the grantee would be required to apply for POTW pretreatment program approval at least 6 months before it is scheduled to receive payment beyond 90% of its Step 3 funding.*

The pretreatment regulation (40 CFR 403.8(d)) provides that such a grantee should request approval of the POTW pretreatment program within 2-1/2 years from the incorporation of a pretreatment compliance schedule into its NPDES permit or by January 1, 1983, whichever is sooner.

In developing the compliance schedule for permittees in this group, the permit-issuance authority should determine which of the above dates provides for the earliest development of a POTW pretreatment program. This date should then be used as the pretreatment compliance schedule deadline for activity 8.

*As a 6 months period is needed to approve a POTW pretreatment program, in order to receive approval of a program by the date upon which the grantee is scheduled to receive payment beyond 90% of its Step 3 funding, the application for approval must be submitted 6 months earlier.

Dates for the remaining compliance schedule activities are negotiable with the permittee. Generally, however, the deadlines for completing activities 1-3 should not exceed 15 months from the initiation of the compliance schedule.

Facilities receiving their Step 3 grant before June 30, 1980, shall be subject to the same time limitations described above.

GROUP 2 Facilities which will have received Step 1 and 2 construction grants before June 30, 1980, and a Step 3 construction grant after December 31, 1980.

The construction grant regulation provides that a grantee which is scheduled to receive a Step 3 grant after December 31, 1980, must have completed compliance schedule activities 1-7 before it can receive its Step 3 funding. Therefore, in developing the compliance schedule, the permit-issuance authority should use as an outside compliance date for activities 1-7 the date for completion of the Step 2 grant as determined by the construction grants compliance schedule as long as this date would not be later than 2-1/2 years from the initiation of the pretreatment compliance schedule or January 1, 1983, whichever is sooner.

The compliance date for pretreatment compliance schedule activity 8 (request for program approval) should not exceed 2-1/2 years from the initiation of the compliance schedule, January 1, 1983, or 6 months before the permittee is scheduled to receive payment beyond 90% of its Step 3 funding, whichever is sooner.

Again, the interim pretreatment compliance schedule dates are negotiable. It is recommended that the completion date for activities 1-3 not exceed 15 months from the initiation of the compliance schedule.

GROUP 3 Facilities which will receive a Step 2 construction grant after June 30, 1980, and a Step 3 construction grant before December 31, 1980.

Under to the construction grant regulation, in order to receive a Step 2 grant after June 30, 1980, a grantee must first have completed activities 1-3 of the pretreatment compliance schedule. The permit-issuance authority should therefore ensure that the compliance schedule dates for the completion of activities 1-3 do not exceed the scheduled date for the completion of the Step 1 grant activities. The permit-issuance authority may at its discretion impose a more stringent time limitation for the completion of these activities. It is recommended that the completion date for activities 1-3 not exceed 15 months from the initiation of the compliance schedule.

The construction grant regulation provides that grantees which will receive a Step 3 grant before December 31, 1980, must have an approved pretreatment program in order to receive the final 10% of the Step 3 grant funds. The final compliance date for activity 8 of the pretreatment compliance schedule therefore should be no later than 6 months* before the date upon which the grantee is scheduled to receive payment beyond 90% of the Step 3 grant funding unless this date exceeds 2-1/2 years from the initiation of the compliance schedule, or January 1, 1983, in which case the final date for activity 8 should be no later than January 1, 1983, or 2-1/2 years from the initiation of the compliance schedule, whichever is sooner.

The interim dates for activities 4-7 are negotiable with the permittee.

GROUP 4 Facilities which will receive a Step 2 construction grant after June 30, 1980, and a Step 3 construction grant after December 31, 1980.

The construction grant regulation provides that in order to receive a Step 2 grant after June 30, 1980, a grantee must first have completed activities 1-3 of the pretreatment compliance schedule. The permit issuance authority should therefore ensure that the compliance schedule dates for the completion of activities 1-3 do not exceed the schedule date for the Step 2 grant application. The permit-issuance authority may impose a more stringent time limitation for the completion of these activities. It is recommended that the completion date for activities 1-3 not exceed 15 months from the initiation of the compliance schedule.

In order to receive a Step 3 grant after December 31, 1980, a facility in this category must also have completed compliance schedule activities 4-7. The final compliance dates for activities 4-7 should therefore be no later than the completion date for the facilities Step 2 grant as determined by the construction grants schedule. If the scheduled completion date for the Step 2 construction grant activities is later than 2-1/2 years from the initiation of the compliance schedule or January 1, 1983, then the final compliance date for activities 4-7 should not exceed January 1, 1983, or 2-1/2 years from the initiation of the compliance schedule, whichever is sooner.

In establishing the pretreatment compliance schedule dates for activities 4-7, sufficient time must be allowed for the grantee to accomplish activity 8 (application for program approval) by January 1, 1983, 2-1/2 years from the initiation of the pretreatment compliance schedule, or 6 months before the permittee is scheduled to receive payment beyond 90% of its Step 3 funding*, whichever is sooner.

* See footnote, page 3

MODEL PRETREATMENT COMPLIANCE SCHEDULE LANGUAGE

Under the authority of section 307(b) and 402(b)(8) of the Clean Water Act, and implementing regulations (40 CFR 403), the permittee is required to develop a pretreatment program. This program shall enable the permittee to detect and enforce against violations of categorical pretreatment standards promulgated under section 307(b) and (c) of the Clean Water Act and prohibitive discharge standards as set forth in 40 CFR 403.5.

The schedule of compliance for the development of this pretreatment program is as follows. The permittee shall:

ACTIVITY NO.	ACTIVITY	DATE
1	Submit the results of an industrial user survey as required by 40 CFR 403.8(f)(2)(i-iii), including identification of industrial users and the character and volume of pollutants contributed to the POTW by the industrial users.	_____
2	Submit an evaluation of the legal authorities to be used by the permittee to apply and enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Clean Water Act, including those requirements outlined in 40 CFR 403.8(f)(1).	_____
3	Submit a determination of technical information (including specific requirements to specify violations of the discharge prohibitions in 403.5) necessary to develop an industrial waste ordinance or other means of enforcing pretreatment standards.	_____
4	Submit an evaluation of the financial programs and revenue sources, as required by 40 CFR 403.8(f)(3), which will be employed to implement the pretreatment program.	_____
5	Submit design of a monitoring program which will implement the requirements of 40 CFR 403.8 and 403.12, and in particular those requirements referenced in 40 CFR 403.8(f)(1)(iv-v), 403.8(f)(2)(iv-vi) and 403.12(h-j),(l-n).	_____

CHART

OUTSIDE PRETREATMENT COMPLIANCE DATES BASED ON CONSTRUCTION GRANT AWARDS AND PRETREATMENT REQUIREMENTS*

Group	JUNE 30, 1980		DECEMBER 31, 1980		2-1/2 YEARS FROM INITIATION OF COMPLIANCE SCHEDULE, JANUARY 31, 1983, OR 6 MONTHS BEFORE THE FINAL 10% OF STEP 3 GRANT WHICHEVER IS SOONER
	Step 1 Awarded	Step 2 Awarded	Step 3 Awarded		
1	Step 1 Awarded	Step 2 Awarded	Step 3 Awarded		Activities 1-8 Due
2	Step 1 Awarded	Step 2 Awarded		Step 3 Awarded (Activities 1-7 due by application for Step 3)	Activity 8 Due
3	Step 1 Awarded	Step 2 Awarded (Activities 1-3 due by application for Step 2)	Step 3 Awarded		Activities 4-8 Due
4	Step 1 Awarded	Step 2 Awarded (Activities 1-3 due by application for Step 2)		Step 3 Awarded (Activities 4-7 due by application for Step 3)	Activity 8 Due

*Interim dates are negotiable and are established by the permit-issuance authority

- 6 Submit list of monitoring equipment required by the POTW to implement the pretreatment program and a description of municipal facilities to be constructed for monitoring or analysis of industrial wastes. _____
- 7 Submit specific POTW effluent limitations for prohibited pollutants (as defined by 40 CFR 403.5) contributed to the POTW by industrial users. _____
- 8 Submit a request for pretreatment program approval (and removal credit approval, if desired) as required by 40 CFR 403.9. _____

The terms and conditions of the POTW pretreatment program, when approved, shall be enforceable automatically through the permittee's NPDES permit.

Quarterly Reporting

The permittee shall report to the permit-issuance authority on a quarterly basis the status of work completed on the POTW pretreatment program. Reporting periods shall end on the last day of the months of March, June, September and December. The report shall be submitted to the permit-issuance authority no later than the 28th day of the month following each reporting period.

Removal Allowances

Any application for authority to revise categorical pretreatment standards to reflect POTW removal of pollutants in accordance with the requirements of 40 CFR 403.7 must be submitted to the permit-issuance authority at the time of application for POTW pretreatment program approval or at the time of permit expiration and reissuance thereafter.