

DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

GENERAL RULES

(By authority conferred on the water resources commission by sections 2 and 5 of Act No. 245 of the Public Acts of 1929, as amended, sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, and Executive Order No. 1976-8a, being §§323.2, 323.5, 24.233, and 24.263 of the Michigan Compiled Laws)

PART 23. PRETREATMENT

R 323.2301 Purpose and applicability.

Rule 1. (1) These rules are promulgated to implement the pretreatment responsibilities under the clean water act and the act. These rules establish responsibilities of state and local government, industry, and the public to control pollutants which pass-through or interfere with treatment processes in publicly owned treatment works, which may contaminate sewage sludge, or which cause publicly owned treatment works' worker health and safety problems.

(2) These rules apply to nondomestic users that discharge pollutants to a publicly owned treatment works either directly or indirectly, including by truck, rail, or any other means of discharge, and apply to publicly owned treatment works that receive pollutants from nondomestic users which are subject to pretreatment standards.

History: 1995 AACs.

R 323.2302 Definitions.

Rule 2. As used in this part:

(a) "Act" means sections 3101 to 3119 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.3101 to 324.3119 of the Michigan Compiled Laws.

(b) "Approval authority" means the department of natural resources.

(c) "Approved program" or "approved pretreatment program" or "publicly owned treatment works' pretreatment program" means a program administered by a publicly owned treatment works which meets the criteria established in R 323.2306 and which has been approved by the approval authority in accordance with R 323.2308.

(d) "Average daily flow" means a reasonable measure of the average daily flow for a 30-day period.

(e) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility needed for compliance with pretreatment standards.

(f) "Categorical industrial user" means all nondomestic users subject to categorical pretreatment standards.

(g) "Categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by the E.P.A. in accordance with sections 307(b) and (c) of the clean water act, 33 U.S.C. §1317, which apply to a specific category of nondomestic users and which appear in 40 C.F.R. chapter I, subchapter N (1990), parts 405-471.

(h) "Clean water act" means the federal water pollution control act, 33 U.S.C. §1251 et seq., as amended.

(i) "Composite sample" means a collection of individual samples which are obtained at regular intervals, collected on a time-proportional or flow-proportional basis, over a specific time period and which provides a representative sample of the average stream during the sampling period.

(j) "Control authority" means the publicly owned treatment works if it has an approved program or means the approval authority until the publicly owned treatment works' program is approved.

(k) "Department" means the director of the department of natural resources or his or her designee.

(l) "Discharge" means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination into any of the waters of the state or upon the ground.

(m) "E.P.A." means the United States environmental protection agency.

(n) "Grab sample" means a sample is taken from a wastestream on a 1-time basis over a period of time of not more than 15 minutes without regard to the flow in the wastestream.

(o) "Interference" means a discharge, alone or in conjunction with a discharge or discharges from other sources, to which both of the following provisions apply:

(i) The discharge inhibits or disrupts the publicly owned treatment works, its treatment processes or operations, or its sludge processes, use, or disposal.

(ii) Pursuant to paragraph (i) of this subdivision, the discharge is a cause of a violation of any requirement of the publicly owned treatment works' permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder, or more stringent state or local regulations:

(A) Section 405 of the clean water act.

(B) The solid waste disposal act, 42 U.S.C. §6901 et seq., including title II, more commonly referred to as the resource conservation and recovery act, and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the solid waste disposal act.

(C) The clean air act, 42 U.S.C. §7401 et seq.

(D) The toxic substances control act, 15 U.S.C. §2601 et seq.

(E) The marine protection, research, and sanctuaries act, 33 U.S.C. §1401 et seq.

(p) "Local limit" means a specific prohibition or limit set by a publicly owned treatment works on discharges by a nondomestic user.

(q) "Municipality" means a county, city, village, township, district, association, or other public body created by or under state law, or an agency or instrumentality of any of them, having jurisdiction over the disposal of wastewater.

(r) "New source" means any building, structure, facility, or installation from which there is or may be a discharge and for which construction commenced after the publication of

proposed pretreatment standards under section 307(c) of the clean water act will be applicable to the source if the standards are thereafter promulgated in accordance with section 307(c), and if any of the following provisions apply:

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

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

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

(s) "Nondomestic user" means an industry, commercial establishment, or other entity that discharges wastewater to a publicly owned treatment works other than, or in addition to, sanitary sewage.

(t) "Pass-through" means a discharge that exits a publicly owned treatment works into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, cause a violation of any requirement of the act.

(u) "Permit" means an authorization, license, or equivalent control document and includes any of the following:

(i) A nondomestic user permit, which is a control document issued by the publicly owned treatment works that controls the wastewater discharges from nondomestic users into the publicly owned treatment works.

(ii) A national pollutant discharge elimination system, which is a permit issued pursuant to section 3112(1) of the act to control wastewater discharges to the surface waters.

(iii) A state permit, which is a permit issued pursuant to section 3112(1) of the act to control wastewater discharges of publicly owned treatment works to the groundwaters.

(v) "Pollutant" means any of the following:

(i) Substances regulated by categorical standards.

(ii) Substances discharged to publicly owned treatment works that are required to be monitored, are limited in the publicly owned treatment works' permit, or are to be identified in the publicly owned treatment works' permit application.

(iii) Substances for which control measures on nondomestic users are necessary to avoid restricting the publicly owned treatment works' approved residuals management program.

(iv) Substances for which control measures on nondomestic users are necessary to avoid operational problems at the publicly owned treatment works.

(v) Substances for which control measures on nondomestic sources are necessary to avoid worker health and safety problems in publicly owned treatment works.

(w) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a publicly owned treatment works. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes; or other means, except for the use of dilution, unless expressly authorized by an applicable pretreatment standard or requirement.

(x) "Pretreatment program" means a nondomestic user waste control program which is required in a publicly owned treatment works' wastewater discharge permit or order of the department and which is developed in accordance with R 323.2306.

(y) "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on a nondomestic user.

(z) "Pretreatment standard" means any regulation containing pollutant discharge limits promulgated in accordance with section 307(b) and (c) of the clean water act and the act. This term includes prohibited discharges and local limits defined in R 323.2303 and categorical standards.

(aa) "Publicly owned treatment works" means a treatment works that is owned by a municipality and includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. The term also includes sewers, pipes, and other conveyances if they convey wastewater to a publicly owned treatment works. The term also means the municipality that has jurisdiction over the indirect discharges to, and the discharges from, a treatment works.

(bb) "Sanitary sewage" means water-carried wastes from toilet, kitchen, laundry, bathing, or other facilities used for household purposes.

(cc) "Significant industrial user" means either of the following:

(i) A nondomestic user subject to categorical pretreatment standards under 40 C.F.R. §403 (1992) and 40 C.F.R. chapter I, subchapter N (1990).

(ii) A nondomestic user to which 1 of the following provisions applies:

(A) The user discharges an average of 25,000 gallons per day or more of process wastewater to the publicly owned treatment works, excluding sanitary, noncontact cooling, and boiler blowdown wastewater.

(B) The user contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works.

(C) The user is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works' operation or for violating any pretreatment standard or requirement.

(iii) Upon a finding that a nondomestic user meeting the criteria in paragraph (ii) of this subdivision has no reasonable potential for adversely affecting the publicly owned treatment works' operation or for violating any pretreatment standard or requirement, the control authority may, at any time, on its own initiative or in response to a petition received from a nondomestic user or publicly owned treatment works, determine that a nondomestic user is not a significant nondomestic user.

(dd) "Significant noncompliance" means any of the following:

(i) Chronic violations of wastewater discharge limits, defined as results of analyses in which 66% or more of all of the measurements taken during a 6-month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter.

(ii) Technical review criteria violations, defined as results of analyses in which 33% or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable technical review criteria. Technical review criteria equals 1.4 for conventional pollutants and 1.2 for all other pollutants, except pH.

(iii) Any other violation of a pretreatment effluent limit, daily maximum, or longer-term average that the control authority determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of publicly owned treatment works' personnel or the general public.

(iv) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment or has resulted in the publicly owned treatment works' exercise of its emergency authority under R 323.2306(a)(vi) to halt or prevent the discharge.

(v) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(vi) Failure to provide, within 30 days after the due date, required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(vii) Failure to accurately report noncompliance.

(viii) Any other violation or group of violations that the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

(ee) "Slug discharge" means any discharge of a nonroutine, episodic nature, including an accidental spill or noncustomary batch discharge.

(ff) "Trade secret" means the whole or any portion or phase of any manufacturing proprietary process or method which is not patented, which is secret, which is useful in compounding an article of trade having a commercial value, and the secrecy of which the owner has taken reasonable measure to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes. Trade secret shall not be construed, for purposes of these rules, to include any information regarding the quantum or character of waste products or their constituents discharged, or sought to be discharged, into the publicly owned treatment works.

(gg) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the nondomestic user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(hh) "Wastewater" means water resulting from industrial and commercial processes and municipal operations, including liquid or water-carried process waste, cooling and condensing waters, and sanitary sewage.

History: 1995 AACs.

R 323.2303 Pretreatment standards.

Rule 3. (1) A nondomestic user may not introduce into any publicly owned treatment works any pollutant that causes pass-through or interference. The control authority shall investigate instances of pass-through or interference and take appropriate enforcement action and inform the responsible nondomestic user of the impact. The general prohibitions of this subrule and the specific prohibitions in subrule (2) of this rule apply to each nondomestic user introducing pollutants into a publicly owned treatment works whether or

not the nondomestic user is subject to any other national, state, or local pretreatment standards or requirements.

(2) In addition to the requirements of subrule (1) of this rule, the following substances shall not be introduced into a publicly owned treatment works:

(a) Pollutants that create a fire or explosion hazard in the publicly owned treatment works, including wastestreams that have a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 C.F.R. §261.21 (1990).

(b) Pollutants that will cause corrosive structural damage to the publicly owned treatment works. Discharges that have a pH lower than 5.0 shall not be discharged, unless the publicly owned treatment works is specifically designed to accommodate the discharges and has been approved by the approval authority.

(c) Solid or viscous pollutants in amounts that will cause obstruction to the flow in the publicly owned treatment works resulting in interference.

(d) Any pollutant, including oxygen-demanding pollutants, released in a discharge at a flow rate or pollutant concentration that will cause interference with the publicly owned treatment works.

(e) Heat that will inhibit biological activity in the publicly owned treatment works resulting in interference, and in no case heat that produces a temperature at the publicly owned treatment works of more than 40 degrees Celsius (104 degrees Fahrenheit), unless the approval authority, at the request of the publicly owned treatment works, approves alternate temperature limits as part of the approved program.

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

(g) Pollutants that result in the presence of toxic gases, vapors, or fumes within the publicly owned treatment works in a quantity that may cause acute worker health or safety problems.

(h) Any trucked or hauled pollutants, except at discharge points designated by the publicly owned treatment works, but only when trucked or hauled in compliance with the state and federal hazardous waste and liquid industrial waste laws.

(3) A nondomestic user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subrule (1) of this rule and the specific prohibitions in subrule (2)(c), (d), (e), and (f) of this rule if the user can demonstrate both of the following:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass-through or interference.

(b) A local limit designed to prevent pass-through or interference was developed in accordance with subrule (4) of this rule for each pollutant in the user's discharge that caused pass-through or interference, and the user was in compliance with each local limit directly before and during the pass-through or interference, or if a local limit designed to prevent pass-through or interference has not been developed in accordance with subrule (4) of this rule for the pollutant that caused the pass-through or interference, the user's discharge directly before and during the pass-through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the publicly owned treatment works was regularly in compliance with its national pollutant discharge

elimination system permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(4) All of the following provisions apply to local limits:

(a) Publicly owned treatment works required by permit to develop a pretreatment program shall develop and enforce local limits to implement the prohibitions listed in subrules (1) and (2) of this rule. Each publicly owned treatment works that has an approved pretreatment program shall review and update the local limits, as follows:

(i) When new pollutants are introduced.

(ii) When new pollutants that are previously unevaluated are identified.

(iii) When substantial increases of pollutants are proposed as required in the notification of new or increased uses in accordance with the provisions of 40 C.F.R. §122.42 (1990).

(iv) As required in a national pollutant discharge elimination system permit application in accordance with the provisions of 40 C.F.R. §122.21(j)(4) (1990).

(b) In addition to the requirements of subdivision (a) of this subrule, each publicly owned treatment works shall evaluate the need for local limits for all pollutants of concern. At a minimum, the publicly owned treatment works shall evaluate the following parameters for local limits: arsenic, cadmium, chromium, copper, cyanide, lead, mercury, nickel, silver, and zinc. Sufficient representative data shall be obtained for determining the limits by performing any of the following monitoring plans:

(i) One sample each per month for a year of wastewater treatment plant influent, effluent, sludge, discharges at other locations, as appropriate, and sanitary sewage, with not less than 2 separate sampling events each weekday, Monday to Friday.

(ii) Six samples each taken over a 4-week period of wastewater treatment plant influent, effluent, sludge, discharges at other locations, as appropriate, and sanitary sewage, with at least 1 sampling event each weekday, Monday to Friday.

(iii) An alternative plan, which may include historical data, which is approved by the approval authority.

(c) Local limits shall not be adopted without public notice and an opportunity to respond.

(d) Where local limits are developed by a publicly owned treatment works in accordance with this subrule, the limits shall be deemed pretreatment standards.

(5) The department retains the right to issue orders or may take other direct enforcement action against nondomestic users. The department shall notify the control authority of any action.

(6) The control authority or any agent duly appointed by the department shall have the right to enter the property of any nondomestic user at reasonable times for the purpose of inspection and sampling. The control authority or the agent shall be allowed access at reasonable times to facilities and records required to be kept by the nondomestic user for the purpose of gathering information to determine applicability, compliance, or noncompliance with these rules.

History: 1995 AACs.

R 323.2304 Effect of rules on local law.

Rule 4. Nothing in these rules is intended to affect any pretreatment standards and requirements established by local law if the local standards and requirements are at least as

stringent as any standards and requirements set forth in national pretreatment standards or any other requirements or prohibitions established under the clean water act or the act.

History: 1995 AACs.

R 323.2305 Pretreatment program applicability.

Rule 5. (1) A state permit or national pollutant discharge elimination system permit issued to a publicly owned treatment works shall contain requirements for pretreatment program development and implementation when the department determines that it is necessary to control the introduction of pollutants into the publicly owned treatment works from nondomestic users.

(2) A publicly owned treatment works shall develop and implement its pretreatment program according to the following criteria if required by order of the department or by its permit:

(a) A publicly owned treatment works which has a total design flow of more than 5 million gallons per day and which receives, from nondomestic users, pollutants that may pass-through or interfere with the operation of the publicly owned treatment works or are otherwise subject to categorical pretreatment standards is subject to the federal industrial pretreatment program as set forth in R 323.2306.

(b) A publicly owned treatment works which has a total design flow of 5 million gallons per day or less and which receives from nondomestic users, pollutants that may pass-through or interfere with the operation of the publicly owned treatment works or are otherwise subject to categorical pretreatment standards is subject to the Michigan industrial pretreatment program, unless the department requires a federal industrial pretreatment program, as set forth in R 323.2306.

(c) A publicly owned treatment works which has a state permit issued under the act to discharge to the groundwater and which has nondomestic users that may cause interference with the publicly owned treatment works or permit violations or has nondomestic users that are otherwise subject to categorical pretreatment standards is subject to the Michigan industrial pretreatment program as set forth in R 323.2306.

(3) A publicly owned treatment works that is required by order of the department or discharge permit to develop an industrial pretreatment program shall submit an approvable program not later than 1 year after written notification.

History: 1995 AACs.

R 323.2306 Industrial pretreatment program requirements; legal authority.

Rule 6. A publicly owned treatment works subject to industrial pretreatment program requirements in accordance with R 323.2305(2) shall develop a pretreatment program based, at a minimum, on the following legal authority and procedures:

(a) The publicly owned treatment works shall operate pursuant to legal authority enforceable in federal or state courts that authorizes or enables the publicly owned treatment works to apply and to enforce the requirements of section 3109 of the act and sections 307(b) and (c) and 402(b)(8) of the clean water act and any rules or regulations implementing those sections within its service area. The authority may be contained in a

statute, ordinance, or series of contracts or interjurisdictional agreements which the publicly owned treatment works is authorized to enact, enter into, or implement and which are authorized by state law. At a minimum, the legal authority shall enable the publicly owned treatment works to do all of the following:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the publicly owned treatment works by nondomestic users where the contributions do not meet applicable pretreatment standards and requirements or where the contributions would cause the publicly owned treatment works to violate its national pollutant discharge elimination system permit.

(ii) Require compliance with applicable pretreatment standards and requirements by nondomestic users.

(iii) Control, through permit, the contribution to the publicly owned treatment works by each significant industrial user to ensure compliance with applicable pretreatment standards and requirements. Permits shall be enforceable and contain, at a minimum, the following conditions:

(A) A statement of the duration of the permit, which shall not be more than 5 years.

(B) A statement of permit nontransferability without prior notification to the publicly owned treatment works and provision of a copy of the existing permit to the new owner or operator.

(C) Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits, and state and local law.

(D) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and state and local law.

(E) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. The schedule may not extend the compliance date beyond applicable federal deadlines.

(iv) Require the development of a compliance schedule by each nondomestic user for the installation of technology required to meet applicable pretreatment standards and requirements and require the submission of all notices and self-monitoring reports from nondomestic users that are necessary to assess and assure compliance by nondomestic users with pretreatment standards and requirements, including the reports required in R 323.2310.

(v) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by nondomestic users, compliance or noncompliance with applicable pretreatment standards and requirements by nondomestic users. Representatives of the publicly owned treatment works shall be authorized to enter any premises of any nondomestic user in which a discharge source or treatment system is located or in which records are required to be kept under R 323.2310 to assure compliance with pretreatment standards. The authority shall be at least as extensive as the authority provided under section 308 of the clean water act and section 3105 of the act.

(vi) Obtain remedies for noncompliance by any nondomestic user with any pretreatment standard and requirement. All publicly owned treatment works shall be able to seek injunctive relief for noncompliance by nondomestic users with pretreatment standards and requirements. All publicly owned treatment works shall also have authority to seek or

assess civil or criminal penalties as authorized by state law for each violation by nondomestic users of pretreatment standards and requirements. Pretreatment requirements that will be enforced through the remedies in this subrule include the following:

(A) The duty to allow or carry out inspections, entry, or monitoring activities.

(B) Any rules, regulations, or orders issued by the publicly owned treatment works.

(C) Any requirements set forth in permits issued by the publicly owned treatment works.

(D) Any reporting requirements imposed by the publicly owned treatment works or these rules. The publicly owned treatment works shall have authority and procedures, after informal notice to the discharger, to immediately and effectively halt or prevent any discharge of pollutants to the publicly owned treatment works that reasonably appears to present an imminent endangerment to the health or welfare of persons. The publicly owned treatment works shall also have authority and procedures, which shall include notice to the affected nondomestic users and an opportunity to respond, to halt or prevent any discharge to the publicly owned treatment works which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the publicly owned treatment works.

(vii) Comply with the confidentiality requirements set forth in R 323.2314.

(b) All local units of government that collect wastewater from nondomestic sources shall be responsible for the development and implementation of a pretreatment program that effectively controls the introduction of pollutants into the sewer system consistent with the program developed by the permittee where the permittee is required to develop or implement a pretreatment program by its permit.

(c) The publicly owned treatment works shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the publicly owned treatment works to do all of the following:

(i) Identify and locate all possible nondomestic users that might be subject to the publicly owned treatment works' pretreatment program. Any compilation, index, or inventory of nondomestic users made under this paragraph shall be made available to the approval authority upon request.

(ii) Identify the character and volume of pollutants contributed to the publicly owned treatment works by the nondomestic users identified under subdivision (b)(i) of this rule. The information shall be made available to the approval authority upon request.

(iii) Notify nondomestic users identified under subdivision (b)(i) of this rule of applicable pretreatment standards and any applicable requirements under sections 204(b) and 405 of the clean water act and subtitles C and D of the resource conservation and recovery act of 1976, as amended, 42 U.S.C. §6901 et seq. Publicly owned treatment works subject to a Michigan industrial pretreatment program are not required to inform nondomestic users of subtitles C and D of the resource conservation and recovery act requirements. Within 30 days of approval of a list of significant industrial users pursuant to subdivision (h) of this rule, the publicly owned treatment works shall notify each significant industrial user of its status and of all requirements applicable to the user as a result of its status.

(iv) Receive and analyze self-monitoring reports and other notices submitted by nondomestic users in accordance with the self-monitoring requirements in R 323.2310.

(v) Randomly sample and analyze the effluent from nondomestic users and conduct surveillance activities to identify, independent of information supplied by nondomestic

users, compliance or noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every 2 years, whether each significant industrial user needs a plan to control slug discharges. Publicly owned treatment works subject to a Michigan industrial pretreatment program are not required to evaluate whether significant industrial users need a plan to control slug discharges. The results of the activities shall be available to the approval authority upon request. If the publicly owned treatment works decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) A description of discharge practices, including nonroutine batch discharges.

(B) A description of stored chemicals.

(C) Procedures for immediately notifying the publicly owned treatment works of slug discharges, including any discharge that would violate a prohibition under R 323.2303(2), with procedures for follow-up written notification within 5 days.

(D) If necessary, procedures to prevent an adverse impact from accidental spills, including any of the following:

(1) Inspection and maintenance of storage areas.

(2) Handling and transfer of materials.

(3) Loading and unloading operations.

(4) Control of plant site runoff.

(5) Worker training.

(6) Building of containment structures or equipment.

(7) Measures for containing toxic organic pollutants, including solvents.

(8) Measures and equipment necessary for emergency response.

(vi) Investigate instances of noncompliance with pretreatment standards and requirements as indicated in the reports and notices required under R 323.2310, or indicated by analysis, inspection, and surveillance activities described in subdivision (b)(v) of this rule. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

(d) Publicly owned treatment works that have pretreatment programs required by these rules shall comply with public participation requirements. The public participation requirements shall include provision for at least annual public notification, in the largest newspaper circulated in the municipality in which the publicly owned treatment works is located, of nondomestic users that, at any time during the previous 12 months, were in significant noncompliance, as defined in R 323.2302(dd), with applicable pretreatment requirements. However, publicly owned treatment works subject to a Michigan industrial pretreatment program shall annually publish only categorical industrial users that are in significant noncompliance.

(e) The publicly owned treatment works shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subrules (a), (b), (c), and (d) of this rule.

(f) The publicly owned treatment works shall develop local limits as required in R 323.2303(4) or demonstrate that local limits are not necessary.

(g) The publicly owned treatment works shall develop and implement an enforcement response plan. The plan shall contain detailed procedures indicating how a publicly owned treatment works will investigate and respond to instances of nondomestic user

noncompliance. The plan shall, at a minimum, be in compliance with all of the following provisions:

(i) Describe how the publicly owned treatment works will investigate instances of noncompliance.

(ii) Describe the types of escalating enforcement responses the publicly owned treatment works will take in response to all anticipated types of nondomestic user violations and the time periods within which responses will take place.

(iii) Identify, by title, the official responsible for each type of response.

(iv) Adequately reflect the publicly owned treatment works' primary responsibility to enforce all applicable pretreatment requirements and standards.

(h) The publicly owned treatment works shall prepare a list of its nondomestic users that meet the user criteria in R 323.2302(cc). The list shall identify the criteria in R 323.2302(cc) applicable to each nondomestic user and, for nondomestic users that meet the criteria in R 323.2302(cc)(ii), shall also indicate whether the publicly owned treatment works has made a determination pursuant to R 323.2302(cc)(iii) that the nondomestic user should not be considered a significant industrial user. The list and any subsequent modifications shall be submitted to the approval authority as a nonsubstantial program modification pursuant to R 323.2309. Discretionary designations or de-designations by the control authority shall be deemed to be approved by the approval authority 90 days after submission of the list or modifications, unless the approval authority determines that a modification is a substantial modification. Unless otherwise noted, the provisions specified in this rule apply to both the federal and the Michigan industrial pretreatment programs. Subdivisions (c)(iii) and (v) and (d) of this rule provide exceptions to program requirements for the Michigan industrial pretreatment program.

History: 1995 AACCS.

R 323.2307 Publicly owned treatment works' pretreatment programs; submissions for approval.

Rule 7. (1) A publicly owned treatment works shall submit a complete pretreatment program to the approval authority as required by its permit or by order of the department. The pretreatment program shall contain all of the following information:

(a) A statement from the municipal attorney or a city official acting in a comparable capacity, or the attorney for a publicly owned treatment works that has independent legal counsel, that the publicly owned treatment works has adequate authority to carry out the program described in R 323.2306. The statement shall identify all of the following:

(i) The provision of legal authority under R 323.2306(a) that provides the basis for each procedure under R 323.2306(b).

(ii) The manner in which the publicly owned treatment works will implement the program requirements set forth in R 323.2306(a), including the means by which pretreatment standards will be applied to individual nondomestic users by permit.

(iii) How the publicly owned treatment works intends to ensure compliance with pretreatment standards and requirements and to enforce them in the event of noncompliance by nondomestic users.

(b) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the publicly owned treatment works for its administration of the program. The

submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the publicly owned treatment works' pretreatment program if approved.

(c) A brief description, including organization charts, of the publicly owned treatment works' organization that will administer the pretreatment program. If more than 1 agency is responsible for administration of the program, the responsible agencies shall be identified, their respective responsibilities delineated, and their procedures for coordination set forth.

(d) A description of the funding levels and full- and part-time manpower available to implement the program.

(2) A request for authority to revise categorical pretreatment standards for removal credits shall contain the information required in R 323.2313(a).

(3) Any publicly owned treatment works requesting publicly owned treatment works' pretreatment program approval shall submit to the approval authority 3 copies of the submission described in subrule (1) and, if appropriate, subrule (2) of this rule. Within 60 days after receiving the submission, the approval authority shall make a preliminary determination of whether the submission meets the requirements of subrule (1) and, if appropriate, subrule (2) of this rule. If the approval authority makes the preliminary determination that the submission meets these requirements, the approval authority shall do both of the following:

(a) Notify the publicly owned treatment works that the submission has been received and is under review.

(b) Commence the public notice and evaluation activities set forth in R 323.2308.

(4) If, after review of the submission as provided for in subrule (3) of this rule, the approval authority determines that the submission does not comply with the requirements of subrule (1) and, if appropriate, subrule (2) of this rule, the approval authority shall provide notice, in writing, to the applying publicly owned treatment works and each person who has requested individual notice. The notification shall identify any defects in the submission and advise the publicly owned treatment works and each person who has requested individual notice of the means by which the publicly owned treatment works can comply with the applicable requirements of subrule (1) and, if appropriate, subrule (2) of this rule.

History: 1995 AACs.

R 323.2308 Approval procedures for publicly owned treatment works' pretreatment programs.

Rule 8. (1) The following procedures shall apply to approvals or denials of publicly owned treatment works' pretreatment programs and applications for removal credit authorization:

(a) The approval authority shall have 90 days from the date of public notice of any submission complying with the requirements of R 323.2307 and, where removal credit authorization is sought, complying with R 323.2307 and R 323.2313(a) to review the submission. The approval authority shall review the submission to determine compliance with the requirements of R 323.2306 and, where removal credit authorization is sought, with R 323.2313(a). The approval authority may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in

this rule is extended beyond 30 days or if a public hearing is held as provided for in subdivision (b)(ii) of this subrule. The time for evaluation of the submission shall not be more than a total of 180 days from the date of public notice of a submission meeting the requirements of R 323.2307 and, in the case of a removal credit application, R 323.2307 and R 323.2313(a).

(b) Upon receipt of a submission, the approval authority shall commence its review. Within 20 work days after making a determination that a submission meets the requirements of R 323.2307 and, where removal allowance approval is sought, R 323.2307 and R 323.2313(a), the approval authority shall do both of the following:

(i) Issue a public notice of request for approval of the submission. The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission.

Procedures for the circulation of public notice shall include all of the following:

(A) Mailing notices of the request for approval of the submission to any person or group who has requested individual notice, including those on appropriate mailing lists.

(B) Publication of a notice of request for approval of the submission in a newspaper circulated within the jurisdiction served by the publicly owned treatment works.

(C) The public notice shall provide a period of not less than 30 days following the date of the public notice during which interested persons may submit their written views on the submission.

(D) All written comments submitted during the 30-day comment period shall be retained by the approval authority and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the approval authority.

(ii) Provide an opportunity for the applicant, any interested state or federal agency, or person or group of persons to request a public hearing with respect to the submission. The request for public hearing shall be filed within the 30-day comment period or the extended comment period provided in this rule and shall indicate the interest of the person filing the request and the reasons why a hearing is warranted. The approval authority shall hold a hearing if the publicly owned treatment works requests a hearing. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved and a request for a hearing has been made. Instances of doubt shall be resolved in favor of holding the hearing. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under this rule. In addition, notice of the hearing shall be sent to persons who request individual notice.

(2) At the end of the 30-day comment period or an extended comment period as specified in subrule (1)(b)(i)(C) and (D) of this rule and within the 90-day period or the extended comment period provided for in this rule, the approval authority shall approve or deny the submission based upon the evaluation in accordance with this rule and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the approval authority makes a determination to deny the request, the approval authority shall notify the publicly owned treatment works and each person who has requested individual notice of the denial. The notification shall include suggested

modifications and the approval authority may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(3) The approval authority shall notify persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the approval authority shall cause to be published a notice of its decision in a newspaper circulated within the jurisdiction served by the publicly owned treatment works and of incorporation of the approved pretreatment program into the publicly owned treatment works' permit. The approval authority shall identify, in any notice of a publicly owned treatment works' pretreatment program approval, any authorization to modify categorical pretreatment standards for removal credits in accordance with R 323.2313(a).

History: 1995 AACCS.

R 323.2309 Modification of publicly owned treatment works' pretreatment programs.

Rule 9. (1) Either the approval authority or a publicly owned treatment works that has an approved publicly owned treatment works' pretreatment program may initiate program modification at any time to reflect changes. Program modification is necessary when there is a significant change in the operation in the publicly owned treatment works' pretreatment program that differs from the information in the publicly owned treatment works' submission, as approved under R 323.2308.

(2) Publicly owned treatment works' pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in subrule (3) of this rule, the following provisions shall be complied with:

(i) The publicly owned treatment works shall submit, to the approval authority, a statement of the basis for the desired modification, a modified program description (see R 323.2307(1)), or other documents that the approval authority determines to be necessary under the circumstances.

(ii) The approval authority shall approve or disapprove the federal industrial pretreatment program modification based on the requirements of R 323.2306 following the procedures in R 323.2308. The approval authority shall approve or disapprove the Michigan industrial pretreatment program modification.

(iii) The federal industrial pretreatment program modification shall be incorporated into the publicly owned treatment works' national pollutant discharge elimination system permit after approval. The permit will be modified to incorporate the approved modification in accordance with 40 C.F.R. §122.63(g) (1990). Michigan industrial pretreatment program modifications will be incorporated at the time of permit reissuance or modification.

(iv) The modification shall become effective upon approval by the approval authority. Notice of the federal industrial pretreatment program approval shall be published in the same newspaper as the notice of the original request for approval of the modification under R 323.2308(3).

(b) The publicly owned treatment works shall notify, in a statement similar to that provided for in subdivision (a)(i) of this subrule, the approval authority of any other nonsubstantial modifications to its federal industrial pretreatment program not less than 30 days before they are to be implemented by the publicly owned treatment works. The

nonsubstantial program modifications shall be deemed to be approved by the approval authority 90 days after the submission of the publicly owned treatment works' statement, unless the approval authority determines that a modification submitted is a substantial modification. Following approval by the approval authority, the modifications shall be incorporated into the publicly owned treatment works' permit in accordance with 40 C.F.R. §122.63(g) (1990). If the approval authority determines that a modification reported by a publicly owned treatment works in its statement is a substantial modification, the approval authority shall notify the publicly owned treatment works and initiate the procedures in subdivision (a) of this rule.

(3) The following are substantial modifications for purposes of this section:

(a) Changes to the publicly owned treatment works' legal authorities.

(b) Changes to local limits that result in less stringent local limits.

(c) Change to the publicly owned treatment works' nondomestic user permit procedure, as described in R 323.2306(a)(iii).

(d) Changes to the publicly owned treatment works' method for implementing categorical pretreatment standards.

(e) A decrease in the frequency of self-monitoring or reporting required of nondomestic users.

(f) A decrease in the frequency of nondomestic user inspections or sampling by the publicly owned treatment works.

(g) Changes to the publicly owned treatment works' confidentiality procedures.

(h) Significant reductions in the publicly owned treatment works' pretreatment program resources, including personnel commitments, equipment, and funding levels.

(i) Changes in the publicly owned treatment works' sludge disposal and management practices.

(4) The approval authority may designate other specific modifications, in addition to those listed in subrule (3) of this rule, as substantial modifications.

(5) A modification that is not included in subrule (3) of this rule is a substantial modification for purposes of this rule if any of the following provisions apply to the modification:

(a) It would have a significant impact on the operation of the publicly owned treatment works' pretreatment program.

(b) It would result in an increase in pollutant loadings at the publicly owned treatment works.

(c) It would result in less stringent requirements being imposed on nondomestic users of the publicly owned treatment works.

History: 1995 AACs.

R 323.2310 Reporting requirements for publicly owned treatment works and nondomestic users.

Rule 10. (1) The control authority may require the submission of data in a standardized format.

(2) Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under R 323.2311(2), whichever is later, existing nondomestic users subject

to the categorical pretreatment standards and currently discharging, or scheduled to discharge, to a publicly owned treatment works shall be required to submit, to the control authority, a report that contains all of the information listed in this rule. Where reports containing this information already have been submitted to the approval authority or E.P.A. in compliance with the requirements of 40 C.F.R. §128.140(b) (1977), the nondomestic user will not be required to submit the information again. Not less than 90 days before the commencement of a discharge, sources that become nondomestic users subsequent to the promulgation of an applicable categorical standard and new sources shall be required to submit, to the control authority, a report that contains the information listed in subdivisions (a) to (e) of this subrule. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions (d) and (e) of this rule. All of the following information shall be submitted pursuant to this rule:

(a) The nondomestic user shall submit the name and address of the facility including the name of the operator and owners.

(b) The nondomestic user shall submit a list of any environmental control permits held by or for the facility.

(c) The nondomestic user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by the nondomestic user. The description should include a facility drawing and schematic process diagram that indicates points of discharge to the publicly owned treatment works and from which processes the discharges originate.

(d) The nondomestic user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the publicly owned treatment works from each of the following:

(i) Regulated process streams.

(ii) Other streams as necessary to allow use of the combined wastestream formula specified in R 323.2311(6). The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) All of the following information shall be provided with respect to the measurement of pollutants:

(i) The nondomestic user shall identify the pretreatment standards, including state or local standards, applicable to each regulated process.

(ii) In addition, the nondomestic user shall submit the results of sampling and analysis identifying the nature and concentration or mass, where required by the standard or control authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration or mass, where required, shall be reported. The sample shall be representative of daily operations.

(iii) A minimum of 4 grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples shall be obtained through flow-proportional composite sampling techniques where feasible. The control authority may waive flow-proportional composite sampling for any nondomestic user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques

or through a minimum of 4 grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

(iv) With the exception of the pollutants specified in paragraph (iii) of this subdivision, the user shall take a minimum of 1 representative sample to compile the data necessary to comply with the requirements of this subrule.

(v) Samples should be taken immediately downstream from pretreatment facilities if the facilities exist or immediately downstream from the regulated process if pretreatment facilities do not exist. If other wastewaters are mixed with the regulated wastewater before pretreatment, the nondomestic user should measure the flows and concentrations necessary to allow use of the combined wastestream formula specified in R 323.2311(7) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with R 323.2311(5), the adjusted limit and supporting data shall be submitted to the control authority.

(vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. part 136 (1992). Where 40 C.F.R. part 136 (1992) does not contain sampling or analytical techniques for the pollutant in question, or where the E.P.A. determines that the part 136 (1992) sampling and analytical techniques are inappropriate for them pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the publicly owned treatment works or other parties, approved by the E.P.A.

(vii) The control authority may allow the submission of a baseline report that utilizes only historical data if the data provides information sufficient to determine the need for industrial pretreatment measures.

(viii) The baseline report shall indicate the time, date, and place of sampling and the methods of analysis and shall certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the publicly owned treatment works.

(f) A statement, reviewed by an authorized representative of the nondomestic user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance or additional pretreatment is required for the nondomestic user to meet the pretreatment standards and requirements.

(g) If additional pretreatment or operation and maintenance will be required to meet the pretreatment standards, the shortest schedule by which the nondomestic user will provide such additional pretreatment or operation and maintenance. The completion date in the schedule shall not be later than the compliance date established for the applicable pretreatment standard. All of the following conditions shall apply to compliance schedules:

(i) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the nondomestic user to meet the applicable categorical pretreatment standards. The events may include any of the following:

- (A) The hiring of an engineer.
- (B) Completing preliminary plans.
- (C) Completing final plans.
- (D) Executing contracts for major components.

(E) Commencing construction.

(F) Completing construction.

(G) Other similar major events.

(ii) An increment referred to in this subrule shall not be more than 9 months.

(iii) Not later than 14 days following each date in the schedule and the final date for compliance, the nondomestic user shall submit a progress report to the control authority, including, at a minimum, whether or not the user complied with the increment of progress to be met on a particular date and, if not, the date on which the user expects to comply with the increment of progress, the reason for delay, and the steps being taken by the nondomestic user to return the construction to the schedule established. Not more than 9 months shall elapse between progress reports to the control authority.

(h) Where the nondomestic user's categorical pretreatment standard has been modified by a removal allowance under R 323.2313(a), the combined wastestream formula under R 323.2311(7) or a fundamentally different factors variance under R 323.2313(b) at the time the nondomestic user submits the report required by this rule, the information required by subdivisions (f) and (g) of this subrule shall pertain to the modified limits.

(i) Any changes to information requested under subdivisions (a) to (e) of this subrule shall be submitted by the nondomestic user to the control authority within 60 days.

(3) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the publicly owned treatment works, any nondomestic user subject to pretreatment standards and requirements shall submit, to the control authority, a report containing the information described in subrule (2)(d) to (f) of this rule. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in R 323.2311(5), the report shall contain a reasonable measure of the nondomestic user's long-term production rate. For all other nondomestic users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report shall include the nondomestic user's actual production during the appropriate sampling period.

(4) All of the following provisions apply to periodic reports on continued compliance:

(a) Any nondomestic user subject to a categorical pretreatment standard after the compliance date of the pretreatment standard or, in the case of a new source, after commencement of the discharge into the publicly owned treatment works shall submit, to the control authority semiannually, unless required more frequently in the pretreatment standard or by the control authority or the approval authority, a report indicating the nature and concentration of pollutants in the effluent that are limited by the categorical pretreatment standards. In addition, the report shall include a record of measured or appropriately estimated average and maximum daily flows for the reporting period for the discharge reported in subrule (2)(d) of this rule, except that the control authority may require more detailed reporting of flows.

(b) Where the control authority has imposed mass limitations on nondomestic users as provided for by R 323.2311(5), the report required by subdivision (a) of this subrule shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the nondomestic user.

(c) For nondomestic users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in R 323.2311(5), the report required by subdivision (a) of this subrule shall contain a reasonable measure of the nondomestic user's long-term production rate. For all other nondomestic users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report required by subdivision (a) of this subrule shall include the nondomestic user's actual average production rate for the reporting period.

(5) All categorical and non-categorical nondomestic users shall notify the publicly owned treatment works immediately of all discharges that could cause problems to the publicly owned treatment works, including any slug loadings.

(6) All of the following provisions apply to monitoring and analysis to demonstrate continued compliance:

(a) The reports required in subrules (2), (3), and (4) of this rule shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained in the discharge that are limited by the applicable pretreatment standards. The sampling and analysis may be performed by the control authority instead of the nondomestic user. Where the publicly owned treatment works elects to perform the required sampling and analysis instead of the nondomestic user, the nondomestic user will not be required to submit the compliance certification required under subrules (2)(f) and (3) of this rule. In addition, where the publicly owned treatment works collects all the information required for the report, including flow data, the nondomestic user will not be required to submit the report. The publicly owned treatment works shall provide, to the nondomestic user, within 10 days after the results are available, the results of any sampling the publicly owned treatment works performs for nondomestic user self-monitoring that show a violation of any pretreatment standard. Any certification required by a categorical pretreatment standard shall be included with the semiannual compliance reports.

(b) If sampling performed by a nondomestic user indicates a violation of pretreatment standards, the nondomestic user shall notify the control authority within 24 hours of becoming aware of the violation. The nondomestic user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation; however, the nondomestic user is not required to resample if the control authority performs sampling at the nondomestic user at a frequency of at least once per month or if the control authority performs sampling at the nondomestic user between the time when the nondomestic user performs its initial sampling and the time when the nondomestic user receives the results of the sampling.

(c) The reports required in subrule (4) of this rule shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The control authority shall require a frequency of monitoring that is necessary to assess and assure compliance by nondomestic users with applicable pretreatment standards and requirements.

(d) All analyses shall be performed in accordance with procedures established by the E.P.A. pursuant to section 304(h) of the clean water act and contained in 40 C.F.R. part

136 (1992) or with any other test procedures approved by the E.P.A. Sampling shall be performed in accordance with the techniques approved by the E.P.A. Where the provisions of 40 C.F.R. part 136 (1992) do not include sampling or analytical techniques for the pollutants in question, or where the United States E.P.A. determines that the part 136 (1992) sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the publicly owned treatment works or other parties and approved by the E.P.A.

(e) If a nondomestic user monitors any pollutant more frequently than required by the control authority using the procedures prescribed in subdivision (d) of this subrule, the results of the monitoring shall be included in the report.

(7) The control authority shall require appropriate reporting from nondomestic users that have discharges which are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit, to the control authority, at least semiannually, a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. The reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 C.F.R. part 136 (1992). Where the provisions of 40 C.F.R. part 136 (1992) do not contain sampling or analytical techniques for the pollutant in question, or where the E.P.A. determines that the part 136 (1992) sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the publicly owned treatment works or other persons and approved by the E.P.A. The sampling and analysis may be performed by the control authority instead of the significant noncategorical industrial user. Where the publicly owned treatment works collects all of the information required for the report, the noncategorical significant industrial user will not be required to submit the report. The publicly owned treatment works shall provide, to the nondomestic user, within 10 days after the results are available, the results of any sampling it performs for nondomestic user self-monitoring that show a violation of any pretreatment standard.

(8) Publicly owned treatment works that have approved pretreatment programs shall provide the approval authority with a report that briefly describes the publicly owned treatment works' program activities, including activities of all participating agencies, if more than 1 jurisdiction is involved in the local program. The report required by this subrule shall be submitted not later than 1 year after approval of the publicly owned treatment works' pretreatment program and at least annually thereafter and shall include, at a minimum, the following information:

(a) An updated list of the publicly owned treatment works' nondomestic users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The publicly owned treatment works shall provide a brief explanation of each deletion. The list shall identify which nondomestic users are subject to categorical pretreatment standards and specify which standards are applicable to each nondomestic user. The list shall indicate which nondomestic users are subject to local standards that are more stringent than the categorical pretreatment standards. The publicly owned treatment works shall also list the nondomestic users that are subject only to local requirements.

(b) A summary of the status of nondomestic user compliance over the reporting period.

(c) A summary of compliance and enforcement activities, including inspections, conducted by the publicly owned treatment works during the reporting period.

(d) A summary of toxics monitored of influent, sludge, and effluent.

(e) Any other relevant information requested by the approval authority.

(9) Both of the following provisions apply to the notification of a changed discharge:

(a) A nondomestic user shall promptly notify the publicly owned treatment works in advance of any substantial change in the volume or character of pollutants in its discharge, including all of the following, if applicable:

(i) Groundwaters that are purged for remedial action programs.

(ii) Groundwaters containing pollutants that infiltrate into the sewers.

(iii) The listed or characteristic hazardous wastes for which the nondomestic user has submitted initial notification under subrule (15) of this rule.

(b) Publicly owned treatment works shall evaluate all new or changed discharges with respect to general and specific prohibitions contained in R 323.2303 before acceptance by the publicly owned treatment works.

(10) Publicly owned treatment works shall notify the approval authority of any substantial change in the volume or character of pollutants discharged to or from the publicly owned treatment works as required by 40 C.F.R. §122.42 (1990), or as contained in the notification requirements of the publicly owned treatment works' permit.

(11) The reports required by subrules (2), (3), (4), and (7) of this rule shall include the certification statement as set forth in R 323.2311(2)(b)(ii) and shall be signed as follows:

(a) By a responsible corporate officer if the industrial user submitting the reports required by subrules (2), (3), (4), and (7) of this rule is a corporation. For the purpose of this subrule, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation or means the principal manager of 1 or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures of more than \$25,000,000.00, in second-quarter 1980 dollars, if authority to sign the documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by subrules (2), (3), (4), and (7) of this rule is a partnership or sole proprietorship, respectively.

(c) By a duly authorized representative of the individual designated in this subrule if all of the following provisions apply:

(i) The authorization is made in writing by the individual described in subdivision (a) or (b) of this subrule.

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well or well field, or superintendent or a position of equivalent responsibility or that has overall responsibility for environmental matters for the company.

(iii) The written authorization is submitted to the control authority. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this subrule shall be submitted

to the control authority before or together with any reports to be signed by an authorized representative.

(12) Reports submitted to the approval authority by the publicly owned treatment works in accordance with subrule (8) of this rule shall be signed by a principal executive officer, ranking elected official, or other duly authorized employee if the employee is responsible for the overall operation of the publicly owned treatment works.

(13) The reports and other documents required to be submitted or maintained under this rule shall be subject to all of the following provisions:

(a) 18 U.S.C. section §1001 relating to fraud and false statements.

(b) Section 309(c)(4) of the clean water act, as amended, governing false statements, representation or certification.

(c) Section 309(c)(6) regarding responsible corporate officers.

(d) Section 3115 of the act.

(14) All of the following provisions apply to recordkeeping requirements:

(a) A nondomestic user and publicly owned treatment works subject to the reporting requirements established in this rule shall maintain records of all information resulting from any monitoring activities required by this rule. The records shall include all of the following information for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples.

(ii) The dates analyses were performed.

(iii) Who performed the analyses.

(iv) The analytical techniques and methods used.

(v) The results of the analyses.

(b) A nondomestic user or publicly owned treatment works subject to the reporting requirements established in this rule shall be required to retain, for a minimum of 3 years, any records of monitoring activities and results, whether or not the monitoring activities are required by this rule, and shall make the records available for inspection and copying by the approval authority and the E.P.A. regional administrator and in the case of a nondomestic user, the publicly owned treatment works. The period of retention shall be extended during the course of any pending litigation regarding the nondomestic user or publicly owned treatment works or when requested by the approval authority or the E.P.A. regional administrator.

(c) A publicly owned treatment works to which reports are submitted by a nondomestic user pursuant to subrules (2), (3), (4), and (7) of this rule shall retain the reports for a minimum of 3 years and shall make the reports available for inspection and copying by the approval authority and the E.P.A. regional administrator. The period of retention shall be extended during the course of any pending litigation regarding the discharge of pollutants by the nondomestic user or the operation of the publicly owned treatment works' pretreatment program or when requested by the approval authority or the regional administrator.

(15) All of the following provisions apply to hazardous waste notification:

(a) The nondomestic user shall notify the publicly owned treatment works, the E.P.A. regional waste management division chief, and the department, in writing, of any discharge into the publicly owned treatment works of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. part 261 (1990). The notification shall include

the name of the hazardous waste as set forth in 40 C.F.R. part 261 (1990), the E.P.A. hazardous waste number, and the type of discharge (continuous, batch, or other). If the nondomestic user discharges more than 100 kilograms of the waste per calendar month to the publicly owned treatment works, the notification shall also contain all of the following information to the extent the information is known and readily available to the nondomestic user:

(i) An identification of the hazardous constituents contained in the wastes.

(ii) An estimation of the mass and concentration of the constituents in the wastestream discharged during that calendar month.

(iii) An estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. Nondomestic users who commence discharging after the effective date of this rule shall provide the notification not later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subdivision need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted under subrule (9) of this rule. The notification requirement in this rule does not apply to pollutants already reported under the self-monitoring requirements of this rule.

(b) Dischargers are exempt from the requirements of subdivision (a) of this subrule during a calendar month in which they discharge 15 kilograms or less of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. 261.30(d) and 261.33(e) (1990). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R. 261.30(d) and 261.33(e) (1990), requires a 1-time notification. Discharges in subsequent months of more than the quantities of any hazardous waste specified in this subdivision do not require additional notification.

(c) If new regulations under section 3001 of the resource conservation recovery act of 42 U.S.C. §6901 et seq., identify additional characteristics of hazardous waste or list any additional substance as a hazardous waste, the nondomestic user shall notify the publicly owned treatment works, the E.P.A. regional waste management division chief, and state hazardous waste authorities of the discharge of the substance within 90 days of the effective date of the regulations.

(d) If notification is made under subdivision (a) of this subrule, the nondomestic user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

History: 1995 AACS.

R 323.2311 National pretreatment standards; categorical standards.

Rule 11. (1) National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties that may be discharged to a publicly owned treatment works by existing or new nondomestic users in specific industrial subcategories will be established by E.P.A. as separate regulations under the appropriate subpart of 40 C.F.R. chapter I, subchapter N (1990). The standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in these rules.

(2) All of the following provisions apply to category determination request:

(a) Within 60 days after the effective date of a pretreatment standard for a subcategory under which a nondomestic user may be included, the nondomestic user or publicly owned treatment works may request that the approval authority, as appropriate, provide written certification on whether the nondomestic user falls within that particular subcategory. If an existing nondomestic user adds or changes a process or operation that may be included in a subcategory, the existing nondomestic user shall request the certification before commencing to discharge from the added or changed processes or operation. A new source shall request the certification before commencing to discharge. Where a certification is submitted by a publicly owned treatment works, the publicly owned treatment works shall notify any affected nondomestic user of the submission. The nondomestic user may provide written comments on the publicly owned treatment works submission to the approval authority within 30 days of notification.

(b) Each request shall contain both of the following:

(i) A statement describing which subcategories might be applicable.

(ii) A statement citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this subdivision shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(c) The approval authority will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the approval authority that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the approval authority, the request for a determination shall be denied.

(d) When the approval authority receives a submittal, the authority will, after determining that it contains all of the information required by subdivision (b) of this subrule, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The E.P.A. has the opportunity to review any information and make a final determination in accordance with 40 C.F.R. §403.6(a)(4) (1992). The approval authority will then make a written determination of the applicable subcategory and state the reasons for the determination. The approval authority shall send a copy of the determination to the affected nondomestic user and the publicly owned treatment works.

(e) Within 30 days following the date of receipt of notice of the final determination as provided for by subdivision (d) of this subrule, the requester may submit a petition to reconsider or contest the decision to the E.P.A. regional administrator, who shall act on the petition expeditiously and state the reasons for his or her determination in writing.

(3) Compliance by existing sources with categorical pretreatment standards shall be attained within 3 years of the date the standard is effective, unless a shorter compliance time is specified in the appropriate subpart of 40 C.F.R. chapter I, subchapter N (1990).

Direct dischargers that have had national pollutant discharge elimination system permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the clean water act shall be required to meet compliance dates set in any applicable categorical pretreatment standard. Existing sources that become nondomestic users subsequent to the promulgation of an applicable categorical pretreatment standard shall be considered existing nondomestic users, except where the sources meet the definition of a new source as defined in R 323.2302(r).

(4) New sources shall install, have in operating condition, and start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, but not more than 90 days, new sources shall meet all applicable pretreatment standards. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of R 323.2302(r)(ii) or (iii), but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source as defined in R 323.2302(r) has commenced if the owner or operator has done either of the following:

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

(i) Any placement, assembly, or installation of facilities or equipment.

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

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

(5) All of the following provisions apply to concentration and mass limits:

(a) Pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Where possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state, or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard or as otherwise specified by the standard.

(b) When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual nondomestic users.

(c) A control authority calculating equivalent mass-per-day limitations under subdivision (b) of this subrule shall calculate the limitations by multiplying the limits in the standard by the nondomestic user's average rate of production. The average rate of production shall be based not upon the designed production capacity, but rather upon a reasonable measure of the nondomestic user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(d) A control authority calculating equivalent concentration limitations under subdivision (b) of this subrule shall calculate the limitations by dividing the mass limitations derived under subdivision (c) of this subrule by the average daily flow rate of the nondomestic user's regulated process wastewater. The average daily flow rate shall be based upon a reasonable measure of the nondomestic user's actual long-term average flow rate, such as the average daily flow rate during the representative year.

(e) Equivalent limitations calculated in accordance with subdivisions (c) and (d) of this subrule shall be deemed pretreatment standards for the purposes of these rules. Nondomestic users will be required to comply with the equivalent limitations instead of the promulgated categorical standards from which the equivalent limitations were derived.

(f) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where the standards being applied specify the different limits set forth in this subdivision, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(g) A nondomestic user operating under a permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within 2 business days after the nondomestic user has a reasonable basis to know that the production level will significantly change within the next calendar month. A nondomestic user that does not notify the control authority of the anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate.

(6) Except where expressly authorized to do so by an applicable pretreatment standard or requirement, a nondomestic user shall not increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on nondomestic users that are using dilution to meet applicable pretreatment standards or requirements and in other cases where the imposition of mass limitations is appropriate.

(7) Where process effluent is mixed before treatment with wastewaters other than those generated by the nondomestic user regulated process, fixed alternative discharge limits may be derived by the control authority or by the nondomestic user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or nondomestic user shall calculate both an alternative daily maximum value using the daily maximum value or values specified in the appropriate categorical pretreatment standard or standards and an alternative consecutive sampling day average value using the monthly average value or values specified in the appropriate categorical pretreatment standard or standards. The nondomestic user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves a nondomestic user modification request. Modification is authorized if there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. A nondomestic user shall immediately report the material or significant change to the control authority. Where appropriate, new alternative categorical limits shall be calculated within 30 days. For new sources, flows shall be estimated using

projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(a) Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i .

F_i = the average daily flow of stream i to the extent that it is regulated for the pollutant.

F_D = the average daily flow from boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where the streams contain a significant amount of a pollutant and the combination of the streams, before treatment, with a nondomestic user's regulated process wastestream will result in a substantial reduction of the pollutant, the control authority, upon application of the nondomestic user, may exercise its discretion to determine whether the streams should be classified as diluted or unregulated. In its application to the control authority, the nondomestic user shall provide engineering, production, sampling, analysis, and other necessary information so that the control authority can make its determination or equals the average daily flow from sanitary wastestreams where the streams are not regulated by a categorical pretreatment standard for 1 or more of the following reasons (see R 323.2312):

(i) The pollutants of concern are not detectable in the effluent from the nondomestic user.

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

(iii) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the E.P.A.

(iv) The wastestream contains only pollutants that are compatible with the publicly owned treatment works.

F_T = The average daily flow through the combined treatment facility, includes F_i , F_D , and unregulated streams.

N = The total number of regulated streams.

(b) Alternative mass limit.

$$\left(\sum_{i=1}^N M_i \right) \left(\frac{F_T - F_D}{F_T} \right)$$

$$M_T = \frac{\sum_{i=1}^N F_i}{N}$$

where

MT = the alternative mass limit for a pollutant in the combined wastestream.

Mi = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

Fi = the average flow of stream i to the extent that it is regulated for the pollutant.

FD = the average daily flow from boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where the streams contain a significant amount of a pollutant and the combination of the streams, before treatment, with a nondomestic user's regulated process wastestream will result in a substantial reduction of the pollutant, the control authority, upon application of the nondomestic user, may exercise its discretion to determine whether the streams should be classified as diluted or unregulated. In its application to the control authority, the nondomestic user shall provide engineering, production, sampling, analysis, and other necessary information so that the control authority can make its determination or equals the average daily flow from sanitary wastestreams where the streams are not regulated by a categorical pretreatment standard or equals the average daily flow from any process wastestreams that were or could have been entirely exempted from categorical pretreatment standards for 1 or more of the following reasons (see R 323.2312):

- (i) The pollutants of concern are not detectable in the effluent from the nondomestic user.
- (ii) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects.
- (iii) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the E.P.A.
- (iv) The wastestream contains only pollutants that are compatible with the publicly owned treatment works.

FT = The average flow through the combined treatment facility, includes Fi, FD, and unregulated streams.

N = The total number of regulated streams. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants. Self-monitoring required to ensure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of R 323.2310(6). Where a treated regulated process wastestream is combined before treatment with wastewaters other than those generated by the regulated process, the nondomestic user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the nondomestic user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the nondomestic user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this rule. The nondomestic user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in a nondomestic user's monitoring point or points

will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

History: 1995 AACCS.

R 323.2312 Industrial subcategories considered dilute.

Rule 12. The industrial subcategories listed in appendix D of 40 C.F.R. part 403 (1986) are considered dilute wastestreams for purposes of applying the combined wastestream formula.

History: 1995 AACCS.

R 323.2313 Alternative categorical limits.

Rule 13. Categorical pretreatment standards shall apply to a nondomestic user subject to categorical standards, unless an enforceable alternative limit to the corresponding national categorical standards is derived using any of the following methods:

(a) 40 C.F.R. §403.7 (1993) contains the requirements for removal credits that reflect the removal of pollutants by a publicly owned treatment works discharged by the nondomestic user.

(b) 40 C.F.R. §403.13 (1992) contains the requirements for a fundamentally different factor variance to reflect the existence of data and information that was not considered or available when the national categorical pretreatment standard was promulgated.

(c) 40 C.F.R. §403.15 (1992) contains the requirements for a net/gross calculation to reflect the presence of pollutants in the intake water of a nondomestic user.

(d) R 323.2311(5) contains the requirements for equivalent mass per day limitations.

(e) R 323.2311(7) contains the requirements for combined wastestream formula alternative limitations.

History: 1995 AACCS.

R 323.2314 Confidentiality.

Rule 14. (1) In accordance with Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws, and Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, any information submitted to the approval authority pursuant to these acts that is a trade secret may be claimed as confidential, if so marked at the time of submission.

(2) All discharge information in the possession of the control authority pursuant to these rules shall be available to the public without restriction.

History: 1995 AACCS.

R 323.2315 Upset provision.

Rule 15. (1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the provisions of subrule (2) of this rule are met.

(2) A nondomestic user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that all of the following provisions apply:

(a) An upset occurred and the nondomestic user can identify the cause or causes of the upset.

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.

(c) The nondomestic user has submitted the following information to the publicly owned treatment works within 24 hours of becoming aware of the upset:

(i) A description of the indirect discharge and cause of noncompliance.

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.

(iii) Steps being taken or planned to reduce, eliminate, and prevent a recurrence of the noncompliance.

If this information is provided orally, a written submission shall be provided within 5 days of becoming aware of the upset.

(3) In any enforcement proceeding, the nondomestic user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) In the usual exercise of prosecutorial discretion, agency enforcement personnel should review any claims that noncompliance was caused by an upset. A determination made in the course of the review does not constitute final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(5) The nondomestic user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

History: 1995 AACs.

R 323.2316 Bypass.

Rule 16. (1) A nondomestic user may allow a bypass to occur if the bypass does not cause pretreatment standards or requirements to be violated, but only if the bypass is also for essential maintenance to assure efficient operation. A bypass is not subject to the provisions of subrules (2) and (3) of this rule.

(2) If a nondomestic user knows in advance of the need for a bypass, it shall submit prior notice to the publicly owned treatment works, if possible, not less than 10 days before the date of the bypass. A nondomestic user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the publicly owned treatment works within 24 hours of the time the nondomestic user becomes aware of the bypass. A written submission shall also be provided to the control authority within 5 days of the time the

nondomestic user becomes aware of the bypass. The written submission shall contain all of the following:

- (a) A description of the bypass and its cause.
 - (b) The duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue.
 - (c) Steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the bypass.
- (3) Bypass is prohibited, and the control authority may take enforcement action against a nondomestic user for a bypass, unless all of the following provisions apply:
- (a) Bypass was unavoidable to prevent a loss of life, personal injury, or severe property damage.
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance.
 - (c) The nondomestic user submitted notices as required under subrule (2) of this rule.
 - (4) The control authority may approve an anticipated bypass after considering its adverse effects if the control authority determines that the provisions listed in subrule (3) of this rule will apply.

History: 1995 AACs.

R 323.2317 Federal regulations; adoption by reference.

Rule 17. The following standards are adopted by reference in these rules. Copies are available for inspection at the Lansing office of the department of natural resources and may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost, as of the time of adoption of these rules of \$36.00, or from the Department of Natural Resources, Surface Water Quality Division, P.O. Box 30028, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of 20 cents per page:

- (a) Aluminum forming, 40 C.F.R. part 467 (1988).
- (b) Asbestos manufacturing, 40 C.F.R. part 427 (1979).
- (c) Battery manufacturing, 40 C.F.R. part 461 (1986).
- (d) Builder's paper and board mills, 40 C.F.R. part 431 (1986).
- (e) Carbon black manufacturing, 40 C.F.R. part 458 (1978).
- (f) Coil coating, 40 C.F.R. part 465 (1985).
- (g) Copper forming, 40 C.F.R. part 468 (1986).
- (h) Electrical and electronic components, 40 C.F.R. part 469 (1985).
- (i) Electroplating, 40 C.F.R. part 413 (1986).
- (j) Feedlots, 40 C.F.R. part 412 (1986).
- (k) Ferroalloy manufacturing, 40 C.F.R. part 424 (1986).
- (l) Fertilizer manufacturing, 40 C.F.R. part 418 (1987).
- (m) Glass manufacturing, 40 C.F.R. part 426 (1986).
- (n) Grain mills, 40 C.F.R. part 406 (1986).
- (o) Ink formulating, 40 C.F.R. part 447 (1975).
- (p) Inorganic chemicals, 40 C.F.R. part 415 (1984).

- (q) Iron and steel manufacturing, 40 C.F.R. part 420 (1984).
- (r) Leather tanning and finishing, 40 C.F.R. part 425 (1988).
- (s) Metal finishing, 40 C.F.R. part 433 (1986).
- (t) Metal molding and casting, 40 C.F.R. part 464 (1986).
- (u) Nonferrous metals forming and metal powders, 40 C.F.R. part 471 (1989).
- (v) Nonferrous metals manufacturing, 40 C.F.R. part 421 (1990).
- (w) Organic chemicals, plastics, synthetic fibers, 40 C.F.R. part 414 (1993).
- (x) Paint formulating, 40 C.F.R. part 446 (1975).
- (y) Paving and roofing materials, 40 C.F.R. part 443 (1975).
- (z) Pesticide chemicals, 40 C.F.R. part 455 (1993).
- (aa) Petroleum refining, 40 C.F.R. part 419 (1985).
- (bb) Pharmaceutical manufacturing, 40 C.F.R. part 439 (1986).
- (cc) Porcelain enameling, 40 C.F.R. part 466 (1985).
- (dd) Pulp, paper, and paperboard, 40 C.F.R. part 430 (1986).
- (ee) Rubber manufacturing, 40 C.F.R. part 428 (1978).
- (ff) Soap and detergent manufacturing, 40 C.F.R. part 417 (1975).
- (gg) Steam electric power generating, 40 C.F.R. part 423 (1983).
- (hh) Sugar processing, 40 C.F.R. part 409 (1986).
- (ii) Timber products processing, 40 C.F.R. part 429 (1982).
- (jj) 40 C.F.R. chapter I, subchapter N (1990).
- (kk) 40 C.F.R. S 25 (1979).
- (ll) 40 C.F.R. S 122 (1990).
- (mm) 40 C.F.R. S 128.140(b) (1977).
- (nn) 40 C.F.R. S 136 (1992).
- (oo) 40 C.F.R. S 261 (1990).
- (pp) 40 C.F.R. S 403 (1992).
- (qq) 40 C.F.R. S 403.7 (1993).

History: 1995 AACs.