



**Minnesota Pollution Control Agency**

## **STATEMENT OF NEED AND REASONABLENESS**

**In the Matter of Proposed New Minnesota  
Rules Chapter 7049, Relating to Pretreatment  
of Wastewater from Industrial Users, and  
Revisions to Minnesota Rules 7001, Relating to  
Permitting**

**Minnesota Pollution Control Agency**

**June 2007**

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**Draft Sonar  
State Pretreatment Rulemaking  
October 6, 2004**

**I. INTRODUCTION**

The Minnesota Pollution Control Agency (MPCA) is proposing to create a new chapter of state water rules for the Pretreatment Regulatory Program, Minn. R. ch. 7049, and to make minor revisions to Minn. R. ch. 7001. The proposed rules contain provisions to control the wastewater discharge from users of Publicly Owned Treatment Works (POTWs). This rule chapter will include requirements for POTWs to control Industrial Users (IUs), prohibitions and limitations applicable to IUs of POTWs, and reporting requirements for POTWs and IUs. The proposed rulemaking also includes minor revisions to the existing rules governing water quality permits, Minn. R. ch. 7001, by adding pretreatment related modifications to the lists of reasons to modify POTW permits. The Minnesota Administrative Procedures Act requires a Statement of Need and Reasonableness (SONAR) justifying and explaining the need for the proposed rule. This document fulfills that requirement.

**Alternative Format**

Upon request, this SONAR can be made available in an alternative format, such as large print, Braille, or audio tape. To make a request, contact [Randall Dunnette, Pretreatment Coordinator](#) at the MPCA, 520 Lafayette Road North, St. Paul, MN 55155-4194; phone 651-296-8006 or e-mail [randall.dunnette@state.mn.us](mailto:randall.dunnette@state.mn.us) TTY users may call the MPCA at 651-282-5332 or 800-657-3864. This SONAR and the proposed rule language can be found at the following web site: [www.pca.state.mn.us/water/pretreatment-rulechange.html](http://www.pca.state.mn.us/water/pretreatment-rulechange.html)

**A. Background**

Three governmental levels are involved in a pretreatment program: local, federal and state. Public wastewater treatment facilities, which are the focus of pretreatment, are typically owned and operated by local communities or sanitary districts. They are commonly referred to as Publicly Owned Treatment Works or POTWs. This term refers both to the wastewater treatment facility itself, understood in a very broad sense, and to the governmental authority that owns and operates the wastewater treatment facility. The POTW authority is the permit holder for the Wastewater Treatment Facility. As such it is responsible for complying with environmental regulations controlling the wastewater discharge and the disposal of sludge from the POTW plant. They are also responsible to their customers for providing wastewater treatment services. These responsibilities make POTWs central in the pretreatment program.

The primary objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. In order to further this objective and due to perceived deficiencies in how POTWs were carrying out pretreatment, the Environmental Protection Agency (EPA), in Title 40 Code of Federal Regulations (CFR) 403, established pretreatment requirements for IUs, POTWs, and states. Authority to administer the pretreatment program as a control authority and approval authority is further delegated to states. Minnesota received approval from EPA in 1979 for delegation of the pretreatment program in Minnesota.

### **Aspects of Pretreatment Program**

A pretreatment program controls discharges from industrial users of POTWs, in order to prevent the introduction of pollutants that interfere with the POTW and its operation, or pass through the POTW without adequate treatment. Preventing interference and pass-through is important because POTWs are both an important class of wastewater dischargers and an important public resource for wastewater disposal.

Excluding non-contact cooling water discharges, most wastewater discharged in Minnesota is discharged via POTWs. The pretreatment program is designed to deal with one of a limited number of factors that impact POTW performance. The performance of a POTW is largely determined by 3 factors: the adequacy of its design, the quality of its operation and what wastes are discharged to it. The pretreatment program deals with that portion of the wastes discharged to a POTW that are non-domestic wastes. Domestic wastes are generally predictable based on population served, and are normally dealt with in those terms. Non-domestic wastewater has greater potential for impact in terms of volume discharged by a single facility, strength of the wastes discharged and potential for incompatible pollutants discharged. It is these wastewaters that the pretreatment program, and the proposed rules are designed to control.

Another way to look at the importance of POTWs is as a resource for disposal of waste. POTWs are one of two almost universally available means of waste disposal in our society. The two options most readily available for waste disposal are: “put it in the trash” or “dump it down the drain.” It is essential to control the use of such public and readily available waste disposal resources. The hazardous and solid waste programs were designed to control what can be put in the trash. The pretreatment program is designed to control what can be dumped down the drain. The proposed rules are intended to put the pretreatment program on a firm regulatory footing in Minnesota.

The federal pretreatment regulations consist of the General Pretreatment Regulations (40 CFR pt. 403) and the pretreatment standards contained in the categorical regulations in Title 40, chapter I, subchapter N. The categorical regulations specify federal effluent guidelines and pretreatment standards. The General Pretreatment Regulations describe how these categorical regulations are applied to indirect (i.e. pretreatment) discharges. The General Pretreatment Regulations also impose requirements for state and some POTW pretreatment programs. Nevertheless, there are significant areas that the federal regulations do not cover.

The federal regulations cover POTWs in detail if the POTW has an approved POTW pretreatment program under the federal general regulations. In the language used in the proposed rules, these are delegated POTWs, and the pretreatment programs they operate are called delegated pretreatment programs. The federal regulations do not deal in detail with other POTWs. We refer to these as non-delegated POTWs. The federal regulations only require a limited number of POTWs to be delegated. The delegation process, the requirements for delegated POTWs, and the oversight requirements for delegated POTWs are sufficiently complex that they are not appropriate for small POTWs. Therefore there are a significant number of POTWs in Minnesota that are not covered by the federal regulations, although they have a practical need to regulate their IUs.

Categorical standards apply to IUs in the categories specified in the applicability provisions of each of

the regulations which comprise the national categorical pretreatment standards. IUs subject to these regulations are required to comply with them, but absent some organization imposing and enforcing these requirements, compliance may be questionable. Delegated POTWs are required to control Categorical Industrial Users (CIUs) within their system, but federal regulations are silent about how, and by whom, CIUs in non-delegated POTWs should be controlled. These proposed rules specify who is responsible to implement these regulations.

## **B. Pretreatment Rulemaking Activities**

When Minnesota received EPA approval in 1979 for delegation of its pretreatment program, the approval was for a pretreatment program without state rules. The state attorney general statement submitted with the request for delegation stated that Minnesota had the authority needed to administer the pretreatment program without state rules, although it did recommend that state rules be developed. Federal regulations were amended in 1988 to require state pretreatment rules (40 CFR § 403.10(g)(1)(iii)). Work on state pretreatment rules was started at that time, but the effort was terminated in 1991 because of other priorities. This present rulemaking will achieve compliance with this federal requirement.

### **Description of the Proposed Rule**

Minor changes to the permitting rule, Minn. R. ch. 7001, will provide the same basis for pretreatment related permit modification and minor modification of POTW permits as provided for in the federal regulations, and provide for placing pretreatment requirements in POTW permits.

The proposed state pretreatment rules largely follow the federal general pretreatment rules, 40 CFR § 403, and incorporate other federal pretreatment regulations from Title 40 CFR Chapter I, subchapter N into state rules with some additions and clarifications to address issues not covered in federal regulations or unclear in federal regulations. The additions and clarifications to the federal regulations all follow current MPCA regulatory practice.

In general this rulemaking will:

- Incorporate prohibitions from federal regulations with a few changes.
- Incorporate federal categorical pretreatment standards and regulations regarding the application of these standards into state rules, and make explicit the use of State Disposal System (SDS) permits to implement these standards.
- Incorporate federal POTW delegated program requirements into state rules, and clarify some issues not addressed in the federal rules.
- Incorporate monitoring and reporting requirements for IUs and POTWs from federal regulations into state rules as well as make extensions of these requirements where the federal requirements are silent.
- Make explicit in state rules the responsibilities of all POTWs, whether delegated or not, to regulate their IUs.
- Specify requirements for POTWs without federal POTW delegated pretreatment programs.
- Specify regulatory and reporting requirements for IUs.

## C. Public Participation and Stakeholder Involvement

The MPCA initiated the formal pretreatment rulemaking effort in December 2002, with the publication of a Request For Comments on Possible New Rules Governing Pretreatment. This specifically requested comment on issues where the state pretreatment rules were expected to differ significantly from the federal pretreatment regulations. Many of the comments received at this time noted the difficulty of commenting without greater detail on what is to be proposed.

Because so many commenters clearly desired a draft to base their comments on, the draft rules were made available in August through September 2005, and a stakeholder meeting with the draft rules was held on September 7, 2005. In addition to comments received in response to these two formal solicitations, the draft rules were also discussed several times at regular meetings with representatives of the nine delegated POTWs. Finally comments were received at a meeting of the Minnesota Environmental Science and Economic Review Board (MESERB), an organization that represents a number of POTWs.

Because of these opportunities provided for comment, and because the proposed state rules closely mirror federal regulations; and where the proposed state rules do depart from federal regulations they largely follow current MPCA practice in the pretreatment program, therefore an advisory committee was not used.

Public participation is further discussed in IV(A)(9) of this SONAR.

## II. STATUTORY AUTHORITY

The MPCA's statutory authority to develop and adopt the proposed rules is set forth in Minn. Stat. ch. 115, and in federal regulations. Specifically, Minn. Stat. § 115.03, subd. 1(e) and (g) provides the agency specific rulemaking authority for promulgating pretreatment rules:

*Subdivision 1. The agency is hereby given and charged with the following powers and duties:*

*(e) To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities;*

*(2) Prohibiting or directing the abatement of any discharge of sewage, industrial waste, or other wastes, into any waters of the state or the deposit thereof or the discharge into any municipal disposal system where the same is likely to get into any waters of the state in violation of this chapter and, with respect to the pollution of waters of the state, chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and specifying the schedule of compliance within which such prohibition or abatement must be accomplished;*

...

*(6) Establishing and revising pretreatment standards to prevent or abate the discharge of any pollutant into any publicly owned disposal system, which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system;*

*(7) Requiring the owner or operator of any disposal system or any point source to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including where appropriate biological monitoring methods, sample such effluents in accordance with such methods, at such locations, at such intervals, and in such a manner as the agency shall prescribe, and providing such other information as the agency may reasonably require;*

...

*(g) To prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of state:*

Additional authority is set forth in Minn. Stat. § 115.03, subd. 5 which grants the agency the authority to promulgate rules needed to administer the National Pollutant Discharge Elimination System (NPDES) program. The authorizing statute provides:

*Subdivision 5. Notwithstanding any other provisions prescribed in or pursuant to this chapter and, with respect to the pollution of waters of the state, in chapter 116, or otherwise, the agency shall have the authority to perform any and all acts minimally necessary including, but not limited to, the establishment and application of standards, procedures, rules, orders, variances, stipulation agreements, schedules of compliance, and permit conditions, consistent with and, therefore not less stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the state of Minnesota in the National Pollutant Discharge Elimination System (NPDES); provided that this provision shall not be construed as a limitation on any powers or duties otherwise residing with the agency pursuant to any provision of law.*

The MPCA is also the delegated Minnesota state agency to implement and administer the CWA Pretreatment Program. Under that delegation, the MPCA has duties, obligations, and authorities under Title 40 CFR pt. 403.

Under the above cited statutes, the MPCA has the necessary statutory authority to adopt the proposed rules.

### **III. NEED FOR THE RULES**

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the MPCA must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate. The need for minor revisions to Minn. R. ch. 7001, and the proposed new chapter of state water rules for the Pretreatment Program, Minn. R. ch. 7049, are discussed below.

#### **History**

When MPCA received delegation for pretreatment in 1979 it was without state rules. Since then MPCA has run the pretreatment program without state rules. This has generally been effective. As loopholes were identified in the program, efforts were made to cover those issues. Over the years several problems have emerged with running a state pretreatment program without state rules. The most direct problem is that federal regulations require us (at 40 CFR § 403.10(e)) to have state pretreatment rules. The deadline contained therein is long past.

The MPCA has operated the pretreatment program for many years using the authority in federal pretreatment regulations, general state rules, and requirements in permits issued to POTWs. Nevertheless, in the absence of state pretreatment rules, the basis for MPCA authority to take action or to require others to take action, has presented some problems. This is specifically true for the following required authorities and requirements:

- Requirements for non-delegated POTWs, and state authority to enforce requirements on non-delegated POTWs now rests on permit language only, and is therefore dependant on the acceptance of these conditions by POTWs.
- Requirements for delegated POTWs, rests on state use of federal regulations, and the federal regulations we use require us to have state pretreatment rules. This makes our reliance on the federal regulations awkward, even where the federal regulations do deal with all the issues in question.
- Our authority to impose categorical standards on CIUs discharging to non-delegated POTWs rests on our general authority to issue SDS permits. There is no explicit requirement for a CIU to apply for a permit. The adequacy of our current usage of SDS permits is dependant on the willingness of industries subject to these regulations to apply for permit coverage, and our ability to require this is not explicitly stated.
- Our authority to take enforcement against Significant Industrial Users (SIUs) causing POTW interference or pass-through is based on our use of the federal regulations. The federal regulations (40 CFR §403.5(e)) specify how federal enforcement of pretreatment requirements is to be conducted, but do not deal with state enforcement action. Since this provision does not apply explicitly to states, our use of it is potentially problematic.



Therefore, this present rulemaking is needed,

- to make these needed authorities and processes explicit in state rules;
- provide a firm basis for the operation of the MPCA pretreatment program; and
- comply with the federal requirement that we have state pretreatment rules.

#### **IV. STATEMENT OF REASONABLENESS**

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of the facts establishing the reasonableness of the proposed rules. “Reasonableness” is the opposite of arbitrariness or capriciousness. “Reasonableness” means there is a rational basis for the MPCA’s proposed action. The reasonableness of the proposed rules is explained in this part and divided into two sections: (A) the reasonableness of the proposed rules as a whole and, (B) the reasonableness of the individual proposed rule parts. The section dealing with the reasonableness of the proposed rules as a whole is further divided into a general justification of the proposed rules as a whole and analysis of the seven factors which Minn. Stat. §§ 14.131 and 14.23 mandate being included in a regulatory analysis that must be included in the SONAR

##### **A. Reasonableness of the Proposed Rules as a Whole.**

The reasonableness portion of this SONAR provides the discussion and background on why and how the provisions of the proposed rules were established. The Reasonableness of the Proposed Rules as a Whole gives a general justification of the rule as a whole and then deals with the mandatory requirements established by the Administrative Procedures Act in completing the SONAR. Minn. Stat. §§ 14.131 and 14.23 set out seven factors for a regulatory analysis that must be included in the SONAR. Since we have subdivided the seventh factor into several parts, items (1) through (9) below quote these factors and give the MPCA’s analysis.

As discussed in I.A. Aspects of Pretreatment Program, POTWs are a major source of discharges to surface waters and an important resource for waste disposal. Since wastes from non-domestic sources are one important factor in the environmental performance of POTWs, it is reasonable that industrial users, which are sources of non-domestic wastes, should be controlled.

Since POTWs provide waste disposal service for their customers they have a responsibility to provide this service in an environmentally acceptable way. In addition, POTWs are the permit holders for the facility providing the treatment and therefore have a legal responsibility to provide acceptable treatment. POTWs also have a close relationship with their customers. It is, therefore, reasonable for POTWs to be the focus of pretreatment and therefore the focus of these proposed rules.

POTWs often accept their responsibility to control their industrial users, but exceptions where a POTW will not accept this responsibility are frequent enough that state rules and state oversight of this activity are needed. Therefore state pretreatment rules requiring the control of discharges from industrial users are reasonable.

The largest part of the proposed rules are derived from federal regulations, mainly the federal general pretreatment regulations, 40 CFR § 403. Since MPCA has been delegated by EPA to implement the pretreatment program, we have a responsibility to implement the federal pretreatment regulations.

Therefore, state pretreatment rules that generally follow the federal regulations are reasonable.

In the course of operating a state pretreatment program for many years, gaps and ambiguities in the federal regulations have become apparent. These gaps and ambiguities are listed above in the justification of the need for these proposed rules. The appearance of these gaps and ambiguities make changes from, and clarifications of, the federal regulations reasonable.

The following is the analysis of the factors required by the Administrative Procedures Act.

**1. “A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.”**

There are two classes of persons that are affected by pretreatment, and will therefore be impacted by this rule. They are authorities that operate POTWs, and industrial users of POTWs. Most POTWs in Minnesota are operated by municipalities, including some that are operated by sanitary districts serving multiple communities. IUs of POTWs include many types of industrial facilities including metal finishing and electroplating, electronic manufacturing, metal manufacturing and forming, dairies, meat processing and other food processing, paper and timber products manufacturing, waste treatment, chemical and pharmaceutical manufacturing, etc. Industrial users also include commercial facilities such as restaurants, laundries, hospitals, dentists, etc.

The proposed rules do not substantively change how the MPCA pretreatment program will be operated or what it requires. The proposed rules include provisions from two existing sources. They adopt the federal pretreatment regulations which already apply to POTWs and IUs nationwide. And the proposed rules also incorporate into rule current MPCA standard permit language and pretreatment procedures. That is, they put into rule the way the pretreatment program is currently operated. Because both of these sources for the proposed rules already apply to Minnesota POTWs and IUs, there is not expected to be any change in the costs that are born by any of the classes of facilities impacted by the pretreatment program.

The classes of facilities who will benefit from the proposed rules include the POTWs and IUs noted above, as well as all users in Minnesota of water resources which are receiving waters for POTW discharges or which are downstream from such waters. IUs may derive some benefit from the presence of written state rules to which they can refer to find limitations and requirements applicable to them. POTWs may benefit from the existence of state pretreatment rules since they explicitly set forth, in one place, pretreatment requirements and authorities that currently are either contained in federal regulations, permit standard language or MPCA policies and procedures. For both POTWs and IUs these proposed rules will not significantly change what is required, but will make the limitations and requirements more accessible. Since the limitations and requirements are already in place and are more or less accessible, this will be a minor benefit, but we believe that it will nonetheless be real and helpful.

The benefit to Minnesota users of water resources will result from the protection of POTWs from interference or pass-through which could cause the POTW discharge to impact the POTW receiving waters or other downstream waters. Since new requirements are not imposed, it is not expected that

this benefit will be noticeable. However, in making pretreatment controls more firmly based and accessible, the proposed rules will bolster the protection of these waters, which is a benefit.

**2. “The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”**

The proposed rules place into state rules two sets of requirements that are already applicable to POTWs and IUs. (1) the federal pretreatment regulations, and (2) the current MPCA standard permit conditions, policies and procedures. Because the proposed rules do not impose new requirements or conditions, they are not expected to cause any additional costs for the MPCA or other agencies. They are also not anticipated to have any effect on state revenues. It is hoped that having established rules will result in some savings, resulting from better defined and more accessible limitations and requirements, but it is expected that any savings will be negligible.

**3. “A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”**

The purposes of the proposed rule have been achieved for many years in the absence of state pretreatment rules. However, as mentioned above in the need for the rules, the limitations of operating without state pretreatment rules have become apparent. Operating the pretreatment program with state pretreatment rules is expected to be no more costly than operating the same program without rules as has been done for many years. We intend and expect that operating the pretreatment program with state rules will be more economical for everyone involved because requirements are established, written and available to all. However, we expect that any savings will be negligible. Operating with fixed rules will be no more intrusive and imposing than the same requirements without rules.

**4. “A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.”**

Alternative methods of achieving the purpose of the proposed rule have not only been considered, but have been used for many years.

**Permits**

Permits have routinely been used to impose pretreatment requirements on non-delegated POTWs and pretreatment requirements for non-delegated POTWs will continue to be placed in POTW permits. However, the imposition of requirements in permits only is less solidly enforceable than permit requirements backed up by rules. Without a regulatory framework as a basis for permit terms and conditions, there is a potential for the regulated parties to object to MPCA including pretreatment conditions in permits. Accordingly, these proposed rules will help eliminate any ambiguity about MPCA’s duty and authority to include pretreatment requirements in POTW permits. This is especially important because federal regulations require the state to adopt and implement pretreatment rules.

Permits have also routinely been used to impose the requirements of the federal categorical

pretreatment standards on industrial users subject to them. This is possible because of the agency's broad authority to issue SDS permits. However, in the absence of rules specifically stating the circumstances under which industrial users are required to obtain SDS permits, the enforceability of SDS permits and the requirement to obtain them has been questioned. We have successfully obtained permit applications in all cases where our authority has been questioned, but a rule provision that can be referenced would simplify this process and make it more certain.

### **Schedules of Compliance or Stipulation Agreements**

There have been a few cases in the history of the MPCA pretreatment program where schedules of compliance or stipulation agreements have been used to require action by a POTW or by an IU. However, this usage is only efficient in specific individual cases. Any attempt to use these mechanisms as a general means of imposing pretreatment requirements, as is needed to operate the pretreatment program, would be hopelessly unwieldy.

### **Policy, Guidance and Outreach**

The pretreatment program has, and will continue to have policy and guidance to cover situations which are faced repeatedly. Outreach has been routinely done and will continue to be done. However policy, guidance and outreach alone are not always adequately public, are not always fully consistent, and are not enforceable. There are many pretreatment requirements that require enforceability. Policy, guidance and outreach are not appropriate for those requirements, but will certainly be used to fully implement those requirements.

For the reasons stated above, it was determined that state pretreatment rules are needed to provide public, consistent, stable and enforceable requirements from which to operate.

This is in addition to the requirement in federal regulations, that we adopt state pretreatment rules. Failure to comply with this requirement could undermine the MPCA's continued operation of the pretreatment program.

### **5. "The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, business, or individuals."**

Because the proposed rulemaking is intended to establish the current status quo of the pretreatment program into rule, the probable costs of complying with the proposed rule are not expected to be significantly different from the costs of complying with the present pretreatment program operated under federal regulations, general state authority, and permit conditions. There may be cost savings due to the stability and predictability of the rules versus the current situation, but even these are expected to be negligible. Any increased costs would be due to improved ability to enforce requirements, rather than any change in the requirements. In other words, some individual POTWs or IUs could, in the future, incur costs to comply with pretreatment standards or requirements, but those standards and requirements already apply, and therefore the costs are not due to the proposed rules. This remains true even if the POTW or IU is presently "getting away with" not complying with the requirements, and the proposed rules make requiring compliance more readily realizable.

### **6. "The probable costs or consequences of not adopting the proposed rule,**

**including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.”**

There is a significant probability that the state may be forced by the federal government to adopt state pretreatment rules, if that is not done in the current rulemaking. It is difficult to estimate how likely this is, but it is thought to be significant. If this occurred it would likely result in an expedited rulemaking with attendant higher costs. Any costs or consequences of not adopting the proposed rule in this scenario would be borne by the state.

It is also possible that EPA could revoke its approval of the MPCA pretreatment program. This would result in increased costs to the state to reestablish a pretreatment program, if the state chose to do so. It would also result in increased costs to industry due to delays involved with the pretreatment program being implemented remotely by EPA. If the MPCA chose not to reestablish a pretreatment program, these added costs for industry would continue indefinitely.

The other cost or consequence of not adopting the proposed rule would be the continued uncertainty, instability and unenforceability associated with the present situation, with the possible consequence of pollutants discharged to the environment.

**7. “An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”**

### **General**

The most widespread and substantial difference between the proposed rule and the existing federal general pretreatment regulations concerns the responsibility of non-delegated POTWs, and the control of IUs in these non-delegated POTWs.

Federal regulations require larger POTWs (those with greater than 5 million gallons per day design wastewater flow) that have SIUs to have delegated pretreatment programs. The federal regulations then provide detailed requirements for these delegated POTWs. However, very little is said in the federal regulations regarding POTWs that are not delegated, and how they should control their industrial users. Options to cover this omission are:

- to require full delegated program for all POTWs with SIUs;
- to impose requirements on non-delegated POTWs requiring that they control their SIUs; or
- for MPCA to directly control SIUs in non-delegated POTWs.

Each of these approaches are used to implement pretreatment requirements in one or more other states. Therefore we need to justify our choice of the second option.

The first option was not pursued. Additional POTWs, beyond those presently delegated, can certainly be delegated and some most likely will be in the future. However, we are convinced that there will always be numerous small POTWs for whom pretreatment delegation is unnecessary and overly burdensome, but who nevertheless need to control their industrial users. Therefore this option was not pursued.

The last option also was not pursued. MPCA has chosen not to directly control SIUs in non-delegated POTWs, since this would entail much additional workload for the MPCA. MPCA is further removed from contact with the SIUs, making control of SIUs less efficient for MPCA than for the POTW. Further, making MPCA responsible to control a POTW's SIU would separate responsibility to control the SIU from responsibility for operation of the POTW and for compliance by the POTW. This is not desirable since the purpose of these pretreatment rules is to prevent interference or pass-through at the POTW. For these reasons this option was not pursued.

Therefore, the proposed rules contain pretreatment requirements for non-delegated POTWs, requiring them to control their IUs. This approach has been used in practice for many years and we believe that it has generally worked well.

Since we have decided to delegate authority to implement the federal regulations only to some POTWs, the MPCA is also left with the need to impose the national categorical pretreatment standards on IUs in non-delegated POTWs that are subject to these standards. In order to provide a firm basis for permitting these CIUs the proposed rulemaking includes specific provisions for CIUs, some of which have no specific parallel in the federal regulations.

### **Specific**

Following is a list and brief description of differences between the proposed state pretreatment rules and the federal pretreatment regulations. The specific differences are treated in more detail later under: **B. Reasonableness of Individual Rule Parts**, under the heading of the rule part cited below.

- Pass-through, in addition to interference, was added to the prohibition at Minn. R. 7049.0140, subp. 3(D).
- The provisions for a Category determination, at Minn. R. 7049.0310, subp. 3, explicitly acknowledges the use of informal category determinations by control authorities in addition to the formal category determination provided in the federal regulations.
- The provisions controlling the appropriate use of the Combined Wastestream Formula, Minn. R. 7049.0350, subp. 1(D), provides for situations where wastestreams are combined without treatment. Whereas the federal regulations only explicitly allow the use of the Combined Wastestream Formula in situations with treatment.
- The conditions under which removal credits may be given, Minn. R. 7049.0380, are strictly limited to delegated POTWs or POTWs required by an enforceable schedule to develop a delegated pretreatment program. Whereas the federal regulations allow an exception to this condition.
- The provisions in the federal regulations that provide for removal credits in the presence of a bypass between the IU and the POTW have been deleted. Removal credits are not allowed where a bypass is present under the proposed rules at Minn. R. 7049.0380.
- A requirement to submit a permit application was added to the requirement for an IU subject to categorical pretreatment standards to submit a Baseline Monitoring Report. (Minn. R. 7049.500).
- Provisions were added at Minn. R. 7049.0600 through 7049.0720 to deal with POTWs that are not delegated. These provisions are similar to, but not the same as federal requirements for delegated POTWs. They reflect current MPCA practice for non-delegated POTWs.
- The proposed rules provide for MPCA direct regulatory action in cases where a POTW does

not properly control their SIUs. This requirement in Minn. R. 7049.0640 is directly comparable to the equivalent federal authority at 40 CFR § 403.5(e).

- The proposed rules make the requirements for reevaluation of local limits more specific and collect them in one place.

All of these differences from the federal regulations are consistent with the current MPCA practices in implementing the pretreatment program.

**8. “Describe how the agency, in developing the proposed rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002, which requires state agencies, whenever feasible, to develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.”**

Pretreatment deals with POTWs and the control of IUs to prevent problems. This makes POTWs primary in the pretreatment program since:

- The IUs being controlled are the POTW’s IUs.
- The facility and discharge etc. being protected are the POTW’s.
- The POTW is responsible for its discharge, sludge disposal etc.
- The POTW is close to the IU and normally in direct contact with them.

Since the POTW is primary, the state pretreatment rules delegate pretreatment authority to the POTW as far as is practical. POTWs are responsible to control their IUs, and have significant flexibility in how they do this. POTWs always have the authority to impose more restrictive controls than federal or state requirements.

While POTWs are given extensive flexibility in the operation of their pretreatment program to control IU, MPCA must retain authority to require certain minimum authorities and procedures as well as authority to impose controls directly on a POTW’s IUs if the POTW fails to adequately control their IUs. Because of the close relationship that may exist between a POTW and its IUs it is possible that the POTW may be reluctant to adequately control the IU. Therefore, the proposed rules require POTWs to report to the MPCA annually and allows inspection and monitoring of the POTW’s records, and the POTW’s IU.

The definition of “pretreatment” contained in these state rules, and taken directly from the federal regulations, specifically allows pretreatment to be accomplished by the IU in anyway that is effective in achieving the needed results. The objectives of the pretreatment program are explicitly stated in the rule.

One issue which must be dealt with in every pretreatment situation is the question of what pollutants should be monitored and controlled. That is, what are the pollutants of concern. A definition of “Pollutant of Concern” is included in the proposed rule. Several approaches were considered for dealing with the question of pollutants of concern, including leaving the term undefined, as the federal regulations do. We believe that the definition in the rule will reliably include all the pollutants that should be of concern, without including pollutants that are really not of concern. In addition to the definition in the rule, we are including the following discussion of the issue and we also intend to

provide guidance on the subject.

The basic central meaning of “pollutant of concern” in the context of pretreatment is a pollutant or pollutant parameter which one or more of the governmental levels involved is, or should be, concerned about. The concern which should be given to a pollutant is determined mainly in the context of the objectives of the pretreatment program: the prevention of interference and pass-through. There are three governmental levels involved in the pretreatment program: the local POTW authority, the MPCA, and the EPA. (see A. Background for a discussion of these three different governmental levels.). EPA highlights its pollutants of concern in pretreatment through 40 CFR pt. 403, national categorical pretreatment standards, and guidance, notably local limits guidance. The MPCA, as permitting authority, can highlight pollutants in a POTW’s permit by limiting its discharge, requiring monitoring of a specific pollutant, or requiring a management plan for a specific pollutant. In its role in basin planning and watershed planning, MPCA can also highlight pollutants through impaired waters lists and Total Maximum Daily Loads (TMDLs). Since the local POTW authority is in the front lines in pretreatment they will make most determinations regarding pollutants of concern, and they are therefore given substantial flexibility in making this determination. In its identification of pollutants of concern the local POTW is guided by the definition in these rules. In addition to pollutants highlighted by EPA and MPCA as noted above, the local POTW must also consider pollutants which the POTW plant is designed to treat. All pollutants identified by these means may not be pollutants of concern for pretreatment for a POTW. Further screening must take place to eliminate from consideration as pollutants of concern any pollutants which a POTW’s IUs do not have potential to contribute and pollutants which do not have potential to cause interference or pass-through. See the discussion at the definition of pollutant of concern Minn. R. 7049.0120, subp. 13, below.

We believe that the flexibility allowed to local units of government involved, the focus on the objectives in pretreatment and the broad definition of pretreatment ensure that the objectives of pretreatment are achieved with maximum efficiency.

**9. “Describe the agency’s effort to provide additional notification to persons or classes of persons who may be affected by the proposed rule.”**

The MPCA initiated the formal pretreatment rulemaking effort in December of 2002 with the publication of a Request For Comments on Possible New Rules Governing Pretreatment. In the Request for Comment notice, seven issues were identified that the MPCA was specifically interested in receiving comment on: (1) The identification of pollutants of concern for consideration in pretreatment activities, (2) the basis and "targets" for prohibiting overload of a POTW, (3) the need for additional special controls on trucked in wastes, (4) the MPCA enforcement authority and process against POTWs and SIUs, (5) the specification of MPCA authority to directly control Industrial Users (IUs) of a POTW, (6) the extent of MPCA review and approval of POTW controls on IUs, and (7) the mechanisms for the MPCA to regulate IUs it controls directly. The MPCA specifically requested comment on these issues because they were the areas where the state pretreatment rules were expected to differ significantly from the federal pretreatment regulations. We received a total of 18 responses to this request. The majority of responses simply asked to be kept informed, but six contained substantive comments. Most of the comments received cited a lack of detail regarding the rules to be proposed as a limiting factor on their comments. The resulting directions taken by MPCA in the proposed rules on the questions asked are dealt with in the discussions of individual rule provisions below. The relevant



sections for each question are: (1) The identification of pollutants of concern for consideration in pretreatment activities Minn. R. 7049.0120, subp. 13; (2) The basis and "targets" for prohibiting overload of a POTW Minn. R. 7049.0140; (3) The need for additional special controls on trucked in wastes Minn. R. 7049.0110 and 7049.0140; (4) The MPCA enforcement authority and process against POTWs and SIUs Minn. R. 7049.0640; (5) The specification of MPCA authority to directly control IUs of a POTW Minn. R. 7049.0640; (6) The extent of MPCA review and approval of POTW controls on IUs Minn. R. 7049.0700, subp 4; and (7) The mechanisms for the MPCA to regulate IUs it controls directly Minn. R. 7049.0300, subp. 1.

In the notice mentioned above, interested parties were also advised that the MPCA did not expect to appoint an advisory committee to comment on the proposed rules. It was not planned to appoint an advisory committee because the proposed state rules very largely mirror federal regulations, and where the proposed state rules do depart from federal regulations, they largely follow current MPCA practice in the pretreatment program.

Because so many commenters clearly desired a draft to base their comments on, the draft rules were made available in August through September 2005, and a stakeholder meeting with the draft rules was held on September 7, 2005. Comments were received at the public meeting, in writing, via e-mail and by telephone. In addition to verbal comments received at the public meeting, a total of ten sets of comments were received, including three sets of written comments. The comments received are dealt with at the appropriate places below.

Comments have been solicited from the nine delegated POTWs at regular meetings during the period when the proposed rule was being developed. These POTWs were consulted since they are generally the POTWs with the heaviest pretreatment involvement, they are readily available during routine meetings held with them several times a year and they are thoroughly familiar with pretreatment rules and procedures.

The organization that has shown the most interest in this rulemaking is MESERB. Many POTWs involved in pretreatment are active in this organization. A presentation on the rulemaking was made to a meeting of this group and comments were received at that time. These duplicated comments received earlier from this group and its members.

The following list summarizes the comments received and indicates where the comments are discussed in the justification of the reasonableness of individual rule parts.

- Comments were received expressing concern regarding due process for MPCA direct regulatory action. This is discussed in the justification of Minn. R. 7049.0640.
- Comments were received expressing concern over the potential breadth of the definition of "Pollutant of Concern" and its usage in the rule. This is discussed in the justification of Minn. R. 7049.0120, subp. 13, which is the definition of the term. It is further dealt with in the justification of the rule as a whole at IV.A.8 and in the justification of Minn. R. 7049.0120, subp. 24, which is the definition of significant industrial user and uses the term pollutant of concern.
- Comments were received regarding a prohibition of overload and definition of POTW capacity that were contained in the draft circulated in summer 2005. That prohibition and definition were dropped from the proposed rules. This is discussed in the justification of Minn. R.

7049.0140 which deals with Prohibited Discharges.

- Comments were received regarding what POTWs need to develop delegated POTW pretreatment programs. The criteria from the federal regulations were incorporated into the proposed rules in response to these comments. This is dealt with in the justification of Minn. R. 7049.0800.
- Comments were received regarding the responsibilities of POTWs without delegated pretreatment programs. This is discussed in the justification of Minn. R. 7049.0600 and justification of Minn. R. 7049.0700 through 7049.0720.
- One comment was received regarding the requirement for categorical industrial users that are required to obtain permits from the Agency to maintain plans and specifications. This is dealt with in the justification of Minn. R. 7049.0300.

## **B. Reasonableness of the Individual Proposed Rule Parts**

This rulemaking makes some minor amendments to Minn. R. ch. 7001, which deals with permitting, and establishes a new rule part (Minn. R. ch. 7049) in its entirety. This justification of the reasonableness of individual parts of the proposed rule will give a brief description of the purpose and source of each part, and then discuss selected issues related to the rules. In most cases, the text of the rule portion being justified is quoted, followed by the justification of that rule part. In some cases this is not done where the rule language is taken directly from state rules or federal regulations and changes are minor. In these cases description of the changes is used rather than quotation.

### **Amendments to Minn. R. ch. 7001**

**7001.0170 Justification to Commence Modification of Permit or Revocation and Reissuance of Permit.** This part lists references to rule parts that justify modification of a permit. Minn. R. 7001.1150, which is discussed below, is being added to the rule. That part adds certain pretreatment circumstances as a justification for modification, so it needs to be referenced in the list in this part.

**7001.0190 Procedure for Modification, Revocation and Reissuance, and Revocation without Reissuance of Permits.** This part lists references to rule parts that justify minor modification of a permit. Minn. R. 7001.1150, subp. 3, discussed below, is being added to the rule which adds pretreatment circumstances as a justification for minor modification. Therefore, Minn. R. 7001.1150, subp. 3, needs to be referenced in the list in this part.

#### *7001.1080 ESTABLISHMENT OF SPECIAL CONDITIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.*

*Subpart 1. Requirement. According to part 7001.0150, subpart 2, a national pollutant discharge elimination system permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all Minnesota or federal statutes or rules. These conditions must be initially established by the commissioner in the draft permit but are subject to final issuance by the agency. The conditions to be included are given in subpart subparts 2 to 9.*

*For text of subps 2 to 5, see M.R.*

*Subp. 6. Pretreatment requirements for publicly owned treatment works. If the applicant proposes to own or operate a publicly owned treatment works and if the applicant is required by Code of Federal Regulations, title 40, section 403.8 part*

7049.0800 to develop a publicly owned treatment works pretreatment program, the commissioner shall:

*A. incorporate the provisions of the approved publicly owned treatment works pretreatment program into the permit and shall require the permittee to submit the information in part 7049.1020; or*

*B. if the publicly owned treatment works does not have an approved pretreatment program, incorporate into the permit a compliance schedule for development of an approvable pretreatment program. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development of a pretreatment program. No increment in the schedule shall exceed nine months. The permit shall also require the permittee to submit to the commissioner, within 14 days following each date in the schedule progress, reports stating whether or not the permittee has complied with the increment of progress to be met on such date and, if not, the date on which the permittee expects to comply with this increment of progress, the reason for delay, and the steps taken to return to the schedule. In no event shall more than nine months elapse between progress reports to the commissioner.*

*For text of subps 7 to 9, see M.R.*

**7001.1080 Establishment of Special Conditions for National Pollutant Discharge Elimination System Permits.** This part includes a list of things to be included as special conditions of NPDES permits. These amendments add subp. 6 to include conditions of approved delegated pretreatment programs and schedules for developing delegated pretreatment programs as things to be included as special conditions in NPDES permits.

### *3.10 7001.1090 GENERAL CONDITIONS OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.*

*For text of subps. 1 and 2, see Minnesota Rules.*

*Subp. 3. Permits for publicly owned treatment works.*

*A. A National Pollutant Discharge Elimination System permit issued by the agency to a publicly owned treatment works must require the permittee to control their industrial users and report their significant industrial users and pretreatment activities to the agency as required by chapter 7049. Permits issued to publicly owned treatment works that do not operate a federal delegated pretreatment program, as defined in part 7049.0120, subpart 7, shall contain or reference the pretreatment requirements applicable to nondelegated publicly owned treatment works, which are found in parts 7049.0600 to 7049.0720, and shall require the permittee to notify the agency of any of its industrial users that may be subject to national categorical pretreatment standards. Permits issued to publicly owned treatment works that operate a federal delegated pretreatment program, as defined in part 7049.0120, subpart 7, shall contain pretreatment requirements based on parts 7049.0600 to 7049.0650 and 7049.0800 to 7049.1020 and the publicly owned treatment work's approved pretreatment program.*

### **7001.1090 General Conditions of Permits.**

Subp. 3 of Minn. R. 7001.1090, which applies to general conditions of permits issued to POTWs, is being amended by this rulemaking. This subpart lists general conditions to be included in all POTW

permits. The proposed amendments modify this subpart to conform to the requirements of the proposed Minn. R. ch. 7049. Specifically, it refers to the requirements of Minn. R. 7049.0600 through 7049.0650, applicable to all POTWs; Minn. R. 7049.0700 through 7049.0720, applicable to non-delegated POTWs; and Minn. R. 7049.0800 through 7049.1020, applicable to delegated POTWs. The parts referred to require that POTWs control their industrial users, specify how they are to control their SIUs, and require POTWs to submit notifications and reports to the MPCA. The contents of these parts are justified in detail in the sections relating specifically to these parts below.

This subpart also requires non-delegated POTWs to notify the agency of the presence of IUs subject to national categorical pretreatment standards. This requirement is not new, but is already contained in the existing Minn. R. 7001.1090, subp. 3. It has been rephrased to correctly reference state rules rather than federal. National categorical pretreatment standards are adopted by reference in Minn. R. 7049.0310. The MPCA is responsible for regulating IUs subject to national categorical pretreatment standards. One of the tasks involved in this responsibility is the need to identify IUs that are subject to the national categorical pretreatment standards. Since the POTW is closer to their IUs and often knows them better, the assistance of POTWs in identifying potential categorical IUs is important. The responsibility of the POTW extends only to notifying the agency of the presence of IUs that may be subject to these standards. The agency then must determine whether the industrial user actually is subject to categorical standards, and appropriately regulate them. This division of labor limits the responsibility to that part of the task each is most suited for and has the authority for.

*7001.1150 MODIFICATION, REVOCATION, AND REISSUANCE OF PERMITS.*

*Subpart 1. **Scope.** In addition to parts 7001.0170 and 7001.0190, subparts 2 and 3 apply to the modification or revocation and reissuance of national pollutant discharge elimination system permits.*

*Subp. 2. **Additional justification for modification, revocation, and reissuance of permits.** In addition to the justifications listed in part 7001.0170, the following constitute justification for the commissioner to commence proceedings to modify a permit or to revoke and reissue a permit:*

*A. the commissioner finds that there is a need to put a publicly owned treatment works on a compliance schedule for the development of a pretreatment program because the addition of pollutants into a publicly owned treatment works by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, the quality of the receiving waters, or the environment;*

*B. the commissioner finds that there are grounds to modify the permit under section 301(h) or 301(i) of the Clean Water Act, United States Code, title 33, section 1311(h) or (i);*

*C. the commissioner has approved a new or modified publicly owned treatment works pretreatment program and the pretreatment program has not yet been incorporated into the publicly owned treatment works' national pollutant discharge elimination system permit; or*

*D. the commissioner has approved a compliance schedule for the development of a publicly owned treatment works pretreatment program and the compliance schedule has not yet been incorporated into the publicly owned treatment works' national pollutant discharge elimination system permit.*

*Subp. 3. **Minor modification of permits.** In addition to the corrections or allowances listed in part 7001.0190, subpart 3, the commissioner, upon obtaining the consent of the permittee, may modify a national pollutant discharge elimination system permit without following the procedures in parts 7001.0100 to 7001.0130 to incorporate conditions of a publicly owned treatment works pretreatment program or a modification to a publicly owned treatment works pretreatment program.*

**7001.1150 Modification, Revocation, and Reissuance of Permits.** This part lists pretreatment circumstances that justify modification or minor modification of a POTW's permit. Specifically, POTW permits may be modified to incorporate a schedule for delegated pretreatment program development or for incorporating the conditions of an approved delegated pretreatment program, including modifications to the program. Minor modifications are allowed, with the consent of the permittee, to incorporate the conditions of an approved delegated pretreatment program or to change those conditions due to modifications to the pretreatment program. Since delegated pretreatment programs are placed on public notice in the process of their approval, it is reasonable that the conditions of these programs can be put into the permit without further public notice.

### **Overall Structure of the Proposed New Rule Minn. R. ch. 7049.**

The organization of the proposed rule is significantly different from the federal regulations (40 CFR pt. 403) on which it is largely based. A condensed table of contents for the proposed rule is presented here to concisely lay out the general organization of the proposed rules.

#### **General Provisions**

7049.0100 - 7049.0130 purpose, applicability, definitions, etc.  
7049.0140 & 7049.0150 prohibited discharges  
7049.0160 - 7049.0163 other general matters

#### **Provisions for Industrial Users in General**

7049.0200 - 7049.0220 reporting, monitoring and notification by industrial users

#### **Provisions for Categorical Industrial Users**

7049.0300 - 7049.0310 categorical standards and application  
7049.0350 - 7049.0485 provisions to modify categorical standards  
7049.0490 & 7049.0495 upset affirmative defense & bypass provisions  
7049.0500 - 7049.0590 reporting for categorical industrial users

#### **Provisions for POTWs in general**

7049.0600 - 7049.0650 POTW responsibility, reporting, agency enforcement action

#### **Provisions for Non-Delegated POTWs**

7049.0700 - 7049.0720 notification, control of SIUs, reporting

#### **Provisions for Delegated POTWs**

7049.0800 - 7049.0870 delegated pretreatment program requirements,  
7049.0880 - 7049.0960 review and approval of delegated pretreatment programs  
7049.0970 - 7049.1000 modification delegated pretreatment programs,  
7049.1005 - 7049.1020 other provisions for delegated POTWs

For a more complete table of contents of the proposed rule, see appendix 1 of this SONAR.

Substantive changes from the federal regulations, besides the organizational changes described above, are noted in the following justifications of individual rule parts. It is intended and believed that all of the provisions of The Federal General Pretreatment Regulations (40 CFR pt. 403) that are relevant to Minnesota state rules have been included in this proposed rule. It is also intended and believed that all of the relevant changes in the “Pretreatment Streamlining” amendments to the federal regulations, promulgated in federal register notices dated October 13 and 14, 2005, have been included. The following is a list of known substantial changes from the federal regulations. For a fuller description and justification of each of these changes, see the justification of the individual rule parts below.

- Pass-through (in addition to interference) was added to the specific prohibition at Minn. R. 7049.0140, subp. 4(D).
- Category determination, Minn. R. 7049.0310, subp. 2, acknowledges the use of informal category determinations by control authority.
- The use of the Combined Waste Stream Formula, Minn. R. 7049.0350, explicitly provides for situations without treatment.
- The availability of removal credits is limited strictly to delegated POTWs or POTWs being delegated Minn. R. 7049.0380.
- The provisions for removal credits in the presence of a bypass between the CIU and the POTW was deleted. The relevant rule part, Minn. R. 7049.0380, does not allow removal credits where a bypass exists between the CIU and the POTW.
- A permit application requirement, in addition to a Baseline Monitoring Report (BMR) requirement was added to Minn. R. 7049.0500.
- Provisions to deal with POTWs that are not delegated have been added at Minn. R. 7049.0600 through 0720. These provisions reflect current practice for dealing with industrial users in these non-delegated POTWs.
- Provisions for MPCA direct regulatory action in case of POTW failure to control SIUs has been added at Minn. R. 7049.0640. This provision parallels 40 CFR § 403.5(e) which provides equivalent authority and procedures for EPA.
- Provision related to the reevaluation of local limits by delegated POTWs have been collected and revised at Minn. R. 7049.1010.

**General Provisions (Minn. R. 7049.0100 through 7049.0163).**

These parts of the rule contain provisions that deal with general issues in pretreatment. Substantial portions of these parts are either taken or derived directly from the federal general pretreatment regulations (40 CFR pt. 403).

*7049.0100 PURPOSE, OBJECTIVE, AND INTENT.*

*This chapter implements the requirements of the federal general pretreatment regulations in Code of Federal Regulations, title 40, part 403, and the pretreatment provisions of national categorical pretreatment regulations in Code of Federal Regulations, title 40, chapter I, subchapter N, and implements the authorities of Minnesota Statutes, section 115.03, subdivision 1, paragraph (e), clause (2). This chapter establishes the responsibilities of the state, local governments, and the public to*

*control pollutants introduced into a publicly owned treatment works (POTW) and prevent the introduction of pollutants into a POTW. This chapter is intended to:*

- A. prevent the introduction of pollutants that are incompatible with a POTW plant;*
- B. prevent the pass-through of pollutants through a POTW plant without adequate treatment; and*
- C. prevent interference with a POTW physical plant; collection system; physical, chemical, or biological processes; personnel; or disposal of residuals.*

*The objective of this chapter is to provide for the prevention or control of pollutants entering a POTW plant that can cause or contribute to the violation by the POTW of any state or federal environmental rule or regulation prohibiting or limiting pollutant release. It is also the intent of this chapter to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.*

**7049.0100 “Purpose, Objective and Intent.”** Is derived from 40 CFR § 403.1 and 403.2, but has been reorganized and rephrased to be appropriate for state rules rather than federal regulations. The provisions of 40 CFR § 403.1 and 403.2 have been combined since both deal with the Purpose, Objective and Intent of this rule. As described in the Introduction I.B. Background of this SONAR, three governmental levels are involved in pretreatment: federal, state, and the local POTW authority. The state and local POTW authority governmental levels are therefore identified in this section, along with IUs. Reference to federal responsibilities in pretreatment have been dropped from the federal language since these are state rules. The purpose, objective and intent of these pretreatment rules is to ensure that industrial users do not interfere with the POTW’s ability to comply with standards that control and limit the release of pollutants to the environment from POTWs. These rules provide a framework for accomplishing this in an organized and predictable manner, consistent with federal regulations and current MPCA practice. Since the purpose of the MPCA is to protect the environment and control pollution, it is reasonable that these rules be intended to prevent interference and pass-through that would prevent a POTW from complying with the discharge limits and other controls on the release of pollutants to the environment. Since POTWs, because of their ready availability, have the potential to receive a wide range of pollutants, it is also a reasonable intention of these rules to prevent the introduction of pollutants to the POTW that are incompatible with the POTW. It is also explicitly the intention of these rules, following the language in the federal regulations, to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. This is consistent with the hierarchy of waste management practices listed in Minn. Stat. § 115A.02(b). In that statute, the first two practices, in order of preference, are “waste reduction and reuse” and “waste recycling.” Improving opportunities to recycle and reclaim municipal and industrial wastewaters and sludges facilitates, for the waste dealt with in the pretreatment program, these two preferred waste management practices and is therefore reasonable.

**7049.0110 APPLICABILITY.**

*This chapter applies to:*

- A. pollutants from nondomestic sources that are discharged into POTWs, transported by truck or rail, or otherwise introduced to POTWs;*
- B. nondomestic sources that discharge pollutants into POTWs, transport pollutants by truck or rail, or otherwise introduce pollutants into POTWs; and*
- C. POTWs that receive wastewater from nondomestic sources.*

*This chapter does not apply to sources that introduce pollutants into a sewer not*

*connected to a POTW treatment plant.*

**7049.0110 “Applicability.”** This part is derived from the federal pretreatment regulations (40 CFR § 403.1) Applicability of the rules has been separated from their purpose, objective and intent. This has been done to clarify applicability and to gather together purpose, objective and intent due to their similarity of content. These rules apply to two general classes of entities: POTWs and IUs. Because the purpose, objective, and intent of these pretreatment rules directly involves these entities, it is necessary and reasonable that the rule apply to both of them.

This rule applies equally to discharges and sources that are trucked in to the POTW as well as discharges and sources that discharge via the POTWs collection system. The need for additional special controls for these discharges and sources was considered. We concluded that the same general types of controls applicable to sewered discharges can also be effective in controlling trucked in wastes. Therefore no special provisions for trucked in wastes are included except for Minn. R. 7049.0140, subp. 4.

Minn. R. 7049.0120 “Definitions” contains definitions used generally in Minn. R. ch. 7049. There are a few definitions elsewhere in this rule which apply specifically to the part in which they are found. Some of the definitions here are taken from the definitions in the Federal General Pretreatment Standards at 40 CFR § 403.3, but some are new and other definitions are changed.

*7049.0120 DEFINITIONS.*

*Subpart 1. **Scope.** The definitions in this part apply to this chapter.*

**Subp. 1 Scope.** These definitions apply to this chapter. [Since some of these terms are defined differently elsewhere, it is important to state that the definitions stated in this part, apply to this chapter.](#)

*7049.0120 DEFINITIONS.*

...  
*Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency. Rights and authorities of the agency may be exercised by any member of, employee of, agent of, or consultant to the agency, when authorized by it, upon presentation of credentials.*

**Subp. 2. Agency.** This definition is included to facilitate reference to the Minnesota Pollution Control Agency (MPCA), including staff and contractors. Since this is a MPCA rule, this is a reasonable term to define. Since the authorities of the MPCA are routinely carried out by MPCA staff and may be carried out by contractors, they are included in the definition.

*7049.0120 DEFINITIONS.*

*Subp. 3. **Best management practices or BMPs.** "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in part 7049.0140. BMPs include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.*



**Subp. 3. Best Management Practices or BMPs.** This definition is taken from the “Pretreatment Streamlining” amendments to the federal general pretreatment regulations which were promulgated in October 2005, and are now included in the federal regulations at 40 CFR § 403.3. BMPs are an effective alternative means to control non-domestic discharges to a POTW which are now explicitly acknowledged by federal regulations. They are therefore now included in these proposed state rules.

*7049.0120 DEFINITIONS.*

*Subp. 4. **Categorical industrial user.** "Categorical industrial user" means an industrial user that is subject to national categorical pretreatment standards.*

**Subp. 4. Categorical Industrial User.** This definition is included to facilitate reference to industrial users that are subject to national categorical pretreatment standards. This is necessary since national categorical pretreatment standards are a major topic in these rules. There are three major sources for pretreatment limits: prohibitions, local limits to implement prohibitions, and national categorical pretreatment standards. Of these three, the national categorical pretreatment standards are the most extensively treated in these rules. Therefore a definition of industrial users subject to these standards is needed.

*7049.0120 DEFINITIONS.*

*Subp. 5. **Categorical pretreatment standards or national categorical pretreatment standards.** "Categorical pretreatment standards" or "national categorical pretreatment standards" means the pretreatment standards from federal regulations that are incorporated by reference in part 7049.0310.*

**Subp. 5. Categorical Pretreatment Standards or National Categorical Pretreatment Standards.** As noted under the definition of categorical industrial user above, National Categorical Pretreatment Standards are extensively treated in these rules, so a definition for convenient reference is needed.

*7049.0120 DEFINITIONS.*

*Subp. 6. **Control authority.** "Control authority" means the following governmental entity that has authority and responsibility to implement specific pretreatment standards for a specific industrial user:*

*A. the receiving POTW authority is the control authority for purposes of preventing interference or pass-through and for implementing all local pretreatment prohibitions, limitations, or requirements, including limitations required by this chapter; and*

*B. for the purpose of regulating industrial users subject to the national categorical pretreatment standards, the control authority is the receiving POTW authority if the receiving POTW authority has been delegated pretreatment authority under parts 7049.0800 to 7049.1020. If the receiving POTW authority has not been delegated authority under parts 7049.0800 to 7049.1020, the agency is the control authority for the purpose of implementing national categorical pretreatment standards. The POTW authority remains the control authority for item A.*

**Subp. 6. Control Authority.** As explained in the introduction to this SONAR (I.B.), there are multiple governmental levels involved in pretreatment. Since the relationships between these multiple

governmental levels is not always simple, it is important to make clear which governmental level has direct responsibility to administer the various pretreatment standards. Defining “Control Authority” is one part of the effort in these rules to make this clear. The responsibility to implement the various pretreatment standards is further set forth in Minn. R. 7049.0650. Regardless of who is the control authority, MPCA retains the authority to take direct regulatory action as provided in Minn. R. 7049.0640.

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*Subp. 7. **Federal delegated pretreatment program.** "Federal delegated pretreatment program" means a pretreatment program administered by a POTW authority that meets the criteria in parts 7049.0800 to 7049.0870 and has been approved by the agency under parts 7049.0880 to 7049.0960.*

**Subp. 7. “Federal Delegated Pretreatment Program.”** This means a pretreatment program that conforms to the requirements and is approved under the procedures contained in federal regulations at 40 CFR § 403.8, 403.9 and 403.11, which are incorporated in these rules in Minn. R. 7049.0800 through 7049.1020. Some smaller POTWs are not required to develop and implement pretreatment programs conforming to requirements in the federal regulations. Those POTWs that are not delegated under those requirements have responsibilities that differ from the responsibilities of POTWs that are delegated under federal regulations. Therefore it is important to identify these two classes of POTWs. “Federal Delegated Pretreatment Program” is the term used to do this. This definition does not require any POTWs to have a federal delegated pretreatment program, that is done elsewhere. This definition simply provides a way to refer to these programs.

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*Subp. 8. **Indirect discharge or discharge.** "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW, whether by sewer or other means.*

**Subp. 8. Indirect Discharge or Discharge.** An “Indirect Discharge” is a discharge to a POTW, as distinguished from a discharge directly to a receiving water, which may be referred to as a direct discharge. Many state rules and federal regulations contain limits on direct discharges, but this rule deals with indirect discharges. Therefore it is important to define indirect discharge as a discharge to a POTW. The term “discharge” in Minn. R. ch. 7049 refers to an indirect discharge. In other rules this term applies to direct discharges, but it is not so used in chapter 7049

*7049.0120 DEFINITIONS.*

*Subp. 9. **Industrial user.** "Industrial user" means a nondomestic source of indirect discharge.*

**Subp. 9. Industrial User.** This pretreatment rule deals with the regulation of discharges from IUs to POTWs. Therefore it is essential to define the term “Industrial User.” This definition defines an “IU” on the basis that it is not a nondomestic source of indirect discharge. Domestic sources of indirect discharge are those that are directly associated with people’s homes. A source ceases to be a domestic source either because the nature of the process that is the source of the discharge ceases to be a domestic process, even if it is done at a person’s home and for their own purposes. A source also ceases to be a domestic source if the process that generates the wastewater is done commercially.

This definition of “IU” is consistent with the definition in the federal regulations 40 CFR § 403.3(j). The federal regulations structure the definition differently but the definitions are equivalent. The federal regulations define “IU” simply as a source of indirect discharge. Indirect discharge is then defined in terms of a nondomestic source. This was changed in these proposed state rules by making the definition of indirect discharge broader than the federal regulations, and then limiting the scope in the definition of “IU.”

The concept of a “nondomestic source” is used in this definition of “IU” since domestic sources of discharge tend to be smaller, they tend to discharge wastes that are compatible with the POTW, they tend to be directly related to the population served by the POTW, and therefore are more appropriately dealt with by a planning process that provides adequate capacity for the population served. Conversely, nondomestic sources tend to be larger, they tend to have more potential to discharge wastes that are not compatible with the POTW, and their presence and size are often unrelated to the population served by the POTW. All of this makes nondomestic sources less readily or appropriately dealt with via the capacity planning process. Defining “IU” in terms of being nondomestic is reasonable since the term “nondomestic” includes those sources which would be individually or uniquely of concern, while naturally excluding those sources that are best dealt with en mass via a planning process.

*7049.0120 DEFINITIONS.*

*Subp. 10. **Interference.** "Interference" means a discharge that, alone or in conjunction with a discharge or discharges from other sources:*

*A. inhibits or disrupts a POTW plant, its treatment processes or operations, or its sludge processes, use, or disposal; and*

*B. is, therefore, a cause of a violation, including an increase in the magnitude or duration of a violation, of any permit or rule controlling, prohibiting, or limiting the release of pollutants from the POTW plant into the environment.*

**Subp. 10. Interference.** This definition is required since the prevention of interference is part of the intention of these rules, and many of the prohibitions in Minn. R. 7049.0140 either prohibit interference itself, or prohibit the discharge of things that will cause interference. The definition in the proposed rules is practically identical with the definition in federal regulations. Whereas the federal regulations attempt to list all the possibly applicable kinds of limits the POTW could potentially violate, these proposed state rules characterize the whole category. These two approaches will only differ if the listing in the federal regulation omits some type of rule, regulation or permit that limits release to the environment. In that case these state rules are, to that extent, more restrictive than the federal regulations, but no such omissions are known.

For an event to be interference two things must occur. A discharge to a POTW must inhibit or disrupt some part of the POTW or its processes. And this inhibition or disruption must cause a violation of some rule, regulation or permit that limits the release of pollutants into the environment, whether the pollutant that violates the limit is contained in the interfering discharge or not. Since it is the intent of these proposed rules to prevent interference and pass-through, (Minn. R. 7049.0100) and since the proposed rules prohibit interference and pass-through (Minn. R. 7049.0140, subp. 1), it is helpful to compare this definition of “interference” with the definition of “pass-through” below (subp. 12).

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*Subp. 11. New source.*

*A. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed national categorical pretreatment standards under section 307(c) of the Clean Water Act, United States Code, title 33, which will be applicable to the source if the categorical standards are adopted according to that section, provided that:*

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

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

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

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

*C. Construction of a new source as defined in this part has commenced if the owner or operator has undertaken any of the following:*

*(1) begun or caused to begin as part of a continuous on-site construction program:*

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

*(b) significant site preparation work including, but not limited to, clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or*

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

**Subp. 11. New Source.** The definition of “new source,” versus an “existing source,” comes directly from the federal regulations 40 CFR § 403.3(m), and is needed for implementing the national categorical standards. Categorical standards make a distinction between existing sources and new sources and sometimes have different limits for new sources versus existing sources. Therefore “new source” must be defined. It is frequently easier to achieve pollutant reductions with a new source as opposed to an existing source. This is the rationale for having separate standards for new sources and existing sources in categorical standards. The timeline for distinguishing a new source from an existing source is construction of the source having started compared to when the categorical standard was proposed.

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*Subp. 12. **Pass-through.** "Pass-through" means a discharge that exits a POTW plant into waters of the state in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of violating a requirement of any permit, rule, regulation, or ordinance controlling, prohibiting, or limiting the release of pollutants from the POTW plant into the environment, including an increase in the magnitude or duration of a violation.*

**Subp. 12. Pass-through.** This definition is required since the prevention of pass-through is part of the intention of these rules, and since many of the prohibitions in Minn. R. 7049.0140 either prohibit pass-through itself, or prohibit the discharge of things that will pass-through. The definition in the draft rules is practically identical with the definition in federal regulations 40 CFR § 403.3(p). Whereas the federal regulation attempts to list all the possible applicable kinds of limits, these proposed state rules characterize the whole category. These two approaches will only differ if the listing in the federal regulation omits some type of rule, regulation or permit that limits release to the environment. In that case these state rules are, to that extent, more restrictive than the federal regulations. No such omissions are known.

Pass-through occurs when a pollutant is discharged to a POTW and the same pollutant exits the POTW, either in the effluent from the POTW, its disposal of solids or in some other way, and violates a standard. Since it is the intent of these proposed rules to prevent interference and pass-through, (Minn. R. 7049.0100) and since the proposed rules prohibit interference and pass-through (Minn. R. 7049.0140, subp. 1), it is helpful to compare this definition of “pass-through” with the definition of “interference” above (subp. 10).

When interference occurs, a pollutant from an industrial user enters a POTW and causes a problem with the POTW’s treatment processes that results in a violation of a permit limit. With interference, the permit limit that is violated will not necessarily be for the pollutant that causes the interference. For example, interference would occur if an industrial user discharges nickel to a POTW, causing inhibition of the POTW’s processes, resulting in a violation of the POTW’s limit for biochemical oxygen demand. When pass-through occurs a pollutant enters a POTW and is discharged from the POTW without being adequately treated causing a violation of a permit limit. This results in the pollutant “passing through” the POTW. With pass-through the pollutant violating the permit limit is the same pollutant that is being discharged by an industrial user to the POTW.

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*Subp. 13. **Pollutant of concern.** "Pollutant of concern" means a pollutant that is or may be discharged by an industrial user to a POTW and that is, or reasonably should be, of concern to the POTW on the basis that it may cause interference or pass-through. In identifying pollutants of concern, the POTW must consider pollutants specifically limited, required to be monitored, or otherwise identified as of concern in the POTW's national pollutant discharge elimination system permit, pollutants that the POTW plant has a specific finite designed capacity to treat, or pollutants that are specifically identified by the agency as being in nonattainment with water quality standards in the POTW's receiving water.*

**Subp. 13. “Pollutant of Concern.”** The term “pollutant of concern” is not defined in the federal pretreatment regulations, although it is used there in several places. Experience in operating the pretreatment program has convinced MPCA that the term “pollutant of concern,” and the concept behind it, are sufficiently important that a definition would be useful. Starting with the first notice regarding this rulemaking, the MPCA solicited comment on this issue. Consideration of the comments received led to considering many options, including not defining the term and discussing the issue in the SONAR and guidance. During the most recent round of obtaining public input on the draft rules, multiple comments were received regarding the definition of “pollutant of concern.” The main focus of these comments was that the definition is too broad. The definition and its use in the rules were reviewed and it was concluded that it is adequately restricted. The definition being proposed is the same as that made available for public comment in August of 2005.

In these rules this term is used in the context of POTW control of a SIU, including monitoring of SIUs and setting local limits.

The core of the definition is “a pollutant that is or may be discharged by an IU to a POTW, that is, or reasonably should be, of concern to the POTW on the basis that it may cause interference or pass-through.” This contains three elements as described in the following paragraphs.

For a pollutant to be considered of concern, it must have potential to be discharged by an IU of the POTW. The phrase “may be discharged” here should be interpreted in terms of pollutants the IU uses or produces somewhere in their process. Pollutants that have no reasonable potential for discharge by an IU need not be considered to be of concern. However, pollutants that are not normally discharged, but may be discharged under some circumstances should be further considered.

The POTW has the responsibility and authority for making the determination of what pollutants are of concern. This responsibility and authority is carried out under oversight by the MPCA, and may be done with information and assistance from the IU and MPCA. This gives the POTW the needed authority at the focus of pretreatment.

Since the objective of pretreatment is to prevent interference or pass-through, the other criterion in the core of this definition is the potential to cause pass-through or interference. Pollutants that do not have a reasonable potential to cause pass-through or interference, in the amounts that the IU has potential to contribute, do not need to be considered to be pollutants of concern.

The remainder of the definition gives specific guidance for what pollutants to consider in identifying pollutants of concern. These point in three directions:

- Pollutants specifically identified in the POTW’s permit.
- The pollutants the POTW plant is designed to treat.
- Water Quality non-attainment designations.

Any pollutants which the POTW must consider as pollutants of concern should be evaluated using the core definition. It is possible that an IU may discharge a pollutant that is not pointed to in any of the ways listed, but nevertheless has potential for pass-through or interference. These pollutants should be identified as pollutants of concern, and nothing in the definition should be construed to prevent a POTW from identifying such pollutants as of concern.

It may at times be desirable for the MPCA to highlight a pollutant as being of concern. The mechanism in this definition by which MPCA can highlight pollutants as being of concern would be for MPCA to specifically identify them in the POTW permit, or list the receiving water as being in non-attainment for that pollutant.

For a discussion of Minn. R. 7049.0120, subp. 14 “POTW Authority”; subp. 15 “POTW Collection System”; and subp. 16 “POTW Plant,” see the discussion of subp. 20 “Publicly Owned Treatment Works” (POTW) below.

*7049.0120 DEFINITIONS.*

*Subp. 17. **Pretreatment.** "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or in lieu of discharging or otherwise introducing pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or other means, except as prohibited by part 7049.0300, subpart 4. Appropriate pretreatment technology includes, but is not limited to, control equipment, such as equalization tanks or facilities, for protection against surges or slug discharges that might interfere with or otherwise be incompatible with the receiving POTW. However, when process effluent limited by categorical pretreatment standards is mixed in an equalization facility with wastewater other than those generated by processes limited by the same categorical pretreatment standard, the effluent from the equalization facility must meet, after pretreatment, the alternate limits for the combined effluent calculated using the combined waste stream formula as provided in part 7049.0350.*

**Subp. 17. Pretreatment.** “Pretreatment” is defined in the proposed rules, as it is in the federal regulations, 40 CFR § 403.3(s) to include a wide range of actions that an IU can take to reduce or otherwise control their discharge of pollutants. The definition only excludes dilution in cases dealing with compliance with national categorical pretreatment standards.

This definition preserves flexibility for an IU to control their discharge in a way that controls the potential for POTW problems, at the same time controlling costs for the IU. This broad definition of pretreatment allows the use of whatever control means is effective and efficient in controlling the discharge of pollutants, without becoming a barrier to unconventional or innovative means of control. For example, a narrower definition of pretreatment would likely become a barrier to the use of pollution prevention techniques in some cases.

The one stated restriction on the breadth of control that qualifies as pretreatment is the prohibition of dilution, and the mathematical compensation for dilution using the combined wastestream formula in Minn R. 7049.0350; where dilution does occur, for meeting the requirements of the national categorical pretreatment standards. This is a reasonable limitation since the categorical pretreatment standards are technology based standards intended to require the use of best available treatment technology.

If the local POTW wants to limit the range of pretreatment options used by an IU, nothing in this definition prevents them from doing so. The POTW must simply state explicitly the restrictions they

want to make. This is allowed by Minn. R. 7049.0130 which allows POTWs to impose more restrictive requirements. (see also the discussion of Minn. R. 7049.0130 below.)

*7049.0120 DEFINITIONS.*

*Subp. 18. **Pretreatment requirements.** "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.*

**Subp. 18. Pretreatment Requirements.** This definition is incorporated from the federal regulations (40 CFR § 403.3(r)). It is used to draw a distinction between pretreatment requirements and pretreatment standards and to refer to pretreatment requirements either alone or in combination with pretreatment standards. Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an IU. This means that a pretreatment requirement places some obligation on an IU, but not a limitation on pollutants they are allowed to release to the environment. Since both pretreatment standards and pretreatment requirements are included in these pretreatment rules, and since a distinction between the two is sometimes required, it is reasonable to define pretreatment requirement in this way.

*7049.0120 DEFINITIONS.*

*Subp. 19. **Pretreatment standard.** "Pretreatment standard" means any state or local law, rule, or ordinance containing pollutant discharge limits or prohibitions, applicable to discharges to a POTW.*

**Subp. 19. Pretreatment Standard.** This term is used in conjunction with the term “Pretreatment Requirement” to describe and distinguish all limits and requirements in Minn. R. ch. 7049. Pretreatment standards and pretreatment requirements are both things that are required by or under the provisions of this rule. The distinction between a pretreatment standard and a pretreatment requirement is that a pretreatment standard limits or prohibits what an IU may discharge to a POTW, while a pretreatment requirement places some other requirement on the IU.

This definition differs in one important respect from the definition in federal regulations 40 CFR 403.3(l). The federal general pretreatment regulations define “Pretreatment Standard” together with, and the same as “National Pretreatment Standard” and “Standard.” That definition defines these terms to refer only to limitations on the discharge of pollutants to a POTW that are contained in or required by federal regulations. The definition in this state rule also includes all limitations on the discharge of pollutants to a POTW whether contained in or required by federal regulations, state rules or local ordinances. In that way the definition of “pretreatment standards” in this rule is broader than the federal definition. In this respect the term “required pretreatment standard”, in this rule, is more nearly comparable to the use and definition of the term “pretreatment standard” in the federal general pretreatment regulations. See the discussion of Minn. R. 7049.0120, subp. 23 “required pretreatment standard” below for further discussion of the distinction between “pretreatment standard” and “required pretreatment standard.”

*7049.0120 DEFINITIONS.*

*Subp. 14. **POTW authority.** "POTW authority" means the governmental authority that holds the permit for a POTW plant.*



*Subp. 15. **POTW collection system.** "POTW collection system" means the sewers, pipes, appurtenances, and other conveyances used to convey wastewater to a POTW plant. This definition includes the physical plant and processes of the POTW collection system and the personnel who operate and maintain the POTW collection system.*

*Subp. 16. **POTW plant.** "POTW plant" means the treatment works that is owned by a municipality, as defined in Minnesota Statutes Section 115.41. This definition includes the physical plant and the physical, chemical, and biological processes used in the storage, treatment, recycling, and reclamation of municipal sewage and sewer industrial waste. This definition includes the POTW collection system and the personnel who operate and maintain the POTW plant.*

...

*Subp. 20. **Publicly owned treatment works or POTW.** "Publicly owned treatment works" or "POTW" means a treatment works as defined in Minnesota Statutes, section 115.01, subdivision 21, that is owned by a state or municipality as defined by section 502(4) of the Clean Water Act, United States Code, title 33, section 1362(4), and Minnesota Statutes, section 115.41. This term includes "POTW plant" and "POTW authority."*

#### **POTW (Publicly Owned Treatment Works) and Related Definitions.**

This section includes a discussion of Minn. R. 7049.0120, subp. 14 "POTW Authority"; subp. 15 "POTW Collection System"; subp. 16 "POTW Plant"; subp. 20 POTW; and subp. 21 "Receiving POTW." These terms are closely interrelated and are therefore best discussed together. Since POTW, defined in subp. 20, is a fundamental pretreatment term, and forms the basis for the other definitions in this group, it will be discussed first.

**Subp. 20. Publicly Owned Treatment Works or POTW.** This is the basic term upon which the definitions of "POTW Authority," "POTW Collection System," "POTW Plant" and "Receiving POTW" are based. Since the intent of these rules relates explicitly to POTWs, it is obviously essential to define what a POTW is. The definition of POTW is practically identical to the federal definition 40 CFR 403.3(q).

The term is defined in terms of public ownership since that can be clearly determined and publicly owned treatment works are normally publicly available. Publicly available treatment works most need the controls implemented in pretreatment since publicly availability implies wide access for use and therefore wide potential for abuse. Where treatment works are not publicly available, the permittee for the treatment works is generally the same organization that generates the wastes treated by the treatment works, so the required external controls of pretreatment are generally not needed. Even where the organization that generates the wastes treated by a privately owned treatment works, the types of external controls provided by pretreatment are generally best provided by other means. Therefore, following the federal regulations, POTW, the central entity in these pretreatment rules is defined in terms of ownership of the treatment works.

The term "POTW" refers to both the treatment works itself, including all of its various parts and aspects, and the public entity that owns and is responsible for operation of, and discharge from, the treatment works. Since a distinction between these meanings is sometimes appropriate, it was decided to have separate definitions for the various meanings or parts of a POTW. Hence the need for the following

definitions.

**Subp. 14 “POTW Authority.”** POTW authority is defined as the public entity that owns and is responsible for operation of the POTW, is responsible for the discharge from the POTW, and therefore has jurisdiction over the indirect discharge by industrial users to the POTW. This term is used where POTW responsibilities are stated. This term and definition are not used in the federal general pretreatment regulations, but the concept is almost everywhere implicit in them. Since it is the POTW authority, that is the public entity, rather than the POTW Plant that is responsible to carry out the responsibilities of pretreatment, this is a reasonable definition and distinction.

**Subp. 15 “POTW Collection System.”** In one place in the rules it is important to distinguish between the POTW Collection System and the rest of the POTW Plant since the POTW collection system is explicitly included in the definition of POTW Plant. Therefore this definition is useful and reasonable. POTW Collection System is defined to include all of the structures and processes used to convey wastewater to the actual treatment plant, but not including the treatment plant itself and its processes. It also includes the personnel who operate and maintain the collection system.

**Subp. 16 “POTW Plant.”** As distinct from POTW authority, this term refers to the actual treatment works itself. Since this term is typically used to refer to the POTW that must be protected by means of pretreatment requirements, and since all parts of the POTW must be protected, this term is defined inclusively. It includes the physical plant of the POTW, the personnel operating and maintaining the POTW, and the POTW processes that perform the actual treatment. Except where it is explicitly excluded, the term POTW Plant also includes the POTW collection system. Since the objectives of pretreatment include protection of the POTW processes from inhibition or disruption which will cause interference, these processes must be included in the definition of POTW plant. Since the vast majority of POTWs employ biological treatment of some kind, the biota performing the treatment are an important part of the POTW process and are therefore included in this definition.

*7049.0120 DEFINITIONS.*

*Subp. 21. **Receiving POTW.** "Receiving POTW" means the POTW that receives the wastewater discharge from an industrial user.*

**Subp. 21. Receiving POTW.** This term is defined and used to refer to the specific POTW that receives the discharge from a particular IU. This term is not used or defined in the federal regulations, although the concept is everywhere implicit. It seems obvious and reasonable that the public entity that operates the particular POTW that receives the indirect discharge from an IU is the entity that must regulate that industrial user. This definition makes that connection explicit.

*7049.0120 DEFINITIONS.*

*Subp. 22. **Regulated process waste stream or regulated process.** "Regulated process waste stream" or "regulated process" means a wastewater stream or process that is subject to national categorical pretreatment standards.*

**Subp. 22. Regulated Process Waste Stream.** “Regulated Process Waste stream” is defined as a waste stream that is subject to National Categorical Pretreatment Standards. This definition is needed to facilitate reference to these waste streams in the parts of this rule that deal with the application of the

national categorical pretreatment standards.

*7049.0120 DEFINITIONS.*

*Subp. 23. **Required pretreatment standard.** "Required pretreatment standard" means a pretreatment standard that a POTW is required to implement and enforce as set forth in part 7049.0650.*

**Subp. 23. Required Pretreatment Standard.** “Required pretreatment standard” is defined to include all pretreatment standards that a POTW is required by federal regulation and state rule to implement and enforce. It does not include any pretreatment standards imposed by a POTW that are not required by these rules. This is the term in these state rules that corresponds most closely with the term “pretreatment standard” in the federal regulations.

“Required pretreatment standards” are distinguished, in these rules, from “pretreatment standards” in general to explicitly indicate that POTWs may impose pretreatment standards on their IUs that are more restrictive than needed to comply with the requirements of these state rules. For example, a POTW may impose a limit on loading from an IU that is more restrictive than needed to protect the POTW plant. This may be done to manage POTW plant capacity. This more restrictive than required limit would not be considered a required pretreatment standard if the POTW also has a separate limitation, a required pretreatment standard, that is adequate to protect the POTW plant. This would increase POTW flexibility by enabling the POTW to make changes to SIU limitations without submitting them to MPCA, provided the required pretreatment standard does not change. The POTW may also demonstrate that no local limitation is required under these rules, and then impose a pretreatment standard that is not a required pretreatment standard.

Since the proposed rules allow a POTW to impose more restrictive requirements on its SIUs than required, it is reasonable to provide for such requirements in the terminology provided in the rules. Since this term is defined in terms of what is required by these regulations, it is often used implicitly. The term is used explicitly in defining a SIU, in the requirements for a delegated POTW Pretreatment Program, in the requirements for both delegated and non-delegated POTW Annual Reports, and, in Minn. R. 7049.0640, in the provision for MPCA direct regulatory action. In this last use required pretreatment standards are those that MPCA can take direct regulatory action for, using the procedures specified in Minn. R. 7049.0640.

*7049.0120 DEFINITIONS.*

*Subp. 24. **Significant industrial user.***

*A. "Significant industrial user" means an industrial user that:*

- (1) contributes five percent or more of the flow or load of any pollutant of concern to the receiving POTW;*
- (2) is designated by the agency or the receiving POTW authority as significant on the basis that it has reasonable potential to impact the receiving POTW plant, or violate required pretreatment standards; or*
- (3) discharges 25,000 gallons per day or more of process wastewater to the receiving POTW.*

*B. An industrial user that meets the criteria in item A may be designated "not significant" by the POTW authority on the basis that it has no reasonable potential to*

*impact the POTW plant and has no reasonable potential to violate required pretreatment standards.*

*C. An industrial user that is subject to national categorical pretreatment standards shall also be considered a significant industrial user by any POTW authority that operates a federal delegated pretreatment program approved under parts 7049.0800 to 7049.1020, except as provided in item D.*

*D. The POTW may determine that an industrial user subject to national categorical pretreatment standards is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day of total categorical wastewater, excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard, and the industrial user:*

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

*(2) annually submits the certification statement required in part Code of Federal Regulation, title 40, section 403.12(q) together with any additional information necessary to support the certification statement; and*

*(3) never discharges any untreated concentrated wastewater.*

**Subp. 24. Significant Industrial User.** The definition of SIU is complicated both by the distinctions drawn by MPCA between delegated and non-delegated POTWs, and by the exceptions contained in the federal regulations. The definition of SIU in this rule consists of four parts. The first item (A) is the base definition of SIU. The second item (B) contains an exception to this base definition. The third item (C) adds CIUs as SIUs for delegated POTWs only. Finally the fourth item (D) contains an exception to the third item for non-significant CIUs. This definition is consistent with the definition of Significant Industrial User in the federal regulations, set forth at 40 CFR 403.3(v).

The base definition (A) of a CIU contains three criteria: a five percent criteria, a designation as significant because of reasonable potential to impact the POTW or violate Water Quality Standards, and a flow criteria of 25,000 gallons per day.

The first criteria for significance of an IU in the state rule reads: "Contributes 5% or more of the flow or load of any pollutant of concern to the receiving POTW." The equivalent federal language is "contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant." The definition in the proposed state rules employs the term "pollutant of concern," and is thus more inclusive than the federal definition. Pollutants of concern are those pollutants that have potential to cause interference or pass-through at the POTW plant. For further discussion of pollutants of concern, see the discussion of the definition of pollutants of concern above at subp. 13. Since a pollutant of concern by definition has potential to cause interference or pass-through, it is reasonable to measure the significance of an IU by the amount of a pollutant of concern the IU discharges compared to what the POTW receives. In situations where the POTW receives much less of a pollutant than would cause problems, this five percent criteria would not apply. There are two essentially equivalent logical paths for not applying the five percent criteria in these cases.

In this definition of SIU there is an exception (which is discussed below) that allows an IU that meets this five percent criteria to be designated "not significant" on the basis that it has no reasonable potential to

impact the POTW plant and has no reasonable potential to violate required pretreatment standards. If a pollutant has no reasonable potential to impact POTW plant, no pretreatment standard would be required and so the IU could be designated as not significant.

The definition of a “pollutant of concern” also cites potential to cause interference or pass-through. Therefore, if the POTW plant receives a loading of a pollutant that will not cause interference or pass-through, the pollutant would not be designated as a pollutant of concern, and therefore the five percent criteria would not apply. This is consistent with the definition in the federal general pretreatment regulations at 40 CFR § 403.3(v). If a pollutant is not a pollutant of concern, because it has no potential to cause interference or pass-through at the POTW, an exception to the 5 percent criteria exists under the federal definition. The exception referred to is contained in 40 CFR § 403.3(v)(3), which allows an exception to the 5 percent criteria if the industrial user has no potential to adversely impact the POTW or violate pretreatment standards.

With these built in exceptions to the use of this five percent criteria, we believe that it is reasonable to apply a five percent criteria to pollutants of concern rather than only to hydraulic or organic plant capacity.

The second criteria provides for the designation of an IU as significant on the basis that it has reasonable potential to impact the receiving POTW plant, or violate required pretreatment standards. Since the intent of these proposed state pretreatment rules is to prevent interference and pass-through, these are reasonable bases for designation of an IU as significant. To the extent that required pretreatment standards under this rule are reasonable, potential to violate those standards is also a reasonable criteria for designation of an IU as significant. The designation of an IU as significant is normally done by the POTW. They are more familiar with their IU and their POTW plant and are, therefore, generally in a better position to make this determination. However, because experience of many cases over the years has shown where the POTW has been unwilling or unable to make this determination, either the receiving POTW authority or the MPCA can designate an IU as significant on the basis that it has reasonable potential to impact the receiving POTW plant, or violate required pretreatment standards. The criteria specified to make this designation is restrictive enough that this is a reasonable provision.

The final criteria for significance in the base definition is a process wastewater flow of 25,000 gallons per day or more. This criteria, directly from the federal regulations, is useful as an objective numeric criteria for significance.

The second item (B) of the definition provides that if an IU has no reasonable potential to impact the POTW plant and has no reasonable potential to violate required pretreatment standards, it may be designated "not significant" by the POTW authority even if it meets the criteria in item A. This exception is taken directly from the federal regulations. Making this exception to the criteria in item A is reasonable based on the intent of these proposed rules and the pretreatment standards that the IU has no reasonable potential to violate. Since an IU qualifying for this exception would have no reasonable potential to impact the POTW plant they would not be significant in terms of the intent of the proposed rules to prevent problems at the POTW plant. Similarly, since an IU qualifying for this exception would also have no reasonable potential to violate required pretreatment standards, it would not be significant in terms of any required pretreatment standards.

The third item (C) of the definition provides that IUs that are subject to national categorical pretreatment standards and discharge to a delegated POTW shall also be designated as SIUs. This part of the definition is consistent with the federal definition, except in the case of non-delegated POTWs where we do not delegate pretreatment authority to implement national categorical pretreatment standards. Because non-delegated POTWs have not been delegated authority to implement categorical standards, MPCA retains this authority and responsibility. This is specifically allowed under the federal general pretreatment regulations 40 CFR § 403.10(e). Therefore the criteria for significance of an IU in Minn. R. 7049.0120, subp. 24 A and B apply to IUs in all POTWs, while the criteria for significance of an IU in Minn. R. 7049.0120, subp. C and D only apply to IUs in POTWs with delegated pretreatment programs.

Although some POTWs are responsible to implement the national categorical pretreatment standards and some are not, they all still have the responsibility and authority to control their IUs to protect their POTW plant and implement the general and specific prohibitions, including preventing interference and pass-through.

The final item (D) of the definition of SIU incorporates the exception for non-significant categorical IUs from the federal regulations. The federal regulations generally consider all IUs subject to national categorical pretreatment standards to be SIUs. This is partly included in the definition in these proposed state rules, as described in the preceding paragraph. The exception in the federal regulations to CIUs being SIUs is the provision for non-significant categorical IUs, which was added to the federal regulations under the pretreatment streamlining amendments of mid 2005, was included in the federal regulations at 40 CFR § 403.3(v) and is included in the state rules at Minn. R. 7049.0120, subp. 24(D). CIUs come in a wide variety of sizes and degrees of significance from the POTW perspective. Some industrial users subject to categorical pretreatment standards have essentially zero potential to impact the POTW. And some CIUs have essentially zero potential to violate categorical standards or any pretreatment standards. Therefore, it is reasonable to provide an exception to the general rule that CIUs are SIUs. The provisions incorporated here are those chosen by EPA for the federal regulations, and are incorporated without change.

*7049.0120 DEFINITIONS.*

*Subp. 25. **Significant noncompliance.** An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:*

*A. chronic violations of wastewater discharge limits, defined in this part as those in which 66 percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric pretreatment standard or requirement;*

*B. technical review criteria (TRC) violations, defined in this part as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of a numeric pretreatment standard or requirement multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);*

*C. any other violation of a pretreatment standard or requirement that the POTW determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public;*

*D. any discharge of a pollutant that has caused imminent endangerment to human*

*health, welfare, or the environment or has resulted in the receiving POTW authority's exercise of its emergency authority to halt or prevent such a discharge;*

*E. failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;*

*F. failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;*

*G. failure to accurately report noncompliance; or*

*H. any other violation or group of violations, which may include a violation of best management practices, that the POTW authority determines will adversely affect the operation or implementation of the local pretreatment program.*

**Subp. 25. Significant Noncompliance.** This definition of significant noncompliance is taken directly without change from the federal definition, but the definition has been moved. In the federal regulations this definition occurs at 40 CFR § 403.8(f)(2)(vii), and relates specifically to the requirement to publish SIUs that are in significant noncompliance. It has been moved to the general definitions in the proposed state pretreatment rule because the practical uses of this term are much broader than just publication for public participation. The term and concept of significant noncompliance in practice is used to evaluate whether to escalate enforcement action, determining when noncompliance must be reported, etc. Given the wider usage of this term it was determined to place the definition into the general definitions.

The criteria defining “significant noncompliance” are: chronic and other discharge violations, failure to comply with schedules, failure to report monitoring or violations on time, discharges that cause interference, pass-through or endangerment, and other violations at the POTW’s discretion. These criteria cover the possibly significant noncompliance that may occur, and are taken directly from the federal regulations. Besides being in the federal pretreatment regulations, the criteria used here are virtually identical to the criteria used to determine significant noncompliance in the water quality program nationwide in general. Therefore, it is reasonable to use these criteria for the same purpose here.

*7049.0120 DEFINITIONS.*

*Subp. 26. **Slug discharge.** "Slug discharge" means a discharge of a nonroutine, episodic nature, including, but not limited to, an accidental spill or a noncustomary batch discharge, which has a reasonable potential to cause interference or pass-through or in any other way violate the POTW's regulations, local limits, or permit conditions.*

**Subp. 26. Slug discharge.** The definition of “slug discharge” is taken unchanged from the federal regulations at 40 CFR § 403.8(f)(2)(vi). It is used mainly to require POTWs to evaluate whether SIUs need to have slug discharge plans to deal with these potentially problematic discharges. However, since the general usage of the term is wider than that specific requirement, the definition was placed here in the proposed rules. POTWs generally function best when they receive a consistent waste stream. Therefore, spills or slug discharges, which may make a waste stream highly inconsistent are a concern in pretreatment. Slug discharges here are defined in terms of potential to cause interference or pass-through, or violate pretreatment standards. Since the intent of this rule is to prevent interference

and pass-through, and since this rule requires development of and compliance with pretreatment standards, it is reasonable to define a slug discharge in these terms.

*7049.0130 LOCAL LAW.*

*Industrial users shall comply with the limitations imposed by the POTW that receives their wastewater discharge. Except as provided in part 7049.0300, subpart 1, and permits issued under that part, industrial users shall report to the receiving POTW. Nothing in this chapter is intended to affect any pretreatment requirements, standards, or prohibitions established by local law, as long as any local requirement is not less stringent than any set forth in this chapter.*

**7049.0130 “Local Law.”** This part is taken directly from 40 CFR § 403.4. Local POTW authorities are explicitly allowed to impose more restrictive standards and requirements than imposed or required by these rules or Federal regulations. This preserves the authority and flexibility needed by local POTW authorities to effectively and efficiently control their IUs.

*7049.0140 PRETREATMENT STANDARDS; PROHIBITED DISCHARGES.*

*Subpart 1. **Scope.** The prohibitions in this part apply to every source of indirect discharge whether or not it is subject to other pretreatment requirements.*

*Subp. 2. **General prohibitions.** An industrial user shall not introduce any pollutants that cause pass-through or interference.*

*Subp. 3. **Specific prohibitions.** In addition to the general prohibitions in subpart 2, the following pollutants must not be introduced into a POTW:*

*A. pollutants that create a fire or explosion hazard in a POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees centigrade using the test methods specified in Code of Federal Regulations, title 40, section 261.21;*

*B. pollutants that will cause corrosive structural damage to a POTW, but in no case discharges with a pH lower than 5.0, unless the POTW plant is specifically designed to accommodate such discharges;*

*C. solid or viscous pollutants in amounts that will cause obstruction to the flow in a POTW plant or POTW collection system resulting in interference;*

*D. any pollutant, including oxygen-demanding pollutants such as biochemical oxygen demand, released in a discharge at a flow rate or pollutant concentration that will cause interference or pass-through at a POTW plant;*

*E. heat in amounts that will inhibit biological activity in a POTW plant resulting in interference, but in no case heat in such quantities that the temperature at the headworks of the receiving POTW plant, excluding the POTW collection system, exceeds 104 degrees Fahrenheit or 40 degrees centigrade unless the agency, upon request of the POTW authority, approves alternate temperature limits;*

*F. petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through; or*

*G. pollutants that result in the presence of toxic gases, vapors, or fumes within a POTW plant in a quantity that may cause acute worker health and safety problems.*

*Subp. 4. **Discharge.** Wastes trucked or hauled to a POTW must only be discharged at a point designated by the POTW authority.*



**7049.0140 “Prohibited Discharges.”** This part mainly implements the prohibitions from the federal general pretreatment regulations (40 CFR § 403.5). They have been slightly changed as described below in this section and have been reorganized with the intention of making them clearer. For example, the prohibition in the federal regulations against trucked or hauled wastes, except at a point designated by the POTW, (40 CFR § 403.5(b)(8)) has been changed to a requirement that trucked or hauled wastes may only be discharged at a point designated by the POTW authority.

Prohibitions are needed to implement this rule’s intention of preventing pass-through or interference. Each of the prohibitions is intended to prohibit the discharge of some pollutant or class of pollutants which will cause interference or pass-through in some way. The general prohibitions in Minn. R. 7049.0140, subp. 2 specifically prohibit interference and pass-through and therefore directly relate to the intention of the rule, stated in Minn. R. 7049.0100. The two conditions, interference and pass-through, prohibited in the general prohibitions are explicitly intended to cover any indirect discharge which causes the POTW to violate any rule, regulation, or permit limit or condition limiting pollutant release from the POTW to the environment. This is reasonable to accomplish the intentions of this rule.

The general prohibitions apply whenever interference or pass-through have occurred. The specific prohibitions, in contrast, prohibit conditions that “create a hazard,” or “will cause damage,” or “will obstruct,” or “will cause interference,” or “will inhibit biological activity,” or “will cause interference or pass-through,” or “may cause acute worker health and safety problems.” All of these prohibitions have in common that the interference or other problem ultimately being prevented need not have already occurred. That is, the specific prohibitions can be applied prospectively. The specific prohibitions of Minn. R. 7049.0140, subp. 3, prohibit the indirect discharge of pollutants that will cause damage to the POTW plant, inhibit the processes of the treatment plant or endanger workers at the POTW in the specific ways listed.

The draft of the state pretreatment rules that was circulated for comment in August 2005 contained a prohibition of overload in Minn. R. 7049.0140 and a definition of capacity of POTW plant in Minn. R. 7049.0120, which drew multiple comments. The rationale for including this prohibition was the felt need for the MPCA to be able, in some limited circumstances, to take enforcement action before effluent violations and other environmental impacts become manifest. In response to the comments received on this prohibition, both the prohibition of overload and the supporting definition of POTW capacity have been dropped, although the need for authority to take action prior to manifest violations is still considered essential.

In the course of received comment review, it was realized that the existing specific prohibitions in the federal regulations can already be applied prior to violations of rules or permit conditions being manifest, if it can be determined that the types of conditions prohibited will cause interference. This interpretation of these prohibitions was verified in discussions with EPA and pretreatment contacts from other states. Since one of these specific prohibition (Minn. R. 7049.0140, subp. 3(D)) can be applied to overload situations, the prohibition of overload and the supporting definition is being dropped. The only change made to the proposed rules that differs from the federal regulations is the addition of pass-through in the prohibition at Minn. R. 7049.0140, subp. 3(D) of “any pollutant, including oxygen demanding pollutants....” The intention is that this prohibition be interpreted that a POTW control authority or MPCA may take enforcement action against an IU for a discharge that has

not yet caused interference or pass-through, but that the control authority or MPCA determines will cause interference or pass-through. Other prohibitions with similar wording, as described above, will also be similarly interpreted.

*7049.0150 AFFIRMATIVE DEFENSE FOR VIOLATIONS.*

*An industrial user has an affirmative defense in any action brought against it alleging a violation of the general prohibitions in part 7049.0140, subpart 2, and the specific prohibitions in part 7049.0140, subpart 3, items C to G, when the user can demonstrate that:*

*A. the user did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass-through or interference; and*

*B. (1) a local limit designed to prevent pass-through or interference was developed according to part 7049.0600, subpart 2, or 7049.0850 for each pollutant in the user's discharge that caused pass-through or interference and the user was in compliance with each such local limit directly prior to and during the pass-through or interference; or*

*(2) if a local limit designed to prevent pass-through or interference has not been developed according to part 7049.0600, subpart 2, or 7049.0850 for the pollutants that caused the pass-through or interference, the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the receiving POTW was regularly in compliance with the receiving POTW's national pollutant discharge elimination system permit requirements and applicable requirements for sewage sludge use or disposal.*

**7049.0150 Affirmative Defense for Violations.** The affirmative defense provision contained in Minn. R. 7049.0150 implements the corresponding provision of the federal general pretreatment regulations (40 CFR § 403.5 (a)(2)) without change. This provides an affirmative defense for an IU for violations of the general prohibitions in Minn. R. 7049.0150, subp. 2. The defense provides protection in cases where the IU does not know or have reason to know that it is violating the prohibitions or otherwise causing problems, but it nevertheless does violate the prohibitions or causes violations by the POTW. The defense provided here does not interfere with the ability of the POTW to impose its own requirements or penalties on the industry. It also does not allow the IU to continue to cause POTW violations and thus violate the general prohibitions. In fact the proposed rules, at Minn. R. 7049.0600, subp. 4 specifically provide that a POTW must take action to correct its local limits if this situation is caused by incorrect or incomplete local limits.

*7049.0160 CONFIDENTIALITY.*

*Except for data determined to be confidential according to Minnesota Statutes, section 116.075, subdivision 2, all reports required by this chapter must be available for public inspection. Effluent data is not confidential. To request the agency to maintain data as confidential, the POTW authority or industrial user supplying the information must comply with part 7000.1300.*

**7049.0160 Confidentiality.** This part is exactly parallel to the confidentiality provisions of the federal general pretreatment regulations, but stated in terms of state rules and statutes. Confidentiality must be addressed in state pretreatment rules since pretreatment controls on IUs often encounter confidentiality

considerations, and these situations must be handled in a manner consistent with state and federal law.

*7049.0161 CRIMINAL VIOLATIONS.*

*Industrial users, significant industrial users, and POTWs under this chapter are subject to Minnesota Statutes, section 609.671.*

**7049.0161 Criminal Violations.** This part makes clear that applicable provisions of Minnesota Statutes relating to criminal violations apply to the provisions of this chapter. Since some provision contained in this rule relate to criminal violations, it is appropriate that the proper state statutes be cited.

*7049.0162 RECORD KEEPING.*

*Subpart 1. **Requirements for monitoring activities.** Anyone required by this chapter to perform any record keeping or monitoring activities shall maintain records of all information required by this chapter, including documentation associated with best management practices. The records shall include for all samples:*

*A. the date, exact place, method, and time of sampling and the names of the person or persons taking the samples;*

*B. the dates analyses were performed;*

*C. who performed the analyses;*

*D. the analytical techniques or methods used; and*

*E. the results of the analyses.*

*Subp. 2. **Retention of records.** Anyone subject to monitoring or reporting requirements under this chapter, including documentation associated with best management practices, shall retain for a minimum of three years:*

*A. records of monitoring activities and results, whether or not the monitoring activities are required by this subpart; and*

*B. reports created, submitted, or required to be submitted under this chapter.*

*The period of retention shall be extended during the course of any unresolved enforcement action regarding an industrial user or a POTW or when requested by the agency.*

**7049.0162 Record Keeping.** This part is derived directly from the federal general pretreatment requirements (40 CFR § 403.12 (o)), without substantive change. Most regulation in the pretreatment program is done by POTWs. Since the MPCA is responsible to oversee these activities, it is necessary that records be kept and retained. This part specifies how this is to be done. In addition, since self-monitoring by IUs and monitoring conducted by POTWs are primary means by which compliance with pretreatment standards is determined, it is also reasonable to require the maintenance of records with specific details of monitoring.

*7049.0163 INFORMATION, RECORDS, AND ACCESS.*

*Subpart 1. **Duty to provide information.** A person who is operating or responsible for or who might otherwise have information concerning an indirect discharge has a duty, when requested by the agency, to furnish to the agency any information the person has, may have, or may readily obtain that is relevant to the indirect discharge.*

*Subp. 2. **Examination of records.** The agency may examine and copy any books, papers, records, or memoranda from a person who has a duty to provide information that*

*the person may have or may readily obtain and that are relevant to an indirect discharge, pass-through, or interference.*

*Subp. 3. **Access to information and property.** The agency, or a member, employee, or agent authorized by the agency, upon presentation of credentials, may enter upon any property, public or private, for the purpose of taking any action authorized by this chapter, including obtaining information from a person who has a duty to provide the information under subpart 1, examining records, or conducting surveys or investigations of any indirect discharge.*

**7049.0163 Information, Records and Access.** This part requires that POTWs and IUs provide information that they have, and provides for MPCA access to records and locations that have indirect discharges. This authority is essential for oversight in the pretreatment program. Since MPCA is responsible for overseeing POTW implementation of the pretreatment program, it is reasonable for MPCA to be provided the authorities contained in this part. The authority provided here is essentially the same as that which MPCA has for direct dischargers.

**Provisions Applicable to Industrial Users in General, (Minn. R. 7049.0200 through 7049.0220)**  
These parts contain provisions that are generally applicable to all industrial users, and mainly deal with reporting and notifications required of IUs.

*7049.0200 REPORTING AND MONITORING.*

*Subpart 1. **Reporting requirements for significant industrial users.***

*Significant industrial users shall submit to the control authority at least once every six months or as frequently as required by the control authority, on dates specified by the control authority, a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit requires compliance with a best management practice or pollution control alternative, the industrial user must submit documentation required by the control authority to determine the compliance status of the industrial user.*

*Subp. 2. **Monitoring of significant industrial users.***

*All monitoring performed to provide information on a discharge from a significant industrial user must be representative of the industrial process discharge or the total discharge from the significant industrial user to the receiving POTW, except when monitoring for compliance with categorical pretreatment standards requires that the monitoring be representative of a specific process wastewater. All periodic monitoring reports required by this chapter must be based upon data obtained during the period covered by the report and on sampling and analysis performed in the period covered by the report and must be performed according to the techniques described in Code of Federal Regulations, title 40, part 136, as amended. The data must be representative of conditions occurring during the reporting period.*

*Subp. 3. **Pollutants to be monitored for.** Except in the case of nonsignificant categorical users, and as provided in parts 7049.0570, subpart 3, and 7049.0710, the reports required in this part and parts 7049.0500 to 7049.0570 shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass when requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards.*

*Subp. 4. **Types of samples.** Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. When time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user's file for that facility or facilities. Using protocols, including appropriate preservation, specified in Code of Federal Regulations, title 40, part 136, and appropriate Environmental Protection Agency guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field and for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures documented in approved Environmental Protection Agency methodologies may be authorized by the control authority, as appropriate. For sampling required in support of baseline monitoring and 90-day compliance reports required in parts 7049.0500 to 7049.0570, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the periodic monitoring reports required by this part and part 7049.0570, the control authority shall require the number of grab samples necessary to assess and ensure compliance by industrial users with applicable pretreatment standards and requirements.*

*Subp. 5. **POTW may monitor in lieu of industrial user.***

*Sampling and analysis of the discharges from industrial users required by this part may be performed by the POTW in lieu of the industrial user. When the POTW collects all the information required for the report, including flow data, the industrial user is not required to submit the monitoring reports required under parts 7049.0200 to 7049.0590.*

*Subp. 6. **Include all monitoring results.** If an industrial user monitors any regulated pollutant more frequently than required by the control authority, at the appropriate sampling point, using the procedures approved for that monitoring, the results of the monitoring shall be included in the relevant report to the control authority.*

**7049.0200 Reporting and Monitoring.** This part specifies monitoring and reporting requirements for SIUs. It collects in one place the general provisions for monitoring and reporting that are applicable to IUs, from various parts of the federal general pretreatment regulations 40 CFR pt. 403. Since self-monitoring and reporting of those results are a major means of controlling IUs, it is necessary to have provisions specifying what monitoring and reporting is required.

Subp. 1 specifies that SIUs monitor at least twice annually. Since self monitoring is heavily relied on in the pretreatment program it is reasonable to specify a minimum monitoring frequency. The twice annual monitoring frequency specified in the federal regulations at 40 CFR § 403.12(h) has been retained.

This subpart also provides for reporting on compliance with BMPs, which have been found to be

effective and efficient substitutes for numeric pretreatment standards. In the federal pretreatment regulations BMPs are allowed or required in several categories of the national categorical pretreatment standards, and they are also explicitly allowed as local limits. Where BMPs are used in the categorical pretreatment standards, or where the local POTW establishes BMPs as local limits, it is normally not practical, and it is sometimes not possible, to obtain data on the discharge via sampling and analysis. Therefore, the federal regulations require reporting on the BMPs and thus do not require actual sampling or analysis for reporting where BMPs are specified.

Subp. 2 requires that sampling be representative and based on actual monitoring. In general monitoring must be representative of the SIU's discharge to the POTW, but many categorical pretreatment standards require compliance at the regulated process. In these cases monitoring must be done at the point of compliance, which is normally at the regulated process. Where the limits from categorical standards have been adjusted using the combined waste stream formula (Minn. R. 7049.0350) to provide for a different point of compliance, monitoring must be done at the point of compliance for which alternate limits have been calculated as provided in Minn.

R. 7049.0350. As discussed under subpart 1 above, reporting need not be based on actual monitoring where BMPs and alternate reporting are provided.

Subp. 3 requires that all pollutants regulated in applicable categorical pretreatment standards be monitored for, except when a monitoring waiver is granted as provided in Minn.

R. 7049.0570, subp. 3. This monitoring waiver is taken unchanged from the federal regulations 40 CFR § 403.12(e)(2) and will be discussed below. This is believed and intended to be consistent with the requirements of the federal regulations.

Subp. 4 specifies the sample types to be used when monitoring for specific pollutants. Since certain pollutants require specific types of sampling, this is needed. These requirements are taken directly from the federal regulations at 40 CFR § 403.12(g)(3).

Subp. 5 provides that the receiving POTW may monitor in lieu of the SIU. Many POTWs prefer monitoring their SIUs rather than requiring self-monitoring by the SIUs. This arrangement provides oversight of the SIU discharge that is at least as good as SIU self-monitoring and it is therefore reasonable to allow it.

Subp. 6 requires that an SIU report all monitoring at the compliance point when the SIU conducts more monitoring than is required. Not only is this requirement taken directly from the federal pretreatment regulations, but it is also a standard requirement of all water quality self-monitoring. Absent this requirement, it might be permissible for an SIU to conduct more monitoring than required and submit only those results that showed compliance. To explicitly prevent this it is reasonable to include this requirement.

*7049.0210 NOTICE.*

*Subpart 1. Notice of potential problems; slug discharges.*

*All industrial users shall notify the receiving POTW immediately of all discharges by the industrial user that could cause problems to the POTW plant, including any slug discharge.*

*Subp. 2. Notification and repeat sampling in case of violation.*

*If sampling performed by an industrial user indicates a violation, the industrial user shall notify its control authority, and its receiving POTW if the POTW is not the control authority, within 24 hours of becoming aware of the violation. The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to its control authority within 30 days after becoming aware of the violation. When the POTW has performed the sampling and analysis in lieu of the industrial user, the POTW must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:*

*A. the POTW performs sampling at the industrial user at a frequency of at least once per month; or*

*B. the POTW performs sampling at the industrial user between the time when the initial sampling was conducted and the time when the industrial user or the POTW receives the results of the sampling.*

*Subp. 3. **Notification of changed discharge.** An industrial user shall promptly notify the receiving POTW in advance of any substantial change in the volume or character of pollutants in the industrial user's discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subpart 4. When the agency is the control authority, the industrial user shall also notify the agency.*

*Subp. 4. **Sewered hazardous waste notification.***

*A. If an industrial user discharges 15 kilograms or more of a substance in any month into a POTW that, if otherwise disposed of, would be a hazardous waste under chapter 7045, or if an industrial user discharges any amount of a substance into a POTW that, if otherwise disposed of, would be an acute hazardous waste under chapter 7045, the industrial user must submit a written sewered hazardous waste notification to the receiving POTW, the Environmental Protection Agency regional waste management division director, and the agency hazardous waste program. Any notification under this subpart need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subpart 3.*

*B. (1) A sewered hazardous waste notification must include the name of the hazardous waste as set forth in chapter 7045, the Environmental Protection Agency hazardous waste number, and the type of discharge (continuous, batch, or other).*

*(2) If the industrial user discharges more than 100 kilograms of the waste per calendar month to the receiving POTW, the notification shall also contain the following information to the extent the information is known and readily available to the industrial user:*

*(a) an identification of the hazardous constituents contained in the wastes;*

*(b) an estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month; and*

*(c) an estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months.*

*(3) The industrial user shall also certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it is determined to be economically practical.*

*C. Industrial users shall provide the sewered hazardous waste notification no later than 180 days after the discharge of:*

(1) more than 15 kilograms of nonacute hazardous wastes in a calendar month; or  
(2) any quantity of acute hazardous wastes as specified in part 7045.0135, subparts 2 and 4.

*In the case of any new regulations under chapter 7045 or United States Code, title 42, section 6921, identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the sewer hazardous waste notification is due within 90 days of the effective date of the regulations.*

*D. The notification requirement in this subpart does not apply to pollutants already reported in a baseline monitoring report, 90-day compliance report, or periodic report on continued compliance as required in parts 7049.0500 to 7049.0570.*

**7049.0210 Notice.** This part collects, in one place, the general notification requirements that are applicable to IUs, from the federal general pretreatment regulations (40 CFR § 403.12). Specifically it contains:

- the requirement from 40 CFR § 403.12(f) that an IU notify its receiving POTW immediately of potentially problem causing discharges;
- the requirement from 40 CFR § 403.12(g) that an IU notify its control authority and also resample their discharge when monitoring finds a violation of limits;
- The requirement from 40 CFR § 403.12(j) that an IU notify its receiving POTW of substantial changes to their discharge; and
- The requirement from 40 CFR § 403.12(p) that an IU notify its receiving POTW, and MPCA and EPA of discharges that would be a hazardous waste, if otherwise disposed of.

All of these requirements are unchanged in substance from the comparable provisions of the federal rules.

**Subp. 1. Notice of Potential Problems; Slug Discharges.** Notifying the receiving POTW of potentially problem causing discharges is an important measure that often allows the POTW to take action to prevent or minimize the problems. Therefore it is reasonable that this notification be required, and be required to be made immediately. This notification may be arranged, by the POTW, to be done in some way other than by direct contact from the IU to the POTW. For example: Metropolitan Council Environmental Services uses the state duty officer to receive these notifications. Arrangements of this type are acceptable provided IUs are adequately made aware of the proper method of notification, and provided the notification means proves to be effective in providing the needed notification to the POTW. If a POTW utilizes a notification method that proves to be ineffective, MPCA may require changes. The determination of what discharges may cause problems is left primarily to the POTW, since they are the primary beneficiaries of this notification and are normally most familiar with the needs of their POTW plant. If an IU discharge that was not considered to be potentially problem causing does in fact cause problems, the POTW should assure that the IU will notify the POTW of such discharges in the future. If the POTW fails to do this, MPCA may take action to insure that adequate notification is required and performed.

**Subp. 2. Notification and Repeat Sampling in Case of Violation.** This subpart requires an IU subject to pretreatment limits to notify its control authority when it becomes aware of violations of those limits. An IU will normally become aware of the violations through the results of their normal self monitoring. Notification of violations gives the control authority advance notice so that action can be taken, if needed, and makes the control authority aware of potential compliance issues. Since the control



authority has the responsibility of enforcing pretreatment limits, it is reasonable to require the IU to notify the control authority when it becomes aware of potential noncompliance. This subpart also requires, with some exceptions, that the IU resample its discharge when it becomes aware of violations. When an IU initially becomes aware of a violation, they normally have only one noncompliant sample result. Requiring the IU to resample is reasonable since the additional data is useful to determine cause of the violations, and to characterized the non-compliance. Since resampling following discovery of a violation is particularly important where monitoring is infrequent, and is therefore less needed when monitoring is frequent, it is also reasonable to have exceptions to this requirement. All requirements in this subpart are taken unchanged from the federal regulations at 40 CFR § 403.12(g)(2).

**Subp. 3. Notification of Changed Discharge.** A receiving POTW may need to take action to retain control over their IUs in cases where an IU makes a substantial change to their discharge. Such actions could be at least as substantial as expansion of the POTW plant, or could be simply modifying the IU's permit, although frequently no action at all is needed. What changes are substantial and require reporting should be interpreted mainly by the POTW and should be interpreted in terms of actions the POTW may need to take in response to these changes. To take needed actions in a timely and well considered manner, the POTW needs to become aware of coming changes. Therefore it is reasonable to require IUs to notify the POTW in advance of changes to their discharge.

**Subp. 4. Sewered Hazardous Waste Notification.** Notification of discharges that would otherwise be hazardous waste have been determined by EPA to be helpful for tracking generated wastes and for informing the POTW of wastes they receive. This requirement is included exactly as it appears in the federal regulations 40 CFR § 403.12(p). Materials that would otherwise be regulated as hazardous wastes fall under the Domestic Sewage Exclusion which is contained, in slightly different forms, both in the federal regulations (40 CFR § 261.4(a)(1)) and in state rules (Minn. R. 7045.0120(B)). This exclusion allows the water quality pretreatment program to regulate sewered discharges without the complication of dealing with hazardous waste regulations which were not designed for sewered wastes. This exclusion makes a notification requirement reasonable so that these wastes do not enter a POTW unknown.

*7049.0220 SIGNATORY REQUIREMENTS FOR INDUSTRIAL USER REPORTS.*

- A. All required reports must be signed by:
  - (1) a responsible corporate officer, if the industrial user is a corporation;*
  - (2) a general managing partner, if the industrial user is a partnership; or*
  - (3) the proprietor, if the industrial user is a sole proprietorship.**
- B. Reports may be signed by a duly authorized representative of an individual designated in item A if the conditions in item D are satisfied.*
- C. For the purpose of this part, "responsible corporate officer" means:
  - (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or*
  - (2) the manager of one or more manufacturing, production, or operating facilities, provided:
    - (a) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making***

*major capitol investment recommendations, and initiate and direct other comprehensive measures to ensure long-term compliance with environmental laws and regulations;*

*(b) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and*

*(c) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.*

*D. Reports may be signed by a duly authorized representative of an individual designated in item A if the authorization:*

*(1) is made in writing by the individual described in item A;*

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

*(3) is submitted in writing to the control authority.*

*If an authorization under this item is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization*

*satisfying the requirements of this item must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.*

**7049.0220 Signatory Requirements for IU Reports.** In order to ensure appropriate assignment of responsibility, it is necessary to specify who is authorized to sign IU reports. This part directly mirrors the provisions in the federal general pretreatment regulations relating to signatory requirements for industrial users. After specifying that reports are to be signed by an officer with authority over the facility having the regulated discharge, this subpart provides that the signatory authority may be delegated within certain restrictions.

**Provisions Related to Categorical Standards.** (Minn. R. 7049.0300 through 7049.0590) These parts contain provisions that relate to national categorical pretreatment standards. They can be viewed as three major groupings. Minn. R. 7049.0300 and 7049.0310 deal with the general application of national categorical pretreatment standards and incorporate the categorical standards by reference. Minn. R. 7049.0350 through 7049.0495 deal with modifications to the categorical standards and affirmative defenses for violations of categorical standards. Minn. R. 7049.0500 through 7049.0550 deal with reporting required for industrial users subject to national categorical pretreatment standards.

*7049.0300 APPLICATION OF CATEGORICAL STANDARDS.*

*Subpart 1. Requirements to comply.*

*A. Industrial users that are subject to one or more of the national categorical pretreatment standards listed in part 7049.0310, as described in the relevant applicability sections of the national categorical pretreatment standards, must comply with the appropriate categorical pretreatment standards.*

*B. Except when the authority to implement these regulations is specifically delegated to the receiving POTW under parts 7049.0800 to 7049.1020, the agency is the control authority for national categorical pretreatment standards and has the authority to enforce*

*categorical pretreatment standards directly on all users subject to them.*

*C. POTW authorities with delegated pretreatment programs approved under parts 7049.0800 to 7049.1020 are the control authority for industrial users subject to national categorical pretreatment standards for which they are the receiving POTW. The agency retains the authority to oversee the POTW's implementation of national categorical pretreatment standards. The agency also retains the authority to enforce the national categorical pretreatment standards when the POTW fails to do so.*

*D. The agency control authority may be implemented via general and individual state disposal system permits or other regulatory documents. Industrial users subject to national categorical pretreatment standards for whom the agency is the control authority shall maintain on-site plans and specifications for pretreatment needed to comply with pretreatment standards.*

**Subp. 2. *Deadline for compliance with national categorical pretreatment standards.***  
*The deadline for compliance with national categorical pretreatment standards is the compliance date contained in the applicable regulation listed in part 7049.0310, but not later than 3 years after the effective date of the applicable regulation. A new source shall install, have in operating condition, and start up all pollution control equipment required to meet applicable categorical pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed 90 days, a new source must meet all applicable categorical pretreatment standards. Existing sources that become industrial users subsequent to adoption of an applicable categorical pretreatment standard shall be considered existing industrial users, except when the sources meet the definition of a new source.*

**Subp. 3. *Concentration and mass limits.***

*A. Pollutant discharge limits in categorical pretreatment standards are expressed either as concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.*

*B. If the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.*

*C. A control authority calculating equivalent mass-per-day limitations under item B shall calculate the limitations by multiplying the limits in the categorical pretreatment standard by the industrial user's average rate of production. The average rate of production shall be based on a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year, and not on the designed production capacity. For new sources, average production shall be estimated using projected production.*

*D. A control authority calculating equivalent concentration limitations under item B shall calculate the limitations by dividing the mass limitations derived under item C by the average daily flow rate of the industrial user's regulated process wastestream. The average daily flow rate shall be based on a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year.*

*E. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all the conditions in this item.*

*(1) To be eligible for equivalent mass limits, the industrial user must:*

*(a) employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;*

*(b) currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard and must not have used dilution as a substitute for treatment;*

*(c) provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;*

*(d) not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and*

*(e) have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.*

*(2) An industrial user subject to equivalent mass limits must:*

*(a) maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;*

*(b) continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;*

*(c) continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subitem (1), unit (c). Upon notification of a revised production rate, the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and*

*(d) continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subitem (1), unit (a), so long as it discharges under an equivalent mass limit.*

*(3) A control authority that chooses to establish equivalent mass limits:*

*(a) must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;*

*(b) upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and*

*(c) may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result*

*of the implementation of water conservation methods and technologies and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to subpart 4. The industrial user must also be in compliance with part 7049.0495, regarding the prohibition of bypass.*

*(4) The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.*

*F. The control authority may convert the mass limits of the categorical pretreatment standards in Code of Federal Regulations, title 40, parts 414, 419, and 455, to concentration limits for purposes of calculating limitations applicable to individual industrial users. When converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable subparts of Code of Federal Regulations, title 40, parts 414, 419, and 455, and document that dilution is not being substituted for treatment as prohibited by subpart 4.*

*G. Equivalent limitations calculated according to this part are required pretreatment standards for purposes of this chapter. Industrial users must comply with the equivalent limitations in lieu of the adopted categorical standards from which the equivalent limitations were derived.*

*H. Many categorical pretreatment standards specify both a maximum daily discharge limitation and a maximum monthly average, or four-day average, limitation. If the standards are being applied, the same production or flow figure shall be used in calculating both types of equivalent limitations.*

*I. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a national categorical pretreatment standard that incorporates production-based standards shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user that does not notify its control authority of an anticipated change must meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.*

*Subp. 4. **Dilution prohibited.** Except when expressly authorized to do so by an applicable pretreatment standard or requirement, an industrial user shall not increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users that have used or are using dilution to meet applicable pretreatment standards or in other cases where the imposition of mass limitations is appropriate.*

**7049.0300 Provisions for Regulating Categorical Industrial Users.** Minn. R. 7049-0300, subp. 1 requires compliance with the National Categorical Pretreatment Standards which are incorporated by reference in Minn. R. 7049.0310, and also specifies who is the control authority. The specification of control authority and description of how MPCA will implement its responsibility as control authority is the only portion of this part that is not taken directly from the federal regulations at 40 CFR § 403.6. The National Categorical Pretreatment Standards are designed to provide a basic minimum required level of treatment for all IUs nationwide that are subject to the various federal

regulations that comprise these standards. This part of the state rules requires compliance with these regulations. No changes have been made to any of these standards.

Minnesota has chosen to delegate the authority to implement the federal regulations to a few POTWs, as provided in the federal regulations at 40 CFR § 403.8 and 403.9, and these proposed rules, and has chosen not to delegate this authority to most smaller POTWs, but retains the responsibility for implementing the National Categorical Pretreatment Standards. Because of this decision it is essential to specify who the control authority is in all cases. This is done in Minn. R. 7049.0300, subp. 1.

**Subp. 1(D)** indicates that MPCA will control IUs subject to categorical standards by means of SDS permits. This has been done for many years under general SDS permitting authority. This part now makes this official. Applications for SDS permits normally require the submittal of plans and specifications. However, in using SDS permits to apply categorical standards, the specific treatment technology used, and therefore plans and specifications, are of lesser importance. Therefore, the proposed rules require applicants for a permit implementing categorical standards is required to maintain plans and specifications, but not submit them. Because of the inclusive definition of “pretreatment” (Minn. R. 7049.0120 subp. 17) many different means may be used to maintain compliance with these standards, including industrial process controls or selection of process chemistry. The plans and specifications that must be maintained to comply with subpart 1(D) must indicate what means the permittee is using to achieve compliance. For example, an IU subject to categorical standards and permitted by MPCA may maintain compliance by using process chemistry and raw materials that will not introduce regulated pollutants into their waste stream. In this case the plans and specifications that must be maintained should indicate what process chemistry and raw material are used with enough specificity to make clear how this will maintain compliance.

**Subp. 2** incorporates the provisions regarding deadlines from 40 CFR § 403.6(b). These are adopted without change from the federal regulations. We cannot make these provisions less restrictive than the federal regulations. Therefore the deadlines in the federal regulations are retained.

**Subp. 3** incorporates the provisions regarding concentration vs. mass limits from 40 CFR § 403.6(c). Some national categorical standards contain limits expressed in mass of pollutant discharged per unit of production, some standards contain concentration limits to be applied as concentration limits and some standards contain concentration limits that are to be converted to a mass in an individual control mechanism for a categorical industrial user. In order to apply national categorical standards from various categories in combination with local limits in various forms, and to do so in the wide variety of situations that exist, provision must be made to allow for changing categorical standards from one form to another without sacrificing the control afforded by categorical standards. Subp. 3 of Minn. R. 7049.0300 provides various options for these changes of form. These are adopted from federal regulations at 40 CFR § 403.6(c).

**Subp. 4** incorporates the dilution prohibition from 40 CFR § 403.6(d). This prohibition applies to National Categorical Pretreatment Standards. National Categorical Pretreatment Standards are technology based standards, developed to require the control of pollutant discharges to be equivalent to best available treatment technology. The provision prohibiting the use of dilution to meet pretreatment standards is needed so that dilution cannot be substituted for actual reduction of pollutant discharge.

7049.0310 NATIONAL CATEGORICAL PRETREATMENT STANDARDS ADOPTED.

Subpart 1. **Adoption.** The pretreatment standards for existing sources, pretreatment standards for new sources, and all supporting provisions relevant to these standards contained in the following federal point source category regulations and all future amendments are adopted by reference and incorporated in this part:

<i>Point Source Category</i>	<i>CFR Cite</i>
A. Grain milling	40 CFR 406
B. Concentrated animal feeding operations	40 CFR 412
C. Electroplating	40 CFR 413
D. Organic chemicals, plastics, and synthetic fibers	40 CFR 414
E. Inorganic chemicals manufacturing	40 CFR 415
F. Soap and detergent manufacturing	40 CFR 417
G. Fertilizer manufacturing	40 CFR 418
H. Petroleum refining	40 CFR 419
I. Iron and steel manufacturing	40 CFR 420
J. Nonferrous metal manufacturing	40 CFR 421
K. Steam electric power generating	40 CFR 423
L. Ferroalloy manufacturing	40 CFR 424
M. Leather tanning and finishing	40 CFR 425
N. Glass manufacturing	40 CFR 426
O. Asbestos manufacturing	40 CFR 427
P. Rubber manufacturing	40 CFR 428
Q. Timber products processing	40 CFR 429
R. Pulp, paper, and paperboard	40 CFR 430
S. Builder's paper and board mills	40 CFR 431
T. Metal finishing	40 CFR 433
U. Centralized waste treatment	40 CFR 437
V. Pharmaceutical manufacturing	40 CFR 439
W. Transportation equipment cleaning	40 CFR 442
X. Incinerators	40 CFR 444
Y. Landfills	40 CFR 445
Z. Paint formulating	40 CFR 446
AA. Ink formulating	40 CFR 447
BB. Pesticide chemicals	40 CFR 455
CC. Battery manufacturing	40 CFR 461
DD. Metal molding and casting	40 CFR 464
EE. Coil coating	40 CFR 465
FF. Porcelain enameling	40 CFR 466
GG. Aluminum forming	40 CFR 467
HH. Copper forming	40 CFR 468
II. Electrical and electronic	

components 40 CFR 469  
JJ. Nonferrous metal forming and  
metal powders 40 CFR 471

*Subp. 2. **Future pretreatment standards.** Future applicable pretreatment standards for existing sources, pretreatment standards for new sources, and all supporting provisions relevant to these standards in Code of Federal Regulations, title 40, chapter I, subchapter N, are adopted by reference.*

*Subp. 3. **Category determination.** The applicable category and subcategory for an industrial user may be determined by the control authority at any time. However, a formal category determination request, as provided by Code of Federal Regulations, title 40, part 403.6, which is incorporated by reference, must be submitted to the agency within the deadlines provided.*

**7049.0310 National Categorical Pretreatment Standards Adopted.** This part incorporates by reference the pretreatment standards from 40 CFR Chapter I subchapter N and provides, in subp. 2, for prospective incorporation of new or revised standards. Since MPCA is required to apply new or revised categorical standards it is reasonable to provide for prospective incorporation to minimize unproductive workload.

This part also incorporates, in subp. 3, the category determination provisions of 40 CFR § 403.6 (a). In addition to incorporating the category determination provisions from the federal regulations, 7049.0310 subp. 3 also explicitly acknowledges the reality that category determinations in fact must be made by control authorities at any time relevant information becomes known. The timelines in the federal regulations inhibit formal category determinations most of the time. But the POTW must in fact make determinations regarding the applicability of national categorical pretreatment standards whenever the question arises, so this part acknowledges this fact.

#### *7049.0350 COMBINED WASTE STREAM FORMULA.*

##### *Subpart 1. **General.***

*A. The combined waste stream formula described in this part is used to derive fixed alternative discharge limits to be applied to the mixed effluent when waste streams subject to national categorical pretreatment standards are mixed with waste streams subject to other categorical standards and/or waste streams not subject to categorical standards. Alternative discharge limits may be derived using the combined waste stream formula by the control authority or by the industrial user with the prior written concurrence of the control authority. Alternative limits must be derived for all applicable limits. 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 monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any material or significant change to the control*



authority. If appropriate, new alternative categorical limits shall be calculated within 30 days. The industrial user may change monitoring points only after receiving prior written approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

B. If process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits shall be derived by the control authority or by the industrial user with the prior written concurrence of the control authority.

C. If a treated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream to determine compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process waste stream, the user shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined waste stream, the user shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in this part. The industrial user may change monitoring points only after receiving prior written approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

D. If a regulated process waste stream is combined without treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream to determine compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process waste stream, the user shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined waste stream, the user shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in this part. However, when no treatment is provided, all waste streams other than the regulated process waste stream are considered to be dilute waste streams in deriving alternative discharge limits. If more than one regulated process waste stream is present at the chosen monitoring point, the combined waste stream formula shall be applied to each regulated process waste stream separately, with all other waste streams considered to be dilute waste streams, and the most restrictive limit applied, for each pollutant. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

Subp. 2. **Alternative limit calculation; definitions.** For purposes of the formulas in subpart 3, the following symbols have the meanings specified.

$C_i$  = the alternative concentration limit for the combined waste stream.

$M_i$  = the alternative mass limit for a pollutant in the combined waste stream.

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

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

$F_D$  = the average daily flow (at least a 30-day average) of dilute waste streams.

If waste streams contain a significant amount of a pollutant and the combination of the streams, prior to treatment, with an industrial user's regulated process waste streams will result in a substantial reduction of that pollutant, the control authority shall determine whether the streams should be classified as dilute or unregulated. Dilute waste streams include, but are not limited to:

A. boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams;

B. sanitary waste streams when the streams are not regulated by a categorical pretreatment standard; and

C. process waste streams from processes that were or could have been entirely exempted from categorical pretreatment standards because:

(1) the regulated pollutants are not detectable in the effluent from the industrial user;

(2) the regulated pollutants are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(3) the regulated pollutants are present in amounts too small to be effectively reduced; or

(4) the waste stream contains only pollutants that are compatible with the receiving POTW.

$F_T$  = the total average daily flow through the combined treatment facility (this includes all  $F_i$ ,  $F_D$ , and unregulated streams).

$N$  = the total number of regulated streams.

For purposes of this subpart, "average daily flow" means a reasonable measure of the average daily flow for at least a 30-day period. For new sources, flows shall be estimated using projected values.

**Subp. 3. Alternative limit calculation; formula.** The alternative limit for a specified pollutant is derived by the use of either of the following formulas:

A. alternative concentration limit under Code of Federal Regulations, title 40, section 403.6(e)(1)(i); or

B. alternative mass limit under Code of Federal Regulations, title 40, section 403.6(e)(1)(ii).

**Subp. 4. Alternate limits below detection limit.** An alternative pretreatment limit derived by the combined waste stream formula may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

**7049.0350 Combined Waste Stream Formula.** This part incorporates the provisions of 40 CFR § 403.6(e) regarding the use of the Combined Waste Stream Formula (CWF) to derive alternate limits. This follows the federal regulations exactly in most instances.

National Categorical Pretreatment Standards apply to a very wide variety of IUs. An IU may have many different waste streams, subject to different categorical standards or not subject to any categorical standards. To allow flexibility in treating the various wastewaters it is necessary to allow

for the combination of regulated process wastewater streams with all kinds of waste streams subject to other federal standards, local limits or no limits at all. To allow the flexibility to do so without compromising the control of the National Categorical Pretreatment Standards, the CWF was placed in the federal regulations, and has been adopted in these state pretreatment rules.

The one change from the federal provisions is that the proposed state rules allow the use of the CWF in cases without treatment, with restrictions to ensure that the limits so derived are never less restrictive than would otherwise be the case. The CWF provisions of 40 CFR § 403.6(e)(4) provide for the use of the CWF only where a treated or untreated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process. It does not explicitly provide for the application of the CWF where no treatment is provided either before or after the wastestreams are combined. These proposed state pretreatment rules also provide for the use of the CWF where a regulated process waste stream is combined without treatment with wastewaters other than those generated by the regulated process and no further treatment is provided or needed. Situations in which wastewater subject to categorical standards can meet the applicable standards without end of pipe treatment are common. This is particularly true of phosphate conversion coating processes which are subject to the metal finishing category, and which are common in Minnesota. It is also common for these wastewaters to be combined with other wastes before they reach a point at which monitoring is reasonable. To allow monitoring at the reasonable monitoring point, and yet apply the categorical standards without prohibited dilution, it is necessary to allow the use of the CWF in these situations. This is, in fact, frequently done under the federal regulations even though it is not explicitly addressed. To ensure that this use of the CWF cannot be used to allow dilution in lieu of needed treatment, Minn. R. 7049.0350 subp. 1(D) provides that when the CWF is used without treatment, the CWF must be applied for each regulated waste stream, with all other waste streams considered dilute, and then applying the most restrictive result for each pollutant. The most common use of the CWF with no treatment present is in a case of waste streams subject to one categorical standard, combined with other waste streams which are not regulated by a categorical standard. In these cases the use of the CWF reduces exactly to the application of the CWF with treatment present.

*7049.0360 DEFINITIONS FOR REMOVAL CREDITS.*

*For the purposes of parts 7049.0360 to 7049.0470:*

*A. "removal" means a reduction in the amount of a pollutant in a POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be:*

- (1) the result of specifically designed POTW capabilities; or*
- (2) incidental to the operation of the treatment system.*

*Removal does not mean dilution of a pollutant in the POTW; and*

*B. "sludge requirements" means the federal statutory provisions, regulations, and permits under Code of Federal Regulations, title 40, section 403.7(a)(1)(ii), and provisions applicable to the use or disposal of solids from POTWs under chapters 7011, 7035, 7041, 7045, and 7050, and permits issued under those chapters.*

*7049.0370 APPLICATION FOR REMOVAL CREDITS.*

*A POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, at its discretion and subject to the conditions of this part, grant removal credits to reflect removal by the POTW plant of pollutants specified in the categorical pretreatment standard. The POTW authority may grant a removal credit*

equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits according to part 7049.0390. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment standard so specifies.

**7049.0380 CONDITIONS FOR AUTHORIZATION TO GIVE REMOVAL CREDITS.**

A. A POTW authority may give removal credits only if:

(1) the POTW authority applies for, and receives, authorization from the agency to give a removal credit according to part 7049.0450;

(2) the POTW authority demonstrates and continues to achieve consistent removal of the pollutant according to parts 7049.0400 and 7049.0410;

(3) the POTW authority has an approved pretreatment program according to parts 7049.0800 to 7049.1020. A POTW authority that does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in part 7049.0430;

(4) the granting of removal credits will not cause the POTW to violate the local, state, and federal sludge requirements that apply to the sludge management method chosen by the POTW. Alternatively, the POTW authority can demonstrate to the agency that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards as modified by the removal credit. Removal credits may be made available for the following pollutants:

(a) for any pollutant listed in Code of Federal Regulations, title 40, part 403, Appendix G, section I, for the use or disposal practice employed by the POTW, when the requirements in Code of Federal Regulations, title 40, part 503, for that practice are met;

(b) for any pollutant listed in Code of Federal Regulations, title 40, part 403, Appendix G, section II, for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in Appendix G, section II, in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in Appendix G, section II; and

(c) for any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in part 7035.2535; and

(5) the granting of removal credits will not cause a violation of the POTW's national pollutant discharge elimination system or state disposal system permit limitations or conditions. Alternatively, the POTW authority can demonstrate to the agency that even though it is not presently in compliance with applicable limitations and conditions in its national pollutant discharge elimination system permit, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards, as modified by the removal credit provision.

B. Removal credits may not be claimed when an uncontrolled overflow exists between the industrial user and the receiving POTW plant.

**7049.0390 CALCULATION OF REVISED DISCHARGE LIMITS WITH REMOVAL CREDITS.**

Revised discharge limits for a specific pollutant must 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 parts 7049.0400 and 7049.0410 (percentage removal expressed as a proportion, such as a number between 0 and 1); and

*y* = revised discharge limit for the specified pollutant (expressed in same units as *x*).  
7049.0400 ESTABLISHMENT OF REMOVAL CREDITS; DEMONSTRATION OF CONSISTENT REMOVAL.

**Subpart 1. Consistent removal.** Consistent removal is calculated by taking the average of the lowest 50 percent of the removal measured according to part 7049.0410. All sample data obtained for the measured pollutant during the time period prescribed in part 7049.0410 must be reported and used in computing consistent removal.

**Subp. 2. Pollutants not measurable.** If a pollutant is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used to calculate consistent removal by the POTW authority at its discretion and subject to approval by the agency. If the pollutant is not measurable in the influent, the data may not be used to calculate consistent removal. "Measurable" means the ability of the analytical method or protocol to quantify as well as identify the presence of the pollutant in question.

#### 7049.0410 CONSISTENT REMOVAL DATA.

A. Influent and effluent operational data demonstrating consistent removal shall be submitted for each pollutant for which a discharge limit revision is proposed and shall meet the requirements of this part.

B. Twelve pairs of measurements, influent and effluent, must be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week to include no-workdays as well as workdays. If the agency determines that this schedule will not be most representative of the actual operation of the POTW plant, an alternative sampling schedule will be approved.

C. Upon agency concurrence, a POTW authority may use a historical database, provided that the data otherwise meet the requirements of this item. For the historical database to be approved, it must present a statistically valid description of daily, weekly, and seasonal sewage treatment plan loadings and performance for at least one year. The historical data shall be representative of present removal.

D. The data shall be representative of:

- (1) yearly and seasonal conditions to which the POTW is subjected; and
- (2) the quality and quantity of normal wastewater flows.

E. The influent and effluent operational data shall normally be obtained through 24-hour flow-proportional composite samples. Composite sampling may be done manually or automatically and discretely or continuously. For discrete sampling, at least 12 aliquots must 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 must be flow-proportional to each stream flow at the time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis. If composite sampling is not an appropriate sampling technique, a grab sample shall be taken to obtain influent and effluent operational data. For example, a grab sample will be required when the parameters being evaluated are those, such as cyanide and phenol, that may not be held for any extended period because of biological, chemical, or physical interactions that take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.*

*F. If grab sampling is used to collect data to calculate consistent removal, the collection of influent grab samples must precede collection of effluent samples by approximately one detention period. The detention period shall be based on a 24-hour average daily flow value. The average daily flow used must be based on the average of the daily flows during the same month of the previous year. If composite sampling is used to collect data to calculate consistent removal, effluent sample collection need not be delayed to compensate for hydraulic detention unless:*

- (1) the POTW authority elects to include detention time compensation; or*
- (2) the agency requires detention time compensation.*

*The agency may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation.*

*G. The sampling under this part and an analysis of the samples shall be performed according to the techniques prescribed in Code of Federal Regulations, title 40, part 136, as amended. If Code of Federal Regulations, title 40, part 136, does not contain sampling or analytical techniques for the pollutant in question, or if the Environmental Protection Agency regional administrator determines that the Code of Federal Regulations, title 40, part 136, sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW authority or other parties, approved by the Environmental Protection Agency regional administrator.*

*H. All data acquired under this part must be submitted to the agency. Removal for a specific pollutant shall be determined, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percentage of the influent concentration, except when the data cannot be obtained. If the data cannot be obtained, consistent removal may be demonstrated using other data or procedures subject to concurrence by the agency.*

#### **7049.0420 PROVISIONAL REMOVAL CREDITS FOR NEW OR CHANGED FACILITIES.**

*For pollutants that are not being discharged currently, the POTW authority may apply for authorization to give removal credits prior to the initial discharge of the pollutant, such as for new or modified facilities or production changes. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities when the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to parts 7049.0400 and 7049.0410. If within 18 months*

*after the commencement of the discharge of the pollutant in question the POTW cannot demonstrate consistent removal pursuant to parts 7049.0360 to 7049.0470, the authority to grant provisional removal credits shall be terminated by the agency and 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 agency.*

**7049.0430 CONDITIONAL REMOVAL CREDITS PRIOR TO AGENCY APPROVAL OF POTW PRETREATMENT PROGRAM.**

*A. A POTW authority required to develop a local pretreatment program under part 7049.0800 may conditionally give removal credits pending approval of such a program according to the following terms and conditions:*

*(1) all industrial users who are currently subject to a categorical pretreatment standard and who want conditionally to receive a removal credit must submit to the POTW baseline monitoring report information, as provided in parts 7049.0500 to 7049.0550, 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 standards as modified by the removal credit;*

*(2) the POTW authority must submit to the agency a timely application for pretreatment program approval meeting the requirements of parts 7049.0800 to 7049.1020. An application is timely if it does not exceed the time limitation in a compliance schedule for development of a pretreatment program included in the POTW's national pollutant discharge elimination system permit. If a POTW that has not previously been required to develop a pretreatment program under parts 7049.0800 to 7049.1020 requests authority to grant removal credits, the POTW's permit shall be modified to require the development of a delegated pretreatment program under parts 7049.0800 to 7049.1020;*

*(3) the POTW must compile and submit data demonstrating its consistent removal according to parts 7049.0400 and 7049.0410;*

*(4) the POTW must comply with part 7049.0380; and*

*(5) the POTW must submit a complete application for removal credit authority according to part 7049.0450.*

*B. If a POTW receives authority to grant conditional removal credits and the agency subsequently makes a final determination after appropriate notice that the POTW failed to comply with item A, the authority to grant conditional removal credits shall be terminated by the agency and 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 agency.*

**7049.0440 TERMINATION OF CONDITIONAL REMOVAL CREDITS.**

*If a POTW authority grants conditional removal credits and the POTW authority or the agency subsequently makes a final determination, after appropriate notice, that the industrial user failed to comply with part 7049.0430, item A, subitem (1), the conditional credit shall be terminated by the POTW authority or the agency for the noncomplying industrial user and 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 agency. The conditional credit shall not be terminated when a violation of part 7049.0430, item A subitem (1), results from causes entirely outside the control of the industrial user or the industrial user had demonstrated substantial compliance.*

#### **7049.0450 POTW APPLICATION FOR AUTHORIZATION TO GIVE REMOVAL CREDITS AND AGENCY REVIEW.**

*Subpart 1. **Who must apply.** A POTW authority that wants to give a removal credit or modify an existing credit must apply for authorization from the agency. A POTW may apply for authorization to give or modify removal credits at any time. An application for authorization to give removal credits must be supported by the following information:*

- A. a list of pollutants for which removal credits are proposed;*
- B. consistent removal data required under part 7049.0410;*
- C. proposed revised discharge limits for each affected subcategory of industrial users calculated according to part 7049.0390;*
- D. a certification that the POTW has an approved local pretreatment program or qualifies for the exception to the requirement in part 7049.0430;*
- E. sludge management certification containing 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 in part 7049.0380, item A, subitem (4); and*

*F. a national pollutant discharge elimination system permit limit certification stating that the granting of removal credits will not cause a violation of the POTW's national pollutant discharge elimination system permit limits and conditions as required in part 7049.0380, item A, subitem (5).*

*Subp. 2. **Assistance.** Nothing in this chapter precludes an industrial user or other interested party from assisting the POTW authority in preparing and presenting the information necessary to apply for authorization. The POTW shall remain solely responsible to the agency for the information contained in the application.*

*Subp. 3. **Review.** The agency shall review the POTW's application for authorization to give or modify removal credits according to parts 7049.0930 to 7049.0960 and shall, except as provided in this part, have no more than 180 days from public notice of an application to complete review. The agency may elect not to review an application for conditional removal credit authority upon receipt of the application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the agency. This review may occur at any time according to parts 7049.0930 to 7049.0960, but in no event later than the time of any pretreatment program approval or any national pollutant discharge elimination system permit reissuance under those parts.*

#### **7049.0460 AUTHORIZATION TO GIVE REMOVAL CREDITS.**

*Subpart 1. **Effect of authorization.** When a POTW authority has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard, it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in part 7049.0380, item A, subitem (4), or its national pollutant discharge elimination system*



permit limits and conditions as required by part 7049.0380, item A, subitem (5). If a POTW authority elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory, or one or more industrial users that initially were not granted removal credits, the POTW must notify the agency.

**Subp. 2. Inclusion in POTW permit.** When authority is granted, the removal credits shall be included in the POTW's national pollutant discharge elimination system permit as soon as possible and become an enforceable requirement of the POTW's national pollutant discharge elimination system permit. The removal credits remain in effect for the term of the POTW's national pollutant discharge elimination system permit, provided the POTW maintains compliance with the conditions in part 7049.0470.

**Subp. 3. Compliance monitoring.** Following authorization to give removal credits, and at intervals specified by the agency, but in no case less than once per year, the POTW authority shall continue to monitor and report on the POTW plant's removal capabilities. A minimum of one representative sample per month during the reporting period is required and all sampling data must be included in the POTW's compliance report.

#### 7049.0470 MODIFICATION OR WITHDRAWAL OF REMOVAL CREDITS.

**Subpart 1. Notice of POTW.** The agency shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to part 7049.0460 or other relevant information available to it, the agency determines that:

A. one or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of part 7049.0380; or

B. the discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's national pollutant discharge elimination system permit.

**Subp. 2. Corrective action.** If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW authority or the affected industrial users demonstrate that a longer time is reasonably necessary to undertake the appropriate corrective action, the agency shall either withdraw the discharge limits or require modifications in the revised discharge limits.

**Subp. 3. Public notice of withdrawal or modification.** The agency shall not withdraw or modify revised discharge limits, unless it has:

A. provided prior notification to the POTW and all industrial users to whom revised discharge limits have been applied;

B. publicly published written rationale for the withdrawal or modification; and

C. provided reasonable notice and opportunity for a public hearing.

**Subp. 4. Compliance with modification.** Following notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied are subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with the 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 agency.

**Removal Credits.** Parts 7049.0360 through 7049.0470 Implement the Provisions for Removal Credits of 40 CFR § 403.7. This material has been adopted directly from the federal regulations with two exceptions:

- The provision in this proposed rule for removal credits unconditionally mandates an approved

delegated pretreatment program, whereas the federal regulations at 40 CFR § 403.7(d) have an exception under which MPCA may act as the control authority.

- Removal credits are not allowed in this rule if there is an uncontrolled overflow between the regulated process and the POTW providing the removal being credited. The federal regulations at 40 CFR § 403.7(h) allow for removal credits in the presence of such an overflow, and have extensive specific requirements for those cases.

Removal credits are included in the federal general regulations, and also included in these state pretreatment rules, to minimize any undue advantage of direct discharging industries under the National Categorical Standards. The National Categorical Standards include both pretreatment standards, applicable to indirect discharges, and direct discharge effluent guidelines. It is the pretreatment standards that are incorporated by reference into this proposed rule. National Categorical Standards are technology based standards, meaning that the standards allow a certain level of discharge based on the best treatment technology that is available. If removal credits were not available, and in cases where the POTW provides significant removal of the limited pollutant, an equivalent direct discharger would likely be allowed to discharge higher levels of pollutant to the environment than the equivalent indirect discharger. One way of describing the purpose of the National Categorical Standards is to say that they establish a “level playing field.” In the absence of removal credits and the presence of significant POTW removal, the “level playing field” is tilted in favor of direct dischargers.

Except for the provisions mentioned above and justified in detail below, the requirements and process for removal credits in these proposed rules are identical to those in the federal regulations at 40 CFR § 403.7. Since allowing removal credits allows the POTW to give credit to its categorical IUs for the removal of pollutants the POTW itself achieves, and therefore makes the limits that would be applied less restrictive, a formal process is provided for removal credits. The POTW must apply for approval to grant removal credits and the approval is via a formal process including public notice. Specific conditions are provided for granting removal credits. These conditions provide that granting removal credits cannot allow an IU to cause the POTW to violate any of its limits. In most cases, the removal credit granted must be based on actual measured removal by the POTW. The only exception to this principle is that new or changed dischargers may be temporarily granted removal credits based on treatability studies or data from other facilities until data is available from the receiving POTW. The rules also provide for termination of removal credits if the conditions for removal credits are no longer attained or if the POTW no longer provides removal necessary to sustain the credits granted.

An approved delegated pretreatment program is required to provide removal credits. The federal regulations generally require that a POTW operate a pretreatment program delegated under the federal regulations in order to provide removal credits for its IUs. However, it allows two exceptions to this general requirement. First, a POTW can provide removal credits conditionally until obtaining approval of their pretreatment program. This exception is retained in state rules. Second, the federal general pretreatment regulations allow states that have been delegated authority by EPA to grant removal credits. Because removal credits are inherently involved with the POTW, MPCA has decided not to preserve this exception. This means that, if a POTW wants to grant removal credits to one or more of its IUs, the POTW must develop a delegated pretreatment program under Minn. R. 7049.0800 through 7049.1020, even if it is not otherwise required to do so. In more than 25 years of operating a state pretreatment program, only one POTW has applied for and been granted authority to give removal credits. Since removal credits are rare, few additional delegated programs will be required because

removal credits are desired. In addition, removal credits require significant administrative overhead by the POTW, which is most readily supplied in the framework of an approved delegated POTW pretreatment program.

Removal credits are not allowed with an overflow. The federal regulations contain provisions for adjusting removal credits in the presence of an uncontrolled overflow. Since removal credits are rare, and since overflows are prohibited in permits issued to POTWs, we have decided to omit the additional complexity of provisions dealing with uncontrolled overflows and not allow removal credits where there is an uncontrolled overflow between the CIU and the POTW. This results in state pretreatment rules that are, on this point, more restrictive than the federal regulations. However, since MPCA has, in more than 25 years of administering the pretreatment program, granted removal credits in only one case, which did not involve an uncontrolled overflow, the difference is practically negligible.

*7049.0480 NET/GROSS CALCULATION TO ADJUST CATEGORICAL STANDARDS.*

*A. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water according to this part. An industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard shall be calculated on a net basis, such as being adjusted to reflect credit for pollutants in the intake water, if the applicable categorical pretreatment standard specifically provides that they shall be applied on a net basis or if the industrial user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards will, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.*

*B. Credit for generic pollutants such as biochemical oxygen demand, total suspended solids, and oil and grease shall not be granted unless:*

*(1) the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water; or*

*(2) appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.*

*C. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this part.*

*D. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the receiving POTW releases its effluent.*

*The control authority may waive this requirement if it finds that no environmental degradation will result.*

**7049.0480 Net/Gross Calculation to Adjust Categorical Standards.** This part implements the “net/gross” provisions of 40 CFR § 403.15 unchanged. The water supply to a categorical industrial user may contain a pollutant regulated by the applicable categorical standard at a concentration that may approach, or even exceed, the limit contained in the categorical standard. Since the point of the categorical standards is to control the addition of pollutants by the IU, not the presence of pollutants in the water supply, it is reasonable to allow for an adjustment for the presence of pollutants already in a water source. Regulatory restrictions are placed on the use of this credit to ensure that application of the credit does not result in pollution of the POTWs receiving water. In addition, local limits, specifically designed to prevent the discharge from the POTW from exceeding water quality based limits, are still applicable. This provision does not apply to local limits.

*7049.0485 FUNDAMENTALLY DIFFERENT FACTORS; VARIANCES TO CATEGORICAL STANDARDS.*

*Any person who believes that factors relating to an industrial user are fundamentally different from the factors considered during development of a national categorical pretreatment standard applicable to that user and that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard may seek a fundamentally different factors variance to national categorical pretreatment standards under Code of Federal Regulations, title 40, part 403.13, which is incorporated by reference.*

**7049.0485 Fundamentally Different Factors; Variances to Categorical Standards.** This part incorporates by reference the fundamentally different factors variance provisions contained in 40 CFR § 403.13. National categorical pretreatment standards are developed based on information regarding the characteristics of the industrial sector being regulated. It is possible that industries may exist that meet the applicability criteria of a categorical pretreatment standard and are therefore subject to it, but nevertheless are fundamentally different than EPA considered in developing the standard. It is reasonable, in these cases, to allow for different standards. Such standards may be requested by anyone, and may be more or less restrictive than the standard. A fundamentally Different Factors variance only affects the categorical standards, and is not a variance on the levels of pollutants that a POTW may discharge, or on local limits imposed by a POTW on its industrial users. Because the fundamentally different factors variances are rare, and the fundamentally different factors variance provisions in the federal regulations are substantial and involved, these provisions have been incorporated by reference.

*7049.0490 UPSET AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CATEGORICAL STANDARDS.*

*Subpart 1. **Defense.** This part provides an affirmative defense to actions brought for noncompliance with categorical pretreatment standards.*

*Subp. 2. **Definition.** For the purposes of this part, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error,*

*improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.*

*Subp. 3. **Effect of upset.** An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subpart 4 are met.*

*Subp. 4. **Conditions necessary for demonstration of upset.** An industrial user that asserts the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:*

- A. an upset occurred and the industrial user can identify the cause of the upset; and*
- B. the industrial user's facility was at the time being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures.*

*Subp. 5. **Establishing defense.** To establish the affirmative defense of upset, the industrial user shall submit the information in items A to C to the control authority within 24 hours of becoming aware of the upset. If the information is provided orally, a written submission must be provided within five days that includes the following:*

- A. a description of the indirect discharge and cause of noncompliance;*
- B. the period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and*
- C. steps being taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.*

*Subp. 6. **Burden of proof.** In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset has the burden of proof.*

*Subp. 7. **Reviewability of agency consideration of claims of upset.** In the usual exercise of prosecutorial discretion, agency enforcement personnel may review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final agency action subject to judicial review. Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.*

*Subp. 8. **User responsibility in case of upset.** The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies when, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.*

**7049.0490 Upset Affirmative Defense for Violations of Categorical Standards.** This part implements the provisions of 40 CFR § 403.16, which contains an affirmative defense for violations of national categorical pretreatment standards. It provides an affirmative defense, in certain circumstances, if an industrial user violates national categorical pretreatment standards due to an upset in their pretreatment.

In the process of promulgating the federal general pretreatment regulations, EPA determined that it was appropriate to provide an affirmative defense for violations of national categorical pretreatment standards. This was included because the purpose of the categorical standards is to establish a

nationwide baseline for the discharge of pollutants from selected categories of industries, and exceedances of the limits caused by upsets were judged to be not relevant to this purpose. We have decided to retain this defense as is and it has, therefore, been incorporated from the federal regulations without change.

*7049.0495 BYPASS PROVISIONS FOR CATEGORICAL STANDARDS.*

*Subpart 1. **Applicability.** This part applies to categorical pretreatment standards.*

*Subp. 2. **Definitions.** For the purposes of this part, the following meanings apply:*

*A. "bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility; and*

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

*Subp. 3. **Bypass not violating applicable categorical pretreatment standards or requirements.** An industrial user may allow a bypass to occur if the bypass does not cause categorical pretreatment standards or requirements to be violated and the bypass is for essential maintenance to ensure efficient operation. A bypass under this subpart is not subject to subparts 4 and 5.*

*Subp. 4. **Notice.***

*A. If an industrial user knows in advance of the need for a bypass, the user shall submit prior written notice to the control authority, if possible, at least ten days before the date of the bypass.*

*B. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass.*

*The written submission shall contain:*

*(1) a description of the bypass and its cause;*

*(2) the duration of the bypass, including exact dates and times;*

*(3) if the bypass has not been corrected, the anticipated time it is expected to continue; and*

*(4) steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass.*

*C. The control authority may waive the written report under item B on a case-by-case basis if the oral report has been received within 24 hours.*

*Subp. 5. **Prohibition of bypass; approval of anticipated bypass.***

*A. A bypass is prohibited and the control authority may take enforcement action against an industrial user for a bypass, unless:*

*(1) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;*

*(2) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This item is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a*

*bypass that occurred during normal periods of equipment downtime or preventive maintenance; and*

*(3) the industrial user submitted notices as required in subpart 4.*

*B. The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that the bypass will meet the conditions in item A.*

**7049.0495 Bypass Provisions for Categorical Standards.** This part implements the provisions of 40 CFR § 403.17, which contains provisions dealing with bypasses of IU pretreatment processes related to national categorical pretreatment standards. It specifies circumstances in which a bypass of treatment at the industrial user is permissible under categorical standards.

In the process of promulgating the federal general pretreatment regulations, EPA determined that it was appropriate to provide these bypass provisions for national categorical pretreatment standards. The purpose of the categorical standards is to establish a nationwide baseline for the discharge of pollutants from selected categories of industries. The by-pass provisions were included because exceedances of the limits caused by by-passes, meeting the criteria in this part, were judged to be not relevant to this purpose. We have decided to retain these provisions as is and they have, therefore, been incorporated from the federal regulations without change.

*7049.0500 BASELINE MONITORING REPORT AND APPLICATION FOR PERMIT.*

*Industrial users that are subject to one or more of the national categorical pretreatment standards contained in part 7049.0310 must submit a baseline monitoring report and permit application to its control authority. If the receiving POTW operates a federal delegated pretreatment program approved under parts 7049.0800 to 7049.1020, the application shall be submitted to the POTW. If the receiving POTW does not operate a federal delegated pretreatment program, the application shall be submitted to the agency with a copy supplied to the receiving POTW.*

*7049.0510 DUE DATE OF BASELINE MONITORING REPORT AND APPLICATION FOR PERMIT.*

*A. The baseline monitoring report and application for permit shall be submitted within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made on a formal category determination submission under part 7049.0310, subpart 2, whichever is later. Existing facilities subject to existing categorical pretreatment standards shall submit a baseline monitoring report and permit application within 180 days after the effective date of this chapter. At least 90 days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the adoption of an applicable categorical standard, shall submit a baseline monitoring report to the control authority. If reports containing this information have already been submitted, the industrial user need not submit the information again.*

*B. If the categorical pretreatment standard is modified by a removal allowance as provided in parts 7049.0360 to 7049.0470, the combined waste stream formula as provided in part 7049.0350, or a fundamentally different factors variance in part 7049.0480, subpart 2, after the user submits the baseline monitoring report, any necessary amendments to the baseline monitoring report shall be submitted by the industrial user to the control authority within 60*

days after the modified limit is approved.

**7049.0520 CONTENTS OF BASELINE MONITORING REPORT.**

**Subpart 1. Baseline monitoring reports.** Baseline monitoring reports must include the information in this part. New sources must include in the report information describing the method of pretreatment the source intends to use to meet applicable categorical pretreatment standards. New sources shall give estimates of the information requested in subparts 5 and 6.

**Subp. 2. Identifying information.** The user shall submit the name and address of the facility including the name of the operator and owners.

**Subp. 3. Permits.** The user shall submit a list of any environmental control permits held by or for the facility.

**Subp. 4. Description of operations.** The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operations carried out by the industrial user. The description shall include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

**Subp. 5. Flow measurement.** The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process waste streams and other streams as necessary to allow use of the combined waste stream formula provided in part 7049.0350. The control authority may allow for verifiable estimates of these flows when justified by cost or feasibility considerations.

**Subp. 6. Measurement of pollutants.** The user shall: A. identify the categorical pretreatment standards applicable to each regulated process; and

B. submit the results of sampling and analysis identifying the nature and concentration, or mass, when required by the categorical standard or by the control authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration, or mass, when required, shall be reported. The sample shall be representative of daily operations. In cases where the categorical pretreatment standard requires compliance with a best management plan or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable categorical pretreatment standards to determine compliance with the standard.

**Subp. 7. Certification.** The user shall submit a certification consisting of a statement, reviewed by an authorized representative of the industrial user, as provided in part 7049.0220, and certified by a qualified professional, indicating whether categorical pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance or additional pretreatment is required for the industrial user to meet the categorical pretreatment standards and requirements. If the industrial user's categorical pretreatment standard has been modified by a removal allowance as provided in parts 7049.0360 to 7049.0470; the combined waste stream formula as provided in part 7049.0350; or a fundamentally different factors variance as provided in part 7049.0480, subpart 2, at the time the user submits the baseline monitoring reports, the certification and the compliance schedule in part 7049.0550 pertain to the modified limits.

B. If an alternate concentration or mass limit has been calculated according to part 7049.0300, subpart 3, the adjusted limit and supporting data shall be included.

C. When the POTW performs the required sampling and analysis in lieu of the



*categorical industrial user, the categorical industrial user is not required to submit the compliance certification under this subpart.*

7049.0530 CONTENTS OF APPLICATION.

*In addition to all information required by the control authority, applications by categorical industrial users shall provide the following information:*

- A. sufficient information to enable the control authority to determine the correct category and subcategory;*
- B. a description and drawing of the location of the proposed monitoring point;*
- C. production data sufficient to determine correct limits, required only for categorical industrial users subject to categories with production-based standards; and*
- D. information sufficient to correctly apply the combined waste stream formula, if the monitoring point proposed by the categorical industrial user includes multiple waste streams requiring the use of the combined waste stream formula under part 7049.0350. This may include identification and flows of the waste streams present at the monitoring point, plus engineering, production, sampling and analysis, and other information on each waste stream to allow the control authority to make all determinations necessary to correctly apply the combined waste stream formula.*

7049.0540 MONITORING FOR BASELINE MONITORING REPORT.

*A. Monitoring for the baseline monitoring report must be performed according to this part.*

*B. The user shall take a minimum of one representative sample to compile the data necessary to comply with this part.*

*C. Samples should be taken immediately downstream from pretreatment facilities, if they exist, or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula under part 7049.0350 in order to evaluate compliance with the categorical pretreatment standards.*

*D. Sampling and analysis must be performed according to Code of Federal Regulations, title 40, part 136, as amended. If Code of Federal Regulations, title 40, part 136, does not contain sampling or analytical techniques for the pollutant in question, or if the Environmental Protection Agency regional administrator determines that the Code of Federal Regulations, title 40, part 136, sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW authority or other parties, approved by the Environmental Protection Agency regional administrator.*

*E. The control authority may allow the submission of a baseline report that uses only historical data as long as the data provides information sufficient to determine the need for industrial pretreatment measures.*

*F. The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.*

7049.0550 BASELINE MONITORING REPORT COMPLIANCE SCHEDULE.

*A. An industrial user submitting a baseline monitoring report that shows that the industrial user is not already in compliance with the categorical standard must submit*

*with the baseline monitoring report the shortest schedule by which the industrial user will provide additional pretreatment or operation and maintenance to comply with the categorical regulation. The completion date in this schedule must not be later than the compliance date established for the applicable categorical pretreatment standard.*

*B. The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards, such as hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, and completing construction.*

*C. An increment referred to in item B shall not exceed nine months.*

*D. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not:*

*(1) the date on which it expects to comply with the increment of progress;*

*(2) the reason for the delay; and*

*(3) the steps being taken by the industrial user to return the construction to the schedule established.*

*In no event may more than nine months elapse between progress reports to the control authority.*

**7049.0500 Baseline Monitoring Report and Application for Permit.**

**7049.0510 Due Date of Baseline Monitoring Report and Application for Permit.**

**7049.0520 Contents of Baseline Monitoring Report.**

**7049.0530 Contents of Application.**

**7049.0540 Monitoring for Baseline Monitoring Report.**

**7049.0550 Baseline Monitoring Report Compliance Schedule.**

Minn. R. 7049.0500 through 7049.0550 of these rules incorporate the provisions of 40 CFR § 403.12(b) and (c) requiring submission of a Baseline Monitoring Report (BMR), prescribing the contents of a BMR and restricting compliance schedules required in a BMR. These parts also require that an IU, subject to national categorical pretreatment standards, must submit an application for a permit to its control authority. Since some control authority (either the receiving POTW or MPCA) is responsible for regulating an IU subject to National Categorical Pretreatment Standards, it is necessary that the industry notify that authority of the fact that they exist and are subject to the categorical standard. The BMR is the form used in the federal general pretreatment regulations (40 CFR § 403.12(b)) for this notification and to obtain information needed to control the IU. These provisions have been adopted without change. The BMR does not always gather all of the information needed for permitting. In addition, the timing of the BMR is sometimes wrong since the BMR is required to be submitted promptly after EPA promulgates a new regulation and many IUs are not recognized as being categorical until much later. Therefore it is considered to be desirable to include the requirement to apply to the control authority for a permit so that current relevant information is required.

Minn. R. 7049.0520 specifies the required contents of a baseline monitoring report, and is taken directly from the federal regulations at 40 CFR § 403.12. This information is designed to provide the information needed to determine the compliance status of a categorical industrial user to regulate them

under the applicable categorical pretreatment standard.

Minn. R. 7049.0530 specifies the contents of the application required under Minn. R. 7049.0500. The information required here is information that is not explicitly required in a BMR but, based on years of experience permitting CIUs, it is typically needed to correctly regulate the CIU and is often missing. Therefore it is reasonable to require this information. This part requires sufficient information to enable the control authority to determine the correct category and subcategory of the IU. The BMR requirements in the federal regulations implicitly assume that the IU knows their correct category. Experience indicates that this is frequently not the case, therefore this information is required. This part also requires information to characterize the IUs monitoring point. Characterization of an IUs monitoring point is essential both for specifying monitoring and for determining whether the categorical standards need to be altered by use of the combined waste stream formula from Minn. R. 7049.0350. Experience has shown that the monitoring point is often not unambiguously identified in BMRs. For categorical standards with production based limits, where the limit is proportional to some measure of production, it is essential to have the appropriate production data to set limits and determine compliance. Experience has shown that this information is often not correctly supplied. Where waste streams subject to different limits are combined, it is necessary to apply the combined waste stream formula from Minn. R. 7049.0350. In order to do this, certain information regarding waste streams present and their flows are needed to apply the formula. Experience has shown that this information is frequently not completely supplied. Therefore all of this information is required in part Minn. R. 7049.0530.

Minn. R. 7049.0540 monitoring for BMR and Minn. R. 7049.0550 BMR compliance schedule are taken directly from the federal regulations (40 CFR § 403.12) without change. One essential set of data required in a BMR is monitoring data of the IU's regulated discharge. Minn. R. 7049.0540 specifies how this monitoring is to be done. In cases where the IU is not in compliance with the applicable categorical standard when the BMR is submitted, a compliance schedule is also required showing how the IU will comply by the deadline in the applicable regulation.

*7049.0560 90-DAY COMPLIANCE REPORT.*

*Subpart 1. General. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into a POTW, an industrial user subject to national categorical pretreatment standards and requirements shall submit to the control authority a report containing the information in subparts 2 to 6.*

*Subp. 2. Identifying information. The user shall submit the name and address of the facility, including the name of the operator and owners.*

*Subp. 3. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the receiving POTW from regulated process waste streams and other streams as necessary to allow use of the combined waste stream formula in part 7049.0350. The control authority may allow for verifiable estimates of these flows when justified by cost or feasibility considerations.*

*Subp. 4. Measurement of pollutants. The user shall:*

*A. identify the categorical pretreatment standards applicable to each regulated process; and*

*B. submit the results of sampling and analysis identifying the nature and concentration, or mass, when required by the categorical pretreatment standard or by the*

control authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration, or mass, when required, shall be reported. The sample shall be representative of daily operations.

**Subp. 5. Certification.** The user shall submit a certification consisting of a statement, reviewed by an authorized representative of the industrial user, as provided in part 7049.0220, and certified by a qualified professional, indicating whether categorical pretreatment standards are being met on a consistent basis. If the industrial user's categorical pretreatment standard has been modified by a removal allowance as provided in parts 7049.0360 to 7049.0470; the combined waste stream formula as provided in part 7049.0350; or a fundamentally different factors variance as provided in part 7049.0485, at the time the user submits the 90-day compliance report, the certification and the compliance schedule in part 7049.0550 pertain to the modified limits. If an alternate concentration or mass limit has been calculated according to part 7049.0300, subpart 3, the adjusted limit and supporting data shall be included.

**Subp. 6. Contents.** For industrial users subject to equivalent mass or concentration limits established by the control authority according to part 7049.0300, subpart 2, for categories with production-based standards, the report must contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report must include the user's actual production during the appropriate sampling period.

**7049.0560 90 Day Compliance Report.** This part incorporates the provisions of 40 CFR § 403.12 (d) requiring submission of a 90-day compliance report by IUs subject to national categorical pretreatment standards. It is incorporated without change from the federal regulations. This report is required, following the applicable compliance deadline to show whether the IU is in compliance by the deadline.

#### 7049.0570 PERIODIC REPORTS ON CONTINUED COMPLIANCE.

**Subpart 1. General requirement.** After the deadline for compliance contained in the categorical pretreatment standard, an industrial user subject to a categorical pretreatment standard shall submit to the control authority periodic reports on continued compliance indicating the nature and concentration of pollutants in the effluent that are limited by categorical pretreatment standards. In cases where the categorical pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the industrial user.

#### **Subp. 2. Frequency of reports.**

A. Except as required in this subpart, the periodic reports on continued compliance under subpart 1 must be submitted twice per year, unless required more frequently in the categorical pretreatment standard or by the control authority. Unless otherwise specified by the control authority, the reports must be submitted in June and December. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, and budget cycles, the control authority may agree to alter the months during which the reports in subpart 1 are to be submitted. The control authority

may reduce the monitoring frequency to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the agency, when the industrial user meets all of the following conditions:

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

(a) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(b) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

(c) 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW under part 7049.0650;

(2) the industrial user has not been in significant noncompliance at any time in the past two years;

(3) the industrial user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for the industrial user would result in data that are not representative of conditions occurring during the reporting period according to part 7049.0710; and

(4) the industrial user notifies the control authority immediately of any changes at its facility causing it to no longer meet conditions of subitem (1) or (2). Upon notification, the industrial user must immediately begin reporting twice annually.

B. The POTW authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under item A for three years after the expiration of the term of the control mechanism.

**Subp. 3. Monitoring waiver.**

A. Except as provided in this subpart, reports submitted under this part shall include data for all pollutants limited by the applicable categorical standard. The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. A waiver under this item must be issued according to items B to H.

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

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

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

processes. The request for a monitoring waiver must be signed according to part 7049.0220 and include the certification statement in part 7049.0590. Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the Environmental Protection Agency-approved method from Code of Federal Regulations, title 40, part 136, with the lowest minimum detection level for that pollutant was used in the analysis.

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

F. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify, with the following statement, on each report that there has been no increase in the pollutant in the user's waste stream due to activities of the industrial user:

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

G. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately comply with the monitoring requirements of part 7049.0570, subparts 1 and 2, or other more frequent monitoring requirements imposed by the control authority, notify the control authority, and monitor for the previously waived pollutant that is found to be present.

H. This subpart does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

**Subp. 4. Flow reporting.** The periodic reports on continued compliance must include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge subject to the categorical regulations and any other flows necessary to apply the combined waste stream formula as provided in part 7049.0350. The control authority may require more detailed reporting of flows.

**Subp. 5. Mass reporting.** If the control authority has imposed mass limitations on industrial users, the periodic reports on continued compliance shall indicate the mass of pollutants regulated by categorical pretreatment standards in the discharge from the industrial user.

**Subp. 6. Production rate reporting.** Industrial users shall report the user's production rate for the reporting period. If the limitations imposed on an industrial user are calculated using production, the report shall be a reasonable measure of the user's long-term production rate.

**7049.0570 Periodic Reports on Continued Compliance.** This part incorporates the provisions of 40 CFR § 403.12(e) requiring submission of Periodic Reports on Continued Compliance by IUs subject to national categorical pretreatment standards. Since the IU must not only achieve, but maintain compliance with categorical standards, ongoing reports on continued compliance are reasonable.

Subp. 2 of this part specifies that the minimum monitoring frequency for periodic reports on continued compliance is twice annually, but then provides for less frequent monitoring for certain CIUs that meet specific criteria. This exception to the twice annual minimum monitoring frequency is taken directly from the federal regulations where it is a recent addition in the “pretreatment streamlining” amendments of October 2005. This is now contained in the federal regulations at 40 CFR § 403.12(e)(2). Comments received during the public meeting, held to gather input on the draft rules, convinced MPCA to include all of the provisions added in the “pretreatment streamlining” amendments. POTWs have the flexibility to reduce monitoring frequency of specific CIUs under this provision, but they are not required to do so.

Subp. 3 of this part specifies that monitoring for all regulated pollutants must be performed, except as provided in this part. Thus this part includes a monitoring waiver under certain specific conditions. This reduces the burden on both CIUs and POTWs since monitoring is not required for parameters which are not present nor expected to be present. The conditions of the monitoring waiver provide ample safeguards to ensure that monitoring will be required for any pollutants which, in fact, are present.

Subp. 4 of this part requires reporting of flow, subp. 5 of this part requires reporting of mass of pollutants discharged if the CIUs limits are expressed in mass, and subp. 6 of this part requires production rate reporting for CIUs subject to production based standards. These are taken directly from the federal regulations at 40 CFR § 403.12. This information is needed in these cases to characterize the discharge from the CIU and to confirm the correctness of the applied limits. Therefore, it is reasonable to include these data reporting requirements.

*7049.0580 POTW MONITORING IN LIEU OF INDUSTRIAL USER SELF-MONITORING.*

*Sampling and analysis for baseline monitoring reports as required by parts 7049.0500 to 7049.0550, 90-day compliance reports as required by part 7049.0560, and periodic reports on continued compliance as required by part 7049.0570 may be performed by the control authority in lieu of the industrial user. If the receiving POTW performs the required sampling and analysis in lieu of the industrial user, the user is not required to submit the compliance certification required with baseline monitoring reports under parts 7049.0500 to 7049.0550 and 90-day compliance reports under part 7049.0560. In addition, if the receiving POTW collects all the information required for baseline monitoring reports under parts 7049.0500 to 7049.0550, 90-day compliance reports under part 7049.0560, and periodic reports on continued compliance under part 7049.0570, including flow data, the industrial user is not required to submit the reports.*

**7049.0580 POTW Monitoring in Lieu of Industrial User Self-Monitoring.** This part allows the receiving POTW to perform monitoring of an IU subject to national categorical pretreatment standards

for the reports required by Minn. R. 7049.0500 through 7049.0570. This includes BMRs, 90-day compliance reports, and periodic reports on continued compliance. This provision directly mirrors the comparable provisions of 40 CFR § 403.12 (b)(d) and (e). It also partly duplicates Minn. R. 7049.0200 subp. 5. That provision applies generally to any monitoring of IUs, whereas this provision applies specifically to the monitoring to demonstrate compliance with categorical standards. Many POTWs prefer to monitor their IUs themselves rather than require IUs to self monitor and report. Monitoring by the POTW provides oversight at least as good as self monitoring by the IU. To allow POTWs the flexibility to do this without requiring duplicative monitoring, this provision is needed and reasonable.

*7049.0590 CERTIFICATION FOR REPORTS.*

*Baseline monitoring reports required by parts 7049.0500 to 7049.0550, 90-day compliance reports required by part 7049.0560, and periodic reports on continued compliance required by part 7049.0570 must include the following certification statement and must be signed by an industrial user's authorized representative as follows:*

*CERTIFICATION*

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties under law for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

**7049.0590 Certification for Reports.** This part sets forth the certification statement that is needed for BMRs, 90-day compliance reports, and periodic reports on continued compliance. A certification statement is needed to assure that reports are properly prepared with appropriate quality control. This part directly incorporates the certification statement required to be included with these reports. In the federal regulations the certification statement is contained in a part of the regulations (40 CFR § 403.6(a)(2)(ii)) that is incorporated by reference in these state rules. Therefore, since this certification is required to be included with the reports required here, it is textually included here to avoid a commonly used reference directing the reader outside of the rule. The requirement is not changed from that in the federal regulations.

**Provisions for Regulating POTWs in General (Minn. R. 7049.0600 through 7049.0650).**

The federal general pretreatment regulations (40 CFR pt. 403) leave indeterminate the status of, and requirements for, smaller POTWs which are not required by 40 CFR § 403.8(a) to develop a pretreatment program under the federal regulations. The provisions contained in Minn. R. 7049.0600 through 7049.0650 serve to clarify the requirements for these smaller POTWs. Some of the most severe pretreatment problems occur with smaller POTWs. This is because a smaller POTW can be



more easily overwhelmed by any particular size of industry. It is therefore generally reasonable to impose pretreatment requirements and require pretreatment standards to provide a means to prevent problems at smaller POTWs that are not delegated under Minn.

R. 7049.0800 through 7049.1020.

*7049.0600 POTW RESPONSIBILITY TO CONTROL INDUSTRIAL USERS.*

*Subpart 1. General.*

*A. It is the responsibility of every POTW authority to control industrial users that discharge to the POTW plant to prevent interference or pass-through. Every POTW shall require industrial users that discharge to the POTW plant to comply with the general and specific prohibitions in part 7049.0140 and shall take appropriate action in case of violations.*

*B. POTW authorities shall control their significant industrial users with control mechanisms, such as agreements or permits, issued to individual significant industrial users, except as provided in part 7049.0820, item C, subitem (1).*

*Subp. 2. Limits.*

*A. In cases where pollutants contributed by industrial users result in interference or pass-through and the violation is likely to recur, the POTW authority shall develop and enforce specific effluent limits or best management practices for industrial users and all other users, as appropriate, which, together with appropriate changes in the POTW plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's national pollutant discharge elimination system permit or sludge use or disposal practices.*

*B. Specific effluent limits must not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.*

*Subp. 3. Prohibited agreements and permits. A POTW authority shall not knowingly enter into an agreement with an industrial user or issue a permit to an industrial user that allows the industrial user to discharge wastewater that would cause interference or pass-through or cause a violation of part 7049.0140.*

*Subp. 4. Revision of local limits. If an industrial user causes interference or pass-through without violating the local limits imposed on them by the receiving POTW, so that the affirmative defense of part 7049.0150 may be invoked, the receiving POTW shall re-evaluate and revise relevant local limits to ensure that they are adequately restrictive to protect against pass-through or interference.*

**7049.0600 POTW Responsibility to Control Industrial Users.** This part is a general requirement that POTWs are responsible to control their IUs. Some of the requirements in this part have no direct counterpart in federal pretreatment regulations, although what is required is implicit in the federal regulations.

POTWs are the closest governmental unit to their own IUs and they are the governmental unit that has direct regulatory authority over their IUs. In addition, the intent of the proposed rules includes preventing problems at the POTW. It is the POTW authority's own POTW that is being protected, and the POTW authority is responsible for the environmental performance of the POTW plant. Therefore, it is reasonable that the POTW be responsible to control its own IUs, as is required by this part.

Subp. 1 states the POTW's responsibility to control IUs and enforce the prohibitions in Minn. R. 7049.0140. Since these prohibitions purpose is to protect the POTW plant, this is the basic minimum for a POTW to do in controlling its IUs. This part also requires POTWs to control SIUs individually. This is consistent with the federal regulations at 40 CFR § 403.8(f)(1)(iii), but goes beyond the federal regulations in applying it to all POTWs. Since this extension applies to smaller POTWs with few SIUs, and since the relative importance of SIUs in small POTWs is greater than in large POTWs, this is reasonable.

Subp. 2 implements some of the requirements of 40 CFR § 403.5(c) that require POTWs in general to develop local limits to implement the prohibitions of Minn. R. 7049.0140. These specific requirements are adopted unchanged from the federal regulations. The requirement here to develop local limits applies to cases where problems have already occurred and are likely to occur again. Surely this is a bottom line minimum for developing local limits for control of an IU.

Subp. 3 prohibits a POTW from agreeing with an IU to accept wastewater in quality or quantity known to cause interference or pass-through or violate the prohibitions of Minn. R. 7049.0140. This is needed to stiffen the backbone of POTWs dealing with SIUs who want practically unlimited ability to discharge wastewater when that will cause problems for the POTW. This is a particular problem for small POTWs with large industries where the importance and influence of the IU may be great.

Subp. 4 deals with cases where an SIU has caused interference or pass-through at a POTW, but was able to invoke the affirmative defense of Minn. R. 7049.0150. If this affirmative defense can legitimately be invoked when interference or pass-through has occurred, an inadequacy of the POTWs local limits is clearly inferred. The inadequacy may be improperly set local limits, or it may be local limits that are needed, but do not yet exist. Therefore this provision reasonably calls for implementation of, or revision to, local limits in these cases.

#### 7049.0620 REPORTING.

*A. Every POTW authority that has one or more significant industrial users shall submit a pretreatment annual report to the agency for each calendar year during which it has a significant industrial user. If more than one jurisdiction is involved in the POTW local pretreatment program, the annual report shall report on activities of all participating agencies. Required contents of annual reports are specified in part 7049.1020 for POTWs with pretreatment programs that have been approved under parts 7049.0800 to 7049.0950 and in part 7049.0720 for all other POTWs.*

*B. Information collected pursuant to this chapter shall be provided to the agency upon request.*

**7049.0620 POTW Annual Reporting.** This part requires all POTWs that have one or more SIUs to report annually. One of the parts of the definition of a SIU is reasonable potential to impact the POTW. Thus, POTWs that have SIUs are the ground floor of pretreatment. Without information on what is happening between POTWs and their SIUs, it would be impossible for the MPCA to administer any kind of coherent pretreatment program. Annual pretreatment reports are a primary means of obtaining this information. Therefore, a requirement to submit a pretreatment annual report is reasonable. Details as to what information must be contained in the annual report are listed in Minn. R. 7049.0720 for non-

delegated POTWs, and in Minn. R. 7049.1020 for delegated POTWs.

7049.0630 SIGNATORY REQUIREMENTS FOR POTW REPORTS.

*Reports submitted to the agency by the POTW according to parts 7049.0600 to 7049.1020 must be signed by a principal executive officer, ranking elected official, or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official and submitted to the agency prior to or together with the report being submitted.*

**7049.0630 Signatory Requirements for POTW Reports.** Reports from POTWs form an essential link with the POTWs who are in the front lines of pretreatment. These reports must be signed by someone in authority at the POTW. This part specifies who is authorized to sign these reports. The requirements are taken directly from the federal regulations at 40 CFR § 403.12(m). In the federal regulations these requirements apply only to POTWs that develop delegated POTW pretreatment programs, since those are the only ones referred to in the federal regulations. In these state rules they apply to all POTWs for all reports submitted. Since the same consideration apply to all POTWs this is a reasonable extension.

7049.0640 AGENCY DIRECT REGULATORY ACTION.

*A. The agency has a regulatory interest in required pretreatment standards and may take direct regulatory action, as provided in item B, to control an industrial user that the receiving POTW is responsible to control if the receiving POTW fails to implement or enforce required pretreatment standards that it is responsible to enforce according to part 7049.0650.*

*B. If the agency determines that a POTW authority has failed to properly implement pretreatment controls as provided in item A, the agency shall notify the POTW authority and industrial user of the determination, specifying the failures and providing 30 days for the POTW authority to commence appropriate action to correct the failures. If the POTW authority fails to adequately correct the failures cited, the agency may, as appropriate, take enforcement action against the industrial user or impose limitations and requirements in an individual control mechanism issued directly to the industrial user. If the agency issues a determination and takes action under this part, failure to take appropriate action against the industrial user constitutes a violation by the POTW authority.*

*C. At any time, the agency may perform any of the activities provided in part 7049.0163, subparts 2 and 3.*

*D. Nothing in this part precludes the agency from taking enforcement action against a POTW for failure to implement pretreatment controls.*

**7049.0640 Agency Direct Regulatory Action.** This part describes under what conditions, and in what way, MPCA can exercise direct regulatory control on a POTW's IUs. Its provisions are based on the provisions of 40 CFR § 403.5(e), but are adapted to MPCA use, since this federal rule refers to federal direct regulatory action. This part provides for MPCA authority to take direct regulatory action on an IU of a POTW. This authority is in addition to, and different from, the authority to regulate categorical

industrial users in non-delegated POTWs as provided in Minn. R. 7049.0300 subp. 1. Direct regulatory action may include permitting, inspecting, monitoring, requiring reports or notifications from, or taking enforcement action against an IU.

Direct regulatory action is authorized when a POTW fails to implement required pretreatment standards. A POTW may impose limitations on an IU more restrictive than required. If the POTW also indicates the required limits, they are free to use unlimited enforcement discretion in dealing with the IU, provided the required limits are not exceeded. Required pretreatment limits are defined in Minn. R. 7049.0120 subp. 23, and described in Minn. R. 7049.0650, which is referred to in the definition. This lists prohibitions and local limits developed to implement these prohibitions. For delegated POTWs it also includes national categorical pretreatment standards.

If MPCA finds that a POTW has failed to properly implement or enforce required pretreatment standards, and if MPCA intends to take direct regulatory action, MPCA must first inform the POTW and IU involved of this finding and intention. The POTW then has 30 days in which to properly implement and enforce required pretreatment standards and respond to the MPCA finding and intent.

If the POTW fails to properly implement required pretreatment standards within the time provided, MPCA can then take appropriate action to implement and enforce required pretreatment standards. This authority necessarily includes the rights of access to facilities and records. Since the POTW is responsible to implement required pretreatment standards and since taking direct regulatory action under this part necessarily implies their failure to do so, direct regulatory action under this part also constitutes a violation by the POTW, making it subject to MPCA enforcement action. Enforcement action may also be taken against a POTW for violations of this chapter without MPCA imposing direct regulatory action. The intention of this part is to provide interim regulatory action to control the IU, returning the SIU to compliance, while promptly reestablishing the POTW in its appropriate role as direct regulator of its own IU.

*7049.0650 POTW RESPONSIBILITY TO ENFORCE PRETREATMENT STANDARDS.*

*A. All POTW authorities are responsible for enforcing the general and specific prohibitions in part 7049.0140 and for developing and enforcing any local limits or best management practices needed to implement those prohibitions.*

*B. For nondelegated POTWs, the conditions under which local limits or best management practices implementing the general prohibitions of part 7049.0140, subpart 2, are required are listed in part 7049.0600, subpart 2.*

*C. For delegated POTW pretreatment programs approved under parts 7049.0800 to 7049.0960, the conditions under which local limits or best management practices implementing the general prohibitions of part 7049.0140, subpart 2, are required are listed in parts 7049.0600, subpart 2, and 7049.0850.*

*D. Delegated POTWs are also responsible for enforcing the categorical pretreatment standards in part 7049.0310.*

**7049.0650 POTW Responsibility to Enforce Pretreatment Standards.** POTW responsibilities differ, depending on whether the POTW is delegated under Minn. R. 7049.0800 through 7049.1020, or operate under the provisions of Minn. R. 7049.0700 through 7049.0720. Therefore a careful explanation of pretreatment standards that are required in each case to be implemented and enforced

was believed to be desirable. This is intended to be provided by this part.

**Provisions for Regulating Non-Delegated POTWs (Minn. R. 7049.0700 through 7049.0720).**

These parts of the proposed rules contain provisions not found in the federal regulations. The federal regulations require larger POTWs to develop pretreatment programs meeting specific detailed requirements and requires those programs to be approved in a specific formal manner. Those requirements are incorporated, with some changes, in these rules in parts Minn. R. 7049.0800 through 7049.1020. However, the federal regulations leave largely undefined how smaller POTWs, not delegated under Minn. R. 7049.0800 through Minn. R. 7049.1020, and their IUs are to be dealt with. This may be reasonable at the federal level, but problems caused by SIUs in smaller POTWs makes it important for state rules to deal with this situation. This is done in Minn. R. 7049.0700 through 7049.0720. The requirements are directly derived from NPDES permit language that MPCA has used for many years to require smaller POTWs to adequately control their IUs.

7049.0700 NOTIFICATION.

Subpart 1. General.

A. A POTW that is not delegated pretreatment authority under parts 7049.0800 to 7049.1020 shall notify the agency in writing of any:

(1) significant industrial user discharging to the POTW that has not been previously disclosed to the agency;

(2) anticipated or actual changes in the volume or quality of discharge by an industrial user that could result in the industrial user becoming a significant industrial user; and

(3) anticipated or actual changes in the volume or quality of discharge by a significant industrial user that would require changes to the local limits imposed on the significant industrial user by the POTW authority.

B. The notification under this subpart shall be submitted as soon as possible and, when changes are proposed, must be submitted prior to changes being made.

Subp. 2. **Contents.** The notification under subpart 1 shall include:

A. the identity of the significant industrial user and a description of the significant industrial user's operation and process;

B. a characterization of the significant industrial user's wastewater discharge;

C. the required limits that will be imposed on the significant industrial user by the POTW authority;

D. a technical justification of the required local limits; and

E. a plan for monitoring the significant industrial user that is consistent with the monitoring requirements in part 7049.0710.

Subp. 3. **Additional requirements.** In addition, upon agency request, the POTW authority shall submit the following:

A. additional information on the significant industrial user and its processes or discharges;

B. a copy of the individual control mechanism used by the POTW authority to impose limitations and requirements on the significant industrial user;

C. a copy of the POTW authority's legal authority to regulate the significant industrial user; or

*D. the POTW authority's procedures for enforcing the requirements imposed on the significant industrial user.*

*Subp. 4. **Agency review.** Notifications required in this part are subject to review by the agency.*

**7049.0700 Notification.** This part requires a POTW to notify MPCA if they have an SIU, and provide information on the SIU and its discharge, the limits the POTW intends to impose on the SIU, and how the POTW intends to obtain information on the discharge from the SIU. MPCA does not always know when a POTW has an SIU. Therefore, it is reasonable to require a POTW to notify MPCA of the fact that they have an SIU. In order to be able to evaluate the adequacy of the POTW's control of the SIU, and to track compliance and identify problems, MPCA needs information on the SIU. Since the POTW is responsible to control the SIU, it is reasonable for the POTW to provide the information.

Two key pieces of information needed by the MPCA for adequate regulation are the limits that the POTW will impose in the SIU, and how the POTW will obtain information on the SIU's discharge. In order to set appropriate limitations on the SIUs discharge, the POTW will need to determine what pollutants or pollutant parameters are of concern. Limitations can then be set based on the levels of those pollutants which can be reliably handled by the POTW. Indicating how the POTW will obtain information on the SIU's discharge will usually require the POTW to say what parameters will be monitored for, who will be responsible for the monitoring, and how frequently the SIU will be monitored.

This notification requirement is similar to the notification requirement that is presently standard language in POTW permits, except for POTWs with delegated pretreatment programs, which have substantially different permit language. The proposed rule contains two substantive changes from the current standard permit language. First, POTWs are presently required to submit copies of the control mechanism they will use to control the SIU, whereas the proposed rules require that the POTW submit the limitations they will impose on the SIU. The proposed rule requirement is less inclusive than the current standard permit language since the control mechanism contains the limits, but also contains many other provisions. Second, present permit standard language requires that this notification be submitted for approval, while the proposed rule language states that the notification is subject to review, but does not routinely require approval.

These changes are related and were made because MPCA has been unable to review and approve these notifications, leaving unapproved notifications in an uncertain status. The change to requiring the limits the POTW will impose on the SIU, rather than submitting the entire control mechanism, will focus the review on this essential element, with reduced potential for becoming entangled in details of the POTW-SIU relationship. In addition, the POTW will now, under the proposed rules, be able to immediately impose limits on the SIU without the question of MPCA approval to possibly delay this.

There are three general groups of information required in this notification. First, information identifying the SIU being disclosed describing what they do and characterizing their discharge. Second, listing the limits imposed for all pollutants of concern and justifying those limits. And third, describing how the discharge from the SIU will be monitored. Information identifying the SIU and characterizing their discharge is obviously needed to rationally perform the functions required of MPCA. A description of the SIU's industrial processes is also needed to make sense of the other

information. The required limits that the POTW will impose on the SIU are essential for evaluating compliance and identifying problems. A demonstration that the limits imposed are adequate to accomplish the objectives required is also needed to have some assurance that the limits are adequate. Monitoring of the SIU is the main means of determining compliance and it is therefore reasonable for the POTW to describe how that monitoring will be accomplished.

In some cases, due to the degree of significance of the SIU or the history with the SIU or POTW or for other reasons, further information beyond that routinely required is important to reasonably and effectively perform the regulatory functions for which MPCA is responsible. Minn. R. 7049.0700, subp. 3 provides the authority to request this additional information. Information that can be listed is added information on the SIU, a copy of the agreement or permit the POTW uses to control the SIU, a copy of the POTW's underlying legal authority such as a sewer use ordinance, and information regarding the POTW's enforcement procedures.

7049.0710 MONITORING OF SIGNIFICANT INDUSTRIAL USERS.

*Each POTW authority shall obtain from its significant industrial users specific information on the quality and quantity of each significant industrial user's discharge to the POTW. Except when specifically requested by the POTW authority and approved by the agency, the information shall be obtained by representative monitoring conducted by the POTW or by the significant industrial user under requirements imposed by the POTW in the significant industrial user's individual control mechanism. A request to obtain information using a different method shall demonstrate that the alternate provides adequate information on the discharge from the significant industrial user. Monitoring performed to comply with this part shall include all pollutants for which the significant industrial user is significant and shall be representative of the significant industrial user's discharge to the POTW. Except as provided in part 7049.0570, subpart 2, POTWs shall obtain significant industrial user monitoring data at least twice annually. The POTW shall require frequency of monitoring necessary to assess and ensure compliance by industrial users with required pretreatment standards and requirements.*

**7049.0710 Monitoring of SIUs.** This part provides additional requirements for monitoring of SIUs. Actually monitoring a discharge by taking a sample and having the sample analyzed is, under the federal and state water quality programs, the standard way of getting information about what is in a discharge, whether direct or indirect. Therefore, it is reasonable for this to be the starting point for monitoring. In some cases, such as where a POTW requires the use of a BMP or a pollution prevention alternative, some other method of tracking IU compliance may be appropriate. Since such compliance tracking is exceptional, and since a wide variety of compliance tracking means may be used, compliance tracking by other than monitoring and analysis of samples must be specifically requested by the POTW and approved by MPCA. A requirement for SIUs to submit reports on BMPs is also contained in Minn. R. 7049.0200, subp. 1.

7049.0720 PRETREATMENT ANNUAL REPORT; NONDELEGATED POTWS.

*If a non-delegated POTW has a significant industrial user at any time during a calendar year, the POTW authority shall submit a pretreatment annual report on forms provided by the agency or shall submit equivalent information. The pretreatment annual*

*report must include at least the following:*

- A. a summary of changes to the POTW's pretreatment program;*
- B. a current list of significant industrial users that discharge to the POTW. Additions and deletions shall be noted and reasons shall be given for deletions;*
- C. a summary of the discharge monitoring data for each significant industrial user for the reporting year. The summary shall summarize all available data and shall accurately represent the discharge by the user;*
- D. a summary of inspections and sampling of significant industrial users performed by the permittee;*
- E. a summary of violations by industrial users of any required pretreatment standards imposed by the permittee and a description of the current compliance status of each significant industrial user;*
- F. a summary of enforcement actions taken against significant industrial users by the permittee;*
- G. a description of any upset, interference, or pass-through incident at the POTW that the permittee knows or believes were caused by industrial users of the POTW system. The description shall include the reasons why the incidents occurred, the corrective actions taken, and the industrial users responsible, if known;*
- H. an assessment of the effectiveness of the pretreatment program in preventing interference, pass-through of pollutants, and contamination of sludge; and*
- I. any other relevant information requested by the agency.*

**7049.0720 Pretreatment Annual Report Contents for Non-delegated POTWs.** This part specifies information required in the annual reports submitted by non-delegated POTWs. The primary way MPCA has for obtaining information on a POTW's pretreatment activities, or the performance of the POTW's SIU, is via a pretreatment annual report submitted by the POTW. Changes to the POTW pretreatment program need to be reported so that the MPCA has a current understanding of what the POTW is doing. Since some of the requirements for POTWs in these rules are conditional upon a POTW having an SIU, it is essential to be able to track a POTW's SIUs. A current list of SIUs is therefore needed so that MPCA can track SIUs and POTWs. Discharge monitoring data from SIUs is the primary way for both the POTW and MPCA to track an SIUs performance. Therefore, it is reasonable for the POTW to summarize this data in their annual report. A major part of a POTW's control over their SIUs consists of monitoring by the POTW and inspections of the SIU by the POTW. Therefore a summary of inspections and monitoring is required. Where violations by SIUs occur it is important for MPCA to be aware of them so that the SIUs performance can be tracked. It is also important for the POTW's enforcement response to any violations to be reported so that MPCA can evaluate the adequacy of the POTW's enforcement of the limits in their pretreatment program. Since one of the objectives of these rules is to prevent interference or pass-through, it is important that POTWs report any such incidents to MPCA, and evaluate the performance of their pretreatment program. Other information not specifically listed above may be important either generally or in specific cases. It is therefore reasonable for MPCA to require the reporting of other relevant information. The reporting requirements in this part are consistent with the pretreatment annual reporting requirements that are currently contained in permit standard language and annual report forms, and has been for many years.



**Provisions for Delegated POTWs (Minn. R. 7049.0800 through 7049.1020).** These parts deal with delegated POTW pretreatment programs. They contain requirements for delegated POTW pretreatment programs, and procedures for approving and modifying them.

*7049.0800 POTWS REQUIRED TO DEVELOP PRETREATMENT PROGRAM.*

*A. Any POTW designated by the agency shall develop a federal delegated pretreatment program approvable under parts 7049.0800 to 7049.1020 according to the schedule contained in the respective POTWs national pollutant discharge elimination system permit. Schedules for the development of the POTW pretreatment program shall not exceed one year. A POTW shall be designated to develop a delegated pretreatment program if it has a design flow of five million gallons per day or more and has one or more SIUs, or when the agency finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent interference with the POTW or pass-through.*

*B. POTWs with federal delegated pretreatment programs meeting the requirements of parts 7049.0810 to 7049.0870 and approved as provided by parts 7049.0880 to 7049.0960 shall maintain and operate their pretreatment programs as approved. The authorities and procedures in the approved program shall at all times be fully and effectively exercised and implemented. The POTW authority is responsible for administering national categorical pretreatment standards, as well as pretreatment standards implementing the requirements of parts 7049.0140 and 7049.0850.*

**7049.0800 “POTWs Required to Develop a Pretreatment Program.”** This implements the requirement for certain POTWs to develop approved delegated POTW pretreatment programs as specified in 40 CFR § 403.8(a). For larger POTWs with substantial and ongoing pretreatment activities and issues, it is reasonable and efficient to require the development and ongoing implementation of a pretreatment program under the federal regulations, and Minn. R. 7049.0700 through 7049.0760. Since delegated POTWs are responsible for implementing all pretreatment standards and requirements, this allows IUs in these POTWs to have “one-stop” for all of their pretreatment issues, questions and needs. It also gives the POTW significant flexibility in controlling their IUs. MPCA maintains oversight of delegated pretreatment programs, but the POTW is responsible for all regulation of the discharges from their IUs.

The criteria, contained in federal regulations 40 CFR § 403.8(a), for determining which POTWs may be required to develop a delegated pretreatment program, has been incorporated in this part in response to a comment received during public participation. The first criteria states that a POTW with a design flow of five million gallons per day or more, with any significant industrial users, should develop a delegated pretreatment program. This criteria is a reasonable measure of a large POTW that should have the resources to operate a delegated pretreatment program, and is therefore a reasonable criteria for POTWs that must develop a delegated POTW pretreatment program. The other criteria calls for a delegated pretreatment program where the MPCA finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent interference with the POTW or pass-through. This allows MPCA to designate other POTWs that must develop a delegated pretreatment program, while reasonably restricting this discretion. In addition to placing some restrictions on the authority of MPCA to require

development of delegated POTW pretreatment programs, it should be noted that including these criteria in state rules may also drive the requirement for a POTW to develop a delegated POTW pretreatment program. This is not a new authority, and it has been the intention of MPCA for some time to require the development of additional delegated POTW pretreatment programs, whether state pretreatment rules were developed or not. Therefore this does not require anything that is not already required.

*7049.0810 DELEGATED LOCAL POTW PRETREATMENT PROGRAM REQUIREMENTS.*

*To be approvable under parts 7049.0800 to 7049.0960, a POTW pretreatment program shall have the program components described in parts 7049.0820 to 7049.0870.*

**7049.0810 Delegated Local POTW Pretreatment Program Requirements.** This part simply points to the following six parts (Minn. R. 7049.0820 through 7049.0870) as the required elements of a POTW delegated pretreatment program. These requirements are taken from the federal general pretreatment regulations (40 CFR § 403.8(f)) and are unchanged in substance.

*7049.0820 LEGAL AUTHORITY.*

*The POTW authority shall operate pursuant to legal authority that authorizes or enables the POTW authority to apply and enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Clean Water Act and any regulations implementing those sections. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements that the POTW authority is authorized to enact, enter into, or implement and that are authorized by state law. At a minimum, the legal authority shall enable the POTW authority to:*

**7049.0820 Legal Authority.** This part specifies the legal authority that the POTW must have for its delegated pretreatment program to be approved. It specifies required legal authorities by listing the things the POTW must have adequate legal authority to do. The required legal authority is the same as required in federal regulations at 40 CFR § 403.8(f)(1).

*7049.0820 LEGAL AUTHORITY.*

...

*A. deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users when the contributions do not meet required pretreatment standards and requirements or when the contributions would cause the POTW to violate its national pollutant discharge elimination system permit;*

Because the stated object of the pretreatment rules is to prevent interference and pass-through, the POTW must be able to control the contributions of pollutants by IUs. If a POTW is presently operating without interference or pass-through, this means that the POTW must have the authority to deny or condition new or increased contributions of pollutants. This is required by Minn. R. 7049.0820 (A).

*7049.0820 LEGAL AUTHORITY.*

...

*B. require compliance with required pretreatment standards and requirements by industrial users;*

This rule, as well as federal pretreatment regulations, both contain pretreatment standards to be applied and require the POTW to develop pretreatment standards to enforce the prohibitions also contained in the federal regulations and state rules. It therefore follows that POTWs who are delegated authority to implement these pretreatment rules must have the legal authority to require compliance with the pretreatment standards and requirements required by this rule. This is required by Minn. R. 7049.0820 (B)

7049.0820 LEGAL AUTHORITY.

...

*C. control contribution to the POTW by each industrial user to ensure compliance with required pretreatment standards and requirements, through permit, order, or similar means. In the case of significant industrial users, the control shall be achieved through permits or equivalent individual control mechanisms issued to each such user, except as follows:*

*(1) at the discretion of the POTW, the control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:*

*(a) involve the same or substantially similar types of operations;*

*(b) discharge the same types of wastes;*

*(c) require the same effluent limitations;*

*(d) require the same or similar monitoring; and*

*(e) in the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms;*

*(2) to be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests under part 7049.0570, subpart 3, for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted according to part 7049.0570, subpart 3. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subitem (1), and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism when the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the combined waste stream formula under part 7049.0350 or net/gross calculations under part 7049.0480; and*

*(3) both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:*

*(a) a statement of duration, which must be no more than five years;*

*(b) a statement of nontransferability without, at a minimum, prior notification to the*

*POTW authority and provision of a copy of the existing control mechanism to the new owner or operator;*

*(c) effluent limits, including best management practices, based on applicable required pretreatment standards in part 7049.0650;*

*(d) self-monitoring, sampling, reporting, notification, and record-keeping requirements, including an identification of the pollutants to be monitored, including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge according to part 7049.0570, subpart 3, or a specific waived pollutant in the case of an individual control mechanism; sampling location; sampling frequency; and sample type, based on the applicable required pretreatment standards as specified in part 7049.0650;*

*(e) a statement of applicable civil and criminal penalties for violation of required pretreatment standards and requirements and any applicable compliance schedule. The schedules may not extend the compliance date beyond applicable federal deadlines; and*

*(f) requirements to control slug discharges, if determined by the POTW to be necessary;*

In addition to the authority to deny or condition new discharges by IUs, a POTW must have legal authority to control the contribution by each IU. Even existing IUs can cause problems for the POTW. It has been extensively argued (III Need for Rules) that a POTW has a responsibility to control their own IUs. Therefore it is reasonable to require them to have the legal authority to do so. Contribution to the POTW by IUs can be controlled by means of permits, orders, or similar means. For SIUs this control must be exercised by an individual control mechanism, such as a permit issued to the individual SIU, except where general permits are allowed. Since SIUs are significant, it is reasonable that SIUs generally be controlled individually rather than simply by general provisions. This is required by Minn. R. 7049.0820(C). IUs subject to the National Categorical Pretreatment Standards are, for delegated POTWs, considered to be significant industrial users, except as provided by the exception in the definition of “Significant Industrial User” (Minn. R. 7049.0120, subp. 24). Many categorical industrial users, even those that do not qualify for this exception, are not significant in terms of potential to impact the POTW or the flow or load criteria. In order to provide POTWs with flexibility in dealing with these and other marginally significant industrial users, the use of general permits are allowed where SIUs are sufficiently similar.

Conditions which must be included in the individual control mechanisms used to control SIUs are:

- **A statement of duration, which must be no more than five years.** Conditions at both the POTW and at the SIU change over time. Therefore, it is reasonable to place a limitation on the term of the control mechanism. Since some of the major potential changes for the POTW are changes to their NPDES/SDS permit issued to them by MPCA, it is reasonable that the limitation on the permit term be the same as the term of the POTWs permit, which is five years.
- **Provisions Controlling The Transfer Of An SIU’s Control Mechanism.** A POTW that issues a control mechanism to an SIU must know to whom the control mechanism is issued. Therefore, although it may be reasonable for a POTW to transfer a control mechanism from one SIU to another, the POTW certainly needs to have the authority to control this process.
- **Effluent Limits.** One of the main purposes of a control mechanism is to place limitation on the discharge of pollutants to the POTW by the SIU. This is necessary in the pursuit of the objectives of pretreatment. Therefore, it is reasonable to require that a POTW have authority to place effluent limits in control mechanisms issued to SIUs. Since these provisions apply to POTWs

which will be delegated authority to apply federal regulations, this authority must include all required pretreatment standards, as required in these rules.

- **Monitoring and Reporting.** The main means for determining compliance with limits in the pretreatment program is self monitoring by IUs. This is consistent with the normal practice in the entire water quality program as administered by the MPCA and EPA, although these rules allow flexibility for POTWs to perform this monitoring themselves rather than rely on self monitoring by SIUs. Since this is the default means of determining compliance, it is reasonable to require POTWs to include such provisions in control mechanisms issued to SIUs. This authority should also enable the implementation of all aspects of these rules as they apply to monitoring by SIUs, and shall require compliance with all pretreatment standards the POTW is required to implement.
- **Statement of Penalties.** Imposing pretreatment limitations and requirements without any provision for penalties, in case the limitations and requirements are not met, invites non-compliance by those not inclined to comply, and indirectly penalizes those who do comply. Therefore provisions for enforcement are needed. To make sure SIUs subject to such potential penalties are aware of them, it is also reasonable to require that they be stated or referenced in the control mechanism issued to the SIU. Since schedules are sometimes used to require compliance by specified dates, it is also reasonable to state here the limitations on such compliance schedules.
- **Requirements To Control Slug Discharges.** POTWs are required to have procedures to determine whether SIUs need to have a plan to control slug discharges. (See definition of slug discharge at Minn. R. 7049.0120, subp. 26.) When such a determination is made, and the SIU develops a slug control plan, it is reasonable to require that the provisions of the slug control plan actually be carried out. The POTW needs to have authority to require the SIU to carry out the provisions of the slug control plan. Note that slug control plans are sometimes referred to as spill control plans, particularly in situations where spills are the main threat of slug discharges.

7049.0820 LEGAL AUTHORITY.

...

*D. require:*

*(1) the development of a compliance schedule by each industrial user for the installation of technology required to meet required pretreatment standards and requirements; and*

*(2) the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with required pretreatment standards and requirements, including, but not limited to, the reports required in parts 7049.0500 to 7049.0570;*

At times IUs cannot comply with pretreatment standards immediately, therefore it may be necessary to require development and imposition of schedules for achieving compliance. Therefore, the POTW must have authority to do so. In the case of national categorical pretreatment standards, schedules of compliance are limited by the final compliance deadline contained in the regulations. In the case of local limits, POTWs have more flexibility, within the limits of properly controlling the IUs to implement the general and specific prohibitions. The legal authority to require the development and imposition of schedules of compliance is required by Minn. R. 7049.0820 (D)(1).

Several notifications and reports are required by these rules to be submitted by IUs of all kinds to their POTW and/or control authority. Therefore, a POTW needs to have the legal authority to require

submittal of notifications and reports. The requirement to have this legal authority is provided by Minn. R. 7049.0820 (D)(2).

*7049.0820 LEGAL AUTHORITY.*

...

*E. carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with required pretreatment standards and requirements by industrial users. Representatives of the POTW authority shall be authorized to enter the premises of an industrial user in which a discharge source or treatment system is located or in which records are kept that are required under parts 7049.0500 to 7049.0590 to ensure compliance with required pretreatment standards. The authority shall be at least as extensive as the authority provided under section 308 of the Clean Water Act;*

The POTW needs to have the legal authority to carry out inspections and monitoring, since it is the POTW's responsibility to control their IUs. This is needed to gather information about the POTW's IUs and to confirm that the IUs are in compliance with pretreatment standards and requirements, or detect unreported non-compliance by IUs. This required authority includes the legal authority to enter the premises of an IU where a source of indirect discharge is located, or where records are kept. Authority for access is necessary since without it, the legal authority to carry out inspections can easily be rendered meaningless. This legal authority is required by Minn. R. 7049.0820(E)

*7049.0820 LEGAL AUTHORITY.*

...

*F. obtain remedies for noncompliance with required pretreatment standards and requirements by industrial users as follows:*

*(1) all POTW authorities shall have authority to seek injunctive relief for noncompliance with required pretreatment standards and requirements by industrial users. POTW authorities shall also have authority to seek or assess civil or criminal penalties of at least \$1,000 a day for each violation by industrial users of required pretreatment standards and requirements;*

*(2) pretreatment requirements that may be enforced through the remedies in subitem (1) include, but are not limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW authority; any requirements in individual control mechanisms issued by the POTW authority; or any reporting requirements imposed by the POTW authority or this chapter;*

*(3) the POTW authority shall have authority and procedures, after informal notice to the discharger, to immediately and effectively halt or prevent any discharge of pollutants to the POTW that reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall have authority and procedures, which must include notice to the affected industrial users and an opportunity to respond, to halt or prevent any discharge to the POTW that presents or may present an endangerment to the environment or that threatens to interfere with the operation of the POTW; and*

*(4) as provided in part 7049.0640, the agency has authority to seek judicial relief and may also use administrative penalty authority when the POTW authority has sought a monetary penalty that the agency believes to be insufficient;*

All IUs will not always be in compliance with pretreatment standards and requirements. Therefore it is necessary for the POTW to have authority to take enforcement action and obtain remedies for noncompliance. This authority must extend to all of the responsibilities a POTW will have as a delegated pretreatment program. In order to take effective action in the case of a discharge that imminently threatens the health or welfare of persons, the POTW must have legal authority to immediately halt a discharge after informal notice to the discharger. This legal authority is required by Minn. R. 7049.0820(F) because insufficient penalties may be ineffective in enforcing pretreatment standards and requirements. The POTW is also required to have legal authority for sufficient penalties. The authority of MPCA is also stated and referenced here to directly obtain remedies for noncompliance when the penalties sought by the POTW are insufficient.

#### *7049.0820 LEGAL AUTHORITY.*

*G. comply with the confidentiality requirements in part 7049.0160.*

Both federal and state regulations have specific procedures for identifying and handling confidential information. Since some information that must be submitted by IUs may qualify to be handled as confidential information, the POTW must also have legal authority to properly handle confidential material. This includes determining what material qualifies as confidential information when a request to hold information confidential is received, and to properly handle the material when it is determined to be confidential. The requirement to have this legal authority is at Minn. R. 7049.0820(G)

#### *7049.0830 PROCEDURES.*

*The POTW authority shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW authority to:*

*A. identify and locate all possible industrial users that might be subject to the POTW pretreatment program;*

*B. identify the character and volume of pollutants contributed to the POTW by the industrial users identified under item A;*

*C. notify industrial users identified under item A of applicable required pretreatment standards and any applicable requirements under this chapter and chapter 7045. The notification shall be made within 30 days of the designation of an industrial user as a significant industrial user;*

*D. receive and analyze self-monitoring reports and other notices submitted by industrial users according to the self-monitoring requirements in parts 7049.0200, 7049.0210, and 7049.0500 to 7049.0570;*

*E. randomly sample and analyze the effluent from industrial users and conduct surveillance activities to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with required pretreatment standards;*

*F. inspect and sample the effluent from each significant industrial user at least once a year, except:*

*(1) when the POTW has authorized the industrial user subject to a categorical*

*pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard under part 7049.0570, subpart 3, the POTW must sample for the waived pollutant at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW must immediately begin at least annual effluent monitoring of the user's discharge and inspection;*

*(2) when the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in part 7049.0120, subpart 24, item D; and*

*(3) in the case of industrial users subject to reduced reporting requirements under part 7049.0570, subpart 2, the POTW must randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in part 7049.0570, subpart 2, the POTW must immediately begin sampling and inspecting the industrial user at least once a year;*

*G. evaluate whether each significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006. Other significant industrial users must be evaluated within one year of being designated a significant industrial user. Significant industrial users must notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW authority decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:*

*(1) a description of discharge practices, including nonroutine batch discharges;*

*(2) a description of stored chemicals;*

*(3) procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate part 7049.0140, and procedures for follow-up written notification within five days; and*

*(4) if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, constructing containment structures or equipment, measures for containing toxic organic pollutants including solvents, and measures and equipment for emergency response;*

*H. investigate instances of noncompliance with required pretreatment standards and requirements, as indicated in the reports and notices required under parts 7049.0200, 7049.0210, and 7049.0500 to 7049.0570, or indicated by analysis, inspection, and surveillance activities described in item E. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and*

*I. comply with the public participation requirements of Code of Federal Regulations, title 40, part 25, in the enforcement of required pretreatment standards. Public participation procedures shall include provision for at least annual public notification, in one or more newspapers of general circulation that provides meaningful public notice*



*within the jurisdictions served by the POTW, of significant industrial users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements and any industrial users that were in significant noncompliance because of violations of the criteria in part 7049.0120, subpart 25, item C, D, or H.*

**7049.0830 Procedures.** In addition to having necessary legal authority to implement and enforce the pretreatment standards and requirements required of it, the POTW; seeking approval of a delegated POTW pretreatment program, also must have procedures for carrying out the activities needed to do so. This part requires the POTW to have these procedures developed in advance. Since POTWs with delegated pretreatment programs tend to be larger programs with multiple SIUs, it is reasonable for these rules to require that procedures be developed in advance, and also to prescribe what some of the procedures must be. These procedures are all drawn directly from the federal general pretreatment regulations (40CFR § 403.8(f)(2)).

### **The Required Procedures Include the Following:**

**Identify Industrial Users.** A POTW has the responsibility to control its IUs. Since a POTW cannot regulate what it does not know, some provision for identification of IUs must be made. Since the POTW is closer to their IUs and has more detailed knowledge of them than either the state or federal government, it is reasonable that the POTW be the governmental level that must identify their IUs, particularly where full pretreatment authority is delegated to the POTW. To ensure that this is done it is reasonable that delegated pretreatment POTWs have procedures to identify their IUs that need to be controlled. This is required at Minn. R. 7049.0830(A). Approvable identification procedures can vary from quite elaborated processes, for larger POTWs, to less formal procedures, in the case of the smaller delegated POTWs.

**Identify the Character and Quantity of IU Discharges.** Since it is important to know the character and quantity of a discharge in order to control those discharges, it is reasonable to require that a POTW have procedures to discover this information. This process relates in multiple ways with the identification of pollutants of concern. Not only should pollutants of concern be particularly noted in characterizing an IU, but the character of a POTW's IU's discharge both drives and restricts the identification of pollutants of concern (See discussion of Pollutants of Concern #8 page 11). Procedures to identify the character and volume of pollutants contributed to the POTW by IUs are required at Minn. R. 7049.0830(B)

**Notify IUs of Pretreatment Standards.** Compliance by IUs with standards and requirements is problematical if those standards and requirements are not known by the IU. To deal with this, every POTW must have procedures to notify IUs of applicable standards and requirements. Since this notification should be done in a timely manner, a 30-day timeline is imposed on POTWs by this rule. Minn. R. 7049.0830(C) requires POTWs to have procedures to notify their IUs of pretreatment standards and requirements.

**Receive and Analyze Reports and Notifications.** Because these proposed rules require IUs to submit various reports and notifications to the control authority, it is reasonable that the POTW, particularly where they are the sole control authority, not only have legal authority to require these reports and

notifications, but that they have procedures to receive and analyze these reports and notifications. Useful reporting provides information that demands analysis. Therefore it is reasonable to require that POTWs have procedures for doing so. Procedures for this purpose are required by Minn. R. 7049.0830(D).

**Sample and Inspect SIUs.** In order to confirm reports, notifications and monitoring received from IUs it is essential for POTWs to have procedures to conduct confirmatory sampling and inspections at IUs. It is also important for POTWs to have procedures to investigate non-compliance by IUs. This serves to verify and characterize the non-compliance and also to collect evidence needed to pursue enforcement action. Because of the significance of SIUs, confirmatory sampling and inspections are needed regularly. In this rule, and consistent with federal regulations, SIUs are required to be independently monitored and inspected by the POTW at least once per year, except as provided for “nonsignificant categorical industrial users” (see Minn. R. 7049.0120, subp. 24(D) or “middle tier categorical industrial users”(see Minn. R 7049.0570, subp. 2). The requirement for procedures to conduct independent sampling and inspections is contained in Minn. R. 7049.0830(E). The requirement to annually monitor and inspect SIUs, except nonsignificant CIUs and middle tier CIUs, is contained in Minn. R. 7049.0830(F).

**Evaluate the Need to Control Slug Discharges.** Slug discharges, which are defined at Minn. R. 7049.0120, subp. 26, have significant potential for causing problems at a POTW plant. In fact, slug discharges are a leading cause of interference or pass-through at POTWs. Therefore, it is reasonable for each POTW with a delegated pretreatment program to have procedures to evaluate the need of each IU to have a slug control plan. This is required by Minn. R. 7049.0830(G). Note that requirements to control slug discharges are required to be placed in control mechanism for SIUs. Minn. R. 7049.0820(C)(3).

**Investigate Instance of Noncompliance.** Noncompliance by IUs occurs from time to time. The main goal of a POTW in taking action in response to non compliance by an IU is to return the IU to compliance. Since the existence, severity, nature, causes and potential remedies for noncompliance are typically not obvious, it is reasonable to require POTWs to have procedures to investigate IU non compliance to determine what actions to take to return the IU to compliance. In addition, IUs may conceal noncompliance, making it necessary for the POTW to investigate possible non-compliance. If noncompliance is to be pursued, as required, it is also necessary for a POTW to investigate noncompliance to provide the evidence needed in the chosen enforcement action. To ensure that investigation of non-compliance is carried out, it is reasonable to require that POTWs with delegated pretreatment programs have procedures to investigate instances of non-compliance by SIUs. This is required by Minn. R. 7049.0830(H).

**Public Participation.** Since POTWs are public organizations, procedures will be needed to allow and facilitate public participation. Federal regulations at 40 CFR § 403.8(2)(viii) require the specific content of these procedures. These requirements are incorporated in Minn. R. 7049.0830(I).

*7049.0840 FUNDING.*

*The POTW authority shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in parts 7049.0820 and 7049.0830. In some limited circumstances, funding and personnel may be delayed as provided in part 7049.0910.*

**7049.0840 Funding.** Since administering a delegated pretreatment program requires resources, it is reasonable to require that a POTW, seeking approval of a delegated POTW pretreatment program, have resources to carry out the pretreatment program as required. Therefore this part requires that a POTW must have resources to administer the program they will be responsible for.

*7049.0850 LOCAL LIMITS.*

*The POTW authority shall develop and enforce specific limits to implement the prohibitions listed in part 7049.0140. POTWs may develop best management practices (BMPs) to implement these prohibitions. Any such BMPs are required pretreatment standards. The POTW authority shall continue to develop these limits as necessary or demonstrate that they are not necessary. The POTW authority shall effectively enforce the limits. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested the notice and an opportunity to respond.*

**7049.0850 Local Limits.** The objectives of these pretreatment rules are to prevent the introduction of pollutants that are incompatible with a POTW plant, prevent pass-through of pollutants through a POTW plant without adequate treatment and prevent interference with any part of a POTW. In order to accomplish these objectives, it is often highly desirable for a POTW to impose local limits on pollutants that have potential to cause interference or pass-through, or which are otherwise incompatible with the POTW. Therefore this part requires each delegated POTW to develop local limits for pollutants of concern, or show that they are not needed. These local limits are developed to be protective in the context of a specific POTW. In cases where a single POTW authority operates multiple POTW plants, it can develop and impose a single set of limits for pollutants, provided the limits are protective of all POTW plants involved. Since conditions at POTW plants are subject to change, it is reasonable to require the POTW authority to continue to develop local limits, or show that local limits changes are not needed, so that the POTW plant continues to be protected. In some cases BMPs provide better protection than actual numeric local limits, or provide good protection more easily. Therefore this part explicitly allows BMPs as local limits.

*7049.0860 ENFORCEMENT RESPONSE PLAN.*

*The POTW authority shall develop and implement an enforcement response plan. The plan shall contain detailed procedures indicating how a POTW authority will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:*

- A. describe how the POTW authority will investigate instances of noncompliance;*
- B. describe the types of escalating enforcement responses the POTW authority will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;*
- C. identify, by title, the officials responsible for each type of response; and*
- D. adequately reflect the POTW authority's primary responsibility to enforce all applicable required pretreatment standards and requirements, as detailed in parts 7049.0820 and 7049.0830.*

**7049.0860 Enforcement Response Plan.** This part requires the POTW seeking approval of a delegated POTW pretreatment program to have specific procedures for enforcement contained in an Enforcement Response Plan (ERP). Enforcement is an important element of a delegated pretreatment program.

Without any enforcement any limits applied could easily become irrelevant, given the natural human tendency to regard laws that are not enforced as irrelevant. In addition, any enforcement actions beyond the simplest cases may become complex. Enforcement cases also may involve difficult judgment calls. Since inconsistencies and hesitation can undermine enforcement effectiveness it is beneficial to think through enforcement tools, procedures, authority and responsibility. This is the general rationale for the requirement to have an ERP. ERPs are subject to review and approval since they are part of the POTW's delegated pretreatment program submittal. For the reasons stated above, it is reasonable to require delegated POTW's to develop and follow an enforcement response plan.

*7049.0870 SIGNIFICANT INDUSTRIAL USER LIST.*

*The POTW authority shall prepare and maintain a list of its industrial users meeting the criteria for being a significant industrial user. The list shall identify the criteria for which each significant industrial user is significant. The list shall also identify the applicable category and subcategory for industrial users subject to national categorical pretreatment standards. The list shall include industrial users that meet the criteria for being a significant industrial user in part 7049.0120, subpart 24, item A, but that have been determined not to be a significant industrial user under part 7049.0120, subpart 24, item B. The initial list must be submitted to the agency with the POTW's submittals as required by parts 7049.0880 to 7049.0920. Modifications to the list must be submitted to the agency with annual reports as required by part 7049.1020.*

**7049.0870 Significant Industrial User List.** As noted above (Minn. R. 7049.0830 A) a POTW seeking approval of a delegated POTW pretreatment program must identify their SIUs, characterize their discharge, and identify applicable categorical pretreatment standards. This is important information for implementing a pretreatment program. Therefore this part requires that POTW's track this information. There are several exceptions allowing certain IUs to not be considered SIUs, although they meet other criteria for being considered SIUs. Because of the use of exceptions, it is reasonable to require that these IUs also be tracked, even though they are not SIUs. It is important that MPCA have knowledge of a POTW's SIUs, so that oversight of the POTW pretreatment program can be reasonable and effective. Therefore it is reasonable to require that POTW's provide their IU list to MPCA periodically. This is required during initial program development, and with annual pretreatment reports thereafter.

Minn. R. 7049.0880 through 7049.0920 describes the required content and process for the submittal of an approvable delegated POTW pretreatment program. These parts directly mirror the comparable provisions in the federal regulations (40 CFR § 403.9 (a)(b)(c)(d) and (g)).

*7049.0880 SUBMITTAL FOR PRETREATMENT PROGRAM APPROVAL.*

*A POTW required to develop a pretreatment program for approval under a schedule established under part 7049.0800 shall submit to the agency three copies of a program description that includes the information in part 7049.0890. A POTW authority may request pretreatment program approval under parts 7049.0800 to 7049.1020 by submitting a request for approval and a pretreatment program description as prescribed in part 7049.0890 whether or not the POTW authority is required by a permit schedule to do so. The agency shall ensure that the submission and any comments on the submission are available to the public for inspection and copying.*

**7049.0880 Submittal For Pretreatment Program Approval.** This part provides the necessary connection between the requirement, in Minn. R. 7049.0800, that a POTW develop an approvable delegated POTW pretreatment program, and the required elements of an application for approval of a delegated pretreatment program, which follow in Minn. R. 7049.0890. This part also specifically authorizes a POTW to submit a request for approval of a delegated POTW pretreatment program whether they are required by a permit schedule to do so or not. It is reasonable to allow this if the POTW has a need or desire to do so and is able to develop an approvable program.

*7049.0890 CONTENTS OF POTW DELEGATED PRETREATMENT PROGRAM SUBMISSION.*

*A POTW authority requesting approval of a POTW pretreatment program shall develop a program submittal that shall be submitted to the agency for program approval according to parts 7049.0930 to 7049.0960. The submittal shall contain the following information:*

*A. a statement from the local unit of government's legal officer, or the attorney for those POTWs that have independent legal counsel, that the POTW authority has adequate authority to carry out the programs in parts 7049.0810 to 7049.0870. The statement shall:*

*(1) identify the provision of the legal authority under part 7049.0820 that provides the basis for each procedure under part 7049.0830;*

*(2) identify the manner in which the POTW authority will implement the program requirements in parts 7049.0810 to 7049.0870 including the means by which required pretreatment standards will be applied to individual industrial users such as by order, permit, or ordinance; and*

*(3) identify how the POTW authority intends to ensure compliance with required pretreatment standards and requirements and to enforce them in the event of noncompliance by industrial users;*

*B. a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW authority for its administration of the program. The submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the POTW pretreatment program if approved;*

*C. a brief description, including organization charts, of the POTW organization that will administer the pretreatment program. If more than one agency is responsible for administration of the program, the responsible agencies shall be identified, their respective responsibilities delineated, and their procedures for coordination set forth;*

*D. a description of the funding levels, equipment, and full-time and part-time personnel available to implement the program;*

*E. a description of program procedures consistent with part 7049.0830, including an enforcement response plan as provided by part 7049.0860; and*

*F. a technical justification, including any relevant calculations used to justify the proposed local limits or to justify why local limits are not needed.*

**7049.0890 Contents Of POTW Delegated Pretreatment Program Submission.** This part specifies the required contents of the POTW's delegated pretreatment program request for approval. The required contents of the submittal are based in the required delegated pretreatment program components as stated

in Minn. R. 7049.0820 through 7049.0870, though not organized in the same manner. These required contents of a delegated POTW pretreatment program are taken directly from the federal regulations (40 CFR § 403.9). The required contents consist of the following elements:

**Legal Authority Statement.** A legal authority statement by the city attorney or someone acting in the same capacity is required in a delegated pretreatment program request for approval. This is needed to assure that the POTW actually has the legal authority required by Minn. R. 7049.0820. This statement must also indicate what legal authority provides the basis for procedures required by Minn. R. 7049.0830. This is necessary to assure that the POTW actually have authority for the procedures that they are required to have.

**Copies of Legal Authority.** Copies of all legal authority documents which the POTW relies on for their required legal authorities is also needed in a delegated pretreatment program request for approval. This is needed so that MPCA can confirm that required legal authorities are actually present. POTWs often make substantial modifications to their legal authority in the course of developing a delegated pretreatment program and receiving approval. These modifications are normally drafted prior to requesting approval of the delegated POTW pretreatment program, but not finally acted on until the program is actually approved. Therefore it is also necessary to include an endorsement of the proposed pretreatment program by the local bodies responsible for supervising and funding the program.

**Description of the POTW Organization for Pretreatment.** A description of the POTW organization with the pretreatment responsibilities for specific positions and individuals indicated is also required in a delegated pretreatment program request for approval. This is needed to make sense of the pretreatment procedures, particularly the ERP. This requirement is of particular importance where inter-jurisdictional issues are involved in a POTW's pretreatment program. In those cases more than one local governmental unit may be involved in implementing the pretreatment program and a description of the way in which these local governmental units relate is essential.

**Resources.** Since the POTW is responsible to provide resources to adequately implement pretreatment standards and requirements, it is reasonable to require a description of funding and resources for pretreatment program implementation.

**Pretreatment Program Procedures.** A POTW is required in Minn. R. 7049.0830 and 7049.0860 to have procedures for implementing their pretreatment program. Since the POTW is required to have these specific procedures, it is reasonable to require that the POTW submit them for approval.

**Local Limits Technical Justification.** Each POTW is required to develop local limits to implement the prohibitions of Minn. R. 7049.0140. To ensure that the local limits are adequate for their purpose, a technical justification of local limits is required to be submitted with the POTW's delegated pretreatment program request for approval. This justification must demonstrate, by technical calculation and reasoning, that the proposed local limits are adequately protective. Such a demonstration is reasonable to ensure that the POTW's local limits are adequately protective. A POTW may alternatively show that local limits for particular pollutants are not needed, because there is not a reasonable potential for the POTW's IUs to violate the prohibitions of Minn. R. 7049.0140 for that particular pollutant. A POTW may also elect to use BMPs to implement the prohibitions. BMPs must also be technically justified in a similar manner as numeric local limits. These provisions are reasonable since local limits are not always

necessary and, in some cases, BMPs are more effective than numeric limits. Local limits must also be periodically re-evaluated as required by Minn. R. 7049.1010.

*7049.0900 CONTENT OF REMOVAL ALLOWANCE SUBMISSION.*

*A POTW authority that desires to grant removal credits under parts 7049.0360 to 7049.0470 shall submit three copies of a request for authority to revise categorical pretreatment standards that must contain the information required in part 7049.0450.*

**7049.0900 Content Of Removal Allowance Submission.** If a POTW desires to request authority to grant removal credits, they must submit the information required by the removal credit provisions of this rule Minn. R. 7049.0360 through 7049.0470. This information is needed to evaluate the request for removal credits.

*7049.0910 REQUEST FOR CONDITIONAL APPROVAL OF POTW PRETREATMENT PROGRAM.*

*The POTW authority may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval must meet the requirements in parts 7049.0810 and 7049.0920, unless the submission demonstrates that:*

- A. a limited aspect of the program does not need to be implemented immediately;*
- B. the POTW authority has adequate legal authority and procedures to carry out those aspects of the program that will not be implemented immediately; and*
- C. funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW authority shall describe in the submission the mechanism by which the funding will be acquired.*

**7049.0910 Request For Conditional Approval Of POTW Pretreatment Program.** In some cases a POTW will not need to implement specific aspects of a pretreatment program immediately. This part allows a POTW to obtain approval of a delegated pretreatment program without having resources presently available; provided legal authority and procedures are in place, and funding and resources will be available when needed. This provides flexibility for the POTW and MPCA to get a pretreatment program started in these cases.

*7049.0920 CONSISTENCY WITH WATER QUALITY MANAGEMENT PLANS.*

*To be approved, a POTW pretreatment program shall be consistent with any agency-approved basin or watershed plans.*

**7049.0920 Consistency with Water Quality Management Plans.** This part requires that delegated pretreatment programs be consistent with basin plans and watershed plans approved by MPCA. Basin plans and watershed plans are an important tool for MPCA in controlling sources of pollution, and are developed with public input. Therefore it is reasonable that delegated pretreatment programs be consistent with these plans. Federal regulations at 40 CFR § 403.9(g) require that pretreatment programs be consistent with approved water quality management plans, and call them “208 plans.” These are the same as the basin plans and watershed plans cited in the proposed rules.

*7049.0930 AGENCY ACTION.*

A. Upon receipt of a submission, the agency shall begin its review. Within 60 days after receiving the submission, the agency shall make a preliminary determination of whether the submission meets the requirements of parts 7049.0810 to 7049.0920 and, if appropriate, parts 7049.0360 to 7049.0470.

B. If the agency makes the preliminary determination that the submission meets the requirements referenced in item A, the agency shall:

(1) notify the POTW that the submission has been received and is under review; and

(2) commence the public notice and evaluation activities in parts 7049.0940 to 7049.0960.

C. After review of the submission as provided for in item A, if the agency determines that the submission does not comply with parts 7049.0890 to 7049.0920, the agency shall provide notice in writing to the applying POTW and each person who has requested individual notice. The notification shall identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of parts 7049.0890 to 7049.0920. 7049.0940 PUBLIC NOTICE AND OPPORTUNITY FOR HEARING.

Subpart 1. **Requirement.** Within 20 working days after making a determination that a submission meets the requirements of parts 7049.0890 to 7049.0910, the agency shall issue a public notice of request for approval of the submission and provide an opportunity for the applicant, an affected state, an interested state or federal agency, or a person or group of persons to request a contested case hearing with respect to the submission.

Subp. 2. **Circulation.** The public notice of request for approval of the submission shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

A. mailing notices of the request for approval of the submission to federal and state fish, shellfish, and wild fish resource agencies, unless the agencies have asked not to be sent the notices; and any other person or group who has requested individual notice, including those on appropriate mailing lists; and

B. publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdictions served by the POTW. The public notice must provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission. All written comments submitted during the 30-day comment period must be retained by the agency and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the agency.

Subp. 3. **Hearing.**

A. The agency shall provide an opportunity for the applicant, an affected state, an interested state or federal agency, or a person or group of persons to request a public hearing with respect to the submission.

B. The request for public hearing shall be filed within the 30-day or extended comment period described in subpart 2 and shall indicate the interest of the person filing the request and the reasons why a hearing is warranted.

C. At the request of the POTW authority, the agency shall hold a hearing. In addition, a hearing shall be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.



*D. Public notice of a hearing to consider a submission, sufficient to inform interested parties of the nature of the hearing and the right to participate, shall be published in the same newspaper as the notice of the original request for approval of the submission under subpart 2. In addition, notice of the hearing shall be sent to those persons requesting individual notice.*

**7049.0950 REVIEW, APPROVAL, AND DECISION.**

**Subpart 1. Time for review.**

*A. The agency shall have 90 days from the date of the public notice required in part 7049.0940, subpart 2, to review the submission. The agency shall review the submission to determine compliance with parts 7049.0810 to 7049.0870 and, if removal credit authorization is sought, with parts 7049.0360 to 7049.0470. The agency may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in part 7049.0940, subpart 2, is extended beyond 30 days or if a public hearing is held as provided for in part 7049.0940, subpart 3. In no event, however, shall the time for evaluation of the submission exceed a total of 180 days from the date of public notice of the submission.*

*B. At the end of the 30-day or extended comment period and within the 90-day or extended period provided for in this subpart, the agency shall approve or deny the submission based on the evaluation in part 7049.0930 and take into consideration comments submitted during the comment period and the record of the public hearing, if held. If the agency makes a determination to deny the request, the agency shall notify the POTW and each person who has requested individual notice. The notification shall include suggested modifications and the agency may allow the requester additional time to bring the submission into compliance with applicable requirements.*

**Subp. 2. Environmental Protection Agency objections.** *A POTW pretreatment program or authorization to grant removal allowances must not be approved by the agency if, following the 30-day or extended public notice period provided for in part 7049.0940 and any hearing held pursuant to that notice, the Environmental Protection Agency regional administrator sets forth in writing objections to the approval of the submission and the reasons for the objections. A copy of the Environmental Protection Agency regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The Environmental Protection Agency regional administrator shall provide an opportunity for written comments and may convene a public hearing on the objections. Unless retracted, the Environmental Protection Agency regional administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.*

**Subp. 3. Notification of result.** *The agency shall notify persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the agency shall publish a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The agency shall identify in any notice of POTW pretreatment program approval any authorization to modify categorical pretreatment standards that the POTW authority may make according to parts 7049.0360 to 7049.0470 for removal of pollutants subject to categorical pretreatment standards.*

**Subp. 4. Reissuance on modification.** *After the POTW's pretreatment program is*

*approved, the POTW's national pollutant discharge elimination system permit shall be reissued or modified by the agency to incorporate the approved program as enforceable conditions of the permit. The modification of a POTW's national pollutant discharge elimination system permit for the purposes of incorporating a POTW pretreatment program approved according to parts 7049.0800 to 7049.0960 is a minor permit modification subject to the procedures in part 7001.1150.*

**7049.0960 APPROVAL OF REQUEST FOR CONDITIONAL APPROVAL.**

*Upon receipt of a request for conditional approval, the agency shall establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW authority may be modified or withdrawn.*

**Process for Review and Approval of Delegated POTW Pretreatment Programs.** Minn.

R. 7049.0930 through 7049.0960 set forth procedures for review and approval of a request for delegated pretreatment program approval or a request to grant removal credits. These procedures are taken directly from the federal regulations, 40 CFR § 403.9(e) and (f). The procedures include initial MPCA review of the delegated pretreatment program request for approval, public notice of the proposed approval, MPCA approval and placing approved pretreatment program conditions in the POTW permit.

**7049.0930 Agency Action.** This part describes the actions and timeline for MPCA approval of a POTW delegated pretreatment program request for approval. It provides for actions if the request is found to be approvable or if the request is determined to be deficient. Such specification of process is reasonable to facilitate and control the review and approval of delegated POTW pretreatment programs.

**7049.0940 Public Notice.** This part describes the public notice and opportunity for public hearing that is required as part of the approval process for delegated pretreatment program requests for approval. Public notice is included in the approval process to provide the opportunity for public input since the approval of a POTW delegated pretreatment program marks a change in POTW responsibility since delegation makes them the control authority for all pretreatment standards for their IUs. Therefore it is reasonable to provide for public notice and the opportunity to request a public hearing.

**7049.0950 Review, Approval, and Decision.** Following public notice, and a public hearing, if one is requested, the final decision on pretreatment program approval is made and the conditions of the pretreatment program approval are placed in the POTW's permit. This part describes the procedures for these actions. Since the purpose of requesting delegation is the approval of the POTW pretreatment program, it is reasonable to have procedures to do that. It is also reasonable that the conditions of the pretreatment program approval be placed in the POTW permit, since this marks a change in the POTW responsibilities.

**7049.0960 Approval Of Request For Conditional Approval.** When a POTW receives conditional approval of their pretreatment program as provided in Minn. R. 7049.0910, this approval necessarily implies a need for the POTW to acquire the funding and resources to operate the program, since the program is approved without funding and resources in place. This part provides for a schedule, placed in the POTW's permit requiring them to get the funding and resources. This is needed so that the conditions of the approval are enforceable.

#### 7049.0970 MODIFICATION OF POTW PRETREATMENT PROGRAMS.

*Either the agency or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under parts 7049.0800 to 7049.0960.*

#### 7049.0980 SUBSTANTIAL MODIFICATIONS DEFINED.

*Substantial modifications include:*

*A. modifications that relax POTW legal authorities, as described in part 7049.0820, except for modifications that directly reflect a revision to this chapter and are reported pursuant to part 7049.1000;*

*B. modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to part 7049.1000. "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or a subgroup of industrial users identified by the POTW authority, may discharge pursuant to limits developed under part 7049.0850;*

*C. changes to the POTW's control mechanism, as described in part 7049.0890;*

*D. a decrease in the frequency of self-monitoring or reporting required of industrial users;*

*E. a decrease in the frequency of industrial user inspections or sampling by the POTW;*

*F. changes to the POTW's confidentiality procedures; and*

*G. other modifications designated as substantial modifications by the agency on the basis that the modification could:*

*(1) have a significant impact on the operation of the POTW's pretreatment program;*

*(2) result in an increase in pollutant loadings at the POTW; or*

*(3) result in less stringent requirements being imposed on industrial users of the POTW.*

#### 7049.0990 APPROVAL PROCEDURES FOR SUBSTANTIAL MODIFICATIONS.

*Subpart 1. **Statement.** To request approval of a substantial modification as defined under part 7049.0890, the POTW authority shall submit to the agency a statement of the basis for the desired program modification, a modified program description as required by parts 7049.0880 to 7049.0920, or other documents the agency determines to be necessary under the circumstances.*

*Subp. 2. **Agency action.** The agency shall approve or disapprove the modification based on the requirements of parts 7049.0810 to 7049.0870 and using the procedures in parts 7049.0930 to 7049.0960, except as provided in items A and B. The modification becomes effective upon approval by the agency.*

*A. The agency need not publish a notice of decision under this part, provided the notice of request for approval under part 7049.0940 states that the request will be approved if no comments are received by a date specified in the notice, no substantive comments are received, and the request is approved without change.*

*B. Notices required by this part may be performed by the POTW provided that the agency finds that the POTW's notice otherwise satisfies part 7049.0940.*

*7049.1000 APPROVAL PROCEDURES FOR NONSUBSTANTIAL MODIFICATIONS.*

*A. The POTW authority shall notify the agency of any nonsubstantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in part 7049.0990.*

*B. Within 45 days after the submission of the POTW's statement, the agency shall notify the POTW of its decision to approve or deny the nonsubstantial modification, except as provided in item C.*

*C. If the agency does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under parts 7049.0980 and 7049.0990, the POTW authority may implement the modification.*

*7049.1005 INCORPORATION IN PERMIT.*

*Upon approval, modifications to a POTW's pretreatment program will be incorporated into the POTW's national pollutant discharge elimination system permit. The modification of a POTW's national pollutant discharge elimination system permit for the purposes of incorporating modifications to the POTW's pretreatment program approved according to parts 7049.0970 to 7049.1000 is a minor permit modification subject to the procedures in part 7001.1150.*

**Provisions for Pretreatment Program Modifications.** Minn. R. 7049.0970 through 7049.1005 provide for modification of approved delegated POTW pretreatment programs. They describe the requirements and process for such modifications of POTW pretreatment programs. This is taken directly from the federal general pretreatment regulations, 40 CFR § 403.18.

**7049.0970 Modification Of POTW Pretreatment Programs.** Modification to a POTW program may be needed due to changes in regulations, POTW circumstances or other factors. Such modifications may be initiated by either MPCA or the POTW. MPCA may initiate program modification due to changes in regulations, perceived deficiencies in a POTW's program or for other reasons. A POTW may initiate such changes due to changed regulatory requirements, changes in the POTW's regulated community, accumulated experience with the pretreatment program, or for other reasons. Modification is needed so that the POTW's approved program reflects the actual authorities and procedures used by the POTW, and so that those authorities and procedures remain adequate for their situation and consistent with rules and regulations.

**7049.0980 Substantial Modifications Defined.** POTW pretreatment program modifications can range from negligible changes, which do not need review and approval of the change, up to the fundamental, which requires formal approval comparable to the initial approval of the POTW's pretreatment program. Requiring approval processes for negligible changes would waste MPCA and POTW resources with no value added. Allowing unrestricted changes without review and approval would give up effective control of the program. Therefore, a definition of what modifications are substantial is needed. This is provided by this part.

**7049.0990 Approval Procedures For Substantial Modifications.** This part describes approval procedures for substantial modifications to pretreatment programs. These procedures specifically reference the initial pretreatment program approval requirements of Minn. R. 7049.0810 through 7049.0870 and the program approval procedures of Minn. R. 7049.0930 through 7049.0960. The procedures for approval of a substantial modification are substantially the same as those for initial

approval of the program, with a few exceptions. A major cost and time constraint on approval of pretreatment program modifications is the requirement to public notice the modifications and publish the public notice in a newspaper. Therefore, this part provides that only a single public notice is required if no comments are received on the program modifications in response to the first public notice, and the initial notice states that the modification will be approved without further public notice if no comments are received. Since it is common for pretreatment program modifications to receive no substantive comments, this is an important provision. This part also provides that the POTW can publish the public notice. This is significant since POTWs are often required to do their own public notice for changes to POTW legal authority and the required POTW and MPCA public notices can be combined since they deal with the same changes.

**7049.1000 Approval Procedures For Nonsubstantial Modifications.** Some non-substantial modifications may have potential to impact the effectiveness of a POTW pretreatment program and should therefore be subject to review. On the other hand, there are many non-substantial modifications that do not deserve any significant review. Therefore, this part provides that non-substantial modifications must be submitted, and may be reviewed by MPCA, but are automatically approved in 45 days unless MPCA denies the modification request or notifies the POTW that it intends to treat the request as a substantial modification. This approach balances the need for review of some non-substantial modifications with the need to process the great majority of non-substantial modifications with minimal effort.

**7049.1005 Incorporation in Permit.** Because the conditions of a POTW's pretreatment program approval are incorporated into the POTW's NPDES permit, pretreatment modifications also need to be incorporated into the permit so that the permit correctly reflects the current status of the POTW pretreatment program and require that the modifications be implemented.

*7049.1010 LOCAL LIMITS RE-EVALUATION.*

*Subpart 1. **Monitoring for local limit pollutants.** The POTW shall, for all pollutants of concern, obtain sufficient data to allow the POTW authority to evaluate the need for local limits and shall set local limits if they are needed. Monitoring shall be done at a sensitivity adequate to evaluate the need for local limits and set local limits if needed.*

*Subp. 2. **Re-evaluation of local limits.** Each POTW authority shall periodically re-evaluate its local limits and the need for local limits. The re-evaluation shall be done at least once every five years unless otherwise provided in the POTW's national pollutant discharge elimination system permit.*

**7049.1010 Local Limits Re-evaluation** Since conditions affecting the need for local limits change over time, local limits must periodically be reviewed to assure that they still effectively implement the prohibitions of Minn. R. 7049.0140. This part specifies requirements for monitoring for local limits pollutants and for the periodic re-evaluation of established local limits. This incorporates the requirements of 40 CFR § 403.8(f)(4) and 40 CFR § 403.5(c)(1), and clarifies them, making them more specific.

The requirement to re-evaluate pretreatment local limits once every five years is consistent with past practice and current POTW permit conditions. Five years is a reasonable interval at which to re-

evaluate local limits since that normally coincides with reissuance of the POTW's NPDES permit.

The requirement to monitor for pollutants of concern obtaining "sufficient data to allow the POTW authority to evaluate the need for local limits" is a significant change from past practice and current POTW permit conditions. Current permit conditions and past practice requires each delegated POTW to monitor for a specific list of local limits pollutants twice annually. The proposed language in this part leaves to the POTW's judgment both the list of pollutants to be monitored for, and the monitoring frequency needed, but requires that the data obtained be sufficient to determine the need for local limits for pollutants of concern, and to set limits where they are needed. This does not change the requirements at Minn. R. 7049.0600, subp. 2 and 7049.0850 to have local limits that are protective when they are needed to prevent interference and pass through, nor does it have any effect on any POTW effluent limits that may be imposed. Monitoring of pollutants for compliance may still be required since this provision only changes the monitoring needed for setting local limits by the POTW. This is a reasonable change since the whole point of monitoring for local limits pollutants is to have adequate data to set local limits or determine that they are not needed, and that is what the proposed rule now requires.

*7049.1020 ANNUAL PRETREATMENT REPORTS FOR DELEGATED POTW PRETREATMENT PROGRAMS.*

*A POTW authority with an approved delegated pretreatment program approved under parts 7049.0800 to 7049.1005 shall submit a pretreatment annual report to the agency for each calendar year. The report shall be submitted within 60 days after the end of each calendar year, unless a different date is specified in the POTW's national pollutant discharge elimination system permit. A POTW's first annual report meeting the requirements of this part following approval of its pretreatment program under parts 7049.0930 to 7049.0960 shall be submitted no later than one year after approval of the POTW's pretreatment program. The annual report shall describe the POTW's pretreatment activities during the previous calendar year and shall include the following additional information:*

*A. a summary of changes to the POTW's pretreatment program that have not been previously reported to the agency;*

*B. an updated list of the permittee's significant industrial users, including the summary total of significant industrial users and categorical industrial users, and a list of additions to and deletions from the previously submitted list of significant industrial users, with a brief explanation for each deletion. For each significant industrial user, the following information shall be included:*

*(1) the significant industrial user's name;*

*(2) the significant industrial user's address;*

*(3) the criteria and parameters for which the significant industrial user is significant;*

*(4) the category and subcategory of any applicable national categorical pretreatment standards;*

*(5) whether or not the significant industrial user's permit is current or expired; and*

*(6) whether the significant industrial user is subject to local limits only or local limits that are more stringent than the categorical pretreatment standards;*

*C. a list of categorical industrial users that are considered nonsignificant categorical industrial users as defined in part 7049.0120, subpart 24, item D, or are subject to*

*reduced monitoring requirements under part 7049.0570, subpart 2;*

*D. a summary of the discharge monitoring data for each significant industrial user for the reporting year. The summary shall include all available data and shall accurately represent the discharge by the user;*

*E. a summary of the inspection and sampling activities conducted by the POTW during the reporting year to gather information and data regarding industrial users. The summary shall include identification of the industrial users subject to surveillance by the POTW and an indication of the type, such as inspection or sampling, and number of surveillance activities performed;*

*F. a characterization of the compliance status of each significant industrial user during the reporting year. The compliance characterization shall at least indicate status as follows:*

*(1) no violations noted with discharge limits, and compliance with monitoring and reporting requirements is sufficient to determine compliance with discharge limitations;*

*(2) violations were noted with discharge limits or violations of monitoring and reporting requirements that may have impaired the permittee's ability to determine compliance with discharge limitations were noted, but the noncompliance does not meet the definition of significant noncompliance;*

*(3) significant noncompliance; or*

*(4) status unknown;*

*G. for each significant industrial user that was out of compliance with required pretreatment standards, a description of the standards or requirements that were violated. For each significant industrial user in significant noncompliance, the reason for the significant noncompliance, if known, and whether the significant industrial user was placed on a compliance schedule for returning to compliance shall be included. If the significant industrial user is on a compliance schedule, the date of final compliance shall be noted;*

*H. a summary of the enforcement actions taken by the POTW authority during the reporting year. The summary shall include the names and addresses of the industrial users that were the subject of enforcement action, the enforcement action taken, and whether or not the industrial user has returned to compliance. The report shall also list numbers of:*

*(1) significant industrial users in significant noncompliance with compliance schedules;*

*(2) formal enforcement actions taken, such as administrative orders or notices of violation;*

*(3) judicial actions taken against significant industrial users;*

*(4) significant industrial users with significant noncompliance published; and*

*(5) significant industrial users that paid penalties;*

*I. a description of any upset, interference, or pass-through incident at the POTW that the POTW authority knows or suspects were caused by industrial users of the POTW system. The description shall include the reasons why the incidents occurred, the corrective actions taken, and the industrial users responsible, if known. The report shall also include an assessment of the effectiveness of the pretreatment program in preventing interference, pass-through of pollutants, and contamination of sludge;*

*J. a summary of public participation activities to involve and inform the public. This*

*shall include a copy of the annual publication of significant noncompliance, if the publication was needed to comply with part 7049.0830, item I; and*  
*K. any other relevant information requested by the agency.*

#### **7049.1020 Annual Pretreatment Reports for POTWs with Delegated Pretreatment Programs.**

This part details the required content of a pretreatment annual report for a POTW with a delegated POTW pretreatment program. The requirements of this part are consistent with, but more specific than, the requirements in federal regulations (40 CFR § 403.12(i)). The information required by these rules in these annual reports is the same as that currently required by permit language to be included in pretreatment annual reports. All information required in pretreatment annual reports relates directly either to the POTW's SIUs or to the POTW's pretreatment activities. SIUs are the entities regulated under the pretreatment program, so knowledge of them and their status is important for effective MPCA oversight of the POTW pretreatment program. Information on the POTW's pretreatment activities is also essential since the POTW is required to carry out certain activities as listed in Minn. R. 7049.0800 through 7049.0860.

### **V. CONSIDERATION OF ECONOMIC FACTORS**

The proposed rules do not substantively change how the MPCA pretreatment program will be operated or what it will require. The proposed rules adopt the federal pretreatment rules, and put into rules the way the pretreatment program is currently operated. Therefore, there is not expected to be any change in the costs that are born by any of the classes of persons impacted by the pretreatment program. See also the discussion of economic issues at IV. A. 1.

### **VI. ADDITIONAL NOTICE**

In addition to the required State Register Notice of intent to adopt rules, MPCA has conducted the following efforts to notify interested parties of the rulemaking and obtain their comments.

In December 2002 the MPCA published a pre-draft notice of intent to do rulemaking and solicitation of comments in the State Register. Some comments were received and have been considered. Some commenters stated that they would be likely to have additional comments once more was know of the proposed content of the rule.

The MPCA has held regular meetings, typically two to three times per year, with personnel from delegated pretreatment POTWs at which the rulemaking was often discussed. At one of these meetings the rules were the main topic discussed.

On August 19, 2006, the MPCA made the then current draft of the rules available on an internet web site. We also sent a mailing to POTWs, SIUs, and previous commenters notifying them of the availability of the draft, soliciting comments and notifying them of a public meeting to discuss the rules. This informal public notice period ran from August 19 until September 19, 2005. On September 7, 2005, during the informal public notice period noted above, we held a public meeting to explain the draft rule and receive comments. According to the sign-in sheet, 26 people attended this meeting. There was a presentation on the rules, and a time for comments and question and answers. Additional comments were received during this time.



The MPCA staff was invited to and attended a meeting of MESERB. MESERB is one of the major commenters on the draft rules. The meeting was held on October 14, 2005, and ended earlier than scheduled when no one had further questions or comments. A presentation on the draft rules was made and the rules were discussed.

Following the informal public notice period, public meeting and meeting with MESERB, changes were made to the draft rules. To keep interested parties informed, MPCA sent a letter, on April 19, 2006, to everyone who attended the public meeting or provided comments. The letter explained changes made to the draft rules and also explained why some requested changes were not made.

Minn. Stat. §§ 14.331 and 14.23 require that the SONAR contain a description of the Agency's efforts to provide additional notice to persons who may be affected by the proposed rules or explain why these efforts were not made. The previous paragraphs in this section describes the Agency's public notification efforts already completed for this rule revision process.

The Agency's proposed Additional Notice Plan, for which prior approval from the Office of Administrative Hearings (OAH) will be requested, is as follows:

- A copy of the Dual Notice will be sent, by United States mail on the Friday preceding the Monday, that it will appear in the *State Register*, to the following:
  - All persons who are registered to be on the Agency mailing list for the purpose of receiving notice of rule proceedings (the list that the Agency maintains as required by Minn. Stat. §14.14, subd. 1a).
  - Interested persons and organizations identified throughout this rulemaking process including:
    - Attendees at the 2005 public meeting;
    - POTWs with delegated pretreatment programs;
    - POTWs identified as having a significant industrial user;
    - Significant industrial users;
    - Categorical industrial users permitted by the Agency;
    - Commenters on the notice of rulemaking;
    - Commenters responding to our public availability of draft rules in the summer of 2005;
    - *League of Minnesota Cities*;
    - *Minnesota Association of Small Cities*; and
    - *Coalition of Greater Minnesota Cities*
- In addition to providing a hardcopy mailing of the Dual Notice to the above parties, the Agency will provide an electronic message containing the Dual Notice to POTWs with delegated pretreatment programs.
- The Dual Notice, which must be approved by the OAH prior to publication in the *State Register*, will contain: 1) a description of the proposed rule amendments; 2) a link to the Agency Web page where copies of the proposed rules, SONAR and Dual Notice will be located; 3) information on how to obtain a hard copy of the proposed rules, SONAR and Dual Notice; and 4) information on how to submit comments on the proposed rules.
- The Agency will also notify the Legislature, as required by Minn. Stat. §14.116, and the Legislative Reference Librarian as required by Minn. Stat. §§ 14.131 and 14.23.

## **VII. NOTIFICATION TO THE COMMISSIONER OF AGRICULTURE**

Minn. Stat. § 14.111 requires that before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the State Register.

Although the pretreatment program may have significant impact on agriculture related industries such as dairies, meat processors, ethanol plants, soybean processing plants, etc. it has no direct impact on farming operations. Pretreatment deals with the control of IUs of POTWs. We are aware of no farming operations that are IUs of a POTW. Therefore we conclude that the proposed rules do not affect farming operations.

## **VIII. CONSULTATION WITH THE COMMISSIONER OF FINANCE REGARDING FISCAL IMPACTS ON LOCAL GOVERNMENTS**

Minn. Stat. § 14.131 requires the agency to consult with the Department of Finance to help evaluate the fiscal impact and benefits of the proposed rules on local governments. In accordance with the process established by the Department of Finance on June 2004, the Agency will provide the Department of Finance with a copy of the Proposed Rule and SONAR form at the same time these items are sent to the Governor's Office. This timing allows the fiscal impacts and fiscal benefits of the proposed rule to be reviewed by the Department of Finance concurrent with the Governor's Office review.

## **IX. NOTIFICATION TO THE COMMISSIONER OF TRANSPORTATION**

Minn. Stat. § 174.05 requires the Commissioner of the MPCA to inform the Commissioner of Transportation of all activities of the MPCA which relate to the adoption, revision, or repeal of any standard or rule concerning transportation established pursuant to Minn. Stat. § 116.07.

This rulemaking does not concern transportation. There may be some limited indirect impacts on transportation due to the pretreatment program in general. However, no changes made by this rule are expected to have any impact on transportation, directly or indirectly.

The Minnesota Department of Transportation has made use of POTWs for disposal of wastewater in the past and probably will in the future. In addition, city and county highway departments, airports and other transportation facilities sometimes dispose of wastewater in POTWs. However, since actual discharge standards and de facto requirements for POTWs regulating discharges from IUs are not changed by this rule, no actual impact is expected.

One federal point source category regulation, for the Transportation Equipment Cleaning category, is incorporated by reference in the proposed rule. However, since the Transportation Equipment Cleaning category regulation is already in effect, no impact from these rules will occur.

Some prohibitions contained in these proposed rules have clear implications for transportation related facilities. For example, the prohibition against sewerage flammables at Minn.

R. 7049.0140, subp. 3(A) has clear implications for gas stations. However, this is not concerning transportation per se. In addition, this prohibition on discharge of flammable material to POTWs is already in effect in federal regulations (40 CFR § 403.5(b)(1)) as well as comparable prohibitions in nearly all POTW sewer use ordinances.

Because these proposed rules do not specifically concern transportation, and no indirect impact on transportation or transportation facilities is expected, the Commissioner of Transportation was not specifically informed.

## **X. LIST OF WITNESSES AND APPENDICES**

Witnesses:

Randall Dunnette  
Teresa Roth  
Gary Eddy  
Deb Lindlief  
Jeff Smith  
Tod Eckberg

### **Appendices:**

Appendix 1: Table of Contents for Proposed Rules

Appendix 2: Federal General Pretreatment Regulations (40 CFR pt. 403)

Appendix 3: Permit Standard Language for Pretreatment

Appendix 4: Pretreatment Annual Reporting Form

## **XI. GLOSSARY**

**BMP – Best Management Practice:** BMPs are practices, as distinct from treatment of wastewater, used to control the discharge of pollutants. BMPs may be required by categorical standards or local limits. See Minn. R. 7049.0120, subp. 3 for a specific definition.

**BMR – Baseline Monitoring Report:** A report, required in Minn. R. 7049.0500, related to initial compliance status with national categorical pretreatment standards.

**CFR:** Code of Federal Regulations

**CIU - Categorical Industrial User:** A CIU is an industrial user subject to national categorical pretreatment standards. See Minn. R. 7049.0120, subp. 4 for definition, see also Minn. R. 7049.0120,

subp. 5. The national categorical pretreatment standards are incorporated in Minn. R, 7049.0310

CWA: Clean Water Act

CWF – Combined Wastestream Formula: A mathematical formula used to adjust certain pretreatment limits. Use of the CWF to calculate alternative discharge limits for national categorical pretreatment standards is described in Minn. R. 7049.0350.

Delegated POTW Pretreatment Program: This is a POTW pretreatment program that conforms with certain requirements and is approved by a formal process. The term is defined in Minn. R. 7049.0120, subp. 7. Requirements for a delegated program, and the process for its approval, are contained in Minn. R. 7049.0800 through 7049.1020.

EPA: United States Environmental Protection Agency

ERP – Enforcement Response Plan: This is a plan required for delegated POTW pretreatment programs at Minn. R. 7049.0860. Similar information can also be requested of non-delegated POTWs under the provisions of Minn. R. 7049.0700, subpart 3 D

IU - Industrial User: An IU is an industry that discharges wastewater to a POTW. It is defined in Minn. R. 7049.0120, subp. 9.

Local Limits: Local limits are limitations on the discharge of pollutants from IUs, which are imposed by a POTW on its IUs. Local limits are developed by POTWs to implement the general prohibition in Minn. R. 7049.0140, subpart 2. They are required under Minn. R. 7049.0600 subpart 2 and Minn. R. 7049.0850.

MPCA: Minnesota Pollution Control Agency

MESERB: Minnesota Environmental Science and Economic Review Board

National Categorical Pretreatment Standards: Federal pretreatment standards that are incorporated in this proposed rule. The term is defined in Minn. R. 7049.0120, subp. 5. The standards are incorporated in Minn. R. 7049.0310.

NPDES: National Pollutant Discharge Elimination System The term refers to a system of wastewater permits. This is the type of permit that would be issued to most POTWs.

Non-delegated POTW: any POTW that does not have a delegated POTW pretreatment program.

OAH: Office of Administrative Hearings

POTW - Publicly Owned Treatment Works means both the treatment works itself, and governmental unit that holds the permit for the treatment works, where the treatment works is owned by a municipality. The term is specifically defined in 7049.0120, subpart 20. Closely related terms are specifically defined in 7049.0120, subparts 14, 15, and 16.

SDS: State Disposal System: Used to refer to a type of state issued wastewater permit.

SIU - Significant Industrial User: This term refers to an IU that is defined as significant. It is defined in Minn. R. 7049.0120 subp. 24.

SNC - Significant Noncompliance: The term is defined in 40 CFR § 403.8(f)(2)(vii) and Minn. R. 7049.0120 subp. 25. Used in this rule in Minn. R. 7049.0830 I.

SONAR: Statement of Need and Reasonableness

TMDL – Total Maximum Daily Load: TMDL refers to a program and process used, among other things, to set effluent limitations for POTWs. This means it may require local limits to be applied to IUs to ensure that the POTW can meet its limits.