

1 Vermont Department of Environmental Conservation Pretreatment 2 Program Strategy

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

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

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

Task	Completion Date	Summary of Work Performed
Gather benchmark info from other states with delegated programs.	8/1/19	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.
Legal counsel determines whether statutory or rule changes are necessary to address Audit and additional support from POTWs.	8/1/19	DEC’s legal counsel completed its initial assessment and legal support is ongoing with the development and implementation of this strategy.
Plan Revision of Wastewater Rule	<i>Ongoing</i>	DEC determined that Pretreatment Rules are necessary to establish a more effective framework for the Pretreatment Program.
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).	Fall 2019	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.

Develop proposed strategy (discuss options, potential fee increase, statutory or regulatory changes, etc.)	Fall 2019	DEC has developed a proposed strategy and implementation schedule to address Audit items.
Obtain stakeholder and EPA input on strategy.	Spring 2020	<i>To be completed following stakeholder and EPA feedback on strategy.</i>
Finalize strategy and timeline and begin implementation (timeline depends on whether rulemaking and statutory changes are necessary).	Spring/Summer 2020	<i>To be completed following stakeholder and EPA feedback on strategy.</i>

17 Overview of Pretreatment Strategy:

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

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

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

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

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

44 DEC Pretreatment Rule

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

51 The Rule will establish requirements for the DEC Pretreatment Program, POTWs seeking to administer
52 their own program, POTWs without programs, and industrial users. In addition, the Rule will delineate
53 DEC and POTW jurisdiction and associated responsibilities related to pretreatment. DEC will ensure the
54 Rule is written so that the Program can operate in accordance with federal requirements, while also
55 fulfilling Program-specific goals.

56 Many of the Program deficiencies cited within the Audit will be addressed through DEC's Pretreatment
57 Rule, including:

- 58 • Adoption of Streamlining Rules;
- 59 • Required elements and approval procedures pertaining to POTW Sewer Use Ordinances;
- 60 • DEC and POTW requirements and responsibilities regarding POTW technically based local limits;
- 61 • DEC and POTW requirements to justify the basis of technically based local limits;
- 62 • Evaluation, criteria, and requirements for Slug Discharge Control Plans;
- 63 • Responsibility for enforcement and compliance;
- 64 ○ *Note: DEC's Enforcement Response Plan will be a separate document from the*
65 *Pretreatment Rule and will be completed by January 2021.*
- 66 • Requirements for POTWs seeking to develop their own POTW pretreatment program, including:
67 ○ The submission process; required elements and procedures; DEC review procedures;
68 and program approval / denial process.
- 69 • Requirements for POTWs to support DEC's implementation of the Pretreatment Program, which
70 may include:
 - 71 ○ Independent compliance sampling; SIU inspections; identification of new and expanding
72 industrial users; implementing a sufficient Sewer Use Ordinance; development of
73 technically based local limits; establishing POTW capacity; and tracking distributed
74 allocations and reserve capacity.

75 DEC plans to begin writing the Rule in Spring 2020. DEC has already begun planning for the Rule through
76 the research and data collected for the development of this strategy. DEC recognizes that the Rule and
77 other Program improvements will likely result in "substantial modifications" as defined by 40 C.F.R. §
78 403.18 and will be subject to EPA review and approval procedures.

79 [DEC and POTW Resources](#)

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

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

92 [Support from POTWs without a Pretreatment Program](#)

93 DEC plans to require that POTWs take on certain pretreatment responsibilities to support the state's
94 implementation of the Pretreatment Program. As mentioned above, requirements for POTW
95 pretreatment support will be adopted in a Pretreatment Rule. Given the varying size, capacity, and

96 industrial user base of POTWs throughout the state, the extent of POTW support will vary significantly
97 between municipalities. Therefore, DEC plans to use its existing permitting authority to incorporate
98 specific POTW pretreatment requirements as a condition in the POTW's NPDES discharge permit.

99 POTW support activities will likely include:

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

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

114 [Accommodate POTWs Seeking a Pretreatment Program through Memorandum of](#) 115 [Understanding](#)

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

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

132 As of June 2019, one Vermont POTW has elected to develop a pretreatment program. It is estimated
133 that program development will occur throughout 2020.

134 DEC will work to accommodate this and any other POTW seeking to develop its own program through a
135 Memorandum of Understanding (MOU). Municipal program requirements and responsibilities will be
136 memorialized within an MOU between the POTW and DEC, thereby allowing the POTW to assume
137 pretreatment responsibility without changing DEC's federal delegation status. This model is based on
138 one currently in place between the State of Nebraska Department of Environmental Control and POTWs
139 throughout that state (City of Omaha, Scottsbluff, Lincoln, Ogallala, and others).

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

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

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

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

160 DEC Pretreatment Program Resources

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

166 Prior to obtaining additional resources, DEC has provided an interim permitting and inspection plan to
167 the EPA in the DEC Response to the EPA Audit (see responses #5 and #18), with commitments to fulfill
168 100% of permitting and inspection responsibilities by Fiscal Year (FY) 2021. These interim commitments
169 have also been proposed in the FY20-FY21 Performance Partnership Agreement.

170 In addition, DEC has invested in streamlining its permit writing process to obtain additional Program
171 efficiencies. The Wastewater Program is currently rolling out "a push button permit" which uses report
172 tools to produce a populated permit template using permittee information from the Program's

173 database. This will eliminate many steps and redundancies in the permit writing process and allow the
174 permit writer to more narrowly focus on permit content and analysis, rather than administrative
175 process.

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

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

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

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

189 Implementation Schedule

Task	Implementation / Completion Date(s)
Establish interim permitting and inspection schedule with EPA.	<i>Complete. See VT FY20-21 P&C List; pretreatment items approved by EPA on 10/21/19.</i>
Work on Pretreatment Rule, including: <ul style="list-style-type: none"> • Streamlining Rules; • POTW Sewer Use Ordinances; • DEC and POTW Local Limits requirements; • Slug Discharge Control Plans; • POTW pretreatment requirements and process; • POTW requirements to support DEC Pretreatment Program. 	Start date: Spring 2020 Anticipated Completion Date: Fall 2021
Work with POTW seeking municipal Pretreatment Program:	Start date: Summer 2019 <i>Currently in-progress</i>
Accommodate POTWs interested in developing municipal Pretreatment Programs: <ul style="list-style-type: none"> • Work on state statute change; • Work on MOUs with interested POTWs, if necessary. 	Start date: Fall 2020
Work to obtain necessary State Program staffing: <ul style="list-style-type: none"> • Determine staffing resources necessary to implement Program; • Determine method for obtaining additional staff resources. 	Start date: Fall 2019 <i>Currently in-progress</i>
Development of Enforcement Response Plan:	Goal Completion Date: January 2021
Perform 100% Independent Compliance Sampling of SIUs:	Goal Completion Date: FY2022
Achieve 100% Inspection and Permitting Requirements:	Goal Completion Date: FY2022

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