

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

**5 CCR 1002-63**

**REGULATION NO. 63**

**PRETREATMENT REGULATIONS**

**63.1 AUTHORITY**

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

**63.2 PURPOSE**

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

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

**63.3 APPLICABILITY**

These regulations apply to:

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

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

**63.4 IMPLEMENTATION**

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

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

## **63.5 STANDARDS INCORPORATED BY REFERENCE**

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

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

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

## **63.6 ENFORCEMENT**

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

## **63.7 DEFINITIONS**

The following definitions are applicable to these regulations:

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

- H. "Control Authority" means the Director of the Water Quality Control Division or in the case of a POTW with an approved POTW Pretreatment Program, the POTW.
- I. "Daily Maximum" means a limitation not to be exceeded by either a composite sample or the arithmetic average of grab samples taken within a 24 hour period.
- J. "Director" means the Director of the Water Quality Control Division or his/her authorized representative.
- K. "Discharge" or "Indirect Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Clean Water Act.
- L. "Domestic Wastewater" includes:
- (1) wastewater from normal residential activities including, but not limited to, wastewater from kitchen, bath and laundry facilities,
- or
- (2) wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, non-commercial sinks, and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics which are similar to those of wastewater from normal residential activities. Specifically *excluded* from this definition is wastewater from commercial, industrial, or institutional laundries or food preparation facilities.
- M. "Enforcement Division Director" means one of the directors of the Enforcement Division within the Regional VIII offices of the EPA or this persons delegated representative.
- N. "EPA" means the federal Environmental Protection Agency.
- O. "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.)
- P. "Grab Sample" means a single "dip and take" sample collected over a period of time not exceeding 15 minutes, so as to be representative of the parameter being monitored.
- Q. "Industrial User" or "User" means a source of indirect discharge which contains non-domestic wastewater.
- R. "Industrial User Permit" means a permit issued pursuant to paragraph 63.12(A) of this regulation.
- S. "Interference" means a discharge which alone or in conjunction with a discharge or discharges from other sources, both:
- (1) Inhibits or disrupts the POTW, its treatment process or operations, or its sludge processes, use or disposal; and
  - (2) Therefore is a cause of a violation of any requirement of the POTW's permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Federal Clean Water Act, the Solid Waste Disposal Act (SWDA) which includes Title II known as the Resource Conservation and Recovery Act, the Division's

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

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

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

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

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

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

GG. "Submission" means:

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

### **63.8 LOCAL LAW**

Nothing in this regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as those requirements are not less stringent than any set forth by the state or federal regulations.

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

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

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

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

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

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

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

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

#### **A. Division Enforcement Actions**

(1) POTWs and Industrial Users of Approved Programs

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

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

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

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

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

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

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

Table 1 – Effluent Guidelines and Standards	
40 CFR 405	Dairy Products Processing
40 CFR 406	Grain Mills Point
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing
40 CFR 408	Canned and Preserved Seafood Processing
40 CFR 409	Sugar Processing
40 CFR 410	Textile Mills
40 CFR 411	Cement Manufacturing
40 CFR 412	Concentrated Animal Feeding Operations (CAFO)

40 CFR 413	Electroplating
40 CFR 414	Organic Chemicals, Plastics, and Synthetic Fibers
40 CFR 415	Inorganic Chemicals Manufacturing
40 CFR 417	Soap and Detergent Manufacturing
40 CFR 418	Fertilizer Manufacturing
40 CFR 419	Petroleum Refining
40 CFR 420	Iron and Steel Manufacturing
40 CFR 421	Nonferrous Metals Manufacturing
40 CFR 422	Phosphate Manufacturing
40 CFR 423	Steam Electric Power Generating
40 CFR 424	Ferroalloy Manufacturing
40 CFR 425	Leather Tanning and Finishing
40 CFR 426	Glass Manufacturing
40 CFR 427	Asbestos Manufacturing
40 CFR 428	Rubber Manufacturing
40 CFR 429	Timber Products Processing
40 CFR 430	The Pulp, Paper, and Paperboard
40 CFR 432	Meat Products
40 CFR 433	Metal Finishing
40 CFR 434	Coal Mining
40 CFR 435	Oil and Gas Extraction
40 CFR 436	Mineral Mining and Processing
40 CFR 437	Centralized Waste Treatment
40 CFR 439	Pharmaceutical Manufacturing
40 CFR 440	Ore Mining and Dressing
40 CFR 442	Transportation Equipment Cleaning



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

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

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

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

- (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's

status as a significant Industrial User by a letter of notification of applicable discharge requirements.

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

B. Procedure for Implementation of the Categorical Pretreatment Standards

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

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

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

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

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

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

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

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

- A. Monitoring and Reporting requirements for Significant Industrial Users in non-approved pretreatment programs.
  - (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's status as a significant Industrial User by the Director's issuance of a Notice of Discharge Requirements.
  - (2) Significant non-categorical Industrial Users and/or the POTW's to which the Industrial User discharges may petition the Director pursuant to 63.7(FF)(4) at any time requesting de-designation. Upon the Director's finding that an Industrial User meeting the criteria of Section 63.7(FF)(2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director may de-designate the Industrial User.
  - (3) A Notice of Discharge Requirements shall contain, at a minimum;
    - (a) A statement of prohibitive discharge standards as specified at 40 CFR 403.5(b);

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

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

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

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

FLOW OF REGULATED PROCESS (GPD)*	CONVENTIONAL POLLUTANTS**, INORGANICS (METALS INCLUDED), CYANIDE, AND PHENOL	ORGANICS (TT0s)
0 - 10,000	1/quarter	2/year
over 10,000	12/year	2/year

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

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

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

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

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

In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed, and include the certification statement in 40 CFR 403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a pollutant

is not present if the EPA-approved method from 40 CFR 136 with the lowest minimum detection level for that pollutant was used in the analysis.

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

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

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

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

#### **63.14 PRETREATMENT FEES**

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

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

- D. Failure of the Industrial User or the POTW to pay the annual pretreatment fee as required by 25-8-502(b.5) is a violation of these regulations and is subject to enforcement pursuant to Section 63.6 of these regulations and Part 6 of the Act.
- E. The pretreatment fee assessed the Industrial Users shall be prorated in the following instances:
  - (1) Commencement of discharge by the Industrial User to a POTW within the fiscal year;
  - (2) Termination of discharge by the Industrial User to a POTW, unless termination is the result of enforcement action by either the POTW or the state.

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

**63.15 SEVERABILITY**

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

**63.16-63.69 RESERVED**

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

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

**BASIS AND PURPOSE**

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

1. Corrections of various typographical errors.
2. Addition of definitions for the following terms to provide greater clarity: Approval Authority, Best Management Practices, and Notice of Discharge Requirements, clarification of the definition for Grab Sample, and expansion of the definition for Significant Industrial User.
3. An incorporation by reference of federal regulations, specifically, various provisions of 49 CFR 403, into Sections 63.9 A–H, 63.10 A–D, 63.11 A–E, 63.12 A–J, and 63.13 A–D, E(2 – 9), and F–I.
4. Addition of language to include the enforcement authority the Division has over POTWs and Industrial Users in Non-Approved Pretreatment Programs.
5. Addition of language that further clarifies the Division’s authority to issue control mechanisms to Significant Industrial Users in Non-Approved Programs.
6. Addition of Monitoring and Reporting requirements for Significant Industrial Users in Non-Approved Programs. This defines the requirements for those facilities that are regulated solely by the Division.
7. Elimination of the reporting period requirements for facilities with flows between 10,001 – 50,000 gallons per day. This will make the reporting and sampling requirements consistent with each other.
8. Addition of the ability of a significant industrial user to request a waiver for pollutants not present in their effluent.

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

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