

US EPA ARCHIVE DOCUMENT

Great Lakes System in the State of New York. For purposes of this paragraph, chronic water quality criteria and values for the protection of aquatic life adopted or developed pursuant to § 132.4(a) through (c) are the criteria and values adopted or developed by New York State Department of Environmental Conservation (see section 703.5 of Title 6 of the New York State Codes, Rules and Regulations) and approved by EPA under section 303(c) of the Clean Water Act.

(e) Effective November 6, 2000, the criteria for mercury contained in Table 4 of this Part shall apply to waters within the Great Lakes System in the State of New York.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 403

[FRL-6882-9]

#### Community XL (XLC) Site-Specific Rulemaking for Steele County, MN

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) will implement a project under the Project XLC program for certain facilities in Steele County, Minnesota. The terms of the project are defined in a Final Project Agreement (FPA) which was made available for public review and comment through a **Federal Register** notice on December 29, 1999 (64 FR 73047) and signed on May 31, 2000. In addition, EPA is promulgating a site-specific rule, applicable only to the Steele County Sponsors who are Participating Industrial Users, to facilitate implementation of the project. This site-specific rule provides regulatory changes under the Clean Water Act (CWA or the Act) to implement the Community XL project, which will result in superior environmental performance. The site-specific rule changes some of the requirements which apply to the Sponsors who are Participating Industrial Users to promote a reduction in the discharge of four priority metals, a reduction in water usage, and the development of an Environmental Management System. An incentive-based monitoring approach will be implemented, such that as discharge reduction goals are met, monitoring frequency may be reduced, mass-based limits will replace certain

concentration limits, and an alternative Significant Noncompliance (SNC) publication approach will be tested. Monitoring reductions for pollutants determined not to be present in an industry's wastestream will also be authorized.

**DATES:** This final rule is effective October 6, 2000. For judicial review purposes, this rule is promulgated as of 1 p.m. (Eastern Daylight Time) on October 6, 2000.

**ADDRESSES:** A docket containing the rule, Final Project Agreement, and supporting materials is available for public inspection and copying at U.S. EPA, Region V, Water Division, Room Number 15046, 77 West Jackson Boulevard, Chicago, IL 60604-3507. The Office is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning Abeer Hashem at (312) 886-1331. Refer to the Docket for the Steele County Site-Specific Rulemaking. The public may copy a maximum of 100 pages at no charge. Additional copies cost 15 cents per page. Project materials are also available on the World Wide Web at: <http://www.epa.gov/projectxl/>.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 445, West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Ms. Kristina Heinemann in advance by telephoning (202) 260-5355. In addition supporting materials are available at the Owatonna, MN Public Library, 105 Elm Avenue, North, Owatonna, MN 55060. The phone number for the library is 507-444-2460, TDD 507-444-2480.

**FOR FURTHER INFORMATION CONTACT:** Ms. Abeer Hashem or Mr. Matthew Gluckman, U.S. Environmental Protection Agency, Region V, Water Division, WC-15] or WN-16], 77 West Jackson Boulevard, Chicago, IL 60604-3507. Ms. Hashem can be reached at (312) 886-1331 and Mr. Gluckman can be reached at (312) 886-6089. Further information on today's action may also be obtained on the world wide web at: <http://www.epa.gov/projectxl/>.

**SUPPLEMENTARY INFORMATION:** On May 8, 2000, the Environmental Protection Agency proposed a site-specific rule (65 FR 26550) that set forth the mechanism through which the Sponsors will attempt to reach discharge reduction goals for chromium, copper, nickel, and zinc; reach water use reduction goals;

and commit to arrange and participate in training for the development of an Environmental Management System (EMS), as outlined in the Steele County Project XLC FPA (the document that embodies the parties' intent to implement this project). Today's final rule promulgates regulations that are identical to the proposed rule and that include the final group of Participating Industrial Users among those named in the May 8, 2000 proposal. Today's rule will facilitate implementation of the FPA that has been developed by the Steele County Project Sponsors, EPA, the Steele County Community Advisory Committee (CAC), the Minnesota Pollution Control Agency (MPCA), the Owatonna Waste Water Treatment Facility (OWWTF), the Blooming Prairie Waste Water Treatment Facility (BPWWTF), and other stakeholders. The FPA is available in the docket for today's action and on the world wide web at <http://www.epa.gov/projectxl/>. The FPA addresses the nine Project XLC criteria, and the expectation of EPA that this XLC project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

Today's rule will implement the provisions of this Project XLC initiative that require regulatory changes. However, Minnesota has had an approved State National Pollutant Discharge Elimination System (NPDES) program since June 30, 1974, and an approved State pretreatment program since July 16, 1979. Therefore, the requirements outlined in today's rule will not take effect until Minnesota revises the Owatonna pretreatment program as incorporated in the Owatonna NPDES permit. EPA will not be the primary regulatory agency responsible for implementing the

requirements of this rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding State and local law and corresponding NPDES and Industrial User permits by which the remaining implementation of this XL project will be achieved.

### Outline of Today's Document

The information presented in this preamble is organized as follows:

- I. Authority
- II. Background
  - A. Overview of Project XL and XLC
  - B. Overview of the Steele County XLC Project
    - 1. Description of the Steele County Community XL Project
    - 2. What Are the Environmental Benefits of the Project?
    - 3. What are the Economic Benefits and Paperwork Reduction Deriving from the Project?
    - 4. Stakeholder Involvement
    - 5. What is the Project Duration and Completion Date?
    - 6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Rule?
    - 7. How May the Project be Terminated?
  - III. Rule Description
    - A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project
    - B. Changes to the Proposed Rule
  - IV. Response to Significant Public Comments
  - V. What Is the Effective Date of this Rule?
  - VI. Additional Information
    - A. How Does This Rule Comply with Executive Order 12866?
    - B. Is a Regulatory Flexibility Analysis Required?
    - C. Is EPA Required to Submit a Rule Report Under the Congressional Review Act?
    - D. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?
    - E. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
    - F. How Does This Rule Comply With Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
    - G. How Does This Rule Comply with Executive Order 13132 on Federalism?
    - H. How Does This Rule Comply with Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?
    - I. Does This Rule Comply with the National Technology Transfer and Advancement Act of 1995 ("NTTAA")?

### I. Authority

EPA is promulgating this regulation under the authority of sections 307, 308, and 501 of the CWA, 33 U.S.C. 1317, 1318, 1361.

## II. Background

### A. Overview of Project XL and XLC

Each Project XL pilot—"eXcellence and Leadership" is described in a Final Project Agreement (FPA). For this Project XL for Communities (XLC), the FPA sets forth the intentions of EPA, the Minnesota Pollution Control Agency (MPCA) and the Steele County Community with regard to a project developed under Project XLC, an EPA initiative to allow regulated entities to achieve better environmental results using common sense, cost effective strategies. This regulation will enable implementation of the project. Project XL was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to that which would be achieved through compliance with current and future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. Project XLC, excellence and leadership for communities, was developed to focus on communities and local governments or regional organizations that are interested in creating an XL project. See 60 FR 55569 (November 1, 1995). Project XLC encourages potential sponsors to come forward with new approaches to demonstrate community-designed and directed strategies for achieving greater environmental quality consistent with community economic goals. To participate in Project XLC, applicants must develop alternative pollution reduction strategies pursuant to nine criteria: superior environmental results;

stakeholder involvement, support, and capacity for community participation; economic opportunity; test of an innovative multi-media strategy; transferability; feasibility; community planning; identification of monitoring, reporting and evaluation methods; and equitable distribution of environmental risks. Projects must have the full support of affected federal, state and tribal agencies to be selected.

For more information about the XL and XLC criteria, readers should refer to the three descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995; 60 FR 55569, November 1, 1995; and 62 FR 19872, April 23, 1997). For further discussion as to how the Steele County XL Communities project addresses the XLC criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or State-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the

discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., section 104 of the CWA (33 U.S.C. 1254).

#### B. Overview of the Steele County XLC Project

##### 1. Description of the Steele County Community XL Project Community-Based Environmental Regulation

The Steele County XLC pilot project will test the effectiveness of a community-based approach to industrial regulated wastewater effluent reductions and water use reduction controls designed to: (1) Result in pollution prevention; (2) meet the objectives of the CWA regulatory program; and (3) be at least as protective of human health and the environment as the current system. This project will pilot a community-based approach to environmental regulation with the goal of achieving a reduction in the discharge of certain metals to the OWWTF, and Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Kjeldahl Nitrogen (TKN) to the BPWWTF. Other aspects of the pilot program will include water usage reduction, the development and implementation of a storm water and sewer water separation and education plan, and the development of a training and assessment program of an Environmental Management System. If this first phase of the project is considered by the parties to be successful, a Phase II, consisting in general outline of a multi-media approach to environmental permitting based on overall community performance in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability may be considered. Today's rule does not cover or commit to a second phase of this project.

For the purposes of today's rule the group of Owatonna Sponsors who are Participating Industrial Users, includes the following Industrial Users (IUs) in the City of Owatonna: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.-Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company. Two facilities included in the Owatonna Sponsor group, Viracon-Marcon, Inc. and the Wenger Corporation and one Sponsor located in Blooming Prairie, Minnesota, ATOFINA Chemicals, Inc. (formerly Elf Atochem), are not

receiving regulatory flexibility under today's rule and are therefore not included as Participating Industrial Users.

To achieve the objectives of Phase 1 of the Project, part of this project will pilot an incentive-based approach to reduced monitoring requirements. As the Owatonna Sponsors who are Participating Industrial Users, as a group meet certain discharge reduction goals, the City may reduce the required frequency of monitoring for any of the Participating Industrial Users. Other aspects of this pilot program include: (1) Pollutant monitoring may be eliminated where a pollutant is not discharged; (2) in order to encourage water use reduction compliance with a concentration-based Pretreatment Standard may be demonstrated by compliance with an equivalent mass-based limit (as discussed in section III. A.1. of this preamble); and (3) an alternative publication process for Significant Noncompliance (SNC) may be put in place. Finally, Sponsors may seek "No Exposure Certification for Exclusion from NPDES Storm Water Permitting", which is available under existing regulations (40 CFR 122.26(g), pursuant to a change in the regulations found at 64 FR 68722 (December 8, 1999)), and does not require flexibility under today's rule. Each of the elements of the pilot program that require regulatory flexibility are explained in the following sections of this preamble.

To achieve the objectives of this project the Participating Industrial Users have committed to utilize their best efforts to reach certain discharge reduction goals. Only if these goals are met will regulatory flexibility regarding lesser monitoring requirements than currently required under 40 CFR 403.12(e)(1) be granted. Specifically, the Participating Industrial Users located in Owatonna (or the "City") commit to a 20% reduction goal in the amount of nickel, chromium, copper, and zinc (by mass) they discharge to the OWWTF. These reduction goals are for each individual pollutant. If the first 20% reduction goal is met, a further 20% reduction goal may be set for the remaining project term. If the initial 20% reduction goal is met for all pollutants, the City may, at its discretion, reduce the self-monitoring frequency of Owatonna Sponsors who are Participating Industrial Users to once per year. If a second metal reduction goal is set, it need not be achieved in order for the minimum monitoring frequency to remain at once per year and no additional regulatory relief is available upon meeting this second goal; accordingly, today's rule

does not address this second goal. In exercising the discretion provided in today's rule, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and may not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

This project focuses on the four metals slated for 20% release reductions because they are the metals determined to be discharged at the highest levels to the Owatonna wastewater treatment system relative to applicable water quality and biosolids criteria. In addition, the participants are regulated for these pollutants under categorical Pretreatment Standards and influence the loading of these pollutants to the Owatonna wastewater treatment system. Specific reductions of other categorically-regulated metals are not being pursued under this project because they are released in small quantities relative to applicable environmental criteria. Because certain of these other metals may be present at some of the participant facilities, these metals may not qualify for the elimination of monitoring due to no releases. In such cases, the Publicly-Owned Treatment Works (POTW) will need to require continued monitoring of these metals. Through this rule the POTW will be given the discretion to reduce monitoring frequencies for the other categorically-regulated metals to the same extent it is being authorized to consider reduced monitoring for the four metals subject to the 20% reduction goals.

This project will also authorize the City to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply. For such pollutants, the OWWTF will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will need to resume monitoring if sampling indicates that a pollutant is present at above-background levels, or at any time at the discretion of the OWWTF.

If the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the IU's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The Participating Industrial User permit will

also require the User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase of the pollutant in its wastewater due to its activities. The POTW will sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the IU's permit.

One of the goals of this pilot project will be to facilitate water conservation measures at the Sponsors' facilities. The total flow to the OWWTF from the six Owatonna Sponsors who are Participating Industrial Users is 415,000 gallons per day. The Owatonna Sponsors commit to a goal in the FPA of reducing this flow by 10%. To facilitate meeting this goal this rule allows the OWWTF to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Under the proposed rule entitled "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution" (Pretreatment Streamlining Proposal), which was published on July 22, 1999 (64 FR 39564), Control Authorities would be allowed to establish alternative mass limits if an Industrial User has installed Best Available Technology Economically Achievable (BAT), or equivalent to BAT treatment, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use (Control Authority is defined at 40 CFR 403.12 (a) and is a broad term that can mean a POTW with an approved pretreatment program or the Approval Authority (defined at 40 CFR 403.3 (c)) where the POTW does not have an approved pretreatment program. The City of Owatonna has an approved pretreatment program.). While all of the conditions for receiving mass limits laid out in EPA's Streamlining Proposal are not being required for this site-specific rule (see discussion regarding Today's Rule in Equivalent Mass Limits for Concentration Limits section of III.A), EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices. To ensure the continued appropriateness of the specific mass limits, Sponsor industries who are Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a

Participating Industrial User's initial mass limits. The Participating Industrial Users will be required to continue operation of at least the same level of treatment as at the outset of the project. Upon notification of a revised production rate, the City will reassess the appropriateness of the mass limit. Sponsor ATOFINA Chemicals discharges 16,900 gallons per day to the BPWWTF and commits in the FPA to a reduction goal of 10% of this amount. Because ATOFINA Chemicals is currently required to comply with mass-based limits, no change to its limits are required to facilitate water conservation measures.

EPA is today promulgating a site-specific alternative procedure for publishing Significant Noncompliance for Participating Industrial Users. SNC is defined in 40 CFR 403.8(f)(2)(vii) as including violations by an Industrial User which meet one or more of eight specific criteria. Currently, POTWs are required to publish in the largest daily newspaper in the municipality in which the POTW is located a list of Industrial Users who have been in SNC at any time during the previous twelve months. The SNC publication requirement serves at least two important functions: (1) A deterrent effect on Industrial Users to avoid noncompliance generally, and SNC specifically, and (2) notice to the public of Significant Noncompliance. One result of this approach is that, if the POTW publishes the notice for a particular SNC violation after the end of the twelve month period, the publication may not occur close in time to the violation, resulting in a delay between the violation and the notice to the public.

The intent of the alternative procedure promulgated today is to require website notice of all SNC violations, and reserve additional newspaper publication for cases where this format is needed for its potentially greater effect. The Sponsors also intend to promote prompt and appropriate assistance for identifying and correcting violations through a unique community-based approach. Pursuant to the Steele County FPA, an Owatonna Peer Review Committee will be established. This Committee will consist of at least two Owatonna Sponsors not connected to the noncompliance event being reviewed and any stakeholders that wish to participate. The Peer Review Committee will investigate all instances of noncompliance by an Owatonna Sponsor who is a Participating Industrial User and provide recommendations and assistance to expedite a return to compliance. The Peer Review Committee will make

recommendations to the City regarding whether or not publication in a newspaper should occur, in addition to the website publication described below. All recommendations by the Peer Review Committee will be non-binding on the City, and the City must continue to implement its State-approved Enforcement Response Plan. Under the Steele County FPA, the Sponsors will take steps to conduct public outreach on the information available regarding Significant and other noncompliance by the Sponsors, including a description of the Peer Review Committee and its functions, a Committee contact person and telephone number, and notice of Peer Review Committee meetings. Such outreach will include, but not be limited to, periodic (at least annual) mailings to the identified Steele County XL community stakeholders, and notice in the public library.

Any violation which is not corrected within thirty (30) calendar days or which results in pass through (as defined at 40 CFR 403.3(n)) or interference (as defined at 40 CFR 403.3(i)) will continue to be published in a newspaper as currently required in Part 403. All SNC violations, whether published in a newspaper or not, will be published as soon as is practicable on the MPCA web site. The website must contain an explanation of how SNC is determined. A contact name and phone number for information regarding all other violations must also be listed on the MPCA website.

## 2. What Are the Environmental Benefits of the Project?

This XLC project is expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by encouraging the Sponsors to work together in a coordinated manner to efficiently reduce their discharges to the OWWTF. As has been described, the Owatonna Sponsors who are Participating Industrial Users have committed to 20% discharge reduction goals for nickel, chromium, copper, and zinc. Although not receiving regulatory flexibility under today's proposal, ATOFINA Chemicals has committed to analogous discharge reduction goals for BOD, TSS, and TKN to the BPWWTF. The Participating Industrial Users and the Blooming Prairie Sponsor have additionally committed to a goal of at least a 10% reduction in water usage. Besides the direct environmental benefits of these reductions, the Sponsors have agreed to conduct an Environmental Management System (EMS) assessment within eighteen

months of the effective date of the project. In the first year of the project, the Sponsors commit to arrange and participate in training for the development of the EMS. The Sponsors will utilize the information from the EMS assessment to reach the discharge reduction goals as well as to examine their facilities for other possible environmental improvements. The Sponsors have agreed to report to EPA and the MPCA the results of the assessment and the suggestions which have been adopted by each facility. Additionally, the City has identified storm water infiltration into the collection system during wet weather events as a major problem. The Owatonna Sponsors have agreed to work with the City to help alleviate this problem through the development of educational materials which will be distributed to Sponsor employees as well as to the community at large. The Owatonna Sponsors have also committed in the FPA to develop a plan to minimize storm water infiltration into the sewer system at each participating facility.

One unique aspect of this pilot project is the desire of the Sponsor facilities to work together to reach common goals. It is hoped that this cooperation will go beyond the specific goals of this project and result in presently unforeseen environmental benefits.

### 3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?

This XLC Project will encourage the Sponsors to reduce water consumption at their facilities. This may result in reduced water costs for the facilities, without diminishing the level of environmental protection. Assuming the Sponsors discharge lower levels of pollutants to the OWWTF and the BPWWTF, these POTWs may benefit from lower treatment costs. To the extent monitoring and reporting frequencies are reduced under this project, reduced expenditures may result. The EMS assessments may identify further environmental and economic benefits.

### 4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Steele County XLC project. The participants have worked through a Community Advisory Committee, established by the Steele County Project Sponsors, to ensure that the general public has had an opportunity to be involved throughout the development of this project. The participants will continue to work to foster full and open

communication between the general public and the project Sponsors.

In addition, the Peer Review Committee will continue to provide opportunities for input from the community on important compliance issues. For example, if a Sponsor is in noncompliance, the Peer Review Committee will provide input to bring the Sponsor back into compliance. Sponsors will continue outreach work with all stakeholders using the strategies and tactics contained in their Proposed Stakeholder Involvement Plan (June 1999). MPCA, the Steele County Sponsors, Owatonna, Blooming Prairie, and EPA have been involved in the development of this project, and support it. From the beginning of the Steele County XLC process, there has been a high priority on providing opportunity for diverse stakeholder input and review. Public meetings were held in the city of Owatonna on June 9, July 27, and September 23, 1999.

### 5. What Is the Project Duration and Completion Date?

As with all XL projects testing alternative environmental protection strategies, the term of the Steele County Community XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be five (5) years from October 6, 2000 or until October 6, 2005. However, the project may be terminated or suspended at any time for failure to comply with any of the requirements of the rule. If the parties renew the Steele County Community XL Final Project Agreement beyond its initial five year period, then it may be necessary to extend this site-specific rule for an additional period of time.

### 6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Rule?

If EPA determines that it is appropriate to terminate Project participation of one or more Sponsors who are Participating Industrial Users, so that they will no longer be eligible to receive the regulatory flexibility provided in today's rule, EPA will coordinate with the POTW and State to make the necessary changes to the Participating Industrial User's permit. EPA retains its enforcement authority under the CWA to enforce Pretreatment Standards whether or not the POTW or State make such changes to the Participating Industrial User's permit.

### 7. How May the Project Be Terminated?

When the State modifies Owatonna's NPDES permit to incorporate the flexibility in today's rule, it has agreed

to include a reopener provision enabling the State to eliminate this flexibility. The State has agreed to use this reopener provision if the Project is terminated. In the event of early Project termination, EPA will also eliminate the provisions of proposed section 403.19 in advance of its October 6, 2005 expiration date.

## III. Rule Description

### A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project

Equivalent Mass Limits for Concentration Limits (40 CFR 403.19(b))

1. *Existing Requirements (40 CFR 403.6(c)).* National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The Pretreatment Standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) Concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. The current regulations do not allow a mass limit to substitute for a concentration limit when the applicable standard is expressed in terms of concentration. While 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution, the equivalent limit applies in addition to the concentration limit. Today's rule allows a Participating Industrial User who qualifies for flexibility under the rule to demonstrate compliance with the categorical Pretreatment Standard by demonstrating compliance with an equivalent mass-based limit alone.

2. *The Pretreatment Streamlining Proposal.* In its proposed rule entitled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution (64 FR 39564, July 22, 1999) (Pretreatment Streamlining Proposal), EPA proposed to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an Industrial User has installed model treatment technology or a treatment technology that yields optimum removal efficiencies, and the Industrial User is employing water conservation methods

and technologies that substantially reduce water use. The Agency, however, solicited comments on whether mass limits would be appropriate in other situations. EPA proposed that 40 CFR 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of concentration-based limits for Industrial Users. The Control Authority would be required to document how the mass limits were derived and make this information publicly available.

The July 22, 1999, proposed rule also specifically referenced the Steele County XL Community Project and indicated that, if this project were ready to proceed before EPA finalized the complete Pretreatment Streamlining proposal, EPA may promulgate, based on that proposal and comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change proposed for 40 CFR 403.6(c).

3. *Today's Rule.* To facilitate water use reduction by industries involved in the Steele County XLC Project, EPA is allowing the City of Owatonna, which is the Control Authority for the Owatonna Sponsor industries, the Participating Industrial Users, to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. For this site-specific rule, EPA will not require Approval Authority review of equivalent mass-based limits in addition to POTW approval because EPA believes that existing Approval Authority oversight is sufficient to ensure that equivalent mass-limits are properly calculated and applied. EPA expects that the experience with Steele County on this element of today's rule may well inform whether Approval Authority review should be required in the Pretreatment Streamlining Proposal. Mass limits must be established by multiplying the five year, long term average process flows of the Participating Industrial Users (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standards. In general, flows used to establish mass-based limits must be appropriate in relation to current production or known future production, and will be determined based on consultation between the industry and the City of Owatonna. EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula", EPA833-B-85-201, September 1985 provides

additional guidance on establishing appropriate long-term average flows.

Importantly, today's rule will not affect the applicability of categorical Pretreatment Standards. Section 307(d) of the Clean Water Act prohibits the owner or operator of any source from operating in violation of any Pretreatment Standard. See 33 U.S.C. 1317(d). Today's rule will simply allow a Participating Industrial User to demonstrate compliance with a concentration-based Pretreatment Standard by meeting a properly-calculated, mass-based equivalent. Today's rule does not affect the underlying categorical Pretreatment Standard and, therefore, does not improperly transfer standard-setting authority to the City of Owatonna. Compliance with a mass-based limit may be used to demonstrate compliance with a categorical Pretreatment Standard only to the extent that the mass-based equivalent is properly calculated. In any event, EPA retains its authority to oversee POTW implementation of categorical Pretreatment Standards, including the authority to ensure that equivalent mass-based limits correctly interpret and apply concentration-based Pretreatment Standards. EPA notes that these provisions are similar to the existing authority to allocate equivalent mass limits or concentration limits for production-based standards. See 40 CFR 403.6(c)(2).

In return for this flexibility, the Sponsor industries, the Participating Industrial Users, are committing as a group to reduce water usage by 10 percent over the initial five-year project period. In this site-specific rule EPA is not conditioning the availability of mass-based limits on the use of water conservation methods and technologies (as it would in the Pretreatment Streamlining Rule) because EPA wishes to determine whether the structure of today's rule would result in the desired reduction in water use without imposing preconditions that may limit more widespread participation. For the same reason, EPA is not requiring that Participating Industrial Users generate complex technical studies to demonstrate the necessity of equivalent mass-based limits. In addition, this rule will not require that Participating Industrial Users utilize model treatment technologies that serve as the basis for the applicable Pretreatment Standards. Instead, EPA is interested in determining whether or not it would be sufficient to prevent facilities from complying with the applicable Standards, in the event of production decreases, by requiring that the facility

maintain at least the same level of treatment as at the time an equivalent mass limit is established. To ensure the continued appropriateness of the specific mass limits, the Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from the previous year's average. Upon notification, the City will reassess the appropriateness of the mass limit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise IU permits issued to Participating Industrial Users to enable it to establish alternative mass limits. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Sampling for Pollutants Not Present (40 CFR 403.19(c))

1. *Existing Requirements (40 CFR 403.12(e), 403.8(f)(2)(v)).* Currently, 40 CFR 403.12(e)(1) requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year, indicating the nature and concentration of all pollutants in their effluent that are limited by the Standards. 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these Industrial Users at least annually. Sampling is currently required for all pollutants limited by a categorical Pretreatment Standard, even if certain pollutants regulated by the Standard are not reasonably expected to be present.

2. *The Pretreatment Streamlining Proposal.* The July 22, 1999 Pretreatment Streamlining proposal would authorize a Control Authority to allow an Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. The Agency also proposed a reduced sampling requirement for the POTW, to once per permit term, once it had determined that a pollutant was not expected to be present.

The Pretreatment Streamlining proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA did not propose that a specific amount of

sampling data be required but solicited comment on that issue.

3. *Today's Rule.* For purposes of this project, and as specified in Attachment C of the FPA, the City will be authorized to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to reduce the required sampling to less than twice per year, or to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply, with no increase in the pollutant due to the regulated process. For such pollutants, the POTW will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will be in violation of the limit and will need to resume the required sampling if existing sampling indicates the User has violated the limit.

Consistent with the Pretreatment Streamlining Proposal, for purposes of this project, determinations by the City of Owatonna to either waive or reduce Participating Industrial User sampling to less than twice per year will be based on both sampling and other technical data, such as raw material usage, industrial processes, and potential by-products. Existing data on pollutant concentrations of the local public water supply will be used to characterize background concentrations; where a Participating Industrial User uses an alternative water supply, representative influent sampling will need to be provided. At least three years of Participating Industrial User effluent data will then be compared to the background data in making the determination that a given pollutant is not expected to be present. In addition, the city will need to make its determination based on its knowledge of the raw materials used and the facility's processes and potential by-products, but will not consider capability and efficiency of the User's pretreatment system. Where it believes it is necessary to make a determination, the City may require a Participating Industrial User to provide representative data on its untreated effluent.

Once the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the Participating Industrial User's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The IU permit must also require the Participating Industrial User to submit, as part of its regular

semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW must sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the Participating Industrial User's permit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to enable it to eliminate monitoring for pollutants not present. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Monitoring Frequency Reductions (40 CFR 403.19(e))

1. *Existing Requirements (40 CFR 403.12(e)).* As discussed above, 40 CFR 403.12(e)(1) currently requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority twice a year, or more frequently if required by the Pretreatment Standard or the POTW, indicating the nature and concentration of all pollutants in their effluent that are limited by the Pretreatment Standards. The City of Owatonna generally requires its significant IUs to monitor and report on a quarterly basis.

2. *Today's Rule.* Upon initiation of this project, the City will evaluate the recent performance of Sponsor Participating Industrial Users, and may reduce monitoring requirements to twice per year for facilities with satisfactory compliance records. After the first metal reduction goal of 20% is met, the City will be authorized, at its discretion, to reduce the self-monitoring frequency of Participating Industrial Users for any regulated pollutant to once per year. EPA believes that this mechanism will provide an incentive for Participating Industrial Users to reduce their contribution of the specified metals. In exercising this discretion, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and cannot reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

The loading values that were specified in the proposed rule have been adjusted in today's rule based on a 20 percent reduction from the baseline loadings from the final group of

Owatonna Participating Industrial Users.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to reduce monitoring frequencies for regulated pollutants. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Significant Noncompliance Criteria (40 CFR 403.19(f))

1. *Existing Requirements (40 CFR 403.8(f)(2)(vii)).* "Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report Noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among Control Authorities for publishing their

lists of Industrial Users in Noncompliance. Under this provision, Control Authorities are required to annually publish a list of Industrial Users in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order ("Guidance for Developing Control Authority Enforcement Response Plans," EPA 832-B-89-102, September 1989.)

**2. The Pretreatment Streamlining Proposal.** EPA did not propose to amend the entire provision on SNC, or even seek comment on all of it. Instead, the Agency proposed limited changes and sought comment on a number of options for a few specific provisions. With respect to publication, the primary purposes of which are to notify the public of violations and provide a disincentive for violating, EPA proposed to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA also proposed to amend the SNC criteria so that they must only be applied to Significant Industrial Users, and to address more than just daily maximum and monthly average limits. The Agency also sought comments on whether to revise the Technical Review Criteria, whether to revise the SNC criteria for late reports, and whether to codify the rolling quarters approach to determining SNC or adopt some other approach.

**3. Today's Rule.** Under today's site-specific rule, the City will have the discretion to not publish certain instances of SNC by Sponsor Participating Industrial Users in a newspaper. EPA believes that this change will provide faster public notice of SNC and will reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. The City will continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. All SNC violations, whether published in a newspaper or not will be published as

soon as is practicable, on the MPCA web site. The web site will contain an explanation of how SNC is determined, as well as a contact name and phone number for information regarding all other violations. The Owatonna Peer Review Committee system contemplated in the Steele County FPA will not be specified expressly in the rule, but rather is a voluntary agreement on the part of the Sponsors.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

#### *B. Changes to the Proposed Rule*

EPA received no public comments on the proposed rule. EPA has made only one change to the proposed rule. The final rule includes the final list of Participating Industrial Users and adjusts the average daily loadings for chromium, copper, nickel and zinc in § 403.19(e) of the proposal to reflect participation of the final group of Participating Industrial Users.

#### **IV. Response to Significant Public Comments**

EPA received no public comments on the proposed rule.

#### **V. What Is the Effective Date of This Rule?**

Pursuant to 5 U.S.C. 553(d)(1), EPA is making this rule effective immediately upon publication because it relieves a restriction in that it reduces monitoring requirements and as such has the effect of reducing regulatory requirements for the Participating Industrial Users. In addition, pursuant to 5 U.S.C. 553(d)(3), EPA finds that good cause exists to make this rule effective immediately. The Owatonna Wastewater Treatment Plant and six Participating Industrial User facilities are the only regulated entities affected by this rule. The Owatonna Wastewater Treatment Facility and the Participating Industrial Users have had full notice of this site-specific rule. Making the rule immediately effective will allow the MPCA to issue a revised NPDES permit to the Owatonna Wastewater Treatment Facility sooner.

#### **VI. Additional Information**

##### *A. How Does This Rule Comply With Executive Order 12866?*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget

(OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than \$100 million and will not meet any of the other criteria specified in the Executive Order and because this rule affects only six specific private sector facilities and a single Publicly-Owned Treatment Works (POTW), it is not a rule of general applicability or a "significant regulatory action" and therefore not subject to OMB review and Executive Order 12866.

Further today's rule does not affect the POTW or the facilities unless they choose on a voluntary basis to participate in the XL project. Finally, OMB has agreed that review of site-specific rules under Project XL is not necessary.

##### *B. Is a Regulatory Flexibility Analysis Required?*

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a Regulatory Flexibility Analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a Regulatory Flexibility Analysis. Pursuant to section 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities for the reasons explained below.

Consequently, EPA has not prepared a Regulatory Flexibility Analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's General Pretreatment Regulations to modify on a site-specific basis the requirements for pretreatment programs. The rule authorizes the Owatonna, Minnesota Waste Water Treatment Facility, in its discretion, to reduce the required frequency of monitoring for Participating Industrial Users. Only one POTW is subject to this rule and grant of the relief authorized by the rule will reduce costs to the Owatonna Wastewater Treatment Facility's Participating Industrial Users, including any Industrial User that is a small business. Under these circumstances, EPA has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

*C. Is EPA Required To Submit a Rule Report Under the Congressional Review Act?*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability, rules relating to agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially effect the rights or obligations of non-agency parties. 5 U.S.C. 804 (3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability affecting just six private sector facilities and one POTW.

*D. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?*

This action applies to six companies and a single POTW and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*E. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to the OWWTF and certain sponsoring industries. This rule will create no

federal mandate because EPA is imposing no new enforceable duties. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with MPCA and the OWWTF and received meaningful and timely input in the development of this rule.

*F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This rule does not impose any new or amended standards for discharged wastewater resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (*e.g.*, buried sewer lines and fenced wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. This rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the regulatory changes will not disproportionately affect children. This rulemaking is thus in compliance with the intent and requirements of the Executive Order.

*G. How Does This Rule Comply With Executive Order 13132 on Federalism?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's rule will not take effect unless Minnesota chooses to adopt equivalent requirements through revisions to Owatonna's NPDES permit and Owatonna chooses to take the steps to implement the rule and make revisions to any local law and Industrial User permits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

*H. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or

uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities". Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of Steele County. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*I. Does This Rule Comply With the National Technology Transfer and Advancement Act of 1995 "NTTAA"?*

Section 12(d) of NTTAA, Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This rulemaking sets equivalent means of expressing the same technical standards, and of determining compliance with those standards. It also uses voluntary goals to achieve pollutant reductions beyond those required by the technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 403**

Environmental protection, Confidential business, Reporting and

recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 29, 2000.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 403—GENERAL  
PRETREATMENT REGULATIONS FOR  
EXISTING AND NEW SOURCES OF  
POLLUTION**

1. The authority citation for part 403 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

2. Section 403.19 is added to read as follows:

**§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.**

(a) For the purposes of this section, the term "Participating Industrial Users" includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.—Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not

maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in § 403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by § 403.12(e):

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR \_\_\_\_\_, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e)."

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than 0.68 pounds per day of chromium, 0.25 pounds per day of copper, 1.17 pounds per day of nickel, and 1.01 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of § 403.12(e) with an annual report provided on a date specified by

Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in § 403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in § 403.8(f)(2)(vii).

(g) The provisions of this section shall expire on October 6, 2005.

[FR Doc. 00-25746 Filed 10-5-00; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Parts 412, 413 and 489

[HCFA-1005-CN2]

RIN 0938-A156

#### Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Correction.

**SUMMARY:** This document corrects several typographical errors that appeared in the notice of delay of effective date for the final rule with comment period published in the **Federal Register** on June 30, 2000, entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date."

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Janet Wellham, (410) 786-4510.

**SUPPLEMENTARY INFORMATION:**

## Background

In FR Doc. 00-16586 of June 30, 2000 (65 FR 40535), there were several typographical errors. The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on June 30, 2000.

## Correction of Errors

In FR Doc. 00-16586 on June 30, 2000, make the following corrections:

1. On page 40535, column three, in the **DATES** section, "§ 412.24" is corrected to read "§ 413.24", and § 489.24(h) is corrected to read "§ 489.24."

2. On page 40537, column one, the third full paragraph, line two, "§ 412.24" is corrected to read "§ 413.24", and "§ 489.24(h)" is corrected to read "§ 489.24."

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 21, 2000.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 00-25498 Filed 10-5-00; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 422

[HCFA-1030-CN2]

RIN 0938-A129

#### Medicare Program; Establishment of the Medicare+Choice Program; Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period; Correction.

**SUMMARY:** On June 29, 2000, we published in the **Federal Register**, at 65 FR 40170, a final rule with comment period that responded to comments on the June 26, 1998 interim final rule that implemented the Medicare+Choice (M+C) program and made revisions to those regulations where warranted. We also made revisions to the regulations that were necessary to reflect the changes to the M+C program resulting from the Balanced Budget Refinement Act of 1999. This document corrects omissions made in the June 29, 2000 document regarding deeming status.

**EFFECTIVE DATE:** July 31, 2000.