



BOILERPLATE PRETREATMENT LANGUAGE IN TPDES PERMITS

Introduction

On August 8, 2019, at the Region VI Pretreatment Association (RVIPA) workshop, the Texas Commission on Environmental Quality (TCEQ) Pretreatment team indicated that the boilerplate pretreatment language in Texas Pollutant Discharge Elimination System (TPDES) permits would be a discussion topic for a September 2019 Stakeholder Meeting. The WEAT Pretreatment Committee (Committee) requests that the TCEQ consider updating the standard permit pretreatment language inserted into each TPDES Permit that is issued to permittees with a TCEQ-approved pretreatment program. An alternative is to provide clarification regarding TCEQ's expectations for certain provision of the permit.

As the Approval Authority, the TCEQ has the responsibility to incorporate pretreatment program requirements in TPDES permits [40 CFR §403.8(c)] to make them enforceable. However, the current default permit language imposes certain requirements that are not mandated in applicable statutes or regulations. In addition, some language is not explicitly clear on the requirements. The consideration of new language could assist Pretreatment Programs to effectively enforce in a timely manner certain pretreatment program requirements. The following provides comments to five areas of the standard permit language:

- Influent and Effluent Sampling Requirements
- Sampling of Industrial Users
- Industrial User Permitting Requirements
- Technically Based Local Limit Development: 1993 Region VI Memo vs. 2004 National Guidance Manual
- Substantial Modification Approval Independent of TPDES Permit Action

Influent and Effluent Sampling Requirements

Currently, standard TPDES permit language requires permittees with approved pretreatment programs to conduct routine influent and effluent pollutant analysis. The broad-ranging and expensive influent and effluent sampling are for the toxic pollutants listed in 40 CFR Part 122 Appendix D, Tables II and III, pollutants in Table V that are expected to be present, and the Texas Surface Water Quality Standards. The sampling which is triggered upon commencement of an industrial discharge to a publicly owned treatment works (POTW) with a pretreatment program is not required in the regulations.



The Committee recommends that the TCEQ consider alternatives to the particular influent and effluent provision such as providing an opportunity in the permit to request a reduction in the pollutants and testing frequency. A Program should be able to demonstrate through a consistent process (such as historic sampling and understanding of the IUs in the service area) that a particular parameter is not expected to be present, allowing for the flexibility to investigate actual parameters of concern. Historical data obtained by many CAs have demonstrated that few, if any of the organic pollutants required to be tested are found in influent samples at detectable levels. Other pollutants are measured in the influent at levels significantly below the levels of concern that are applicable to the effluent.

The TCEQ's standard operating procedure (SOP) and applicable Environmental Protection Agency (EPA) guidance documents demonstrate that frequency reduction and pollutant reduction are procedural options a permit writer can consider when drafting permits. The following provides references to relevant excerpts of the documents that demonstrate that Committee's recommendation is consistent with the TCEQ's applicable SOP and EPA guidance.

TCEQ Standard Operating Procedure Pretreatment Language Options, 1998¹

The SOP acknowledges that there is not a single approach that is appropriate for all programs and emphasizes the importance of working with the permittee and the pretreatment program when determining permit conditions:

"This frequency listing was originally developed in 1987 when the first pretreatment language was developed that required specific sampling. For example, 1/6 means one sample will be taken every six months. It has never been intended as "THE" answer. It is intended to be a starting point for a selection of frequencies, but they can be modified based upon the information and knowledge we have on hand about the particular treatment plant and types and levels of pollutants that have been demonstrated in the past. In many situations it may be advantageous for the folks that write the permits and those that work with the pretreatment program to discuss the appropriate frequencies."

EPA 2004 TBLL Guidance²

The EPA's 2004 Technically Based Local Limits (TBLL) Guidance includes the following recommendation regarding monitoring:

Section 4.3 highlights that the POTW should have flexibility in determining sampling regiments – with TCEQ approval – and should consider local concerns and economics:

"The initial development of local limits, for example, may require rapid data collection and analysis to meet the schedule for developing a Pretreatment Program submission, of which local limits evaluation is a part. In contrast, reviews and detailed re-evaluations should be based on data collected as part of a routine, long-term sampling effort. Detailed

¹ Pretreatment Language Options, TPDES Pretreatment Program, Revised 1998

² Local Limits Development Guidance, EPA, 833-R-04-002A, July 2004



below are suggested sampling frequencies for initial program development and ongoing evaluation. The reader should note that these minimum sampling frequencies are recommendations. The POTW has flexibility to adjust their sampling frequencies based on local concerns and economics.”(emphasis added)

The Committee requests that the TCEQ consider flexibility in allowing pretreatment programs to request a reduction in influent and effluent scans. This would allow CAs to focus resources on the investigation of actual parameters of concern.

Sampling of Industrial Users

Additionally, the Committee requests that the standard permit language relating to monitoring requirements be revised for clarity. Section 1.b of the current standard permit language reads “The permittee is required to inspect and sample the effluent from each significant industrial user (SIU) at least once per year, except as specified in 40 CFR §403.8(f)(2)(v). This is in addition to any industrial self-monitoring activities;”. This phrase “in addition to any industrial self-monitoring activities”, is not appropriate as long as the pretreatment program is sampling twice per year, which is fulfilling its obligation to conduct one compliance monitoring event per year [40 CFR §403.8(f)(2)(v)]. This also fulfills the requirements for CIUs and SIUs to be monitored twice per year [40 CFR §403.12(e) and (h)]. This practice, known as “sampling in lieu of” (mentioned in 40 CFR §403.12(g) and (h)) has been an acceptable standard practice for CAs by TCEQ and EPA for many years. This is a common practice found in the SOPs of multiple approved programs.

Documentation to support this understanding are as follows:

EPA Industrial User Inspection and Sampling Manual for POTWs³

The Industrial User Inspection and Sampling Manual for POTWs provides guidance and clarification on the monitoring requirements. The guidance directly addresses the ability of pretreatment programs to sample twice per year in lieu of the SIUs with no additional self-monitoring activities required.

“The General Pretreatment Regulations allow for the POTW to take over the periodic sampling and analysis activities for the industrial user. When the POTW collects all the information required for the periodic report, including flow data, the industrial user is not required to submit the periodic compliance report required in 40 CFR 403.12(e) or (h). However, there will be many instances where the POTW will not be gathering all information that is required in the periodic compliance report (e.g., BMP documentation, TTO certifications for metal finishers, flow data if the POTW is not monitoring flow, additional samples collected by the industrial user, etc.). In these cases, the SIU is still required to submit periodic compliance reports with the remaining information not

³ Industrial User Inspection and Sampling Manual for POTWs, EPA, EPA-831B17001, April 1994; updated January 2017



collected by the POTW. The General Pretreatment Regulations also require POTWs to “inspect and sample the effluent from each Significant Industrial User at least once a year” (40 CFR 403.8(f)(2)(v)). The purpose of this inspection and sampling is to provide compliance status information, independent of the industrial user. If the POTW is already conducting the periodic sampling for the industrial user, then the POTW is already evaluating compliance independent of the industrial user. Therefore, if the POTW is conducting the sampling for the industrial user required under 40 CFR 403.12, the POTW is satisfying the 40 CFR 403.8(f)(2)(v) requirement of annually sampling the industrial user, and the POTW would only be required to conduct one additional sampling event at the industrial user, totaling two events per year, to meet the requirements at 40 CFR 403.12(e). The POTW is still required to inspect each SIU annually.” (emphasis added)

Federal Register EPA 40 CFR Parts 122 and 403 General Pretreatment and National Pollutant Discharge Elimination System Regulation; Final Rule⁴

In addition, the preamble to the 1990 General Pretreatment and National Pollutant Discharge Elimination System Regulation final rule, EPA identifies its reason behind the annual sampling requirements conducted by a CA.

“One of the principal purposes and benefits of an annual compliance monitoring program is the independent verification of the compliance status of the industrial user by the Control Authority. This annual presence provides a means to determine whether the information the POTW receives is adequate in terms of sampling techniques and lab procedures. It also provides a way to evaluate the recordkeeping procedures of the industrial user as well as the operation and maintenance of the pretreatment facility. This annual presence also provides a deterrent value by encouraging the industrial user to maintain appropriate operation and maintenance procedures as well as helping to ensure proper recordkeeping and lab procedures. These benefits are not possible through the review of self-monitoring reports alone.”

This Preamble presents EPA rationale for the additional annual sampling by the CA. The CA sampling is to verify information independent of an industry user. When a CA is “sampling in lieu of”, they are sampling minimum semiannually at an SIU. This means independent verification is being conducted more than required by the regulation. The Committee believes if an SIU conducts the compliance monitoring activities, then a total of three samples would be collected each year (2 collected by the SIU, and 1 by the

⁴ Federal Register EPA 40 CFR Parts 122 and 403 General Pretreatment and National Pollutant Discharge Elimination System Regulation; Final Rule, Vol. 55, No. 142, 1990, pages 30117 and 30118



CA). Alternatively, if the CA performs sampling and analysis in lieu of the industry, then a total of two samples would be required per year (2 collected by the CA).

The Committee requests that the phrase “This is in addition to any industrial self-monitoring activities” be removed from the standard permit language, as this phrase has been found to reduce the clarity of the monitoring requirements being imposed.

Industrial User Permitting Requirements

The WEAT Pretreatment Committee requests that the TCEQ revise the standard permit language relating to industrial user permitting requirements for clarity and consistency. In section 1.d, the current standard permit language requires that pretreatment programs “control through permit, order, or similar means, the contribution to the POTW by each IU” but also “In the case of SIUs (identified as significant under 40 CFR §403.3(v)), this control shall be achieved through individual permits or general control mechanisms”.

As written, the requirements of 1.d of the TPDES permit section “Contributing Industries and Pretreatment Requirement” are ambiguous. It does not clearly state to whom permits must be issued. The language would be clarified and made consistent with the regulations by revising the provision to read as follows:

“The permittee shall have the authority to control through permit, order, or similar means the contributions to the POTW by each IU”.

This revision would preserve the permitting ability of the pretreatment program, as each program is capable of making the determination that any IU be a SIU [40 CFR §403.3(v)(1)(ii)], and therefore required to be permitted. The Committee requests that the language be revised as recommended above to provide clarity and consistency with the regulations.

Technically Based Local Limit Development: 1993 Region VI Memo Vs. 2004 National Guidance Manual

The Committee requests that TCEQ require development and redevelopment of technically based local limits (TBLLs) be consistent with the 2004 EPA Local Limits Development Guidance⁵, rather than requiring the elements specified in the 1993 Region VI TBLL Guidance memo⁶ (1993 memo). The above referenced 2004 Guidance superseded the 1993 memo and is, therefore, more appropriate to be used as a guidance document. EPA Region VI does not require other states in Region VI to follow the 1993 memo and instead refers the other states to use the 2004 Guidance. The Committee requests TCEQ remove from the TPDES permits the requirements to conduct TBLL development in accordance with the 1993 memo, and not require CAs to strictly adhere to the elements described in it.

⁵ Local Limits Development Guidance, EPA, 833-R-04-002A, July 2004

⁶ Region 6 Technically Based Local Limits Development Guidance, Second Revision, October 12, 1993



Substantial Modification Approval Independent of TPDES Permit Action

The Committee requests that the TCEQ consider modifying their approval process for pretreatment program substantial modifications. Current TCEQ practices have resulted in delays of the implementation of technically complete pretreatment program modifications due to the need to have the modification date included in the TPDES permit. Revising the pretreatment program approval processes would allow for quicker implementation of the technically complete pretreatment program modifications. The Committee requests that program modifications approval process be revised allowing modification to be approved by reference in the TPDES permit or approved through a minor amendment process of the permit.

These suggestions in no way conflict with the requirements in 40 CFR §403.18(e), which states that substantial modifications shall be incorporated into the TPDES permit. The alternative discussed are demonstrated in other state permits.

Modifications Incorporated by Reference

The State of Washington provides approval of pretreatment program modifications in permit by reference. An excerpt of the permit for King County is as follows:

S6. Pretreatment

S6.A. General requirements

1. The Permittee must implement the Industrial Pretreatment Program in accordance with King County Code 28.84.060 as amended by King County Ordinance No. 11963 on January 1, 1996, legal authorities, policies, procedures, and financial provisions described in the Permittee's approved pretreatment program submittal entitled "Industrial Pretreatment Program" and dated April 27, 1981; any approved revisions thereto; and the General Pretreatment Regulations (40 CFR Part 403). At a minimum, the Permittee must undertake the following pretreatment implementation activities:



Minor Modification Process

The State of Arizona provides an alternate expedited permit revision process. The process allows for inclusion of a modification to be inserted into a permit in a same way a typographical error would be corrected. An excerpt of the permit for Phoenix is as follows:

5. Minor modifications of permits; at 40 CFR 122.63.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR 124 draft permit and public notice as required in 40 CFR 122.62. Minor modifications may only:

- g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

The Committee requests that the TCEQ consider alternatives to the approval process of modifications to allow quicker implementation following TCEQ declaring modifications to be technically complete.

Conclusion

Revisions to the standard language in the Contributing Industries and Pretreatment Requirement section of TPDES permit are requested. However, if TCEQ is not able to make revisions to the provisions discussed above clarification needs to be provided.