

PRETREATMENT AGREEMENT  
BETWEEN  
THE SOUTH CENTRAL WASTEWATER AUTHORITY  
AND  
THE CITY OF PETERSBURG

This Pretreatment Agreement ("Agreement") is entered into by the South Central Wastewater Authority (the "Authority") and the City of Petersburg ("Petersburg"), hereinafter jointly referred to as (the "Parties").

Recitals

1. The Authority owns and operates a wastewater treatment facility (the "Facility").
2. Petersburg discharges wastewater to the Facility pursuant to a Service Agreement effective as of July 2, 1996 (the "Service Agreement").
3. Some of the wastewater that is so discharged is generated by non-domestic sources discharging to Petersburg's sewerage collection system.
4. The provisions of 40 C.F.R. Part 403 and 9 VAC 25-30-10, which serve to implement certain provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq., and the State Water Control Law, Va. Code 62.1-44.2, et seq. ("applicable Federal and State law"), impose pretreatment requirements and standards on wastes from industrial users, as defined in 40 C.F.R. § 403.3.
5. The Parties desire to enter into an agreement to cooperatively implement and enforce a pretreatment program (including the regulation of significant industrial users through the use of permits) which fully conforms to applicable Federal and State law, to consistently enforce the pretreatment program upon industrial users tributary to the Authority and to encourage the free exchange between the Parties of all relevant information

concerning industrial users tributary to the Authority.

6. For the purposes of this Agreement, the Parties wish to adopt those definitions set out in 40 C.F.R. § 403.3, a copy of which is attached as Exhibit A and incorporated herein by reference.

### Agreement

NOW THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. To the extent that the Parties' existing pretreatment program does not comply with applicable Federal and State law, the Parties shall, to the extent required by law, enact or amend appropriate ordinances and/or regulations to gain compliance within their respective jurisdictions.
2. The Parties shall review their respective pretreatment programs annually for the purpose of ascertaining whether such programs remain in full compliance with applicable Federal and State law. If the programs are not in compliance, the Parties shall, to the extent required by law, enact or amend, or cause to be enacted or amended, appropriate ordinances and/or regulations to gain compliance.
3. To the extent the Parties' pretreatment legal authority and program structure does not comply with applicable federal and Virginia requirements, each of the Parties, to the extent required by law, shall enact or amend appropriate ordinances and/or rules and regulations to bring the program into full compliance. Such program shall include but not be limited to (1) enforcement authorities including misdemeanor penalties of no less than \$1,000 per violation for violations of pretreatment permits, ordinances, or rules or regulations; (2)

local limits for specific pollutant parameters no less stringent than those established by the Authority and applicable to dischargers to the Authority; and (3) provision of access to industrial users' facilities to sample, inspect, and otherwise verify compliance with pretreatment requirements. Petersburg shall provide the Authority with a reasonable opportunity to comment on any proposed changes to its pretreatment programs which may affect the Authority. Petersburg shall notify the Authority in writing of the proposed changes, including the justification and authority for such changes, not less than thirty (30) days prior to their submission to the Virginia Department of Environmental Quality ("DEQ") for approval.

4. Petersburg shall notify the Authority in writing within thirty (30) days of the DEQ's written notice of denial of any changes to its pretreatment program which may affect the Authority. Petersburg shall also provide, to the extent of its knowledge, the justification and authority for such denial or approved changes, and shall provide the Authority with a copy of any denial or approved program change.

5. The Authority, on behalf of Petersburg, shall periodically perform an industrial waste survey (at least once every five years) to identify, locate, and characterize the industrial wastes from all significant industrial users and, additionally, any other industrial users which will discharge or are likely to discharge pollutants which constitute an interference with, or a pass through of, the Facility, or otherwise constitute a threat to human health, safety or welfare. The results of such surveys shall be promptly provided to Petersburg. The Authority will specify all identified pollutants which are limited in the Facility's permit or that may otherwise impact the Facility, however such specification by the

Authority shall not limit the liability of industrial users for discharges of other pollutants which constitute an interference with, or a pass through of, the Facility or otherwise constitute a threat to human, health, safety or welfare.

6. Petersburg shall promptly notify the Authority upon discovery of a material change in the nature of the business engaged in by a significant industrial user tributary to the Authority and any material change in the volume or character of pollutants introduced into a sewer system tributary to the Authority by an industrial user.

7. The Authority shall conduct, on behalf of Petersburg, unannounced monitoring and inspection of Significant Industrial Users (SIU's) tributary to the Authority within Petersburg. From such monitoring and inspection, the Authority will gather samples for the analysis of the wastewater of such users in accordance with the requirements of its DEQ-approved pretreatment program, together with such additional analysis as is otherwise necessary to verify compliance by such users. The Authority shall make every reasonable effort to conduct such testing and analysis with a level of care sufficient to produce evidence that would be admissible in a judicial proceeding. The Authority shall inspect and sample and analyze the effluent from each SIU within Petersburg at least once every six months. Nothing in this paragraph shall limit the Authority's right to sample and test discharges tributary to the Authority whenever it deems sampling and testing appropriate.

8. If the Authority believes that an industrial user within Petersburg and tributary to the Authority is discharging or will discharge any pollutant which presents a substantial and imminent risk of endangerment to health or safety, of harm to the Facility or its processes, of inhibition of wastewater treatment or sludge treatment processes or sludge

disposal practices, or of harm to the receiving waters of the Facility, the Authority may request that Petersburg immediately order the cessation of such discharge and that Petersburg take all necessary steps to attempt to enforce such an order. The Authority shall provide Petersburg with the information and/or background on which it bases its good faith request and Petersburg shall, to the extent allowed by law, immediately comply with any such reasonable request.

9. Upon the reasonable request of Petersburg, the Authority shall provide access to, and make available for copying, the results of all analyses and relevant documentation concerning industrial users tributary to the Authority and subject to appropriate confidentiality commitments, to all records and all other relevant elements of their respective pretreatment programs.

10. The Authority shall issue industrial user permits to qualified industrial users tributary to the Authority and located within Petersburg prior to any significant industrial discharge to the Authority. Petersburg shall use best efforts to prevent or terminate a discharge by a significant industrial user which is not authorized by a valid Significant Industrial User Permit issued pursuant to this Agreement.

11. The Authority shall transmit to Petersburg copies of all proposed permits prior to their issuance for review and comment. Within 30 days of Petersburg's receipt of a proposed permit from the Authority, Petersburg shall review and comment on the proposal. Upon receipt of any comments, the Authority shall make additions, deletions, or changes to the proposed permit to assure compliance with the Authority's requirements, to the extent that such requirements are consistent with applicable Federal or State law or deemed

necessary for ensuring compliance with the Service Agreement.

12. Significant industrial user permits issued by the Authority to significant industrial users tributary to the Authority shall include, as a minimum, the reporting, record keeping, and notification requirements of 40 C.F.R. § 403.12 and the provisions required by 40 C.F.R. § 403.8(f)(1)(iii).

13. The Authority shall submit to Petersburg a quarterly report on the compliance status of each significant industrial user within Petersburg and tributary to the Authority and, subject to appropriate confidentiality provisions affecting an industrial user's process related information, on all enforcement response actions taken. Such reports shall be submitted within thirty (30) days after the end of each calendar quarter. Reports shall at a minimum contain copies of all documents required for the annual report to the DEQ.

14. Except as otherwise provided in this Agreement, Petersburg shall enforce all applicable pretreatment requirements within Petersburg. The Parties agree that Petersburg retains the primary responsibility for enforcement of the applicable law in accordance with the Enforcement Response Plan as it applies to industrial dischargers located within Petersburg and which are tributary to the Authority. In the event that Petersburg fails to adequately enforce applicable law, Petersburg agrees that the Authority may seek such enforcement to the full extent permitted by law.

15. The Parties agree to informally pursue resolution of any dispute arising out of this Agreement. The Authority's Executive Director and Petersburg's designated representative shall meet as necessary to coordinate and resolve any disputes concerning their respective staffs' implementation of this Agreement. However, the Parties recognize and

agree that any dispute arising out of this Agreement may be submitted for resolution by any of the Parties to a court of the Commonwealth of Virginia, to the extent that such court has subject matter jurisdiction and personal jurisdiction.

16. If any provisions of this Agreement are held void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall be unaffected and shall remain in full force and effect.

17. The Authority shall apply pretreatment requirements consistently and equitably among the participating jurisdictions to the Authority in accordance with state and federal requirements.

18. Nothing in this Agreement shall preclude the charging of Petersburg for the Authority's cost for implementing the industrial pretreatment program in Petersburg in accordance with other agreements between the Parties.

19. The Parties represent that they have the authority to enter into this Agreement and that the individuals signing this Agreement on their behalf have the requisite power and authority to bind the Parties to its provisions. This Agreement shall apply to and shall be binding upon the Parties hereto as well as their elected officials, officers, directors, employees, agents, successors and assigns: and all persons whether natural or corporate acting under, through, or for them.

20. 21. Notices pursuant to this Agreement shall be made as follows:

To the South Central Wastewater Authority:

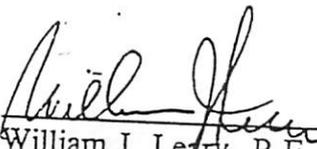
Executive Director  
South Central Wastewater Authority  
900 Magazine Road  
Petersburg, VA 23803  
(804) 861-0111

City of Petersburg

City Manager  
202 City Hall  
Petersburg, Virginia 23803

22. This Agreement is made this 2nd day of July, 1996 and is in full force and effect on that date.

Agreed by the South Central Wastewater Authority:

  
\_\_\_\_\_  
William J. Leary, P.E.  
Executive Director

Agreed by the City of Petersburg:

  
\_\_\_\_\_  
Valerie C. Rennie  
City Manager

NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

The total time during which the pH values are outside the required range shall not exceed 7 minutes and 25 minutes in any calendar month.

No individual excursion from the range of pH values shall exceed 60 minutes.

The Director, as defined in § 122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

For the purposes of this section, an incident in which the pH value of the wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

403.306 and 403.307 of the Clean Water Act, Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1987 (Pub. L. 100-4).

June 4, 1982]

### 403.303—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF WASTEWATER

and applicability.  
of general pretreatment regulations.

local law.

pretreatment standards: Pro-

charges.

pretreatment standards: Cat-

egories.

credits.

Program Requirements:

and Implementation by

pretreatment programs and/or

to revise pretreatment

standards for approval.

403.10 Development and submission of NPDES State pretreatment programs.

403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

403.12 Reporting requirements for POTW's and industrial users.

403.13 Variances from categorical pretreatment standards for fundamentally different factors.

403.14 Confidentiality.

403.15 Net/Gross calculation.

403.16 Upset provision.

403.17 Bypass.

403.18 Modification of POTW Pretreatment Programs.

APPENDIX A TO PART 403—PROGRAM GUIDANCE MEMORANDUM

APPENDIX B TO PART 403—[RESERVED]

APPENDIX C TO PART 403—[RESERVED]

APPENDIX D TO PART 403—SELECTED INDUSTRIAL SUBCATEGORIES EXEMPTED FROM REGULATION PURSUANT TO PARAGRAPH 8 OF THE NRDC v. Costle CONSENT DECREE

APPENDIX E TO PART 403—SAMPLING PROCEDURES

APPENDIX F [RESERVED]

APPENDIX G TO PART 403—Pollutants Eligible for a Removal Credit

AUTHORITY: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(b)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

SOURCE: 46 FR 9439, Jan. 23, 1981, unless otherwise noted.

EDITORIAL NOTE: Nomenclature change to part 403 appears at 51 FR 20430, June 4, 1986.

#### § 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(b)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act". It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies:

(1) To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in § 403.3;

(2) To POTWs which receive wastewater from sources subject to National Pretreatment Standards;

(3) To States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and

(4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

(46 FR 9439, Jan. 23, 1981, as amended at 48 FR 2776, Jan. 21, 1983; 60 FR 3332, June 29, 1995)

#### § 403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

#### § 403.3 Definitions.

For the purposes of this part:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 shall apply to this regulation.

(b) The term Act means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(c) The term Approval Authority means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State

or NPDES State without an approved State pretreatment program.

(d) The term *Approved POTW Pretreatment Program* or *Program* or *POTW Pretreatment Program* means a program administered by a POTW that meets the criteria established in this regulation (§§403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with §403.11 of this regulation.

(e) The term *Director* means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(f) The term *Water Management Division Director* means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(g) The term *Indirect Discharge* or *Discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(h) The term *Industrial User* or *User* means a source of Indirect Discharge.

(i) The term *Interference* means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act,

and the Marine Protection, Research and Sanctuaries Act.

(j) The term *National Pretreatment Standard*, *Pretreatment Standard*, or *Standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to §403.5.

(k)(1) The term *New Source* means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which, commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that*:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin as part of a continuous onsite construction program:

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the Marine Protection, Research Sanctuaries Act.

The term *National Pretreatment Standard*, *Pretreatment Standard*, or *Standard* means any regulation concerning pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act. This term applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to § 403.5.

(j) The term *New Source* means a building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307 of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that*:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the building, structure, facility or production equipment that was used for the discharge of pollutants at the same source; or

(iii) The production or wastewater treatment processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(k) Construction on a site at which an existing source is located results in a new source rather than a new source if construction does not create a building, structure, facility or installation meeting the criteria of paragraph (j)(i)(ii), or (j)(i)(iii) of this section, but otherwise alters, replaces, or expands an existing process or production equipment.

(l) Construction of a new source as defined under this paragraph has commenced if the owner or operator has begun, or caused to begin as part of a continuous onsite construction

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(i) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(l) The terms *NPDES Permit* or *Permit* means a permit issued to a POTW pursuant to section 402 of the Act.

(m) The term *NPDES State* means a State (as defined in 40 CFR 122.2) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

(n) The term *Pass Through* means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(o) The term *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(p) The term *POTW Treatment Plant* means that portion of the POTW which is designed to provide treatment (in-

cluding recycling and reclamation) of municipal sewage and industrial waste.

(q) The term *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by § 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with § 403.6(e).

(r) The term *Pretreatment requirements* means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(s) The term *Regional Administrator* means the appropriate EPA Regional Administrator.

(t) *Significant Industrial User*. (1) Except as provided in paragraph (t)(2) of this section, the term *Significant Industrial User* means:

(i) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blow-down wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violat-

ing any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (c)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

(u) The term *Submission* means:

(1) A request by a POTW for approval of a Pretreatment Program to the EPA or a Director;

(2) A request by a POTW to the EPA or a Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or

(3) A request to the EPA by an NPDES State for approval of its State pretreatment program.

(46 FR 9439, Jan. 23, 1981, as amended at 49 FR 5132, Feb. 10, 1984; 49 FR 28059, July 10, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986; 52 FR 1600, Jan. 14, 1987; 53 FR 40610, Oct. 17, 1988; 55 FR 30129, July 24, 1990)

#### §403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with §403.10 of this regulation.

#### §403.5 National pretreatment standards: Prohibited discharges.

(a)(1) *General prohibitions.* A User may not introduce into a POTW any pollutant(s) which cause Pass Through

or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(2) *Affirmative Defenses.* A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate that:

(i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

(ii)(A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 251.21.