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lund.lisa@epa.gov

*Re: Recommendations for Prioritization for the U.S. EPA National
Pretreatment Program*

Dear Ms. Nagle, Mr. Wood, and Ms. Lund:

The Association of Clean Water Administrators (ACWA) (hereinafter “the Association” or “states”) appreciates the opportunity to provide the recommendations below pertaining to activities and areas of technical support provided by the U.S. Environmental Protection Agency’s (EPA) Office of Water (OW) and Office of Enforcement and Compliance Assurance (OECA) related to EPA’s National Pretreatment Program. The Association is a national, nonpartisan, professional organization, representing State, Interstate, and Territorial water quality control officials (hereinafter “states”) responsible for the implementation of surface water protection programs throughout the nation, including pretreatment programs. State pretreatment staff coordinate with local government entities (e.g., publicly-owned treatment works (POTWs)) to

ensure proper implementation and compliance with pretreatment standards.

Pretreatment programs at the state and national level have experienced increasing disinvestment over the last several years. The loss of historical knowledge via staff retirements and a decrease in program personnel/capacity has created significant knowledge and training gaps. ACWA wishes to express its appreciation to the staff at EPA's National Pretreatment Program for creating and maintaining valuable forums for state-to-state and EPA-state information sharing in the pretreatment program listserv and bi-monthly pretreatment coordinator conference calls. These discussions help facilitate information sharing that serves to both combat knowledge gaps and avoid unnecessary duplicative efforts for pretreatment programs already forced to make difficult prioritization choices in the face of decreasing resources. As an outcome of these ongoing dialogues, participants in those EPA-state forums determined that it would be beneficial to gather state feedback on where states would recommend EPA prioritize efforts in its pretreatment technical support areas. Several of these recommendations would require cross-program coordination amongst programs within EPA-OW as well as with OECA. For that reason, the Association wanted to share these recommendations more broadly with the goal of furthering cross-program dialogue around these state recommendations for prioritization. The Association also recognizes that EPA may have already taken meaningful steps that are aligned with these recommendations and we are interested in future discussions on any ongoing efforts.

During November and December 2012, states had an opportunity to provide feedback on areas where increased technical support and updates would provide the greatest benefit, recognizing the difficult task of prioritization EPA may be faced with given its own decreased funding and program staffing. A total of 37 state pretreatment program staff, representing 26 states,¹ provided input.

The respondents shared an overwhelming consensus that EPA should increase grant monies to state pretreatment programs. However, recognizing that water programs are facing deep cuts across the board, we have focused the following priorities on where the greatest needs are, that are also more likely achievable given current and ongoing resource constraints. Additionally, these recommendations for prioritization are not intended to displace other important Clean Water Act work. Based on the priorities achieving the greatest consensus, ACWA developed the recommendations set forth below:

¹ Pretreatment program staff from the following states provided feedback (*indicates more than one individual from that state gave feedback): NH, NJ, WV, VA*, NC*, SC*, TN*, FL, MS, KY, OH*, MI, IN, IA*, MO, AR*, NE, KS, OK, TX*, UT, WA*, OR, CA, AK, CO.

PRIORITIZATION OF ACWA RECOMMENDATIONS:

The following is a list of National Pretreatment Program activities that the states identified for higher prioritization. The activities are listed in order of descending priority, from greatest to lesser importance.

- 1. Recommendation:** EPA should ensure that technical experts are available in EPA Regions and Headquarters to assist states with program implementation. States often rely on EPA technical staff to determine applicability and interpret pretreatment standards and requirements for the various categories. With attrition in recent years, there has been a loss of expertise at the federal level.
- 2. Recommendation:** EPA should provide greater flexibility within any current restrictions tied to grant monies for states to address their state-specific pollutants of concern. Pollutants of concern will vary from state-to-state. For example, some states may have mercury issues, while others may have pharmaceuticals issues.
- 3. Recommendation:** EPA should continue to make and maintain updates to the Effluent Limitation Guidelines (ELG) websites, including all regulatory and support documents (e.g., Federal Register (FR) notices and their preambles) and other notices related to program development (e.g., Domestic Sewage Study (DSS) (1990) regulations). This will become increasingly important as states continue moving toward wholly electronic data systems and are being asked to significantly reduce reliance on hardcopies. Many existing ELGs pre-date the time that the Federal Register routinely became available online, and therefore need to be scanned in and posted to the ELG website. It is also our understanding that there is an effort underway to create an electronic index to key concepts located in the regulatory preambles. States remain keenly interested in having such a searchable tool and encourage continued progress with this effort.
- 4. Recommendation:** Local limits remain a very important aspect of the industrial pretreatment program. In order to keep industrial pretreatment programs vibrant and responsive, states need additional training in areas which EPA has not refined guidance such as setting limits for compatible pollutants, managing mass based load allocations, and incorporating best management practices (BMPs) in lieu of numeric limits. States would greatly benefit from additional training in these areas. A comprehensive two-day training course hosted by EPA on local limit development in each EPA Region is one possible approach states identified for addressing these knowledge gaps.

- 5. Recommendation:** The last official EPA-State National Pretreatment Program face-to-face meeting was held in August, 2008 (Charleston, SC). Another was planned for March, 2009 (Charlotte, NC) but became an EPA only meeting due to projected low attendance by states. At that time, EPA switched direction to provide a series of webinars to try to fill the void. The webinars are a great vehicle for unilateral communication and training, but do not provide an opportunity for states and EPA to collaborate on issues. Although the online/teleconference forums for discussion and information exchange are very helpful, the value of face-to-face interaction cannot be matched. EPA should restore the annual National Pretreatment Coordinators Meeting (with an extra day focused on training for Approval Authorities), and offer states some travel assistance to ensure maximum participation (e.g., 50% cost-share). If an annual face-to-face is not feasible, then EPA should strive to hold such a meeting every two years. Additionally, EPA should continue to provide remote access/dial-in capabilities for those state participants that are unable to travel.
- 6. Recommendation:** With respect to compliance, EPA OECA should revise performance metrics to consider allowing Pretreatment Compliance Inspections in lieu of Pretreatment Compliance Audits for well-run programs. This would allow more staff time and resources to focus on POTWs with a greater history of non-compliance issues.
- 7. Recommendation:** Although EPA has produced some valuable instructional webinars with slide presentations, states recommend supplementing those with an instructional video demonstrating a model industrial pretreatment inspection. Specifically, states would recommend downloadable MP3 files or some other format that can be readily accessed online. It is ACWA's understanding that OECA may be working on some online instructional tools. ACWA encourages communication with states on any such tools under development.
- 8. Recommendation:** Likewise, states recommend that EPA consider developing an instructional video to supplement existing slide presentations on proper sampling techniques. The video should also address clean sampling techniques, and include how to determine sample type (flow vs time proportional), and proper location. Again, states recommend the video be made available as a downloadable MP3 files or similar format. Instruction in sampling also provides cross-program training benefits that extend beyond state pretreatment staff.
- 9. Recommendation:** In states' experience, many control authorities (i.e., POTWs) have misinterpreted or misunderstood significant noncompliance criteria (SNC). Therefore states recommend that EPA develop software to assist those entities with the SNC calculations.

For example, something similar to EPA's Pretreatment Compliance Monitoring & Enforcement (PCME) software (c.1992). Or alternatively, if a software tool is not possible in the near future, then a detailed narrative description and FAQ would be beneficial. For example, an FAQ on "how to consider incomplete information," would be useful for states.

Recommended Prioritization of Pretreatment Manual Updates:

Current Projects:

The states understand that EPA is already revising or recently completed an update to the following five manuals, and that these updates may require cross-coordination among more than one OW division. The states therefore encourage EPA to continue working to finalize these documents in addition to starting new manual and guidance updates. Since the Control Authority Pretreatment Audit Checklist has been updated recently, the Pretreatment Compliance Inspection (PCI) guidance has become less of a priority, but remains important. The following manuals are listed in order of descending priority for updating, from greatest to lesser importance. Additionally, for each of these manuals, ACWA recommends adding a frequently asked questions (FAQs) section, or posting those respective FAQs online:

1. Introduction to the National Pretreatment Program (February 1999) update published June, 2011. States encourage maintaining more frequent updates to this publication.
2. Industrial User Permitting Guidance Manual (September 1989). A basic document was complete as of September 2012; several appendices have not been completed.
3. Guidance for Conducting a Pretreatment Compliance Inspection (PCI) (September 1991). States encourage EPA to revisit and refresh this publication.
4. Control Authority Pretreatment Audit Checklist and Instructions (May 1992) updated February 2010.
5. Guidance for Developing Control authority Enforcement Response Plans (September 1989). States encourage EPA to revisit and refresh this publication.

Proposed Projects:

States identified the following list of new guidance development and updates ranked in order of descending priority, from greatest to lesser importance. The first item in particular was rated as a very high priority by most states relative to the choices.

1. If 40 CFR 433 (metal finishing) and 413 (electroplating) will not be updated in the near future, EPA should provide specific guidance regarding application of these regulations, given

the new chemistry being used by the industry. The guidance needs to provide interpretation of the applicability of the Metal Finishing regulations in the current industrial practices.

2. Update the Industrial User Inspection and Sampling manual to include discussion of BMPs and flow proportional monitoring as well as more guidance on 40 CFR 136 (test methods). In particular guidance pertaining to sample collection (field blanks) and preservation are of the greatest priority. It is our understanding that EPA may already be working on online instructional tool that would address this training gap. States would be interested in hearing from EPA on any instructional tools under development.
3. Update guidance on developing local limits to include specific examples of developing BMPs as local limits. Also, guidance that addresses the problem of control authorities using the total toxic organics (TTO) limit from 40 CFR 433 as a local limit in permits for non-categorical industries.
4. Update and expand the guidance manual for Developing BMPs, October 1993 where it pertains to industrial activities. For example, it could be expanded to describe: industry specific BMPs; using BMPs in lieu of numeric standards; which records to require; and how to verify that the BMPs are being followed through record keeping.
5. Update where necessary the FY1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements.
6. Finalize the “Procedures Manual for Reviewing a POTW Pretreatment Program Submission.” States had an opportunity to review and provide feedback on a draft version of this document which provides a comprehensive checklist for new pretreatment programs, as well as for existing programs that are undergoing updates. States encourage moving forward with finalizing and releasing this manual.
7. Continue updating the Guidance for Developing Control Authority Enforcement Response Plans (ERPs). This should include a checklist for reviewing ERPs, and how to evaluate whether or not an ERP is being followed. This guidance should also include an extensive discussion of how to determine SNC, including how to consider missing information.
8. More guidance is needed regarding the optional portions of the streamlining regulations. Some control authorities that have added optional portions of streamlining are not including very much detail in the procedures to implement the control authority’s legal authority for the option/options that were added. It would be helpful to have some foundation/guidance for requiring the control authorities to add the detail to the procedure(s). One way that this could be addressed is through incorporation into the forthcoming “Guidance Manual for POTW Pretreatment Program Development.” (*see # 6 above*).

ACWA looks forward to facilitating discussions between EPA and states on any of the aforementioned recommendations. We look to host a discussion sometime late summer/early fall 2013 for EPA and states to discuss the recommendations and any EPA response, as well as any current and ongoing EPA efforts that address these priorities. Please contact our Executive Director and General Counsel, Alexandra Dunn, at 202/756-0600 or at adunn@acwa-us.org, to facilitate any follow-up discussions conversations.

Sincerely,

A handwritten signature in black ink that reads "Steven H. Gunderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Steven H. Gunderson
ACWA President
Director, Water Quality Control Division
Colorado Department of Health and Environment
ACWA President