

Hearing Officers Report on Proposed Revisions to the
Wastewater Pretreatment Rules in 15A NCAC 02H .0900

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

**A REPORT TO THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE PROCEEDINGS OF
THE PUBLIC HEARING AND COMMENT PERIOD ON
THE PROPOSED REVISIONS TO THE
WASTEWATER PRETREATMENT RULES**

15A NCAC 02H .0900

PUBLIC HEARING

June 16, 2010, Archdale Building, 512 North Salisbury Street, Raleigh NC

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SUMMARY AND RECOMMENDATIONS

INTRODUCTION

The Pretreatment Rules establish procedures for the implementation of the Pretreatment Program. The State delegates authority to local governments to regulate industrial users (IUs) of their wastewater treatment plants (WWTP) by implementing an approved local Pretreatment Program. Local governments covered by the Pretreatment Program are referred to as publically owned treatment works, or POTWs. Upon delegation by the NC Division of Water Quality (DWQ or Division), the POTW is referred to as the Control Authority (CA). The purposes of the program are: (1) to protect publically owned WWTPs, (2) to protect WWTP receiving streams, (3) to protect WWTP workers and the general public, and (4) to promote the beneficial reuse of biosolids.

The program has been in effect in North Carolina since 1982. There are approximately 110 locally delegated pretreatment programs permitting approximately 670 Significant Industrial Users (SIUs).

The Pretreatment Rules (15A NCAC 2H .0900) were last revised in 1994. The proposed modifications of the Pretreatment Rules are necessary to address several aspects of the Environmental Protection Agency's (EPA) October 2005 streamlining of the Federal Pretreatment Regulations in 40 CFR 403. This includes granting NC Control Authorities access to provisions allowing the option to reduce sampling of extremely small IUs.

Other amendments are intended to ensure consistency with the Federal Regulations. These include electronic reporting requirements and revisions to the definition of Significant Noncompliance (SNC) to require separate SNC determinations of daily maximum and monthly averages for the same parameter, and to apply selected SNC criteria such as causing pass through to non-SIUs.

The remaining amendments are intended to ensure consistency with current DWQ practices and to allow flexibility of DWQ oversight of pretreatment programs. This includes amendments to ensure adequate communication and coordination regarding IU discharges in situations where one POTW sends wastewater to another POTW for treatment, sometimes called a "satellite POTW." This situation is becoming more common in NC, especially with regionalization of wastewater services. Other revisions of this type include clarifications regarding submittal of confidential industrial information to DWQ regulators as well as clarifications on sampling requirements, pretreatment permit supporting documentation, and record keeping.

The purpose of the new Rule .0922 is to consolidate and update the adjudicatory hearing conditions to cover pretreatment civil penalties and administrative orders in addition to the adjudication of pretreatment permits already covered in an existing rule.

Prior to the public hearing, meetings were held with representatives of the North Carolina Pretreatment Consortium (NCP), a professional organization representing approximately 100 delegated pretreatment programs. The purpose of these meeting was to get input from the regulated community. After revisions based on the stakeholder meetings were completed, copies of the proposed rules were emailed to NC Pretreatment Programs, the NC League of Municipalities and several industrial groups. Two informational meetings were then held. The meetings were attended by 39 people representing 29 Control Authorities, one consultant and one SIU.

The Proposed Rule was published in the State Register on June 1, 2010. A copy of this is found in Attachment C. The Division conducted one public hearing on the proposed amendments to the pretreatment

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rules. The hearing was held in Raleigh on June 16, 2010. Environmental Management Commission (EMC) members Daryl Moss and Kevin Martin served as the Hearing Officers. Approximately nine people attended the hearing; 1 person made verbal comments. The speaker commented on behalf of Durham County regarding their concerns about the definition of interference and the regulation of satellite POTWs. Written comments giving more detail of the spoken comments were submitted and are included with other written comments. The public comment period remained open until August 2, 2010. Written comments submitted during the public comment period are provided as a part of the hearing record in Attachment B. The issues raised at the public hearing and in written comment are discussed beginning on page A-5.

Comments were received from Durham County, City of Graham, NC Water Quality Association (NCWQA), City of Wilson, City of Randleman, Town of Cary, Greenville Utilities Commission, City of Burlington, City of Greensboro (2 commenters), NC Pretreatment Consortium (NCPC), City of Durham, Metropolitan Sewerage District of Buncombe County (MSD Buncombe), City of Raleigh, City of Newton and City of Charlotte.

Several commenters expressed their support of the comments made by NCWQA and by the NCPC. They were: Greenville Utilities, City of Durham, City of Greensboro, City of Raleigh, City of Newton, City of Charlotte in support of NCWQA and City of Randleman, City of Durham, City of Greensboro, City of Raleigh and City of Charlotte in support of NCPC.

After a detailed review of the comments received, and consultation with other Division staff as well as the Department of Environment and Natural Resources (DENR) Office of General Consult and EPA, a Report of Proceedings including the Hearing Officers recommendations was published on the EMC web-site on October 22, 2010, in preparation for presentation of the Rules to the EMC for adoption at their November 18, 2010, meeting. Notification to the commenters, NC Pretreatment Programs, and other interested parties was provided through email and web-site postings.

After publication, members of the NCWQA met with Division staff on November 4, 2010, to discuss their continuing objection to five areas of the Rules. The Division decided to withdraw the Rules from the November EMC agenda and schedule a meeting with all parties to attempt to resolve these objections. This meeting was held on December 7, 2010. The meeting was productive and various revisions were agreed upon. The most significant of these latest revisions are discussed in the following sections of this report: .0903(b)(23) – Pass Through; .0903(b)(33) – Significant Industrial User; .0906 – SUO requirements for Intermunicipal situations; .0908(e) – required POTW sampling; .0917 – IUP submission and Division review (response only). All changes since the October version are highlighted in the Proposed Rule itself, including the minor ones, are highlighted in the Proposed Rule beginning on page A-23.

A list of acronyms is on page A-22.

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SUMMARY OF HEARING OFFICER RECOMMENDATIONS

While there were several comments on the revisions to the Pretreatment Rules, the majority of comments received were actually about portions of the Rule that were not proposed for revision. In some cases, the record for the original Rule adoption may not have included sufficient explanation of the intent of Rule. In these cases, extra background and details were included in the staff responses, even when no Rule revision was recommended.

The Rule revision recommendations made as a result of the Public Hearing and Comment Period are summarized as follows:

Several commenters felt strongly that that the collection system permit should be included in the list of permits for which contributing to permit violations constitutes interference and pass through. The Hearing Officers agree, and recommend various changes to the following Rules: .0903(b)(14) - Interference; .0903(b)(23) - Pass Through; .0903(b)(26) - POTW or Publicly Owned Treatment Works.

There were many comments and objections to the listing of flow in several parts of the Rule. Several revisions are recommended to more properly characterize the ways in which flow is of concern to the Pretreatment Program. These include: .0903(b)(10) - Headworks Analysis; .0903(b)(25) - Pollutant of Concern; .0903(b)(26) - POTW or Publicly Owned Treatment Works ; and .0916(c)(4)(A) - Allocation table (AT).

Several commenters objected to including “an instream water quality standard (WQS) even if not included in the permit” in the definitions of Pass Through and Significant Industrial User (SIU). They believe the entire phrase is inconsistent with the Federal definitions of these terms, as well as being inconsistent with Clean Water Act (CWA) “permit shield” and the National Pollutant Discharge Elimination System (NPDES) permitting program. At the request of a majority of Control Authority representatives, the language is proposed to be removed from both definitions.

Also within the definition of SIU, there were objections to defining an IU contributing more than 5 % of the allowable loading for any pollutant as an SIU as it is more stringent than the Federal definition which only lists 5 % of the allowable loading for organic pollutants such as BOD, TSS, and ammonia. It is proposed to follow the Federal definition.

Several commenters made suggestions on how to improve or clarify the Pretreatment Program requirements for intermunicipal situations. After consultation with the NC DENR’s General Counsel, revision recommendations are made to .0903(b)(32) - Sewer Use Ordinance (SUO) definition; .0906(b)(1) - SUO requirements; and .0906(b)(9) - a brief description (including organization charts) of the Control Authority (CA).

A number of other minor revision recommendations are made to consolidate duplicated wording, or otherwise simplify or clarify existing wording, replace Division approved forms or formats with “forms or formats acceptable to the Division, establish time limits of Division review of changes to the list of SIUs, clarify records retention requirements, revise time limits for inspections associated with Industrial User Pretreatment Permits (IUPs), and clarify Adjudicatory process sets, and which are mandatory in order to seek judicial review.

The next section of this Report beginning on page A-6 addresses each individual Rule that received a comment, and provides staff response and a Rule Revision Recommendation. A copy of the entire Rule as recommended begins on page A-23. A copy of the written public comments is found in Attachment B.

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DESCRIPTION OF PUBLIC COMMENTS, STAFF RESPONSES, AND RULE REVISION RECOMMENDATIONS

.0900 in general [NCWQA]

Issue 1: NCWQA objects to the automatic incorporation by reference of subsequent revisions to the Federal Rules. There is no provision for if the NC rules and Federal rules are inconsistent and the opportunity for public input is missed.

Issue 1 Response:

New Federal Rules have a sufficient comment period and a second comment period should not be necessary. Additionally, where new Federal Rules are more stringent, having a second comment period in North Carolina will not change their applicability. NC Regulations must be at least as stringent as the Federal Regulations.

The Division agrees that a subsequent amendment of the Federal Rule could create inconsistencies with the State Rules in .0900. To address this, each Rule that adopts a portion of 40 CFR 403 by reference that also has specific NC language has been written as follows, "Except where in conflict with any part of this Section, the regulations codified as 40 CFR 403.xxx... are hereby incorporated by reference including any subsequent amendments and editions." The wording in .0903(a) is slightly different, but the meaning is the same. This clarifies that NC Control Authorities would be subject to the specific NC language until such time as the EMC adopts revised Rules, whether the revised Federal Rule is more or less stringent than the NC specific rule language.

This type of wording is not included in .0904, .0909, .0910, .0912., 0914, and .0915 as these Rules do not contain any NC specific provisions. It is also not included in .0913, .0916, .0917, .0920, and .0922 as the issues covered by these Rules are not covered by 40 CFR 403.

Issue 1 Rule Revision Recommendation: None

Issue 2: Durham County commented regarding the regulation of satellite POTWs: 15A NCAC .0901 et seq proposes to place pretreatment administration of POTWs owned by other governing bodies upon treatment plant POTWs without the necessary statutory support to enable the treatment plant POTW to regulate and enforce the required Pretreatment Program.

Issue 2 Response: See discussion and related proposed rule revisions in .0906.

.0902 Scope [NCWQA, Burlington]

The commenters objected to the addition of the phrase "and wastewater discharges" because they believed it would regulate clear water, is inconsistent with Federal rules [403.1] which just say "pollutants from non-domestic sources" and unnecessary as there exists sufficient authority in the Sewer Use Ordinance (SUO) to regulate flow from users.

Response:

While the Division does not necessarily agree with the commenter's interpretation, clear water discharges can be of as great of concern as any other wastewater discharge. It can reduce wastewater treatment plant (WWTP) capacity, contribute to NPDES flow violations, exceed hydraulic capacity of the collection system or dilute the WWTP influent wastewater thereby interfering with the WWTP's treatment ability. However, sufficient authority to control these discharges does exist.

Rule Revision Recommendation: The phrase "and wastewater discharges" is to be removed. The condition will now read as follows:

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Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR Part 403.3 and Rule .0903 of this Section;

.0903(b)(10) Headworks Analysis (HWA) [NCWQA, Burlington, NCPC]

Commenters objected to using NPDES flow limits for identifying SIUs and for allocating flow to non-domestic users. The phrase “permit limits” is not necessary because it is implicit in “interference” and “pass through”. The commenters did not object to the addition of “design capacity” and pointed out that “permit limits” should be “NPDES permit limits”.

Response:

Regarding the proposal to use the WWTP “Design Flow” instead of the NPDES permitted flow, these values are identical for the majority of NC POTWs. The rare cases where the two values are different provide good examples of why the Division selected NPDES permitted flow in the definition of HWA and in other areas of the Rule. One typical case is when a POTW needs to build something to be allowed to use the new flow. Here, some treatment units might have one design flow, but the NPDES permitted flow is established based on the limiting treatment unit. The other typical case is where the WWTP is fully built to the full design flow, but its actual average flows are really low as compared to their full capacity. In this case, POTWs will request NPDES limits, including a flow limit, for a lower flow. This is to the POTW’s advantage as the lower NPDES permitted flow gives a lower Instream Waste Concentration (IWC) and thus higher NPDES pollutant limits. In some cases, it will also mean less reasonable potential for violating a water quality standard (WQS), so fewer limits. In other cases, the monitoring frequencies will be lower, or other requirements such as 24 hour staffing will be reduced. In both cases, it would be inappropriate for the Division to allow use of the higher design flow as the basis for the flow Maximum Allowable Headworks Loading (MAHL). On a case by case basis, the Division might be able to allow calculation of design pollutant loads using the full design flow if this is technically sound.

It was also suggested that “permit limits” be removed because they are implicit by the reference to interference and pass through contained within this definition. It could be interpreted that including “permit limits” is redundant, but by stating specifically that permit limits are part of the HWA procedure there is no confusion on anyone’s part.

Rule Revision Recommendation: The following italicized language is to be inserted:

Rule .0903(b)(10) – Headworks Analysis. “...to calculate the maximum allowable influent loadings for *flow and* pollutants of concern based on design capacity, *NPDES or Non-discharge* permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable.”

.0903(b)(13) Industrial Waste Survey (IWS) [Graham]

This commenter was concerned that “identification of all industrial users and the character and amount of pollutants ...” could create an excessive burden on the POTW to include all users in the survey. POTWs should be able to use best professional judgment to eliminate some classes of commercial establishments.

Response:

40 CFR 403.8 (f) (2) requires the identification of all possible industrial users (IUs) that might be subject to the Control Authority’s Pretreatment Program and to identify the character and volume of pollutants contributed to the POTW by the IU in order to determine if those IUs meet the definition of SIU. The Division’s IWS guidance in Chapter 3 of the *Comprehensive Guidance for North Carolina Pretreatment Programs* (available at <http://portal.ncdenr.org/web/wq/swp/ps/pret/compguide>) advises that “service only” operations and other small volume commercial users can be eliminated from the list of dischargers who should be sent a survey.

