Chapter NR 211

GENERAL PRETREATMENT REQUIREMENTS

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Note: Chapter NR 211 as it existed on July 31, 1983 was repealed and a new chapter NR 211 was created effective August 1, 1983. Corrections made under s. 13.93 (2m) (b) 6. and 7., Register, March, 1997, No. 495.

NR 211.01 Purpose. The purpose of this chapter is to establish under s. 283.21 (2), Stats., the responsibilities of industrial users and of publicly owned treatment works in preventing the discharge into publicly owned treatment works of pollutants which will interfere with the operation of the POTW, will pass through the POTW insufficiently treated, or which will impair the use or disposal of POTW sludge.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; **CR 13-006: am. Register January 2014 No. 697, eff. 2-1-14.**

NR 211.02 Applicability. The provisions of this chapter apply to industrial users and to publicly owned treatment works which receive or may receive wastewater from such industrial users.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.03 Definitions. The following special definitions are applicable to terms used in this chapter. Definitions of other terms are set forth in ch. NR 205 and ch. 283, Stats.

(1) "Average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values.

(1e) "Best management practices" or "BMPs" means maintenance or operating procedures, schedules of activities, prohibited practices, treatment requirements and other management practices to implement the prohibitions listed in s. NR 211.10 (1) and (2) or to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage areas.

(1m) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.

(2) "Categorical pretreatment standard" means any standard specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by industrial users in specific industrial categories.

(2e) "Centralized waste treater" means an industrial user that treats wastes generated by activities located at a site other than where treatment occurs and introduces the wastes into a POTW. This definition does not include an industrial user whose generating facility and treatment facility are owned by the same entity, and who do not accept wastes generated by entities other than the industrial user.

(2s) "Commencement of construction" means the beginning of any of the following activities as part of a continuous on-site construction program:

(a) The placement, assembly or installation of facilities or equipment;

(b) Significant site preparation work, such as clearing, excavation or the removal of existing buildings, structures or facilities if their removal is necessary for the placement, assembly or installation of new source facilities or equipment; or

(c) The making of binding contractual obligations for the purchase of facilities or equipment which are intended to be used in the new source's operation. Options to purchase or contracts which may be terminated without a substantial loss and contracts for feasibility, engineering or design studies do not constitute a commencement of construction.

(3) "Consistent removal rate" means a rate of consistent removal as calculated in accordance with s. NR 211.13 (2).

(4) "Control authority" means the POTW in relation to POTWs which have a pretreatment program and means the department in relation to POTWs which do not have a pretreatment program.

(4m) "EPA" means the U.S. environmental protection agency.

(5) "Existing source" means any source which is not a new source.

(6) "Indirect discharge" means the introduction of pollutants into a POTW from any point source other than residential or commercial sources that discharge only domestic waste. Method of introduction includes, but is not limited to, by pipe, truck, or rail car.

(7) "Industrial user" means any source of indirect discharge.

(8) "Interference" means the inhibition or disruption of a POTW's sewer system, treatment processes, or operations by an indirect discharge which, alone or in conjunction with the discharge or discharges from other sources, causes a violation or increases the magnitude or duration of a violation of any requirement of the POTW's WPDES permit, or impairs the use or disposal of POTW sludge under chs. 281 and 283, Stats.

(8m) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or groups of industrial users identified by the POTW, may discharge pursuant to local limits developed under s. NR 211.10 (3).

(9) "New source" means any building, structure, facility, or installation:

(a) That discharges or may discharge pollutants;

(b) For which the commencement of construction occurred after the publication in the federal register of proposed pretreatment standards that will be applicable if promulgated according to section 307 (c) of the federal clean water act, 33 USC 1251 et seq.; and

(c) That is one of the following:

1. Constructed at a site at which no other source is located;

2. A total replacement of the process or production equipment that causes the discharge of pollutants at an existing source; or

3. Substantially independent from an existing source at the same site. Whether or not a source is substantially independent shall be determined based on, among other factors, the extent to which the new facility is engaged in the same general type of activity as the existing source, and the extent to which the new facility's production and wastewater generation are integrated with the existing source.

(9m) "Overflow" means any diversion of flow from a POTW before the POTW treatment plant.

(10) "Pass through" means the discharge of pollutants through the POTW to waters of the state in quantities or concentrations which, alone or in conjunction with the discharge or discharges from other sources, causes a violation or increases the magnitude or duration of a violation of any requirement of the POTW's WPDES permit.

(11) "POTW" or "Publicly owned treatment works" means a treatment works which is owned by a municipality and any sewers that convey wastewater to such a treatment works. This definition includes any devices or systems used by a municipality in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes. The term also means the municipality or local unit of government which has jurisdiction over the indirect discharges to, and the discharges from, such a treatment works.

(12) "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.

(13) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to, or in lieu of, discharging such pollutants into a POTW.

(14) "Pretreatment program" means a program administered by a POTW that meets the criteria established in subch. II and which has been approved by the department in accordance with subch. III.

(15) "Pretreatment requirement" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(16) "Pretreatment standard" means any regulation which applies to industrial users and which contains pollutant discharge limits promulgated by the department in accordance with s. 283.21 (2), Stats. This term includes both prohibited discharge standards set forth in or established under s. NR 211.10 and categorical pretreatment standards set forth in s. NR 211.11 and in chs. NR 221 through 297.

(17) "Prohibited discharge standard" means any standard specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by industrial users regardless of industrial category.

(18) "Regulated stream" means a stream regulated by a categorical pretreatment standard.

(19) "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of a pollutant during treatment at the POTW. The reduction or alteration may be physical, chemical or biological and may be the result of designed POTW capabilities or incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW.

(19m) "Significant industrial user" means:

(a) Any industrial user subject to the categorical pretreatment standards in chs. NR 221 to 297, except as provided in s. NR 211.15 (4) (d);

(b) Any industrial user which discharges an average of 25,000 gallons per day or more of wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

(c) Any industrial user that discharges to the POTW a process waste stream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(e) Any other industrial user designated as a significant industrial user by the control authority.

(20) "Sludge requirements" means the following statutory provisions and regulations or permits issued pursuant to them: section 405 of the federal clean water act; 33 USC 1251 et seq.; the solid waste disposal act (SWDA), 42 USC 6901 et seq.; the federal clean air act, 42 USC 1857 et seq.; the toxic substances control act, 15 USC 2601 et seq.; the marine protection, research and sanctuaries act, 33 USC 1401 et seq.; and ch. 281, Stats.

(20m) "Slug" means any nonroutine, episodic discharge, such as a discharge resulting from a spill or a noncustomary batch discharge.

(21) "Unregulated stream" means a stream not regulated by a categorical pretreatment standard.

(22) "WPDES permit" means a permit issued to a POTW under s. 283.31, Stats., for the purposes of controlling pollutant discharge.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. (6), renum. (1) to (5) and (7) to (15) to be (2), (4), (6) to (8) and (10) to (17) and (22), cr. (1), (3), (5), (9) and (18) to (21), Register, September, 1986, No. 369, eff. 10-1-86; cr. (1m), (2e), (2s), (9m), (19m) and (20m), am. (8) and (10), and recr. (9), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: cr. (1e), (4m), am. (8), cr (8m), am. (16), (19m) (a), (c), r (19m) (d) Register January 2014 No. 697 eff. 2-1-14; correction in (16) made under s. 13.92 (4) (b) 7., Stats., Register January 2014 No. 697.**

Subchapter I – Industrial User Requirements

NR 211.10 Prohibited discharge standards. **(1)** Industrial users may not discharge pollutants into a POTW which pass through or interfere with the operation or performance of the POTW, and thereby cause or significantly contribute to a violation of the POTW's WPDES permit.

(2) The following pollutants may not be introduced into a POTW:

(a) Pollutants which create or contribute to a fire or explosion hazard in the POTW, including but not limited to wastestreams with a closed cup flashpoint of less than 140° F or 60° C using the test methods in s. NR 661.21.

(b) Pollutants which will cause or contribute to corrosive structural damage to the POTW but in no case discharges with a pH lower than 5.0, unless the POTW is specifically designed to accommodate such discharges.

(c) Solid or viscous pollutants in amounts which will cause or contribute to obstruction to the flow in sewers or other interference with the operation of the POTW.

(d) Any pollutant, including oxygen demanding pollutants, released in a discharge of such volume or strength as to cause or contribute to interference in the POTW.

(e) Heat in amounts which will inhibit or contribute to the inhibition of biological activity in the POTW treatment plant resulting in interference or causing damage to the POTW but in no case heat in such quantities that the temperature exceeds 40° C (104° F) at the influent to the POTW treatment plant unless the

department, at the request of the POTW, has approved alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(g) Pollutants which result in the presence of gases, vapors or fumes within the POTW in a quantity which may cause acute worker health or safety problems.

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(3) (a) POTWs developing pretreatment programs under subchapter II shall develop specific prohibited discharge standards to enforce the general prohibitions of subs. (1) and (2). All other POTWs shall, where the contributions of industrial users result in pass-through or interference and the resulting permit violation is likely to recur, develop and enforce specific prohibited discharge standards which, together with appropriate POTW facility or operation changes, are necessary to ensure continued compliance with the POTW's WPDES permit.

(b) This subsection is not intended to require pretreatment as a substitute for adequate municipal treatment.

(c) Specific prohibited discharge standards may not be developed and enforced by the POTW without giving prior notice to persons or groups who have requested notice and an opportunity to respond.

(d) Where specific prohibited discharge standards or limits on pollutants or pollutant parameters are developed by a POTW under this subsection, they shall be deemed pretreatment standards for the purposes of s. 283.21 (2), Stats.

(e) POTWs may develop best management practices to implement the prohibitions of subs. (1) and (2). Such BMPs shall be considered specific prohibited discharge standards under this subsection and pretreatment standards for the purposes of s. 283.21 (2), Stats.

(4) Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user may increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on an industrial user to account for dilution or in any other situation for which the control authority finds mass limitations appropriate.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. (1) (a) and (b), am. (2) (a), cr. (2) (f) to (h) and (4), Register, March, 1992, No. 435, eff. 4-1-92; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register May 2011 No. 665; **CR 13-006: am. (3) (d), cr. (3) (e) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.11 Categorical pretreatment standards. **(1)** Categorical pretreatment standards for specific point source categories are set forth in chs. NR 221 to 297. Limits in categorical pretreatment standards shall apply to the effluent from the process regulated by the standard, unless otherwise specified in the standard. Limits in categorical pretreatment standards shall apply to wastestreams which are transported off-site for disposal as well as those discharged on-site. Industrial users shall comply with applicable categorical pretreatment standards, in addition to complying with the general prohibitions established in s. NR 211.10, unless specifically noted otherwise in the categorical pretreatment standard.

(2) COMPLIANCE DATES. (a) All industrial users, except new sources, shall comply with the applicable categorical pretreatment standards within 3 years from the effective date of the standard or within a shorter time period if specified in the applicable standard. A direct discharger which becomes an industrial user after promulgation of an applicable categorical pretreatment standard may not be considered a new source unless it falls within the definition of a "new source" contained in s. NR 211.03 (9).

(b) New sources shall install, have in operating condition and start up all of the pollution control equipment required to meet the applicable pretreatment standards before beginning discharge. Within the shortest feasible time, not to exceed 90 days, new sources shall meet all applicable pretreatment standards.

(3) CONVERSION TO EQUIVALENT MASS OR CONCENTRATION STANDARDS. (a) 1. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating limits for individual users.

2. Equivalent mass per day limits shall be calculated by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based upon a reasonable measure of the industrial user's actual long-term daily production, such as average daily production, during a representative year. For new sources, actual production shall be estimated using projected production.

3. Equivalent concentration limits shall be calculated by dividing the mass limits derived according to subd. 2. by the average daily flow rate of the industrial user's process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the same representative year used in subd. 2.

4. When pretreatment standards specify both daily and long-term limits, the same production or flow figures shall be used in calculating daily and long-term equivalent limits.

5. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within 2 business days after the industrial user has reason to know that the production level will significantly change within the next calendar month. Any industrial user which does not notify the control authority of such anticipated change shall meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

(bm) 1. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user:

a. Employs or demonstrates that it will employ water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

b. Uses control and treatment technologies that are adequate to achieve compliance with the applicable categorical pretreatment standard, and has not used dilution as a substitute for treatment;

c. Provides sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate shall be representative of current operating conditions;

d. Does not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

e. Has consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

2. Upon approval by the control authority an industrial user subject to equivalent mass limits shall:

a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

c. Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subd. 1. c. Upon notification of a revised production rate, the control authority shall reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subd. 1. a. so long as it discharges under an equivalent mass limit.

3. A control authority which chooses to establish equivalent mass limits:

a. Shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated processes by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

c. May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment as prohibited by s. NR 211.10 (4). The industrial user shall also be in compliance with s. NR 211.19.

4. A control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

(cm) The control authority may convert the mass limits of the categorical pretreatment standards in chs. NR 233, 235, and 279 to equivalent concentration limits. When converting such limits to concentration limits, the control authority shall use the concentrations listed in the applicable subparts of chs. NR 233, 235, and 279 and document that dilution is not being substituted for treatment as prohibited by s. NR 211.10 (4).

(d) Equivalent limitations calculated in accordance with par. (a), (bm), or (cm) are deemed pretreatment standards for the purposes of this chapter and s. 283.21 (2), Stats. The control authority shall document how the equivalent limits were derived and make this information available to the public. Once incorporated into its control mechanism, the industrial user shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(e) When pretreatment standards specify both maximum daily and maximum average limits, the same production or flow figures shall be used in calculating maximum daily and maximum average limits.

(4) COMPENSATION FOR POLLUTANTS IN INTAKE WATER. (a) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water if the applicable categorical pretreatment standards specifically provide that they may be applied on a net basis or if the industrial user demonstrates to the control authority that:

1. The control system used or proposed to meet the categorical pretreatment standards would meet the categorical pretreatment standards in the absence of pollutants in the intake water if the control system is properly installed and operated;

2. The constituents of a generic measure, such as BOD, TSS or oil and grease, in the industrial user's effluent are substantially similar to the constituents of the generic measure in the intake water. The control authority may waive this requirement if appropriate additional limits are placed on process water pollutants either at the point of discharge or elsewhere; and

3. The intake water is drawn from the same water body as the water body to which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

(b) The control authority shall grant credits only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. The control authority may require additional monitoring to determine eligibility for credits and compliance with the adjusted standards.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. (1), r. and recr. (2) and (3), cr. (4), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: am. (3) (title), cr. (3) (a) 5., r. (3) (b), cr. (3) (bm), r. (3) (c), cr. (3) (cm), (d), (e), am. (4) (a) (intr.) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.12 Combined wastestreams. (1) Where effluent from a process regulated by a categorical pretreatment standard is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be established by the control authority or by the industrial user with the written concurrence of the control authority. These alternative limits shall apply to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standards and an alternative monthly average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits approved by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user shall immediately report any such material or significant change to the control authority. New alternative categorical limits shall be calculated within 30 days.

(2) ALTERNATIVE LIMIT CALCULATION. Alternative limits shall be derived according to the following formulas:

(a) Alternative concentration limit:

$$C_T = \frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \cdot \frac{F_T - F_D}{F_T}$$

(b) Alternative mass limit:

$$M_T = \left[\sum_{i=1}^{N} M_i\right] \cdot \frac{F_T - F_D}{\sum_{i=1}^{N} F_i}$$

(c) Where:

N	=	The total number of regulated streams
C_T	=	The alternative concentration limit for the combined wastestream
C_i	=	The categorical pretreatment standard concentration limit for the pollutant in the regulated stream i.

M_T = The alternative mass limit for the combined waste-stream

M_i = The categorical pretreatment standard mass limit for a pollutant in the regulated stream i, which is the categorical pretreatment standard multiplied by the appropriate measure of production

F_i = The average daily flow over at least 30 days of stream i to the extent that it is regulated for the pollutant

F_T = The average daily flow over at least 30 days through the combined treatment facility, including Fi, F_D, and unregulated streams

F_D = The average daily flow over at least 30 days from:

1. Boiler blowdown, non-contact cooling, stormwater and demineralizer backwash streams. However, if these streams contain a significant amount of a pollutant and if the combination of these streams with an industrial user's regulated process wastestream prior to treatment will result in a substantial reduction of that pollutant, the control authority, upon the industrial user's application, shall determine whether these streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user shall provide engineering, production, sampling and analysis and other information necessary for the control authority to make its determinations;

2. Sanitary wastestreams where the streams are not regulated by a categorical pretreatment standard; or

3. Any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons:

a. The pollutants regulated by the categorical pretreatment standards used in the formula are not detectable in the effluent from the industrial user;

b. The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

c. The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator of EPA; or

d. The wastestream contains only pollutants that are compatible with the POTW.

(3) ALTERNATE LIMITS BELOW DETECTION LIMIT. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(4) SELF-MONITORING. Self-monitoring to insure compliance with the alternative categorical limit shall be conducted in accordance with s. NR 211.15 (4).

(5) CHOICE OF MONITORING LOCATION. (a) If a treated regulated process wastestream is combined with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process wastestream or the combined wastestream for purposes of determining compliance with the applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, the industrial user shall apply the applicable categorical pretreatment standard. If the industrial user chooses to monitor the combined wastestream, the industrial user shall apply an alternative discharge limit calculated according to the combined wastestream formula in sub. (2).

(b) An industrial user may change monitoring points only after receiving approval from the control authority The control authority shall ensure that any change in an industrial user's monitoring point will not allow the industrial user to substitute dilution for adequate treatment.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; am. (1), r. and recr. (2) and (4), cr. (5) and (6), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: r. (6) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.13 Removal credits. (1) (a) Any POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, subject to the conditions of this section, grant removal credits for removal by the POTW of pollutants specified in the categorical pretreatment standard. The POTW may grant a removal credit equal to or less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with par. (c).

(b) A POTW may give removal credits only if:

1. The POTW applies for and receives authorization from the department to give a removal credit in accordance with the requirements and procedures specified in sub. (5). Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment standard so specifies.

2. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with sub. (2).

3. Except as provided in sub. (7), the POTW has an approved pretreatment program as required by this chapter; however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in sub. (4).

4. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the department that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its modified categorical pretreatment standard.

5. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the department that even though it is not presently in compliance with applicable limitations and conditions in its WPDES permit, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its modified categorical pretreatment standard.

6. The granting of removal credits will not result in a discharge of pollutants to waters of the state greater than the discharge that would be allowed if the pollutants were discharged other than through a POTW.

(c) Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard.

r = removal credit for that pollutant as established under sub. (2) (percentage removal expressed as a proportion, i.e., a number between 0 and 1).

y = revised discharge limit for the specified pollutant (expressed in same units as x).

(2) DEMONSTRATION OF CONSISTENT REMOVAL. In order to demonstrate consistent removal, the POTW shall, for each pollutant [for] which removal credit authorization is sought, collect influent and effluent data and calculate consistent removal in accordance with the following requirements:

(a) At least 12 representative samples of influent and effluent shall be taken at approximately equal intervals throughout one full year. Sampling shall be evenly distributed over the days of the week to include non-work days as well as work days. Upon concurrence of the department, a POTW may utilize a historical data base either in lieu of or as a supplement to these 12 samples. In order to be approved, the historical data base shall represent the yearly and seasonal conditions to which the POTW is subject and the POTW's performance for at least one year. Alternatively, a POTW, upon approval of the department, may utilize an alternative sampling design, if the samples to be taken represent the POTW's normal operating conditions and the different seasonal conditions to which the POTW is subject.

(b) The POTW shall use the composite sampling method unless the grab sampling method is more appropriate.

1. Composite method. a. Influent and effluent operational data should be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites shall be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots shall be combined in the laboratory immediately before analysis.

b. Effluent sample collection need not be delayed to compensate for hydraulic detention. However, the POTW may elect to include detention time compensation or the department may require detention time compensation. The department may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample if necessary to represent actual POTW operation. The detention period shall be based on a 24-hour average daily flow value. The average daily flow shall be based on the average of the daily flows during the same month of the previous year.

2. Grab method. If composite sampling is not an appropriate technique, grab samples shall be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples shall precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period shall be based on a 24-hour average daily flow value. The average daily flow shall be based upon the average of the daily flows during the same month of the previous year. Grab samplings shall be employed where the pollutants being evaluated are those which may not be held for an extended period because of biological, chemical or physical interaction after sample collection which affects the results.

Note: Examples: Cyanide and phenol.

(c) The POTW shall analyze the samples for pollutants in accordance with the analytical techniques prescribed in ch. NR 219. If ch. NR 219 does not contain analytical techniques for the pollutant in question, or if the department determines that ch. NR 219 analytical techniques are inappropriate, the analysis shall be performed using validated analytical methods or any other applicable analytical procedures approved by the department including procedures suggested by the POTW.

(d) 1. For purposes of this paragraph "measurable" refers to the ability of the analytical method to quantify as well as identify the presence of the pollutant in question. "Limit of detectability" refers to the lowest limit at which the analytical method can quantify the pollutant in question.

2. For each sample, removal shall be calculated by dividing the difference between the concentrations of a pollutant in the POTW's influent and effluent by the influent concentration. If the number of samples with measurable concentrations is greater than 12, the consistent removal is the average of the lowest half of the removals. If the number of samples with measurable concentrations is between 8 and 12, the consistent removal is the average of the lowest 6 removals. If less than 8 samples have measurable concentrations, the department may approve a means for demonstrating consistent removal on a case-by-case basis.

3. If a substance is measurable in the influent but not in the effluent, the effluent concentration may be assumed to be the limit of measurement, and those data may be used by the POTW, subject to approval by the department.

4. When calculating consistent removal, the POTW shall use all of the data obtained for measuring removal, except for measurements in which a substance is not measurable in the influent.

(e) If an overflow of untreated water to receiving water occurs at least once per year, a POTW may claim consistent removal only by complying with either subd. 1. or 2., except as provided in subd. 3.

1. The POTW shows, to the department's satisfaction, that:

a. All industrial users to which the POTW proposes to apply removal credits have demonstrated the ability to contain or reduce discharges or increase pretreatment to compensate for the removal not being provided by the POTW during circumstances in which overflow can be reasonably expected to occur;

b. The POTW has identified circumstances in which an overflow event can be reasonably expected to occur and has a notification plan or other viable plan to ensure that industrial users will learn of an impending overflow event in sufficient time to contain or reduce discharges or increase pretreatment to prevent untreated overflow from occurring;

c. The POTW will monitor and verify the data required in subd. 1. d. to ensure that industrial users are containing or reducing discharges or pretreatment during overflow events; and

d. All industrial users to which the POTW proposes to apply removal credits have demonstrated the ability and commitment to collect and make available, upon request, to the POTW, department or EPA, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the removal credit is requested were contained, reduced or subject to increased pretreatment during all circumstances in which an overflow was reasonably expected to occur.

2. a. The consistent removal calculated according to par. (d) is reduced according to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

Where:

r_c = corrected removal

r_m = POTW's consistent removal for that pollutant as established by sub. (1)

Z = hours per year that overflow occurred between the industrial user and the POTW treatment plant, as shown in the POTW's current WPDES permit application or by verifiable data specifically related to overflows between a particular industrial user and the POTW treatment plant; and

b. The POTW is complying with all WPDES permit requirements and any additional requirements in any order or decree issued pursuant to the Federal Water Pollution Control Act, (33 U.S. Code section 1251 *et seq.*), (Clean Water Act), affecting combined sewer outflows. These requirements include, but are not limited to, any requirements contained in EPA's Combined Sewer Overflow Control Policy.

3. This paragraph does not apply if the industrial user can show that overflow does not occur between the industrial user and the POTW treatment plant.

(3) PROVISIONAL CREDITS. For pollutants which are not discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal for the first 18 months of discharge shall be based on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Eighteen months after initial discharge of pollutants, consistent removal shall be demonstrated pursuant to the requirements of sub. (2). If the POTW cannot demonstrate consistent removal pursuant to the requirements of sub. (2), the authority to grant provisional removal credits shall be terminated by the department. All industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the department.

(4) TERMS AND CONDITIONS FOR POTW GRANTING AND CONTINUING CONDITIONAL REMOVAL CREDITS. A POTW required to develop a local pretreatment program by s. NR 211.20 may give removal credits pending approval of the program under the following terms and conditions:

(a) All industrial users who are currently subject to a categorical pretreatment standard and who apply for a conditional removal credit shall submit to the POTW the information required in s. NR 211.15 (1) (a) to (h). However, new or modified industrial users shall only submit the information required by s. NR 211.15 (1) (a) to (f), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standard as modified by the removal credit;

(b) The POTW shall have submitted to the department an application for pretreatment program approval meeting the requirements of subch. II of ch. NR 211 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's WPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(c) The POTW shall:

1. Compile and submit data demonstrating its consistent removal in accordance with sub. (2);

2. Comply with the conditions specified in sub. (1) (b); and

3. Submit a complete application for removal credit authority in accordance with sub. (5);

(d) If a POTW receives authority to grant conditional removal credits and the department subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in pars. (b) and (c), the authority to grant conditional removal credits shall be terminated by the department. All industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department.

(e) If a POTW grants conditional removal credits and the POTW or the department subsequently makes a final determination, after appropriate notice, that the industrial user failed to comply with the conditions in par. (a), the conditional credit shall be terminated by the POTW or the department for the non-complying industrial user. The industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department. The conditional credit may not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or the industrial user had demonstrated substantial compliance.

(f) The department may decide not to review an application for conditional removal credit authority, in which case the conditionally revised discharge limits shall become effective and remain in effect until reviewed by the department. This review shall be conducted in accordance with the procedures of s. NR 211.30 before any pretreatment program approval or any WPDES permit reissuance pursuant to the pretreatment program approval.

(5) POTW APPLICATION FOR AUTHORIZATION TO GIVE REMOVAL CREDITS. (a) Any POTW that wants to give removal credits or modify existing ones shall apply for authorization from the department. Such application may be submitted at any time and shall include the following information:

1. A list of pollutants for which removal credits are proposed;

2. The data required pursuant to sub. (2);

3. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with sub. (1) (c);

4. A certification that the POTW has an approved local pretreatment program or qualifies for the exceptions to this requirement found in subs. (4) and (7);

5. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in sub. (1) (b) 4.;

6. A certification that the granting of removal credits will not cause a violation of the POTW's WPDES permit limits and conditions as required in sub. (1) (b) 5.; and

7. A demonstration that the granting of removal credits will be consistent with sub. (1) (b) 6. for each industrial user for whom removal credits are proposed.

(b) The department shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of s. NR 211.30 within 180 days from public notice of an application to complete review.

(c) Nothing in these regulations precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(6) CONTINUATION AND WITHDRAWAL OF AUTHORIZATION. (a) A POTW authorized to grant removal credits for a pollutant regulated in a categorical pretreatment standard may extend that removal credit to the same pollutant when it is regulated in other categorical standards. If a POTW elects to extend removal credits to a new categorical standard, industrial subcategory, or one or more industrial users that were not granted removal credits, it shall notify the department. A POTW may extend removal credits if granting the removal credit will not cause the POTW to violate the sludge requirements identified in sub. (1) (b) 4., or its WPDES permit limits and conditions as required by sub. (1) (b) 5.

(b) Removal credits shall be included in the authorized POTW's WPDES permit as soon as possible and shall become an enforceable requirement of the POTW's WPDES permit. The removal credits shall remain in effect for the term of the POTW's WPDES permit, provided the POTW maintains compliance with the conditions specified in par. (d).

(c) A POTW authorized to give removal credits shall monitor and report on the POTW's removal capabilities. The reporting period shall be specified by the department and may not be less than once per year. A minimum of one sample per month during the reporting period is required, and all sampling data shall be included in the POTW's compliance report. As a condition of retaining removal credit authorization, the POTW's consistent removal shall continue to be equal to or greater than the removal credit.

(d) 1. Compliance with the conditions in sub. (1) (b) 3. to 5. may be reviewed by the department whenever it elects and shall, at the very least, be reviewed whenever the POTW's WPDES permit is reissued. If the department determines, on the basis of compliance monitoring reports or other information available to it, that the conditions specified in sub. (1) (b) 3. to 5. are not being met, the department shall withdraw the POTW's authority to grant removal credits or modify those credits in accordance with the procedures specified in subd. 3.

2. If, during the term of the POTW's WPDES permit, the department determines that the POTW's consistent removal rate is consistently and substantially lower than the removal credit specified in the POTW's WPDES permit, the department shall either withdraw the POTW's authority to grant removal credits or modify those credits in accordance with the procedures specified in subd. 3.

3. If the department tentatively determines that a POTW's authority to grant removal credits should be withdrawn or modified, the department shall notify the POTW of its determination and give the POTW a reasonable time to take corrective action. The period for corrective action may exceed 60 days only if the POTW or industrial users demonstrate that a longer period is reasonably necessary to undertake appropriate corrective action.

4. If the department finds the corrective action insufficient, the department shall, in accordance with the procedures specified in s. NR 211.30, issue a public notice, provide a public comment period of at least 30 days and provide an opportunity for interested persons to request a public hearing. The mailing list for the public notice shall include, at a minimum, the POTW and industrial users to whom the revised discharge limits have been applied.

5. If the department finally determines to withdraw or modify the POTW's authority to grant removal credits, the department shall provide notice of the determination to the POTW, all industrial users to whom the revised limits have been applied and each person who has requested individual notice. This notice shall include the basis for the determination. Notice of the final determination shall also be published in the same newspaper that published the notice of the tentative determination.

6. Following the notice required by subd. 5., all industrial users to whom revised discharge limits have been applied shall be subject to the modified discharge limits or the limits prescribed in the applicable categorical pretreatment standard. Industrial users shall comply with these limits within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard, as may be specified by the department.

(7) Where the department has not required the POTW to develop a pretreatment program, the POTW may not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW shall, however be required to comply with the other conditions of sub. (1) (b).

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; cr. (1) (b) 6., (2) (e), (5) (a) 7., (6) (d) 4. to 6., am. (2) (a), (5) (a) 5. and 6., r and recr. (2) (d) 2. to 4. and (6) (d) 3., Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: r. and recr. (2) (e) 2. b. Register January 2014 No. 697, eff. 2-1-14.**

NR 211.14 Fundamentally different factors variances. (1) Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user, and that the existence of those factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard may request a fundamentally different factors variance under this section. Such a variance request may be initiated by EPA.

(2) (a) A request for a fundamentally different factors variance may be approved only if:

1. Factors relating to the industrial user which would be affected by the variance are fundamentally different from the factors considered in establishing the applicable categorical pretreatment standard;

2. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been proposed; and

3. The procedural requirements of this section have been met.

(b) A request for a fundamentally different factors variance to establish limits less stringent than required by the categorical pretreatment standard may be approved only if:

1. The alternative limit requested is no less stringent than justified by the fundamental difference; and

2. The alternative limit will not result in a violation of any prohibited discharge standard set forth in or established under s. NR 211.10;

3. The alternative limit will not result in an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during development of the categorical pretreatment standard; and

4. Compliance with the applicable categorical pretreatment standard would result in either a removal cost wholly out of proportion to the removal cost considered during development of the standard or an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during development of the standard.

(c) A request for a fundamentally different factors variance to establish limits more stringent than required by the categorical pretreatment standard may be approved only if:

1. The alternative limit requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative limit would not result in either a removal cost wholly out of proportion to the removal cost considered during development of the standard or an environmental impact not related to water quality which would be fundamentally more adverse than the impact considered during the development of the standard.

(3) Factors considered fundamentally different are:

(a) The nature or quality of pollutants contained in the industrial user's raw process wastewater;

(b) The volume of the industrial user's process wastewater and the volume of effluent discharged;

(c) The environmental impact, other than that related to water quality, of control and treatment of the industrial user's raw process wastewater;

(d) The energy requirements of the application of control and treatment technology;

(e) Age, size, and configuration of the industrial user's equipment, facilities, production processes and process changes, availability of land, and engineering aspects of the application of control technology; and

(f) The cost of compliance with required control technology.

(4) Factors which may not be considered fundamentally different are:

(a) The feasibility of installing the required pretreatment equipment within the time allowed by the categorical pretreatment standard;

(b) The assertion that the standard cannot be achieved with the appropriate pretreatment equipment installed, if such assertion is not based on factors listed in sub. (3);

(c) The industrial user's ability to pay for the required pretreatment equipment; or

(d) The impact of a discharge on the quality of the POTW's receiving water.

(5) Requests for a variance shall be submitted in writing to the department within 180 days after the effective date of the federal categorical pretreatment standard. If the industrial user has

requested a categorical determination under s. NR 211.33, the request for a fundamentally different factors variance may be delayed to within 30 days after the final decision on the category determination has been made. Variance requests shall include the following:

(a) The name and address of the person making the request;

(b) Identification of the interest of the person making the request;

(c) Identification of the POTW receiving the indirect discharge from the industrial user for which the variance is requested;

(d) Identification of the categorical pretreatment standards applicable to the industrial user;

(e) A list of each pollutant for which an alternative discharge limit is sought;

(f) The alternative discharge limits being proposed for each pollutant identified in par. (e);

(g) A description of the industrial user's existing pretreatment equipment;

(h) A schematic flow chart of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and

(i) A statement of facts clearly establishing why the variance request should be approved, including detailed supporting data, documentation and evidence necessary to fully evaluate the merits of the request.

(6) The department will act only on written requests for variances which contain all of the information required in sub. (5). Persons who submit incomplete requests will be notified that the requests are deficient and will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days, or within an extended period if allowed by the department, the request for the variance shall be denied.

(7) The department shall publish a notice of its receipt of a request for a fundamentally different factors variance and shall mail copies of the notice to the affected industrial user and any other interested party. The public notice shall be published as a Class I notice under ch. 985, Stats., in a newspaper of general circulation in the area in which the industrial user is located. The department shall allow a 30-day period for public review and comment.

(8) If the department finds that fundamentally different factors do not exist, the department shall deny the request. If the department finds that fundamentally diferent factors do exist, the request and findings shall be forwarded to EPA for EPA's approval, disapproval, or revision and approval of the variance. A copy of the final determination shall be sent to the person requesting the variance, and to the affected industrial user and POTW.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.15 Monitoring and reporting requirements. **(1)** Within 180 days after the effective date of a categorical pretreatment standard as published in the federal register or 180 days after the final decision in a request for category determination under s. NR 211.33, whichever is later, industrial users subject to that standard which are not new sources and which are currently discharging or scheduled to discharge into a POTW shall submit to the control authority a report containing the information listed in pars. (a) to (g), except when reports containing this information have already been submitted to the control authority for other purposes. At least 90 days before the commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical pretreatment standard shall submit a report to the control authority which at a minimum contains the information listed in pars. (a) to (e). New sources shall estimate the information required by pars. (d) and (e). New sources shall also include in this report information regarding the method of pretreatment that will be used to meet the applicable pretreatment standards. The control authority may require the industrial user to submit any additional information which the control authority finds is necessary to determine the industrial user's ability to meet the applicable pretreatment standards.

(a) The name, address, and location of the industrial user and the name of the owner or operator.

(b) A list of any environmental control permits held by or for the industrial user.

(c) The nature and average rate of production and the standard industrial classification of the processes carried out by the industrial user. This description shall include a schematic diagram which indicates points of discharge to the POTW from the processes regulated by the applicable categorical pretreatment standard.

(d) The measured average and maximum flows from the industrial user to the POTW, in gallons per day, from regulated process streams and other streams as necessary to allow use of the combined wastestream formula of s. NR 211.12. When approved by the control authority based on considerations of cost or accessibility, the average and maximum flow of the discharge may be estimated by verifiable techniques.

(e) The nature and concentration of pollutants in the discharge from each of the industrial user's regulated processes and an identification of the applicable categorical pretreatment standards and pretreatment requirements. The nature and concentration of pollutants in each discharge shall be determined in accordance with subds. 1. to 5. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standard to determine compliance.

1. Sampling and analysis shall be performed to identify the concentration or mass of regulated pollutants in the discharge from each regulated process, according to the requirements of the applicable categorical pretreatment standard and the control authority. Both daily maximum and average values shall be reported. Samples shall be representative of daily operations. A minimum of 4 grab samples per day shall be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organics. All other samples shall be 24-hour flow proportional composites, unless time proportional or grab sampling is authorized by the control authority. Where alternative sampling is authorized by the control authority, the samples shall be representative of the discharge and the decision to allow alternative methods shall be documented in the industrial user's file. Multiple grab samples collected during a 24-hour period may be composited prior to analysis provided appropriate protocols specified in ch. NR 219, and in EPA and department guidance are followed. Samples for cyanide, total phenols and sulfides may be composited in the laboratory or in the field. Samples for volatile organics and oil and grease may be composited in the laboratory. Other samples may be composited using approved methodologies as authorized by the control authority.

2. The industrial user shall collect and analyze a minimum of one representative sample to compile the data necessary for this subsection. Sampling shall be performed during full facility production when substances subject to regulation, including those in batch or periodic discharges, are likely to be present in maximum concentrations or quantities for the reporting period. The control authority may require more frequent monitoring when necessary to assess compliance with the applicable pretreatment standards and requirements. If an industrial user samples any pollutant more frequently than required by the control authority and analyzes these samples according to sub. (8), the results of this monitoring shall be included in the report.

3. Samples shall be taken at the discharge from the regulated process, or at the discharge from pretreatment facilities provided that wastewaters that are not regulated by the applicable categori-

cal pretreatment standard are not mixed with the regulated wastestream prior to the sampling point. Where sampling according to this provision is not feasible, the department may consider allowing alternative means of sampling to be used to determine compliance with the applicable categorical pretreatment standard at the point of discharge from the regulated process. If streams which are not regulated by the applicable categorical pretreatment standard are mixed with the regulated stream prior to the sampling point, the industrial user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of s. NR 211.12 in order to evaluate compliance with the pretreatment standards. Where an alternative concentration or mass limit has been calculated in accordance with s. NR 211.12 this adjusted limit along with the supporting data shall be submitted to the control authority.

4. Representative historical data may be used in the initial baseline report with the approval of the control authority.

5. The report shall indicate the time, date, and place of sampling, method of analysis, and shall certify that sampling and analysis are representative of normal work cycles and expected pollutant discharges to the POTW.

(f) A statement indicating whether the applicable categorical pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance, or additional pretreatment, or both, is required in order for the industrial user to meet the applicable categorical pretreatment standards. The statement shall be reviewed by an authorized representative of the industrial user and certified by a qualified professional.

(g) If additional pretreatment or operation and maintenance is needed, the industrial user shall submit the shortest schedule by which additional treatment or operation and maintenance can be provided. The completion date resulting from this schedule may not be later than the compliance date established for the applicable categorical pretreatment standard. The schedule shall specify dates for the commencement and completion of the major events necessary to provide the additional pretreatment or operation and maintenance. The length of time between any 2 dates may not exceed 9 months.

(h) Where the industrial user's discharge limit has been modified by a fundamentally different factors variance (s. NR 211.14), a removal credit (s. NR 211.13), or the combined wastestream formula (s. NR 211.12) at the time the report is submitted, the information required in pars. (f) and (g) shall pertain to the modified limit. Revisions to the information submitted under pars. (f) and (g) may be required by the department where the industrial user's discharge limit is modified at a later date.

(2) Not later than 14 days following each date in the schedule required in sub. (1) (g), the industrial user shall submit to the control authority a progress report, including at a minimum a statement of whether the required event was completed by the specified date and if not, the reason for delay, the steps being taken to return to the schedule, and the date on which the required event will be completed.

(3) A report shall be submitted to the control authority within 90 days after the date for final compliance with applicable categorical pretreatment standards or, for new sources and sources that become industrial users subsequent to the compliance date of an applicable categorical pretreatment standard, the date on which wastewater is first discharged to the POTW. The report shall include the information required by sub. (1) (d) to (f). For industrial users subject to equivalent mass or concentration limits established by the control authority according to s. NR 211.11 (3), this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the industrial user's actual production or other measure of operation during the appropriate sampling period.

(4) (a) After the compliance date for an applicable categorical pretreatment standard, industrial users, except those meeting the requirements in par. (c) or (d), shall submit semi-annual reports to the control authority. New sources and sources that become industrial users subsequent to the compliance date of an applicable categorical pretreatment standard shall submit the semi-annual reports to the control authority after commencement of discharge to the POTW. The report shall include the information required by sub. (1) (d) and (e) except that the control authority may require more detailed reporting of flows and alternative sampling techniques may be used if they result in samples that are representative of the user's discharge and are approved by the control authority and documented in the industrial user's file. For industrial users subject to equivalent mass or concentration limits established by the control authority according to s. NR 211.11 (3), this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the industrial user's actual production or other measure of operation during the reporting period. For all wastes subject to categorical pretreatment standards that have been shipped off-site for disposal, these reports shall include the category, manufacturing process, volume and destination of such wastes. In cases where the pretreatment standard requires compliance with best management practices (or pollution prevention alternative) the user shall submit documentation needed to determine the compliance status of the user. These reports shall be submitted during June and December unless otherwise specified by the control authority. Industrial users shall submit these reports more frequently if required to do so by the control authority, or the department, or the applicable categorical pretreatment standards.

(b) The control authority may authorize a monitoring waiver for individual pollutants for an industrial user subject to a categorical standard if the 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:

1. The control 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.

2. The monitoring waiver is valid only for the duration of the effective permit or equivalent control mechanism, but in no case longer than 5 years. The user shall submit a new request for the waiver before the waiver may be granted for each subsequent control mechanism or 5 year period.

3. In making a demonstration that a pollutant is not present, the industrial user shall 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 shall include the certification statement and be signed in accordance with s. NR 211.15 (10) (b). 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 Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

4. Any grant of the monitoring waiver by the control authority shall 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 shall be maintained by the control authority for 3 years after expiration of the waiver.

5. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user shall 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 applicable pretreatment standards, 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.

6. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user shall immediately comply with the monitoring requirements of par. (a) or other more frequent monitoring requirements and notify the control authority.

7. This paragraph does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

(c) The control authority may reduce the frequency of the reports required under par. (a) to no less than once per year, unless required more frequently by the pretreatment standard or the department, where the industrial user meets all of the following conditions:

1. The industrial user's total categorical wastewater flow does not exceed any of the following:

a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with s. NR 211.10 (3);

2. The industrial user has not been in significant noncompliance, as defined in s. NR 211.23 (1) (j), at any time in the past two years;

3. The industrial user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement would result in data that are not representative of conditions occurring during the reporting period;

4. The industrial user shall notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subd. 1. or 2. Upon notification, the industrial user shall immediately begin complying with the minimum reporting requirements in par. (a); and

5. The control authority shall retain documentation to support the determination that a specific industrial user qualifies for reduced reporting requirements under this paragraph for a period of 3 years after the expiration of the term of the control mechanism.

(d) The control authority may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that all of the following conditions are met:

1. The industrial user never discharges more than 100 gallons per day of total categorical wastewater, excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard.

2. The industrial user has consistently complied with all applicable categorical pretreatment standards and requirements.

3. The industrial user never discharges any untreated concentrated wastewater.

4. The industrial user annually submits the following certification statement signed in accordance with the signatory requirements of s. NR 211.15 (10) along with any additional information required by the control authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with pretreatment standards, I certify that, to the best of my knowledge and belief that during the period from [insert month, day, year] to [insert month, day, year], the facility described as [insert facility name] met the definition of a non-significant categorical industrial user as described in s. NR 211.15 (4) (d); the facility complied with all applicable pretreatment standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information: [list information supporting the facility's classification as a non-significant categorical industrial user].

Note: The final bracketed material was not included in rule CR 13-006, but it is added by DNR for informational purposes.

(5) Significant industrial users which are not subject to categorical pretreatment standards and which discharge to a POTW with a pretreatment program shall submit reports to the control authority at least twice per year. At a minimum, these reports shall describe the flow rate and concentration of pollutants in wastewater discharges, and shall be based on sampling and analysis performed in the period covered by the report. Sampling shall be conducted at the appropriate sampling location and shall be representative of conditions during the reporting period. If a user monitors any regulated pollutant more frequently than required by the control authority using procedures prescribed in sub. (8), the results of this monitoring shall be included in the report. In cases where a local limit requires compliance with best management practices or pollution prevention alternative, the user shall submit documentation required by the control authority to determine the compliance status of the user. Other industrial users not subject to categorical pretreatment standards shall submit reports according to the requirements of the control authority.

(6) The industrial user shall notify the control authority, and the POTW if the POTW is not the control authority, in advance of any substantial change in the volume or character of the pollutants in the discharge, including changes in listed or characteristic hazardous wastes for which the industrial user has submitted initial notification according to s. NR 211.17. Industrial users shall immediately notify the POTW of any discharge that could cause problems at the POTW, such as any slug loading in violation of s. NR 211.10 (2) or of any changes at the facility affecting the potential for a slug discharge and the need for a slug control plan as required by s. NR 211.235 (4) (a).

(7) If sampling and analysis performed by an industrial user indicates a violation, the industrial user shall notify the control authority within 24 hours of becoming aware of the violation. The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, unless the control authority regularly performs sampling at the industrial user at least once per month or performed sampling at the industrial user between the time of the industrial user's initial sampling and the time when the industrial user received the results of the initial sample. Where the control authority has performed the original sampling and analysis in lieu of the industrial user as allowed in sub. (9), the control authority shall perform the repeat sampling

and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis.

(8) (a) Analysis of the samples required by this section shall be performed in accordance with ch. NR 219. Laboratory test results for radiological samples submitted by the industrial user to the department shall be performed by a laboratory approved by the department of agriculture, trade and consumer protection. Other laboratory test results submitted by the industrial user to the department shall be performed by a laboratory certified or registered under ch. NR 149. Sample results submitted by the industrial user to the POTW need not be from a certified or registered laboratory. The following tests are excluded from this requirement:

1. Temperature,
2. Turbidity,
3. Bacteria tests in wastewater effluent,
4. pH,
5. Chlorine residual,
6. Specific conductance,
7. Flow measurements.

(b) Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from all monitoring activities. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
2. The dates the analyses were performed;
3. The name of the person who performed the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(c) Any industrial user subject to the reporting requirements established in this section shall retain for a minimum of 3 years all records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by EPA, the department, and the receiving POTW. This period for retaining records shall be extended during the pendency of any litigation to which the industrial user or the POTW into which the industrial user discharges is a party, or when requested by the department or EPA.

(9) (a) Sampling and analysis may be performed by the control authority instead of the industrial user. When the control authority collects all of the information required for a report, the control authority may not require the industrial user to submit the report.

(b) The control authority may require the installation of sampling manholes or other monitoring devices necessary for the collection of representative samples by either the industrial user or the control authority.

(10) (a) The reports containing analytical data required by this section shall include the following certification signed by a person specified by par. (b), (c) or (d):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) If the industrial user is a corporation, the certification in par (a) shall be signed by:

1. A president, secretary, treasurer, vice-president in charge of a principal business function or any other person who performs similar policy or decision making functions for the corporation;

2. The manager of one or more manufacturing facilities provided the manager is authorized to make decisions which govern the operation of the facility, make major capital investment recommendations, initiate and direct comprehensive measures to assure long-term compliance with environmental laws, can ensure the necessary systems are established to gather complete and accurate information for the report and where authority to sign documents has been delegated to the manager according to the corporation's procedures; or

3. A representative of a person described in subd. 1. or 2. if the representative has been authorized according to par. (e).

(c) If the industrial user is a partnership, the certification in par (a) shall be signed by either a general partner or a representative authorized according to par. (e).

(d) If the industrial user is a sole proprietorship, the certification in par. (a) shall be signed by either the proprietor or a representative authorized according to par. (e).

(e) Authority to sign the certification in par. (a) may be delegated if:

1. The person to whom authority is delegated is an individual or occupies a position with responsibility for:

a. The overall operation of the facility from which the discharge occurs, such as a plant manager; or

b. The overall environmental matters for the company, such as a corporate environmental officer; and

2. A written authorization is submitted to the control authority. If circumstances change so that an authorization is no longer accurate, the industrial user shall submit a new authorization before or along with the submission of any report signed by a new representative.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. (1) (e) 4., renum. (1) (e) 5. and 6., (8) (a) and (b) to be (1) (e) 4. and 5., (8) (b) and (c), am. (5), (8) (a), Register, April, 1986, No. 364, eff. 8-28-86; am. (1) (d), (e) 3. and (h), Register, September, 1986, No. 369, eff. 10-1-86; am. (1) (intro.), (e) 1. and 4., (3), (4) and (6), r. and recr. (1) (e) 2., (5) and (7), cr. (9) and (10), Register, March, 1992, No. 435, eff. 4-1-92; correction in (1) (e) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; **CR 13-006: am. (1) (e) (intro.), 1., renum. (4) to (4) (a) and am., cr. (4) (b) to (d), am. (5) to (7), (10) (b) 2., Register January 2014 No. 697, eff. 2-1-14.**

NR 211.16 Additional monitoring and reporting requirements for centralized waste treaters. (1) INITIAL REPORT. At least 180 days before the commencement of discharge, a new centralized waste treater shall provide the control authority with the following information:

(a) Name, location, mailing address and the names of the owner and operator;

(b) A description of the treatment equipment and processes, a schematic diagram and a discussion of performance capabilities;

(c) The types of waste the centralized waste treater intends to treat, identified by industrial category and manufacturing process, and estimated volumes for each type of waste;

(d) A description of the waste acceptance procedures developed according to sub. (3) for incoming waste;

(e) A description of effluent monitoring plans developed according to sub. (4); and

(f) Any other information requested by the control authority.

(2) NEW WASTESTREAM REPORT. At least 60 days before accepting wastes from an industrial category or manufacturing process not included in the report required by sub. (1), a centralized waste treater shall submit to the control authority the following information for the new type of waste:

(a) A description of the waste, including industrial category and manufacturing process;

(b) Estimates for the volume of the waste; and

(c) The equipment and processes that will be used for treatment.

(3) WASTE ACCEPTANCE PROCEDURES. Each centralized waste treater shall implement waste acceptance procedures sufficient to ensure that wastes accepted for treatment are within the centralized waste treater's treatment capabilities and have no characteristics that could reasonably be expected to prevent compliance with the applicable pretreatment standards and requirements. These acceptance procedures shall include sampling and analysis, treatability studies and any other procedures necessary to identify the source and character of the waste.

(4) EFFLUENT MONITORING. Sampling and analysis of effluent shall be sufficient to assess consistent compliance with the applicable pretreatment standards and requirements. Samples shall be analyzed according to s. NR 211.15 (8).

(5) SEMIANNUAL REPORT. Every June and December or as otherwise specified by the control authority, each centralized waste treater shall provide to the control authority the following information for all wastes treated since the previous report:

(a) The name and address of each waste's generator;

(b) The volume and date of arrival of each wastewater and the name and address of the transporter if received by truck or rail;

(c) The applicable pretreatment standards, including the generator's production data if production based standards apply;

(d) Effluent volume and effluent sampling and analysis results; and

(e) Any other information requested by the control authority.

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.17 Hazardous waste discharge report. (1) An industrial user shall notify in writing, the POTW, the EPA Region V waste management division director and the department's bureau of waste management of the discharge to a POTW of:

(a) More than 15 kilograms per calendar month of any substance that would be hazardous waste according to ch. NR 661 if otherwise disposed; or

(b) Any amount of a substance that would be an acute hazardous waste according to s. NR 661.30 (4) or 661.33 (5) if otherwise disposed.

(2) The notification required by sub. (1) shall include:

(a) The name of the hazardous waste;

(b) The hazardous waste number;

(c) Whether the discharge is continuous, batch or other; and

(d) A certification that the industrial user has a program in place to reduce to the extent economically practicable the volume and toxicity of the generated hazardous wastes.

(3) If an industrial user discharges to a POTW more than 100 kilograms of hazardous wastes per month, the report required by sub. (1) shall include the following additional information to the extent it is known and available:

(a) The identity of the hazardous constituents in the listed wastes;

(b) The mass and concentration of the hazardous constituents in the wastestream; and

(c) The mass of the hazardous constituents expected to be discharged during the next 12 months.

(4) The notification required by sub. (1) shall be made by the date required by the control authority.

(5) Industrial users who commence discharging a hazardous waste after the date established under sub. (4) shall provide the notification required by sub. (1) within 180 days of commencement of discharge.

(6) Any notification under this section need be submitted only once for each hazardous waste discharged except for notifications of changed discharges under s. NR 211.15 (6).

(7) This section does not apply to wastestreams already reported under the self-monitoring requirements of s. NR 211.15.

(8) If ch. NR 661 is amended to identify additional characteristics of hazardous wastes or list any additional substance as a hazardous waste, any industrial user discharging the newly designated hazardous waste shall notify in writing, the POTW, the EPA Region V waste management division director and the department's bureau of waste management of the discharge of the substance within 90 days of the efective date of the new regulations.

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92; corrections in (1) (a), (b) and (8) made under s. 13.92 (4) (b) 7., Stats., Register May 2011 No. 665.

NR 211.18 Defenses. (1) In any action brought for violation of s. NR 211.10 (1) or (2) (c), (d), (e), (f) or (g), an industrial user shall have an affirmative defense if the industrial user demonstrates that:

(a) The industrial user did not know or have reason to know that its discharge, alone or in conjunction with the discharge or discharges from other sources, would cause pass through or interference; and

(b) 1. A local limit designed to prevent pass through or interference was developed in accordance with s. NR 211.10 (3) (a) for each pollutant in the user's discharge which caused pass through or interference and the industrial user was in compliance with each local limit prior to and during the pass through or interference; or

2. If a local limit designed to prevent pass through or interference has not been developed in accordance with s. NR 211.10 (3) (a) for the pollutant or pollutants which caused the pass through or interference, the industrial user's discharge immediately prior to and during the pass through or interference did not substantially change in nature or constituents from the industrial user's prior discharge activity when the POTW was regularly in compliance with the POTW's WPDES permit requirements and, in case of interference, applicable requirements for sewage sludge use or disposal.

(2) In any action brought for noncompliance with categorical pretreatment standards, an industrial user shall have an affirmative defense if the industrial user demonstrates all of the requirements of pars. (a) to (d) by properly signed contemporaneous operating logs or other evidence.

(a) The noncompliance was exceptional, unintentional, temporary and beyond the reasonable control of the industrial user;

(b) The industrial user demonstrates that the noncompliance was not caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation;

(c) The industrial user identifies the causes of the noncompliance; and

(d) 1. The industrial user has provided the information listed in subd. 1. a. to c. to the control authority within 24 hours of becoming aware of the noncompliance.

a. A description of the discharge and the cause of noncompliance;

b. The exact date and time period of noncompliance or, if not yet corrected, the anticipated time noncompliance is expected to end;

c. The steps being taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

2. If this information is provided orally a written submission to the control authority shall be made within 5 days.

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.19 Loss of treatment capacity and bypass. (1) Industrial users shall control production or contain discharges to the extent necessary to maintain compliance with pretreatment standards and requirements upon the reduction, loss or failure of a treatment facility until the facility is restored or an alternative

method of treatment is provided. This requirement applies to, but is not limited to, the situation in which the primary source of power for the treatment facility is reduced, lost or fails.

(2) A bypass that does not result in a violation of any pretreatment standard or requirement is prohibited except where the bypass is necessary for essential maintenance.

(3) A bypass that results in a violation of any pretreatment standard or requirement is prohibited unless the conditions of pars. (a) to (c) are met:

(a) 1. Bypass is necessary to prevent loss of life;

2. Bypass is necessary to prevent personal injury; or

3. The industrial user reasonably expects the following to occur without a bypass:

a. Substantial physical damage to property;

b. Damage to treatment facilities that would cause them to become inoperable; or

c. Substantial and permanent loss of natural resources.

(b) No feasible alternatives to the bypass exist, such as use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) 1. If an industrial user knows in advance of the need for a bypass, it notifies the control authority at least 10 days before the bypass if possible or otherwise as soon as possible; or

2. An industrial user orally notifies the control authority of an unanticipated bypass within 24 hours from the time the industrial user becomes aware of the bypass and provides a written submission, within 5 days of the time the industrial user becomes aware of the bypass, containing:

a. A description of the bypass and its cause;

b. The duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the time it is expected to end; and

c. A description of the steps taken or planned to prevent reoccurrence of the bypass.

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92.

Subchapter II – POTW Requirements

NR 211.20 Establishment of pretreatment programs. The department may require any POTW with a design flow greater than 5 MGD which receives indirect discharges which pass through or interfere with the POTW's operations or are subject to pretreatment standards to establish a POTW pretreatment program in accordance with the provisions of ss. NR 211.21 through 211.26. In addition, the department may require any POTW with a design flow of 5 MGD or less to establish such a program or part of such a program if the nature or volume of industrial user contributions, treatment process upsets, violations of POTW effluent limits, contamination of municipal sludge, or other circumstances warrant such a program in order to prevent interference with POTW treatment operations or the pass-through of untreated pollutants or in order to improve opportunities for disposal of municipal sludge. The pretreatment program shall be developed in accordance with a compliance schedule established by the department in the POTW's WPDES permit which calls for the completion by specific dates of major events leading to the development and implementation of the pretreatment program.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.21 Compliance dates. POTWs shall establish pretreatment programs which meet the requirements of ss. NR 211.22 to 211.26 no later than 3 years after the reissuance or modification of an existing WPDES permit to require the development of a pretreatment program, but in no case later than July 1, 1983. A POTW identified after July 1, 1983, as being required to develop a pretreatment program shall develop a pretreatment program which meets the requirements of ss. NR 211.22 to 211.26 and submit it as soon as possible, but not later than one year after written notification from the department that a pretreatment program is required.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.22 Legal authority requirements. Where the department requires a POTW to develop a pretreatment program under this subchapter, the POTW shall operate under legal authority and include procedures, fully enforceable in federal or state courts, which at a minimum enables the POTW to perform the following functions. These authorities and procedures shall be fully exercised and implemented at all times.

(1) Deny or condition new or increased discharge of pollutants, or changes in the nature of pollutants, discharged to the POTW by industrial users where such discharges do not meet applicable pretreatment standards and requirements or where such discharge causes the POTW to violate its WPDES permit.

(2) Require compliance with applicable pretreatment standards and requirements by industrial users.

(3) Control through permit, order, or similar means the discharge to the POTW by each industrial user.

(4) Require the development by industrial users of the compliance schedules required under s. NR 211.15 (1) (g).

(5) Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements.

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, whether industrial users are complying with applicable pretreatment standards and requirements. Representatives of the POTW must be authorized to enter any premises of any industrial user in which an effluent source or treatment system is located or in which records are required to be kept, under s. NR 211.15 (8), to assure compliance with pretreatment standards and requirements.

(7) Obtain remedies, including injunctive relief, for any industrial user's:

(a) Noncompliance with any pretreatment standard or requirement;

(b) Failure to allow the POTW to enter and to carry out inspections and monitoring activities;

(c) Noncompliance with any rule, regulation or order issued by the POTW; or

(d) Noncompliance with any reporting requirement imposed by the POTW or by this chapter.

(8) Have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 per day for each violation of pretreatment standard or requirement.

(9) After informal notice to the industrial user, immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appear to present an imminent danger to the health or welfare of persons.

(10) After notice to the industrial user and an opportunity to respond, halt or prevent any discharge to the POTW which endangers or may endanger the environment or which threatens to interfere with the operation of the POTW.

(11) Comply with the confidentiality requirements of s. NR 211.26.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. (intro.) and (3), r and recr. (7), renum. (8) to (10) to be (9) to (11) and am. (10), cr. (8), Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.23 Procedural requirements. (1) Where the department requires a POTW to develop a pretreatment program under this subchapter, the POTW shall develop and fully implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

(a) Identify and locate all possible industrial users who might be subject to the pretreatment program.

(b) Reclassify, upon the POTW's own initiative or in response to a petition from an industrial user, a significant industrial user not subject to categorical pretreatment standards as a nonsignificant industrial user after a finding that the industrial user has no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(c) Identify the character and volume of pollutants contributed to the POTW by industrial users.

(d) Notify industrial users of applicable pretreatment standards and requirements including those relating to user charges and solid or hazardous waste disposal.

(e) Receive and analyze self-monitoring reports and other notices submitted by industrial users.

(f) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independently of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards.

(g) Develop an enforcement response plan that discusses how the POTW will investigate and respond to instances of industrial user noncompliance. At a minimum, the plan shall:

1. Describe how the POTW will investigate instances of noncompliance;

2. Describe the escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which the responses will take place; and

3. Identify by title the officials responsible for each type of response.

(h) Investigate instances of noncompliance by collecting and analyzing samples and other information with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

(i) Make the information obtained under pars. (a) to (h) available to the department or EPA upon request.

(j) Annually publish a list of the industrial users that were in significant noncompliance with the applicable pretreatment standards and requirements at any time during the previous 12 months. The list shall be published in a newspaper of general circulation that provides meaningful public notice in the area served by the POTW. A significant industrial user has been in significant noncompliance if: any of the criteria in subds. 1. to 8. apply. A non-significant industrial user has been in significant noncompliance if criteria in subd. 3., 4., or 8. apply.

1. Sixty-six percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period exceeded by any magnitude any numeric pretreatment standard or requirement including an instantaneous limit.

2. Thirty-three percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period equaled or exceeded the product of the numeric pretreatment standard or requirement including an instantaneous limit multiplied by either 1.4 for BOD, TSS, and fats-oil-grease; 1.2 for all other pollutants except pH; or exceeded a pH limit by .4 standard units.

3. The control authority has reason to believe that the industrial user has caused, alone or in combination with other discharges, interference, pass through or endangerment of the health of POTW personnel or the general public because of a violation of a pretreatment standard or requirement.

4. The industrial user has discharged a pollutant that has caused imminent endangerment to human health, welfare or the environment or has otherwise resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge.

5. The industrial user failed to meet, by 90 days or more, a milestone date contained in a compliance schedule within a local control mechanism or enforcement order for starting construction, completing construction or attaining compliance.

6. The industrial user has failed to provide within 45 days of a deadline a required report containing all required monitoring results and other information, such as a baseline monitoring report, 90 day compliance report, periodic self-monitoring report or report on compliance with a compliance schedule.

7. The industrial user has failed to accurately report noncompliance.

8. The control authority has determined that any other violation or group of violations, which may include a violation of required best management practices, by the industrial user has adversely affected the operation or implementation of the local pretreatment program.

(2) The POTW shall have sufficient resources and qualified personnel to carry out the authority and procedures described in this section and s. NR 211.22, unless conditional approval of the pretreatment program is requested under s. NR 211.24 (2).

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; r. and recr. (1), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: am. (1) (j) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.235 Regulation of significant industrial users. A POTW with an approved pretreatment program shall:

(1) (am) Control the discharge from each significant industrial user through individual control mechanisms or, as provided in par. (b), through general control mechanisms. The control mechanism shall have a duration of no longer than 5 years and may not be transferred without prior notification to the POTW. The control mechanism shall contain or contain by reference the following:

1. Statement of duration;

2. Transferability requirements;

3. Effluent limits, including best management practices, based on prohibited discharge standards, categorical pretreatment standards, local limits and state and local law;

4. Requirements for self monitoring, including sampling location, sampling frequency, sample types, record keeping and reporting;

5. Notification requirements for irregular discharges regulated by s. NR 211.15 (7);

6. Any applicable compliance schedule;

7. A description of the civil and criminal penalties for violation of pretreatment standards or requirements; and

8. Requirements to control slug discharges, if determined by the control authority to be necessary.

(b) At the discretion of the POTW, this control may include use of general control mechanisms which contain the elements listed in par. (am) if all facilities to be covered:

1. Involve the same or substantially similar types of operations;

2. Discharge the same types of wastes;

3. Require the same effluent limitations;

4. Require the same or similar monitoring; and

5. Are more appropriately controlled under a general control mechanism than under individual control mechanisms as determined by the control authority.

(c) To be covered by the general control mechanism, the user shall file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with s. NR 211.15 (4) (b) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the control authority deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the control authority has provided written notice to the user that such a waiver request has been granted in accordance with s. NR 211.15 (4) (b). The control authority shall retain a copy of the general control mechanism, documentation to support the determination that a specific user meets the criteria in par. (b) 1. to 5., and a copy of the user's written request for coverage for 3 years after the expiration of the general control mechanism.

(d) A control authority may not use general control mechanisms for facilities that are subject to production-based categorical standards, standards expressed as mass of a pollutant discharged per day, limits that are based on the combined waste stream formula in s. NR 211.12 or limits that are adjusted for pollutants in intake water in s. NR 211.11 (4).

(2) Within 30 days after identifying an industrial user as a significant industrial user, notify the newly designated significant industrial user of its status and of all requirements applicable to it as a result of its status.

(3) Inspect and sample the effluent from each significant industrial user at least once per year except as otherwise specified below:

(a) Where the POTW has authorized a user subject to a categorical pretreatment standard to forego sampling for a pollutant that is not present in accordance with s. NR 211.15 (4) (b), the POTW shall sample for the waived pollutant at least once during the term of the user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW shall immediately begin at least annual effluent monitoring for that pollutant and inspection.

(b) Where the POTW has determined that an industrial user meets the criteria for classification as a non-significant categorical industrial user in accordance with s. NR 211.15 (4) (d), the POTW shall evaluate, at least once per year, whether the industrial user continues to meet those criteria.

(c) Where the POTW has determined that an industrial user is subject to reduced reporting requirements under s. NR 211.15 (4) (c), the POTW shall inspect and sample the effluent from the industrial user at least once every two years. If the industrial user no longer meets the conditions for reduced reporting, the POTW shall immediately begin sampling and inspecting the industrial user at least once a year.

(4) (a) Evaluate whether each significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to March 3, 2014, this evaluation shall have been conducted by February 1, 2015. Additional significant industrial users shall be evaluated within 1 year of being designated as significant industrial users.

(b) If the POTW determines that a slug control plan is needed, require the industrial user to develop a plan with the following elements:

1. A description of discharge practices, including nonroutine batch discharges;

2. A description of stored chemicals;

3. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition in s. NR 211.10, with procedures for a subsequent written notification within 5 days;

4. Any necessary procedures to:

a. Prevent accidental spills;

b. Inspect and maintain storage areas;

c. Handle and transfer materials;

d. Control loading and unloading operations;

e. Control plant site run-off; and

f. Train workers.

5. Any necessary measures for building containment structures or equipment;

6. Any additional measures necessary to contain toxic organic pollutants, including solvents;

7. Any necessary procedures and equipment for emergency response; and

8. Any necessary practices to limit the damage suffered by the treatment plant or the environment after a slug discharge.

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: renum. (1) (intro.) and (a) to (g) to (1) (am) (intro.) and 1. to 7. and am. (intro.), 3., 6., 7., cr. (1) (am) 8., (b) to (d), renum. (3) to (3) (intro.) and am., cr. (3) (a) to (c), am. (4) (a) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.24 Requests for pretreatment program approval. (1) A POTW requesting approval of its pretreatment program shall submit to the department in triplicate a description of the pretreatment program containing the following:

(a) A statement from the POTW's attorney that the POTW has adequate legal authority to carry out the pretreatment program. This statement shall identify the POTW's source of those legal powers required under s. NR 211.22, and shall identify the manner in which the POTW will implement the requirements of s. NR 211.23.

(b) A copy of all statutes, ordinances, regulations, contracts, agreements, and other written legal authority relied upon by the POTW for its administration of the pretreatment program.

(c) A statement reflecting approval of the POTW's pretreatment program by the local governmental bodies responsible for supervising and funding the pretreatment program.

(d) A brief description, including organizational charts, of the POTW or other governmental bodies which will administer the pretreatment program, and their respective responsibilities.

(e) A description of the funding for the pretreatment program and full and part-time positions available to implement the program.

(2) The department may grant conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program provided that the conditions of pars. (a) through (c) are met. The POTW must submit a written request for conditional approval containing, in addition to the information required in sub. (1), facts to support a conclusion that the conditions set forth in pars. (a) through (c) are met. The conditional approval of the POTW pretreatment program may be withdrawn if funding and personnel are not acquired by a date established by the department.

(a) The delayed funding and hiring of personnel is directly related to an aspect of the program which the POTW is not required to implement immediately.

(b) The POTW has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately.

(c) Funding and personnel for those aspects of the program to be implemented at a later date will be available when needed. The POTW shall describe the mechanism by which the funding will be acquired.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.25 Reporting requirements. (1) The POTW shall submit interim program development documents to the department as required by the compliance schedule in its WPDES permit. If a required interim document has not been submitted on

time, the POTW shall indicate the date by which it expects to complete the document, the reasons for delay, and the steps taken to return to the established schedule.

(2) Documents submitted in accordance with this section shall be signed by a principal executive officer, ranking elected official, or a duly authorized employee if the employee is responsible for the overall operation of the POTW or the pretreatment program. This authorization shall be made in writing by the principal executive officer or ranking elected official and submitted to the department prior to or together with the report being submitted.

(3) (a) Analysis of monitoring samples taken by any POTW operating a pretreatment program shall be performed in accordance with ch. NR 219. Laboratory test results for radiological samples submitted by the POTW to the department shall be performed by a laboratory approved by the department of agriculture, trade and consumer protection. Other laboratory test results submitted by the POTW to the department shall be performed by a laboratory certified or registered under ch. NR 149. The following tests are excluded from this requirement:

1. Temperature,
2. Turbidity,
3. Bacteria tests in wastewater effluent,
4. pH,
5. Chlorine residual,
6. Specific conductance,
7. Flow measurements.

Note: The requirement in this section to submit data from a certified or registered laboratory is effective on December 28, 1986.

(b) Any POTW operating a pretreatment program shall maintain records of information resulting from all monitoring activities. These records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
2. The dates the analyses were performed;
3. The name of the person performing the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(c) Records and results from all monitoring activities, whether required by this section or not, shall be retained for a minimum of 3 years. This time period shall be extended at the department's request or during the pendency of any litigation to which the POTW or any industrial user discharging to the POTW is a party. These records shall be made available for inspection or copying to the department and EPA upon request.

(d) A POTW receiving reports from industrial users shall retain the reports for a minimum of 3 years. A POTW shall retain these reports for additional periods at the request of the department or EPA. All reports related to litigation to which the POTW or the reporting industrial user is a party shall be retained until the conclusion of the litigation. These reports shall be made available for inspection or copying to the department and EPA.

(e) POTWs that elect to receive electronic documents shall satisfy the requirements of 40 CFR Part 3 – Electronic Reporting.

(4) POTWs with approved pretreatment programs shall provide the department with a report which describes the POTW's program activities, including the activities of all participating agencies if more than one jurisdiction is involved in the local program. This report shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter. At a minimum, the report shall include:

(a) The name and address of each industrial user or a list of deletions and additions keyed to a previously submitted list with a brief explanation for each deletion. The list shall include:

1. A list of significant industrial users with reasons for each significant industrial user designation and identification of applicable pretreatment standards for each categorical industrial user;

2. A list of significant industrial users that the POTW has determined to regulate as a nonsignificant industrial user and the reasons for that determination.

3. An identification of categorical users listed in subd. 1 that are subject to reduced reporting requirements under s. NR 211.15 (4) (b) and (c).

(b) A summary of the POTW's compliance assessment and enforcement activities, including activities such as inspections, sampling and review of slug control plans;

(c) A summary of industrial user compliance over the reporting period;

(d) A summary of changes to the POTW's program that have not been previously reported to the department; and

(e) Any other information requested by the department.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; renum. (3) (intro.) (a) to (e) and (4) and (5) to be (3) (b), (3) (b) 1. to 5. and (3) (c) and (d), cr. (3) (a), Register, April, 1986, No. 364, eff. 8-28-86; am. (3) (a), Register, September, 1986, No. 369, eff. 10-1-86; am. (3) (d), cr. (4), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: am. (2), cr. (3) (e), (4) (a) 3., am. (4) (c), (d), cr (4) (e) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.26 Confidentiality. Effluent data submitted to the control authority under this chapter shall be a public record within the meaning of s. 19.21, Stats. All other information submitted to the control authority under this chapter shall be a public record unless the information is entitled to confidential treatment under s. 283.55 (2), Stats., and s. NR 2.19 as a trade secret. POTWs operating a pretreatment program must enact ordinances or rules giving them the authority to treat as confidential information which is a trade secret.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.27 Pretreatment program modification. (1) A POTW may initiate a pretreatment program modification at any time to reflect changing conditions in the pretreatment program. Pretreatment program modification is necessary whenever the pretreatment program will be significantly different from the pretreatment program previously approved by the department.

(2) To initiate a modification, the POTW shall submit to the department a statement of the basis for the desired modification, a modified program description and any other documents the department determines to be necessary. The department shall review, public notice and approve or deny the requested modification according to the procedures of s. NR 211.30 (7).

History: Cr. Register, March, 1992, No. 435, eff. 4-1-92.

Subchapter III – Department Activities

NR 211.30 Pretreatment program approval and removal credit authorization. (1) Upon receipt of a request from a POTW for pretreatment program approval or removal credit authorization, the department shall perform an initial review to determine the completeness of the submittal. The department shall complete its initial review and inform the POTW whether the submission is sufficient within 60 days. If the submittal is not complete, the department shall notify the POTW of the deficiencies and shall suspend review until the submittal is complete.

(2) Within 20 days after making the initial determination that the POTW submittal meets the requirements of ss. NR 211.22 to 211.26 for pretreatment program approval, or s. NR 211.13 for removal credit authorization, the department shall publish a public notice of receipt of the request or authorization. The notice shall provide an opportunity for the POTW or any interested person to submit written comments or to request a public hearing under s. 283.49, Stats., with respect to the submittal. The public notice shall provide a period of not less than 30 days following the date of public notice during which time written comments and requests for public hearing shall be filed. All written comments received during this time shall be considered in determining

whether or not to approve the POTW's request. The comment period may be extended at the department's discretion.

(3) The department shall hold a hearing if the requirements of s. 283.49, Stats., are met. Public notice of the hearing shall be provided under s. 283.49, Stats.

(4) The department shall have 90 days from the date of public notice of receipt of any request for approval or authorization submitted in compliance with the requirements of s. NR 211.24 for pretreatment program approval and s. NR 211.13 for removal credit authorization, to review the request for compliance with the requirements of ss. NR 211.22 through 211.26 and s. NR 211.13. The department may have up to 90 days more to complete its review if the comment period provided for in sub. (2) is extended beyond 30 days or if a public hearing is held under s. 283.49, Stats. In no event shall the total time for evaluation exceed 180 days from the date of public notice of receipt of a request for approval or authorization.

(5) At the end of this evaluation and comment period the department shall either approve or disapprove the request for approval or authorization. The department shall publish a notice of determination to approve or disapprove the pretreatment program or removal credit authorization and shall mail copies of the notice to the POTW and to each person who submitted a written comment or participated in the public hearing or who requested a copy of the notice. If the pretreatment program is not approved or if the removal credit authorization is not granted, the notice of disapproval or denial shall state the modifications and revisions necessary to bring the pretreatment program or removal credit request into compliance with applicable requirements.

(6) The department shall make implementation of an approved pretreatment program an enforceable condition in the POTW's WPDES permit.

(7) (a) The department shall use the procedures in par. (b) for approval of any of the following substantial pretreatment program modifications:

1. Modifications that relax POTW legal authorities, as outlined in s. NR 211.22, except for modifications that directly reflect a revision to this chapter or to other state or federal pretreatment requirements and are reported under par. (c);

2. Modifications that relax local limits, except for pH and reallocations of maximum allowable industrial loadings that do not increase the total industrial loadings of a pollutant and are reported under par. (c);

3. Changes to the POTW's control mechanism;

4. A decrease in the frequency of self-monitoring or reporting required of industrial users;

5. A decrease in the frequency of industrial user inspections or sampling by the POTW;

6. Changes to the POTW's confidentiality procedures; and

7. Other modifications designated as substantial by the department on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, result in an increase in pollutant loadings at the POTW or result in less stringent requirements being imposed on industrial users of the POTW.

(b) The department shall approve or disapprove the modifications listed in par. (a) using the procedures in subs. (1) to (5) except as provided in subds. 1. and 2. The modification shall become effective upon approval by the department.

1. The department need not publish a notice of decision under sub. (5) provided:

a. The notice of request for approval under sub. (2) states that that the request will be approved if no comments are received by the date specified in the notice;

b. No substantive comments are received; and

c. The request is approved without change.

2. Notices required by subs. (2) and (5) may be performed by the POTW provided that the department finds that the notice otherwise satisfies the requirements of those subsections.

(c) For modifications not listed in par. (a) and that are not considered substantial the following procedures will be used.

1. The POTW shall notify the department of any non-substantial modifications at least 45 days prior to implementation in a statement as described in s. NR 211.27.

2. Within 45 days after receipt of the POTW's statement the department shall notify the POTW of its decision to approve or disapprove the non-substantial modification or to treat the modification as substantial under par. (a). If the department does not notify the POTW within 45 days of its decision, the POTW may implement the modification.

(d) After approval by the department, the modification shall be incorporated into the POTW's WPDES permit.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. Register, September, 1986, No. 369, eff. 10-1-86; am. (1) and (2), cr. (6) and (7), Register, March, 1992, No. 435, eff. 4-1-92; **CR 13-006: r. and recr. (7) Register January 2014 No. 697, eff. 2-1-14.**

NR 211.31 Department activities in the absence of a pretreatment program. (1) In the absence of a pretreatment program, the department may:

(a) Identify and locate all possible industrial users which might be subject to pretreatment standards or requirements.

(b) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under par. (a).

(c) Notify industrial users identified under par. (a) of applicable pretreatment standards and of any applicable solid or hazardous waste disposal requirements under chs. 289 and 291, Stats.

(d) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements of s. NR 211.15.

(e) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independently of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards.

(f) Investigate instances of noncompliance with pretreatment standards and requirements indicated in the reports and notices required under s. NR 211.15.

(g) Annually publish the names of industrial users that meet any of the criteria in s. NR 211.23 (1) (j) 1. to 8. The list of industrial users shall be published in the newspaper with the largest circulation in the municipality in which the industrial user is located.

(2) At the discretion of the department, portions of the pretreatment program responsibility may be delegated to the POTW, with the department implementing those portions not delegated to the POTW.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. (1) (g), Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.32 Supplemental compliance monitoring and enforcement activities. (1) In cases where a POTW has a pretreatment program the department may perform such activities as are necessary to ensure that pretreatment standards and requirements are being properly implemented and enforced by the POTW. These activities may include but are not limited to:

(a) Review of monitoring reports submitted by the industrial users and POTW as required by ss. NR 211.15 and 211.25; and

(b) Periodic inspection, surveillance, and monitoring of POTW and industrial user operations.

(2) In cases in which the POTW has failed to seek judicial relief for violations of its ordinances or rules by industrial users or where the department deems such action or penalty to be insufficient, the department may seek civil and criminal penalties and

injunctive relief from the industrial user or POTW, as necessary, under this chapter and ch. 283, Stats.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

NR 211.33 Certification of industrial user category. **(1)** Within 60 days after the effective date of a categorical pretreatment standard for a subcategory under which an industrial user believes itself to be included, the industrial user may request the department to provide written certification that the industrial user does or does not fall within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user shall request this certification prior to commencing discharge from the added or changed process or operation. New sources desiring certification must request this certification prior to commencing discharge.

(2) A POTW may file a request for certification under sub. (1) relating to an industrial user discharging into the POTW. Where a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of such submission. The industrial user may provide written comments on the POTW submission to the department within 30 days after the date of notification.

(3) Each request for certification shall be submitted to the department and shall contain the following:

(a) A statement describing which subcategories might be applicable;

(b) Facts and reasons indicating why a particular subcategory is applicable and why others are not applicable; and

(c) The certification statement contained in s. NR 211.15 (10).

(4) The department will act only on written requests for certification which contain all the information required. Persons who have made incomplete requests will be notified by the department that their requests are deficient and will be given at least 30 days to correct the deficiency. If the deficiency is not corrected within 30 days, or within an extended period allowed by the department, the request for certification shall be denied.

(5) Upon receipt of a request for certification the department shall, after determining that it contains all of the information required in sub. (3), consider the request, any additional information that the department may have requested, and any other available information relevant to the request. The department shall make a written determination of the applicable subcategory and state the reasons for its determination. This determination shall be forwarded to EPA which will make the final determination. EPA may approve, disapprove, or revise and approve the department's determination. A copy of the final determination shall be sent to the applicant by the department.

(6) The final determination shall apply only to the industry and to the facts that are presented at the time of the request for certification. Any changes in processes, raw materials, or other particulars may result in the invalidation of the certification.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83; am. (1), r. and recr. (3), Register, March, 1992, No. 435, eff. 4-1-92.

NR 211.34 Pretreatment standards and requirements based upon federally promulgated regulations. **(1)** In the event that federal regulations establishing pretreatment standards or requirements are promulgated for any point source to which the provisions of this chapter apply, the department may implement and enforce these pretreatment standards and requirements based upon the federal regulations after publishing a notice of its intent to do so in the Wisconsin administrative register.

(2) The department shall, as soon as possible after the promulgation of any federal regulation establishing pretreatment standards or requirements as described in sub. (1), adopt appropriate pretreatment standards or requirements for point sources subject to this chapter in the Wisconsin administrative code.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Subchapter IV – Regulation of Chloride and Mercury Sources

NR 211.40 POTW authority to regulate chloride discharges from all sources. Notwithstanding all other provisions of this chapter, a POTW may develop and enforce specific standards or requirements, including but not limited to source reduction activities enumerated in s. NR 106.90, to regulate the discharge of chloride from industrial, residential and commercial sources. The POTW's authority includes the authority to regulate all industrial, commercial and domestic wastewater containing chloride.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

NR 211.41 POTW action to reduce mercury discharges from all sources. Notwithstanding all other provisions of this chapter, a POTW shall develop and enforce any specific standards or requirements and implement any source reduction activities that are necessary to assure compliance with requirements established in s. NR 106.145. These standards, requirements and source reduction activities apply to mercury discharges to the POTW from all relevant sources, including but not limited to industrial, commercial and residential sources.

History: CR 02-019: cr. Register October 2002 No. 562, eff. 11-1-02.