Vermont Department of Environmental Conservation Pretreatment Program Strategy

In response to EPA’s 2018 Pretreatment Compliance Audit (Audit), the Vermont Department of Environmental Conservation (DEC) has conducted a comprehensive evaluation of its Pretreatment Program (Program) to determine the best strategy to bring the Program into full compliance with the federal pretreatment regulations at 40 C.F.R. Part 403, while effectively and efficiently providing protection to Vermont’s Publicly Owned Treatment Works (POTWs), POTW staff, and receiving waters.

Through this evaluation, DEC gathered benchmark data from other state, POTW, and EPA regional pretreatment programs; worked with its legal counsel to analyze current Pretreatment Program procedures and evaluate necessary statutory and rule changes; collected feedback from stakeholders involved in the implementation of Vermont’s Pretreatment Program; assessed the feasibility of full or partial delegation of Program responsibilities to Vermont POTWs; and evaluated the resources necessary to correct Program deficiencies and sustainably implement the Program in accordance with federal requirements.

The DEC has been working under the following schedule to develop this strategy:

<table>
<thead>
<tr>
<th>Task</th>
<th>Completion Date</th>
<th>Summary of Work Performed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gather benchmark info from other states with delegated programs.</td>
<td>8/1/19</td>
<td>The DEC has collected information and data from Connecticut, Maine, Mississippi, Nebraska, New Hampshire, Virginia, Washington, Claremont, NH, Sacramento Regional County Sanitation District, EPA Region 1, and EPA Region 10 pretreatment programs.</td>
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<tr>
<td>Legal counsel determines whether statutory or rule changes are necessary to address Audit and additional support from POTWs.</td>
<td>8/1/19</td>
<td>DEC’s legal counsel completed its initial assessment and legal support is ongoing with the development and implementation of this strategy.</td>
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<tr>
<td>Plan Revision of Wastewater Rule</td>
<td>Ongoing</td>
<td>DEC determined that Pretreatment Rules are necessary to establish a more effective framework for the Pretreatment Program.</td>
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<tr>
<td>Prepare outreach materials and convene stakeholders (e.g., relevant municipalities, EPA, Vermont Rural Water Association, Green Mountain Water and Environment Association, Vermont League of Cities and Towns, and consulting firms).</td>
<td>Fall 2019</td>
<td>DEC has conducted outreach to stakeholders involved in the implementation of the Pretreatment Program, including POTWs, consultants, technical assistance groups, and municipal support groups. A half-day stakeholder meeting and follow-up survey was conducted with 31 stakeholder groups. Seventy-one percent of stakeholders identified provided feedback through the stakeholder meeting or the survey, or through both.</td>
</tr>
<tr>
<td>Task</td>
<td>Timeframe</td>
<td>Details</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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<td>-------------------------------------------------------------------------</td>
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<tr>
<td>Develop proposed strategy (discuss options, potential fee increase,</td>
<td>Fall 2019</td>
<td>DEC has developed a proposed strategy and implementation schedule to</td>
</tr>
<tr>
<td>statutory or regulatory changes, etc.)</td>
<td></td>
<td>address Audit items.</td>
</tr>
<tr>
<td>Obtain stakeholder and EPA input on strategy.</td>
<td>Spring 2020</td>
<td>To be completed following stakeholder and EPA feedback on strategy.</td>
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<tr>
<td>Finalize strategy and timeline and begin implementation (timeline</td>
<td>Spring/Summer</td>
<td>To be completed following stakeholder and EPA feedback on strategy.</td>
</tr>
<tr>
<td>depends on whether rulemaking and statutory changes are necessary).</td>
<td>2020</td>
<td></td>
</tr>
</tbody>
</table>
Overview of Pretreatment Strategy:

DEC has identified seven major program areas to address in its pretreatment strategy:

1. Consistent identification and tracking of industrial users;
2. Permitting of industrial users;
3. Evaluation and development of technically based local limits;
4. Inspection of Significant Industrial Users (SIUs);
5. Independent compliance sampling of SIUs;
6. Compliance and enforcement; and
7. DEC Pretreatment Program resources.

To fulfill each of these program needs, DEC has developed a three-pronged strategy:

1. **Rules**: Develop and implement a Pretreatment Rule that defines Pretreatment Program requirements and responsibilities for DEC, POTWs, and industrial users;
2. **Resources**: Define the range of DEC resources needed to administer the Pretreatment Program at the state level, subject to the level of support received by POTWs;
3. **Support**: Obtain POTW support for taking on select Pretreatment Program responsibilities and allow interested POTWs to develop and administer their own program.

DEC’s goal is to continue to administer the Pretreatment Program at the state level. However, given the challenges of administering the Program for the entire state, DEC believes that POTW support is integral to ensure the Program is administered in accordance with the federal requirements, while assuring protection for POTWs and receiving waters. Therefore, DEC is proposing to require POTWs assume certain pretreatment responsibilities to allow DEC to implement an effective program. In addition, DEC is willing to accommodate any POTW that is interested in developing its own pretreatment program, provided its program is developed in accordance with federal regulations and requirements. Finally, DEC will establish a framework for its Pretreatment Program through a Pretreatment Rule that details DEC, POTW, and industrial user responsibilities. Collectively, these three major elements will ensure the implementation of a comprehensive, protective, and sustainable Pretreatment Program for the entire state.

**DEC Pretreatment Rule**

DEC and stakeholders appreciate the importance of the Pretreatment Program, while recognizing the challenges associated with administering the Program for POTWs at the state level. Therefore, as mentioned above, DEC is employing a collaborative approach to ensure Program requirements and pretreatment standards are efficiently and effectively achieved. A Pretreatment Rule will be drafted and proposed to support this approach and serve as the backbone for the administration of DEC’s Pretreatment Program.

The Rule will establish requirements for the DEC Pretreatment Program, POTWs seeking to administer their own program, POTWs without programs, and industrial users. In addition, the Rule will delineate DEC and POTW jurisdiction and associated responsibilities related to pretreatment. DEC will ensure the Rule is written so that the Program can operate in accordance with federal requirements, while also fulfilling Program-specific goals.
Many of the Program deficiencies cited within the Audit will be addressed through DEC’s Pretreatment Rule, including:

- Adoption of Streamlining Rules;
- Required elements and approval procedures pertaining to POTW Sewer Use Ordinances;
- DEC and POTW requirements and responsibilities regarding POTW technically based local limits;
- DEC and POTW requirements to justify the basis of technically based local limits;
- Evaluation, criteria, and requirements for Slug Discharge Control Plans;
- Responsibility for enforcement and compliance;
  - Note: DEC’s Enforcement Response Plan will be a separate document from the Pretreatment Rule and will be completed by January 2021.

- Requirements for POTWs seeking to develop their own POTW pretreatment program, including:
  - The submission process; required elements and procedures; DEC review procedures; and program approval / denial process.

- Requirements for POTWs to support DEC’s implementation of the Pretreatment Program, which may include:
  - Independent compliance sampling; SIU inspections; identification of new and expanding industrial users; implementing a sufficient Sewer Use Ordinance; development of technically based local limits; establishing POTW capacity; and tracking distributed allocations and reserve capacity.

DEC plans to begin writing the Rule in Spring 2020. DEC has already begun planning for the Rule through the research and data collected for the development of this strategy. DEC recognizes that the Rule and other Program improvements will likely result in “substantial modifications” as defined by 40 C.F.R. § 403.18 and will be subject to EPA review and approval procedures.

DEC and POTW Resources

DEC is responsible for administering the Pretreatment Program for the state’s POTWs, in accordance with its federal NPDES/pretreatment delegation from the U.S. Environmental Protection Agency (Memorandum of Agreement dated March 11, 1974, amended March 17, 1982). Due to insufficient funding and resources, however, DEC is currently unable to implement the Pretreatment Program in full compliance with federal regulations. For example, the Program is currently unable to renew Pretreatment Permits within the 5-year timeframe and has accrued a 30% backlog. In addition, the Program is unable to complete its 32 annual SIU inspections.

DEC and stakeholders agree that the State is in the best position to administer major elements of the Pretreatment Program for the majority of POTWs, and that POTWs are in the best position to provide support for the Program and carry out certain pretreatment responsibilities. Therefore, DEC intends to implement a collaborative approach with POTWs to employ the Program’s resources as effectively and efficiently as possible while protecting POTWs and receiving waters.

Support from POTWs without a Pretreatment Program

DEC plans to require that POTWs take on certain pretreatment responsibilities to support the state’s implementation of the Pretreatment Program. As mentioned above, requirements for POTW pretreatment support will be adopted in a Pretreatment Rule. Given the varying size, capacity, and
industrial user base of POTWs throughout the state, the extent of POTW support will vary significantly
between municipalities. Therefore, DEC plans to use its existing permitting authority to incorporate
specific POTW pretreatment requirements as a condition in the POTW’s NPDES discharge permit.

POTW support activities will likely include:

1. Identification of new and expanding industrial users;
2. Development and implementation of a sufficient Sewer Use Ordinance;
3. Support for technically based local limits through:
   a. Developing POTW Maximum Allowable Headworks Loading (MAHL) and Maximum
      Allowable Industrial Loading (MAIL);
   b. Tracking allocations distributed to industrial users; and
   c. Accounting of POTW reserve capacity;
4. Independent Compliance Sampling of SIUs; and
5. Inspections of SIUs.

The development of roles and responsibilities for POTWs to support DEC’s Pretreatment Program will
occur during the creation of the Pretreatment Rule. The implementation of these requirements will
occur following rule adoption. Support in areas such as sampling, industrial user tracking, and local
limits development will provide DEC with additional capacity to administer the Program at the state
level.

Accommodate POTWs Seeking a Pretreatment Program through Memorandum of
Understanding

DEC has educated POTWs on what is involved with delegating pretreatment responsibilities to POTWs
and collected feedback on the spectrum of potential municipal involvement. As mentioned above, DEC
believes that given the small industrial user base throughout Vermont, it is neither reasonable nor
economical for DEC to change its federal NPDES/Pretreatment delegation status and require POTWs to
administer their own pretreatment programs. For most municipalities, DEC and stakeholders agree that
it is more efficient and effective to administer the Program at the state level, given the state’s expertise
in permitting, inspections, wastewater streams associated with various industrial sectors, general and
categorical pretreatment regulations, and compliance and enforcement. In addition, DEC and
stakeholders agree that administering the Program at the state level will allow for consistent regulation
of industrial users across the state, discouraging businesses from “shopping” for municipalities with
more favorable wastewater requirements or enforcement records.

DEC and stakeholders recognize that state-level implementation of the Pretreatment Program presents
challenges with characterizing and controlling discharges from smaller non-significant industrial users to
POTWs, identifying and tracking new or expanding industrial users, and performing statewide
independent compliance sampling. Therefore, DEC will support any POTW that is interested in
voluntarily developing its own program.

As of June 2019, one Vermont POTW has elected to develop a pretreatment program. It is estimated
that program development will occur throughout 2020.
DEC will work to accommodate this and any other POTW seeking to develop its own program through a Memorandum of Understanding (MOU). Municipal program requirements and responsibilities will be memorialized within an MOU between the POTW and DEC, thereby allowing the POTW to assume pretreatment responsibility without changing DEC’s federal delegation status. This model is based on one currently in place between the State of Nebraska Department of Environmental Control and POTWs throughout that state (City of Omaha, Scottsbluff, Lincoln, Ogallala, and others).

To the extent a POTW seeks to take on the responsibility of pretreatment permitting, DEC’s permitting authority will need to be amended in statute. The discharge permitting statute, 10 V.S.A. § 1263, specifically prescribes a permit from the Secretary of Agency of Natural Resources (which permitting authority is delegated to DEC):

(a) Any person who intends to discharge waste into the waters of the State or who intends to discharge into an injection well or who intends to discharge into any publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with that works or would have a substantial adverse effect on that works or on water quality shall make application to the Secretary for a discharge permit. Application shall be made on a form prescribed by the Secretary. An applicant shall pay an application fee in accordance with 3 V.S.A. § 2822.

Therefore, DEC is unable to transfer its pretreatment permitting authority to a municipality without an amendment to § 1263. Following such an amendment, pretreatment permitting may be incorporated into an MOU.

DEC will require that POTW programs are developed and operate in accordance with federal regulations to ensure they meet federal and state standards. This will result in significant DEC involvement during initial POTW program development and “approval.” However, DEC estimates that if there are at least three SIUs within the POTW, then efficiency will be gained at the state level due to the relief of state permitting and inspection responsibilities.

DEC Pretreatment Program Resources

Overall, DEC will gain capacity to implement its Pretreatment Program as a result of POTW support, however, DEC has determined that additional state resources will still be necessary to sustainably implement the Program in accordance with federal requirements. DEC is in the process of determining the necessary Program staff levels and investigating methods of obtaining financial support for these additional resources.

Prior to obtaining additional resources, DEC has provided an interim permitting and inspection plan to the EPA in the DEC Response to the EPA Audit (see responses #5 and #18), with commitments to fulfill 100% of permitting and inspection responsibilities by Fiscal Year (FY) 2021. These interim commitments have also been proposed in the FY20-FY21 Performance Partnership Agreement.

In addition, DEC has invested in streamlining its permit writing process to obtain additional Program efficiencies. The Wastewater Program is currently rolling out “a push button permit” which uses report tools to produce a populated permit template using permittee information from the Program’s
database. This will eliminate many steps and redundancies in the permit writing process and allow the permit writer to more narrowly focus on permit content and analysis, rather than administrative process.

The Program will improve additional processes through the development of the Pretreatment Rule. During Rule drafting, procedures for local limit development, permit determinations, Slug Discharge Control Plan evaluations, and other Pretreatment Program tasks will be streamlined.

With respect to sampling, DEC’s goal is to collect 100% of required independent compliance samples by FY2022 using one or a combination of the following methods:

1. Obtaining an outside contractor;
2. Obtaining coverage from POTWs; or
3. Using permanent staff to perform all or a portion of required sampling.

According to stakeholder feedback, the majority of POTWs are willing to conduct independent compliance sampling on behalf of DEC. However, if coverage is going to be obtained by relying on POTWs, SIU sampling would be rolled into a condition of the POTW’s NPDES permit upon permit renewal, following the adoption of a Pretreatment Rule. Due to these circumstances, this approach may further delay DEC’s compliance with this requirement.
### Implementation Schedule

<table>
<thead>
<tr>
<th>Task</th>
<th>Implementation / Completion Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish interim permitting and inspection schedule with EPA.</td>
<td><strong>Complete.</strong> See VT FY20-21 P&amp;C List; pretreatment items approved by EPA on 10/21/19.</td>
</tr>
<tr>
<td><strong>Work on Pretreatment Rule, including:</strong></td>
<td></td>
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<tr>
<td>• Streamlining Rules;</td>
<td>Start date: Spring 2020</td>
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<tr>
<td>• POTW Sewer Use Ordinances;</td>
<td>Anticipated Completion Date: Fall 2021</td>
</tr>
<tr>
<td>• DEC and POTW Local Limits requirements;</td>
<td></td>
</tr>
<tr>
<td>• Slug Discharge Control Plans;</td>
<td></td>
</tr>
<tr>
<td>• POTW pretreatment requirements and process;</td>
<td></td>
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<tr>
<td>• POTW requirements to support DEC Pretreatment Program.</td>
<td></td>
</tr>
<tr>
<td><strong>Work with POTW seeking municipal Pretreatment Program:</strong></td>
<td>Start date: Summer 2019</td>
</tr>
<tr>
<td><strong>Accommodate POTWs interested in developing municipal Pretreatment Programs:</strong></td>
<td>Start date: Fall 2020</td>
</tr>
<tr>
<td>• Work on state statute change;</td>
<td></td>
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<tr>
<td>• Work on MOUs with interested POTWs, if necessary.</td>
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<tr>
<td><strong>Work to obtain necessary State Program staffing:</strong></td>
<td>Start date: Fall 2019</td>
</tr>
<tr>
<td>• Determine staffing resources necessary to implement Program;</td>
<td>Currently in-progress</td>
</tr>
<tr>
<td>• Determine method for obtaining additional staff resources.</td>
<td></td>
</tr>
<tr>
<td><strong>Development of Enforcement Response Plan:</strong></td>
<td>Goal Completion Date: January 2021</td>
</tr>
<tr>
<td><strong>Perform 100% Independent Compliance Sampling of SIUs:</strong></td>
<td>Goal Completion Date: FY2022</td>
</tr>
<tr>
<td><strong>Achieve 100% Inspection and Permitting Requirements:</strong></td>
<td>Goal Completion Date: FY2022</td>
</tr>
</tbody>
</table>