

Pretreatment Compliance Audit

Summary Report

Discharger: City of Beacon Wastewater Treatment Facility
Dutchess County
SPDES No. NY0025976

Location: 90 Dennings Avenue, Beacon, NY 12508

Contact: David Tavernier, Chief Wastewater Treatment Plant Operator
Greg Post, Senior Operator

Audit Dates: February 28, 2022 (In-Person Interview (partial))
March 17, 2022 (Microsoft Teams Interview)
March 22, 2022 (In-Person Interview, File Review and Industrial
User Site Visits)
March 7, 2023 (Microsoft Teams Closing Conference)

Audited By: Alexandre Remnek, US EPA Region 2

Attachments

Attachment A Industrial User Site Visit Data Sheets
Attachment B Legal Authority Review Checklist

I. Audit Summary

The City of Beacon Wastewater Treatment Facility pretreatment compliance audit (PCA) was conducted in three parts. The in-person interview was truncated on February 28, 2022 and was continued on March 17, 2022 virtually using Microsoft Teams. File review and industrial user visits were conducted on March 22, 2022. A virtual closing conference was conducted on March 7, 2023 using Microsoft Teams.

The PCA was conducted by Alexandre Remnek (US EPA Region 2) (referred to as the Auditor). The City's contacts were David Tavernier, the Chief Wastewater Treatment Plant Operator, and Greg Post, the Senior Wastewater Treatment Plant Operator. At the beginning of the audit, the Auditor discussed the purpose and format of the audit and interviewed the City representative about the City's pretreatment program. Significant Industrial User (SIU) files for review were uploaded by the City of Beacon to a shared online folder. The Auditor also evaluated the City's procedures and legal authority.

As part of the audit, the Auditor reviewed three nondomestic non-categorical SIU discharger files: EarthCare, Fishkill Correctional Facility, and Downstate Correctional Facility. Industrial user inspections were conducted by Beacon staff and the Auditor at EarthCare and Fishkill Correctional Facility.

The last review of the City's pretreatment program was a PCA performed on January 14, 2014 (2014 PCA).

II. WWTP Description

The City of Beacon operates a wastewater treatment plant that serves the City of Beacon and the Dutchess Park Sewer District of the Town of Fishkill. The City of Beacon Water Pollution Control Plant (Beacon WPCP) consists of an activated sludge plant with a design flow of 6.0 million gallons per day (MGD) that provides secondary treatment for an average of 3.2 MGD of sewage. The facility serves a combined population of approximately 16,000 people which includes all of Beacon (population 13,800 in 2020) and from some pump stations in the Town of Fishkill (app. 500,000 gallons of flow). Fishkill operates their own POTW serving the rest of its population.

The influent flow recorder can measure up to 18.0 MGD; sometimes inflow into the Beacon POTW is greater than that. When significant rainfall occurs the inflow rate is approximately 10.0 MGD. Even though the service area only has sanitary sewers and no combined sanitary and stormwater sewers, there is significant inflow and infiltration due to the poor condition of the clay pipe in some areas; these pipes need to be replaced eventually. While there have been adjustments to the POTW's headworks to help better receive the inflow, the POTW has no secondary storage or ability to bypass the plant and therefore all of the wastewater must be treated. Therefore, significant rain events have a significant impact on the headworks and the operation of the wastewater treatment plant. The wastewater goes through mechanical screen and a grit vortex removal system to the primary tanks, then to the aeration basins, then to secondary settlement tanks and finally to the chlorine contact chamber prior to being discharged into the Hudson River.

Sludge goes from the aerobic digester to gravity thickeners, then to the sludge press. Sludge from the Beacon WPCP is incinerated or sent to the Ontario County, Chemung County or Hyland landfills; Beacon has an agreement with Casella and Goulet Trucking hauls the sludge.

Recent upgrades to the POTW include a new headworks system which was installed in October 2020, which allows for the capture of more solids at the headworks. The rebuilding and enhancement of the secondary treatment system was completed in September 2020. New chlorine contact chambers were installed in Fall 2021. There are no other planned changes or upgrades for the POTW in the foreseeable future.

The Beacon Pretreatment Program issues permits to three significant industrial users (SIUs) – none of which are classified by Beacon as categorical industrial users. One of the permitted SIUs is EarthCare, which processes leachate and septic waste, and the other two permitted SIUs are correctional facilities: Downstate Correctional Facility (which closed on March 10, 2022) and Fishkill Correctional Facility. Generally, Beacon issues industry permits for a five-year period. Beacon accepts hauled landfill leachate, sludge and septage, including septage from non-domestic sources such as fast-food restaurants.

III. Industrial User (IU) Characterization		
IUs currently identified by the Control Authority (CA)	IU Type	
3 on March 1; 2 on April 1	Discharging Significant Industrial Users (SIU)	
	3 --> 2	Discharging Non-Categorical SIUs (as defined by the CA) (Downstate Correctional Facility closing on 3/10/2022)
	0	Categorical Industrial Users (CIUs)
	Not applicable (N/A)	Middle Tier CIUs
0	Zero-Discharging CIUs	
N/A	Non-significant CIU (NSCIU)	
0	Other Regulated IUs (e.g. permitted IUs)	
21	Waste Haulers Describe: The City accepts hauled septage and leachate at the WWTP. See Section H.2 of this report for more information.	

IV. Findings Summary Table		
Part V Section Reference – Finding	Requirement(s)	Recommendation(s)
A.1.a – The City has not updated its legal authority to incorporate all of the required streamlining changes.	1	
A.1.b – The City’s staff cannot locate a copy of its ERP; a new ERP must be created and approved.	2	
A.2.a – The intermunicipal agreement does not require contributing jurisdictions to adopt the City of Beacon’s SUO when revisions are made.		1
A.2.b – The current intermunicipal agreement should be revised either to state that no industrial discharge can be accepted by the contributing jurisdiction or should include all the necessary elements to implement the pretreatment program in the contributing jurisdiction.	3	
B.1.a – The City does not routinely conduct an industrial waste survey (IWS) of its service area.	4	
B.1.b – The City’s POTW does not communicate routinely with other City Departments to identify potential industrial users.		2
B.1.c – The City likely does not issue industrial user permits for some industrial users.		3
C.1 – All IU Permits must be issued prior to the start date and signed.	5	

C.4.a – The permits reviewed contain an acceptable statement of non-transferability which is more stringent than Federal regulations.		4
C.4.b – The industrial user permits included a limit for silver which was not based on local limits or categorical limits.	6	
C.4.c – Toluene, BOD and TSS in the industrial user permits are not the same as the local limits in the SUO.	7, 8, 9	
C.4.d – The permits did not clearly state what type of sampling procedure was required to determine “Maximum Effluent Concentration”.	10	
C.4.e – The permits did not specify the frequency of pH sampling and location of the sampling.	11	
C.4.f – The sampling frequency in the EarthCare permit is monthly; in the Fishkill and Downstate. Penitentiary Facilities permits it is yearly for metals and toluene and twice per year for BOD and TSS.	12	5
C.4.g – The permits reviewed did not properly identify the current discharge and sample locations.	13	
C.4.h – The permits reviewed included a statement of criminal penalties, however the SUO and the ERP did not include such a statement.	14	6
C.4.i – The permits reviewed did not include specific language requiring the development of a slug discharge control plan (SDCP).	15	
C.4.j – The permits reviewed did not include a requirement for the industrial user to notify the City of changes that affect the facility’s potential for a slug discharge.	16	
C.4.k – The Sewer Capacity Reservation Agreement between the City of Beacon and EarthCare contradicts both Federal pretreatment regulations, the City of Beacon SUO and the EarthCare permit and must be rescinded.	17	
D.1 – The City has not adopted the required 2005 streamlining provisions.	18	
D.2 – The City’s Sewer Use Ordinance should include all Federal pretreatment regulations.	19	
D.3 – The City does have agreements in place with its contributing jurisdictions; the agreements do not contain provisions related to implementing the pretreatment program.	20	7
D.4 - The definition of significant violation is missing in the City of Beacon’s SUO.	21	
E.1 – The City of Beacon has not applied all applicable pretreatment standards.	22	

E.2 – The City does not document annual evaluations of the need for each SIU to develop a SDCP.		8, 9
F.1.a – The City has difficulty scheduling sampling at the penitentiaries and does not conduct in-person inspections of the facilities.		10
F.1.b – City staff did not conduct a complete inspection of all industrial wastewater generating processes and pretreatment facilities within the Fishkill and Downstate Penitentiary Facilities.	23	
F.1.c – The City’s inspection report sheet is missing several components and the inspection report sheets are not completely filled out.		11, 12
F.2.a – The City failed to sample for temperature, flow and pH, which are SIU permit parameters.	24	
F.2.b – For annual sampling, the VOC samples did not comply with 40 CFR 136. The method used for BOD and TSS is not the most recent method in 40 CFR 136.	25	
F.5.a – The City did not receive proper semi-annual reports from their industrial users.	26	
F.5.b – The City did not receive annual reports from the Fishkill and Downstate Correctional Facilities in 2020.		13
F.5.c – EarthCare did not self-monitor for all pollutants listed in their permit. Sampling did not occur monthly as required in their industrial user permit.	27	
F.5.d – EarthCare’s 9/23/21 analytical report chain-of-custody sheet lacks pertinent information; the 2021 Fishkill analytical reports did not include a chain-of-custody.	28	
F.5.e – The industrial user’s laboratory analysis did not comply with 40 CFR 136. For analysis of samples collected on behalf of the industrial users, the VOC samples did not comply with 40 CFR 136. The method used for BOD and TSS is not the most recent method in 40 CFR 136.	29	
F.6 – There was no documentation of resampling performed by EarthCare or Downstate within 30 days of a pollutant exceedance.	30	
F.8 – Non-categorical SIUs have not been self-monitoring and reporting every 6 months.	31	
F.10 – It is not clear whether the SIUs have been notified of the hazardous waste reporting requirements.		14
F.11 – The City has accepted electronic reports from its SIUs.	32	
G.1 – The City did not take enforcement for all industrial wastewater effluent exceedances.	33	

G.2 – The City’s Enforcement Response Plan needs to be written and approved.	34	
G.3 – The City failed to evaluate SIUs for SNC for violations of concentration limits.	35	
H.3 – Beacon does not have a surcharge program.		15
H.4 - The City of Beacon does not include fact sheets in their industrial user files.		16
H.5 – The City has not identified all dental facilities and has not received one-time certification forms from all dental facilities.	36	
Industrial User Visit- EarthCare: EarthCare does not have any additional on-site pretreatment for its effluent.		17
Industrial User Visit- Fishkill: There is rapid corrosion of wastewater treatment equipment in the Sewer Plant room.		18
Industrial User Visit- Fishkill: Grease Traps are not replaced and are not maintained properly.		19

V. Evaluation

The Auditor discussed the topics in subsections A-H regarding the City’s pretreatment program with the City representative. The Auditor also reviewed SIU files to assess the retention and maintenance of required program documents and to generally evaluate overall program implementation. The following sections describe program deficiencies and areas of concern identified during the audit process along with requirements, recommendations, and associated references to 40 CFR Part 403.

A. Control Authority (CA) Pretreatment Program Modification

1. When was the last program modification? Did the CA notify the EPA of program modifications? (40 CFR 403.18)

The City’s Sewer Use Ordinance (SUO) was last revised in 2011¹. The SUO was updated to incorporate the publication requirements in the definition of significant noncompliance (SNC). The City’s staff does not have a copy of their most recent local limits development package and are unsure when they City adopted the WWTP’s current maximum allowable industrial loading (MAIL). The City’s staff were unable to locate the City’s Enforcement Response Plan (ERP).

Finding A.1.a – The City has not updated its legal authority to incorporate the required streamlining changes.

As noted above, the City updated its SUO in 2011. However, the City did not incorporate the required streamlining changes. These required changes are outlined in EPA’s Pretreatment Streamlining Rule Fact Sheet 2.0: Required Changes, available at http://www.epa.gov/npdes/pubs/pretreatment_streamlining_required_changes.pdf. Because the City

¹ City of Beacon Administrative Code, Part II-General Legislation, Chapter 179 – Sewers [HISTORY: Adopted by the Council of the City of Beacon 9-18-1985; amended in its entirety 7-18-2011 by L.L. No. 11-2011. Amendments noted where applicable.]

has not adopted most of the required streamlining rule changes (see the end of Appendix B), the City's pretreatment program is less stringent than required by federal regulations.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(1) require the City to have the legal authority to implement its pretreatment program.

Requirement 1

The City is required to modify its current SUO to incorporate the required streamlining changes. The City may not adopt any of the optional streamlining changes until New York has adopted these provisions into state law. New York State is in the final stage of updating its regulations which will include the optional pretreatment streamlining rules at 40 CFR Part 403. The process is expected to be finalized in 2023. Once the state updated rule becomes effective, all municipalities with pretreatment programs would need to update their SUOs to adopt the provisions of the optional streamlining rules. EPA will be providing guidance and assistance with regards to revising the City of Beacon SUO once the updated rules are in place. EPA recommends waiting to revise and adopt an updated SUO until the optional streamlining rules are promulgated.

Finding A.1.b – The City's staff cannot locate a copy of its ERP; a new ERP must be created and approved.

According to the City representatives, the City's ERP cannot be located.

Requirement 2

The City is required to have an ERP that is consistent with current City practices and consistent with the City's SUO. Additionally, the City should ensure that the ERP is consistent with the upcoming revisions made to the SUO to incorporate the required streamlining changes.

2. Are there any contributing jurisdictions discharging wastewater to the POTW? Does the CA have an agreement in place that addresses pretreatment program responsibilities?

The City receives wastewater from the Town of Fishkill and the Dutchess Stadium. The City has a Sewer Agreement (aka Intermunicipal Agreement) with the Town of Fishkill ("Sewer Agreement Between City of Beacon & Village of Fishkill" dated September 28, 2021). Meanwhile Dutchess Stadium is considered a commercial sewer user which is managed by Dutchess County ("Sewer Line Agreement" dated October 26, 1995) and therefore does not require an intermunicipal agreement between Dutchess County and the City of Beacon.

The City's representatives stated that they have no problems with implementation of its pretreatment program within the contributing jurisdiction. The Town of Fishkill agreement states that the Town of Fishkill desires to discharge up to 500,000 gallons per day but could opt to discharge a greater quantity of wastewater. The agreement does not have any information whether industrial wastewater can be discharged to the Village of Fishkill's conveyance system, nor any protocols for implementing the pretreatment program within the Town's service area. In addition, there is no mention of whether the Town's SUO pretreatment language should be equal or more stringent than that of the City of Beacon, or protocols for the City to review and approve the Town's SUO.

The Sewer Line Agreement with the County allows for Dutchess Stadium to discharge 40,500 gallons per day average to the Beacon WWTP, with the option of discharging up to an additional 49,000 gallons per day upon completion of an intermodal transportation facility and High School. The agreement states: “The term of this Agreement shall be 15 years beginning at the commencement date.” The agreement further states that: “The County shall have the option to renew this lease upon the same terms and conditions for two additional terms of 15 years each and one term thereafter of 5 years.” While this is not part of the pretreatment audit, the lease should be renewed since the 1995 lease would have lapsed in 2010.

The intermunicipal agreement did not contain the following:

- Protocols for revising Sewer Use Ordinances;
- Adoption of Local Limits;
- Protocols for when industrial users from outside the contributing jurisdiction service area discharge to the contributing jurisdiction;
- Cases when any term of the IMA is held to be invalid in any judicial action that the remaining terms will be unaffected;
- Reviewing and revising the IMA to ensure compliance with pretreatment regulations periodically; and
- Protocols for terminating the agreement by providing written notice.

Finding A.2.a – The intermunicipal agreement does not require contributing jurisdictions to adopt the City of Beacon’s SUO when revisions are made.

Recommendation 1

It is recommended that the City ensure that pretreatment responsibilities are identified in its agreements with contributing jurisdictions, including where contributing jurisdictions are required to update their SUOs when the City revises its own SUO.

Finding A.2.b – The intermunicipal agreement should be revised either to state that no industrial discharge can be accepted by the contributing jurisdiction or should include all the necessary elements to implement the pretreatment program in the contributing jurisdiction.

Regulatory Requirement

The specific legal authorities and procedures that a Control Authority must have to implement a pretreatment program are set out in 40 CFR 403.8(f)(1) of the General Pretreatment Regulations. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law.

Requirement 3

It is required that the Authority review its intermunicipal agreements to ensure that the agreements are comprehensive and cover the requirements of an approved pretreatment program or does not allow for discharge of industrial wastewater into the contributing jurisdiction’s conveyance system. In addition,

the intermunicipal agreements should be reviewed periodically by all signatories and updated as needed. Please refer to EPA's Multijurisdictional Pretreatment Programs Guidance Manual (1994, EPA 833-B-94-005).

B. IU Characterization

1. Describe the CA's procedure for identifying and locating IUs that might be subject to the pretreatment program. Has the CA identified and located all applicable IUs (non-categorical SIUs, CIUs, NSCIUs, etc.)? (40 CFR 403.8(f)(2)(i))

It is unclear how the City of Beacon's pretreatment program locates potential industrial users that might be subject to the pretreatment program on a continuous basis. Current POTW staff have no communication with the City's building inspectors about new permit applications. There might have been discussions in the past between building inspectors and the former Chief Operator, Ed Balicki, who is currently the Water Superintendent. According to the City's representatives, there has not been communication between wastewater treatment plant staff and the Chamber of Commerce.

The City's representatives are not sure when Beacon last conducted an industrial waste survey (IWS). Furthermore, the City's representatives indicated that there are potential IUs that are not currently permitted for industrial wastewater discharge, such as distilleries and breweries (such as Industrial Arts) and septage/hailed waste.

Finding B.1.a – The City does not routinely conduct an industrial waste survey (IWS) of its service area.

The City does not have clear procedures on how new industrial users are identified and the City has not conducted an IWS in more than ten years.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(i) require the City to identify and locate all possible industrial users that might be subject to the pretreatment program.

Requirement 4

The City is required to conduct a formal IWS of the service area to ensure that all nondomestic users have been located and properly classified and should conduct a formal IWS every five years thereafter.

Finding B.1.b – The City's POTW does not routinely communicate with other City Departments to identify potential industrial users.

The POTW staff does not communicate with building inspectors, the water building clerks, the Chamber of Commerce or other entities to determine if new industrial users are discharging to the wastewater treatment plant.

Recommendation 2

The Auditor recommends that communication between the wastewater treatment plant staff, the Chamber of Commerce, and the City of Beacon's water billing clerks and building inspectors be strengthened as needed to more easily identify new businesses and industries that may be subject to

pretreatment regulations.

Finding B.1.c – The City likely does not issue industrial user permits for some industrial users.

Recommendation 3

The City of Beacon could reassess what facilities might require industrial user permits; there are dischargers in Beacon which do not have an industrial user permit while discharges with similar operations are issued industrial user permits by other pretreatment programs. In addition, hauled waste can also be regulated using industrial user permits if appropriate.

**2. Has the CA identified the character and volume of pollutants contributed to the publicly owned treatment works (POTW) by IUs subject to the pretreatment program?
(40 CFR 403.8(f)(2)(ii))**

Yes, the City conducts inspections and compliance monitoring of some pollutant parameters at each SIU at least annually. However, as noted in Finding F.1 below, the City has not been able to conduct a complete inspection of either penitentiary facility.

The City of Beacon is not able to easily identify changes in wastewater generating activities and wastewater discharges at prisons. The communication with prison staff in some cases is lacking; the City conducts sampling and monitoring once per year and their ability to access different parts of the facility is difficult or dissuaded by the facility.

EarthCare effluent can be continuously observed by visual monitoring and looking at the influent viscosity in the North Interceptor which receives wastewater only from EarthCare and a few residences. In addition, EarthCare has allowed the City's staff to look at the video camera feed of their press and Beacon is able to observe the quality of the filtrate and whether there are any operational problems.

**3. Has the CA prepared and maintained a list of SIUs, as defined in 403.3(v)(1), along with the applicable SIU criteria? Does the list indicate whether the CA has made a determination that a SIU is a NSCIU, as defined in 403.3(v)(2), rather than a SIU? Have modifications to the list been submitted with annual reports?
(40 CFR 403.8(f)(6))**

Yes. The City maintains a list of SIUs, which it submits in the semi-annual reports to EPA Region 2. The City did not have the legal authority to designate SIUs as NSCIUs.

C. Control Mechanism Evaluation

**1. Has the CA issued individual or general control mechanisms to all SIUs?
(40 CFR 403.8(f)(1)(iii))**

The City issues individual permits to SIUs and one of the permits was not current at the time of the audit. The City had not issued any general permits at the time of the audit. There was an issue with the Fishkill Correctional Facility permit, which was not signed; the error likely occurred when the permit

was being processed by the City Administrator's office.

Finding C.1 – All IU Permits must be issued prior to the start date and signed.

Regulatory Requirement

40 CFR 403.8(f)(1)(iii) states: "Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows...."

Requirement 5

All industrial user permits must have an issuance or signature date, a start date and an end date. Industrial user permits should be signed.

**2. Do the applications for general control mechanisms contain all of the following?
(40 CFR 403.8(f)(1)(iii)(A)(2))**

- a. Contact info
- b. Production processes
- c. Types of wastes generated
- d. Location for monitoring
- e. Any request for waiver for pollutants not present per 40 CFR 403.12(e)(2)

N/A. The City does not issue general control mechanisms.

**3. Are general control mechanisms only issued for IUs where all of the following is true?
(40 CFR 403.8(f)(1)(iii)(A)(1))**

- a. Involve same/substantially similar types of operations
- b. Discharge the same type of waste
- c. Same effluent limitations
- d. Same or similar monitoring
- e. There are no CIU production-based standards, CIU mass limits, combined wastestream formula, or net/gross calculations

N/A. The City does not issue general control mechanisms.

**4. Do both individual and general control mechanisms include the following, where applicable?
(40 C.F.R. §403.8(f)(1)(iii)(B))**

- a. Statement of duration (5 years max)
- b. Statement of non-transferability
- c. Applicable effluent limits (local limits, categorical standards, best management practices (BMPs))
- d. Self-monitoring requirements
 - Identification of pollutants to be monitored

- Sampling frequency
- Sampling locations/discharge points
- Appropriate sample types
- Reporting requirements
- Record-keeping requirements
- e. Statement of applicable civil and criminal penalties
- f. Compliance schedules
- g. Notice of slug loading or potential problems at POTW
- h. Notification of spills, bypasses, upsets, etc.
- i. Notification of significant change in discharge
- j. 24-hour notification of effluent violation
- k. Submit resampling results within 30-days
- l. Slug discharge control plan requirement, if required by POTW
- m. Certification statements
- n. Sampling/analysis requirements (Part 136 or alternative)
- o. Reporting of additional sampling
- p. 90-day compliance report

Findings regarding permit conditions are listed below.

Finding C.4.a – The permits reviewed contain an acceptable statement of non-transferability which is more stringent than Federal regulations.

Section 3C of all industrial user permits reviewed states: “Any wastewater permit issued by the City shall not be transferred, sold to a new owner, new user, or new or changed operation.”

Regulatory Requirement

The federal pretreatment regulations at 40 CFR 403.8(f)(1)(B)(2) state that the control mechanisms must contain a statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator.

Recommendation 4

The permit language is acceptable but is more stringent than the regulatory requirement. The City has the option to permit the transfer of the permit with at a minimum prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator and/or require prior approval of the permit transfer by the City of Beacon.

Finding C.4.b – The industrial user permits included a limit for silver which was not based on local limits or categorical limits.

The Fishkill Correctional Facility and EarthCare permits both have a silver limit of 0.04 mg/l Maximum Effluent Concentration Units. There are no local limits for silver in the SUO and the facility is a non-categorical SIU.

Regulatory Requirements

The federal regulations at 403.8(f)(1)(iii)(B) state that “Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions: ...

- (3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;
- (4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;”

Requirement 6

The City must remove the silver limit in the Fishkill Correctional Facility permit. The City can opt to develop a local limit for silver and incorporate the limit in a revised SUO, then include it in the industrial user permits. Another option is to include a “monitor only” requirement for silver in the industrial user permit.

Finding C.4.c – Toluene, BOD and TSS in the industrial user permits are not the same as the local limits in the SUO.

The BOD limit in the Fishkill Correctional Facility permit is 250 mg/l which is greater than the local limit of 200 mg/l in the SUO. Furthermore, the Fishkill Correctional Facility permit has a footnote for BOD that states that the “Chief Operator may raise Effluent Concentration Limit up to 285 mg/l in accordance with Section 4 of this Ordinance.” Meanwhile, in Section 179-5 of the Beacon SUO, the footnote for BOD states “NOTE: May be changed upon plant modifications.”

In the most recent EarthCare permit, the City Administrator, without adequate consultation of City of Beacon wastewater treatment staff and without informing EPA Region 2, increased the discharge limit to 1,000 mg/l BOD and 500 mg/l TSS; the previous limits were 250 mg/l for both BOD and TSS. In addition, there is a surcharge max of 1,750 mg/l for TSS and 750 mg/l in Section 8 of the Sewer Capacity Reservation Agreement but these are not included in the industrial user permit. These changes were not based on the local limits currently in the SUO. Beacon currently does not plan to have any changes to the local limits and to the SUO. Furthermore, the SUO does not establish a surcharge program.

In the EarthCare permit, the limit for Toluene is 10.0 mg/l while in both the Fishkill Correctional Facility permit and the SUO it is 107 mg/l.

Requirement 7

Any change in industrial user permit limits associated with local limits must be technically based and go through the local limits development process. The City has the option to submit their local limit sampling plan to EPA for review (but this is not required) and then conduct a local limits development study which is submitted to EPA. The City can also opt to allocate loading capacity unequally to different industrial users rather than have the same local limits for all industrial dischargers; this is particularly helpful if there are a few dischargers which need greater pollutant discharge capacity for certain pollutants. Furthermore, the City can opt to develop surcharges for industrial wastewater loadings to help offset wastewater treatment costs incurred by the City and

encourage greater pretreatment removal of pollutants by industrial users; typically, such surcharges are applied to BOD, TSS, and COD.

Requirement 8

Local limits are not supposed to be variable nor changed at the discretion of the City or WWTP personnel if they are given as a single value in the SUO. Any reference or language suggesting that local limits are variable or optional should be removed from the industrial user permits and any other correspondence and agreements between the City of Beacon and the industrial users.

Requirement 9

Any agreements between industrial user representatives and the City should not contradict the language and requirements as stated in the SUO, industrial user permit and/or Federal regulations. The Sewer Reservation Capacity Agreement between EarthCare and the City of Beacon (Contract No. 2021-046, December 13, 2021) seems to both supersede and, in parts, contradict the industrial user permit.

Finding C.4.d – The permits did not clearly state what type of sampling procedure was required to determine “Maximum Effluent Concentration”.

The limits in the permit are given as “Maximum Effluent Concentrations” in the Monitoring Requirements Table. The Table has a preamble: “Maximum concentration listed for the parameters shall not exceed in the effluent.” The footnotes below the Table state: “(1) The sample shall be taken on a day when these substances are likely to be present in their maximum concentration.” and “(2) Flow proportional composite sample over daily duration of discharge.” These footnotes imply that the limits are maximum daily average concentration, while the preamble implies that the limits might be instantaneous limits. However, Beacon and the industrial users currently use flow proportional composite sampling to measure maximum average daily concentrations and/or maximum monthly average concentrations.

The SUO only provides the limits as concentrations, without any additional information with regards to sampling procedure required to determine compliance or specific type of limit.

Regulatory Requirement

The regulations at 40 CFR 403.12(g)(3) require that all monitoring and reporting be based upon data obtained through appropriate sampling and analysis:

“The reports required in paragraphs (b), (d), (e) and (h) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and

appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.”

As noted in EPA’s *Industrial User Inspection and Sampling Manual for POTWs* (EPA-83-B-17-001, January 2017; page 71), “grab sampling is the appropriate method of sampling...when a POTW or state has adopted an instantaneous local limit which is based on grab samples.”

Requirement 10

The SUO and permits must clearly express the pollutant limit as either as an instantaneous maximum, maximum daily average, maximum monthly average, or another clearly defined metric. There could be more than one limit as well for each pollutant in order to address both acute and chronic impacts.

Finding C.4.e – The permits did not specify the frequency of pH sampling and location of the sampling.

In Section 1A of all industrial user permits, pH is listed as a grab sample with a limit between 5-9 SU, but the frequency of sampling is not specified. Sampling frequencies are included for all other parameters in the permit. One would assume that a pH reading would be taken at the time of sampling, but pH readings have not consistently been taken during sampling events (see Subsection F).

Regulatory Requirement

The regulations at 40 CFR 403.12(g)(3) require that all monitoring and reporting be based upon data obtained through appropriate sampling and analysis.

Requirement 11

The permits must state how frequently pH readings be taken. pH can be analyzed in the field or in the lab. If it is analyzed in the lab, pH must be measured within 2 hours of the sample collection. The permits could include additional information on 40 CFR 136 compliant pH sampling procedures if necessary. Otherwise, the industrial user permits could state that a pH meter could be used for measuring pH.

Finding C.4.f – The sampling frequency in the EarthCare permit is monthly; in the Fishkill and Downstate Penitentiary Facilities permits it is yearly for metals and toluene and twice per year for BOD and TSS.

All local limit parameters should be sampled at least twice a year by the permittee. The City of Beacon can require more frequent sampling if the discharge is variable or if surcharges are being assessed. There is no provision in the pretreatment regulations for a reduction in monitoring for local limits. Once there are optional streamlining rules promulgated by New York State and incorporated into the Beacon SUO and permits, there will be an option for reducing the monitoring frequency for categorical standards if certain protocols are followed and conditions are met.

The EarthCare permit requires monthly sampling, which is acceptable. More frequent monitoring is reasonable for facilities with variable flows and pollutant loadings and with a history of noncompliance with pollutant limits in their permit.

Regulatory Requirement

40 CFR 403.12(h) states:

“Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User.”

Requirement 12

All local limit parameters must be sampled twice per year by the permittee; industrial user reports must be submitted to the City of Beacon twice per year as well.

Recommendation 5

The sampling frequency in the EarthCare permit is acceptable; however, Beacon should periodically assess if pollutants should be sampled more or less frequently. It is also recommended that Beacon documents in a memo to the permit file folder the basis and rationale for choosing the sampling frequency in the permit if it is more frequent than twice per year for local limits.

Finding C.4.g – The permits reviewed did not properly identify the current discharge and sample locations.

The industrial user permits did not include a description of the sampling location or discharge point. In both the EarthCare and Fishkill Correctional Facility permits, there is reference to an “Outfall 1” but its location is not described.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(1)(iii)(B)(4) require permits to contain a description of the sample location.

Requirement 13

The City is required to revise the industrial user permits to include a description of all current monitoring locations and discharge points. The Auditor recommends using a narrative description, photos, or schematics/maps in the permit and/or permit files.

Finding C.4.h – The permits reviewed included a statement of criminal penalties, however the SUO and the ERP did not include such a statement.

Section 3.F. of the industrial user permits, Penalties for Violations of Permit Conditions, correctly states that:

“Section 1-3 provides that any person who violates a permit condition is subject to a civil penalty of at least \$1,000 per day of such violation. Any person who willfully or negligently violates permit conditions is subject to criminal penalties of a fine of up to \$1,000 per day of violation, or by imprisonment for 15 days or both. The permittee may also be subject to sanctions under State and/or Federal Law.”

However, the SUO does not include a statement of criminal and civil penalties and the City of Beacon does not have an ERP.

Requirement 14

The SUO, ERP and industrial user permit must state the same requirements. The City is required to revise the SUO and ERP to include the applicable civil and criminal penalties.

Recommendation 6

The industrial user permits should be edited and should not have any spelling or grammatical errors.

Finding C.4.i – The permits reviewed did not include specific language requiring the development of a slug discharge control plan (SDCP).

The permits reviewed did not specifically state if the industrial user is required to have an SDCP. Given the types of operations and pollutants generated by the industrial users, it is unlikely that a SDCP would be needed at either facility. However, whether a SDCP is required or not should be clearly stated in the permit.

Regulatory Requirement

The federal pretreatment regulations at 40 CFR §403.8(f)(1)(iii)(B)(6) state that control mechanisms must include requirements to develop an SDCP if the POTW has determined that an SDCP is necessary. 40 CFR §403.8(f)(2)(vi) lists the required components of an SDCP.

Requirement 15

The City is required to specify in the SIU permits if the industrial users are required to develop and implement processes to control slug discharges. For any SIUs that have been identified as needing an SDCP, the City is required to amend their discharge permits to specifically state that an SDCP is required and identify the necessary components to be included in such a plan. If a SIU does not need a SDCP, then it should be documented and kept in the industrial user files.

Finding C.4.j – The permits reviewed did not include a requirement for the industrial user to notify the City of changes that affect the facility’s potential for a slug discharge.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(1)(iii)(B)(4) require that permits include notification and other requirements in accordance with the general pretreatment standards in part 403. The regulations

at 40 CFR 403.8(f)(2)(vi) require SIUs to notify the City immediately of any changes at the facility affecting the potential for a slug discharge.

Requirement 16

The City is required to revise the industrial user permits to include the required notification of any changes affecting the potential for a slug discharge specified at 40 CFR 403.8(f)(2)(iv).

Finding C.4.k – The Sewer Capacity Reservation Agreement between the City of Beacon and EarthCare contradicts both Federal pretreatment regulations, the City of Beacon SUO and the EarthCare permit and must be rescinded.

The City of Beacon and EarthCare (a Division of Wind River Environmental, LLC) signed a Sewer Capacity Reservation Agreement on December 13, 2021 (Contract No. 2021-046) signed by Christopher White, City of Beacon Administrator, and Mark Farrell, VP Operations Wastewater of EarthCare. This agreement establishes a surcharge for BOD and TSS for discharges above the local limits; surcharges have not been established by the City in its SUO. The allowed effluent concentrations of BOD and TSS are 1,000 mg/l and 500 mg/l in this agreement with “surcharge max” of 1,750 mg/l and 750 mg/l, respectively. The agreement specifies that: “For BOD and TSS only, monthly testing results that exceed the non-surcharge max but that are less than the Surcharge Max, EarthCare will pay a surcharge fee for that month of one thousand dollars (\$1,000.00) for the first three exceedances within the calendar year and two thousand dollars (\$2,000) for any additional exceedances.” Furthermore, “Monthly testing results for BOD and TSS that exceed the Surcharge Max limit shall be considered a non-compliance.” Also, since this agreement calculated civil penalties on a monthly basis, it contradicts the language in the permit that states that the civil penalties are assessed each day there is an exceedance: “Section 1-3 provides that any person who violates a Permit condition is subject to a civil penalty of at least \$1,000 per day of such violation. Any person who willfully or negligently violates Permit conditions is subject to criminal penalties of a fine of up to \$1,000 per day of violation, ~~or by imprisonment for 15 days or both.~~ (struck out and deleted by MCF) The Permittee may also be subject to sanctions under State and/or federal Law.”

Requirement 17

There should be only one document or industrial user permit; it is recommended that if the City and industrial user wishes to change or update the permit then a new permit should be issued rather than developing an additional agreement.

D. Legal Authority

1. Has the CA amended its pretreatment program to include the streamlining provisions?

Finding D.1 – The City has not adopted the required 2005 streamlining provisions.

As noted in Finding A.1.a above, EPA promulgated changes to the general pretreatment regulations on October 13, 2005, referred to as the “streamlining rule”. The state of New York has not, as of yet, adopted the optional streamlining provisions into its regulations. Therefore, the City cannot, at this time, adopt any changes to its SUO that are less stringent than New York state law, but can make changes to the SUO to adopt the streamlining amendments that are more stringent than New York state law. The City has not amended its SUO to include the required streamlining rule changes.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(1) requires the City to have a legal authority that allows the City to enforce all Federal regulations.

Requirement 18

It is required that City of Beacon update its SUO to include the 2005 required streamlining provisions and incorporate other changes in pretreatment regulations. It is further noted that the sewer use ordinance be revised and edited for improved clarity and presentation. The Town of Fishkill would then update its SUO to be as stringent as the City's.

2. Does the SUO provide the control authority adequate legal authority, consistent with 40 CFR 403.8(f)(1)?

Finding D.2 – The City's Sewer Use Ordinance should include all Federal pretreatment regulations.

As a component of this PCA, the Auditor compared the City of Beacon Administrative Code, Part II- General Legislation, Chapter 179 – Sewers [HISTORY: Adopted by the Council of the City of Beacon 9-18-1985; amended in its entirety 7-18-2011 by L.L. No. 11-2011. Amendments noted where applicable.] (referred to as the SUO) with the provisions of 40 CFR Part 403 (see Attachment B, Legal Authority Review Checklist). The following deficiencies and inconsistencies were observed with the SUO:

1. Definition of:
 - Authorized or duly authorized representative of the user;
 - Best management practices or BMPs; and
 - National pretreatment standard (or pretreatment standard or standard);
 - New source;
 - Pass through;
 - Significant industrial user;
 - Significant noncompliance; and
 - Slug load or slug discharge;
2. General prohibitions for:
 - Interference; and
 - Pass through;
3. Specific prohibitions for:
 - Fire/Explosion hazard;
 - Petroleum/nonbiodegradable cutting/mineral oils; and
 - Truck/hailed wastes;
4. National categorical standards;
5. Local limits development;
6. Deny/Condition New or Increased Contributions;
7. Individual control mechanism's permit content for:
 - Statement of duration;
 - Statement of non-transferability;
 - Effluent limits;
 - Best management practices;
 - Self-monitoring requirements;

- Statement of applicable civil and criminal penalties;
- 8. Report to develop compliance schedule for installation of technology;
- 9. Baseline monitoring report report's measurement of pollutants, including:
 - Identifying information;
 - Other environmental permits held;
 - Flow measurements;
 - Measurement of pollutants;
- 10. Notification of changes affecting potential for a slug discharge;
- 11. Notice of violations/sampling requirement;
- 12. Requirement to conduct representative sampling;
- 13. Notification of changed discharge;
- 14. Notification of discharge of hazardous waste;
- 15. Data accuracy certification and authorized signatory included in reports;
- 16. Recordkeeping requirements (3 years or longer), including documentation associated with best management practices;
- 17. Submission of all monitoring data in reports;
- 18. Samples collection procedures;
- 19. Right to enter all parts of the facility at reasonable times;
- 20. Right to take independent samples;
- 21. Right to require installation of monitoring equipment;
- 22. Non-emergency response remedies for non-compliance:
 - Injunctive relief; and
 - Civil/criminal penalties;
- 23. Legal authority to enforce Enforcement Response Plan; and
- 24. Publish list of industrial users in significant noncompliance.

In addition, it is recommended that the City modify the following:

- 1. Definition of categorical pretreatment standard or categorical standard;
- 2. Specific prohibitions for:
 - pH/corrosion;
 - Flow rate/concentration (BOD, etc...); and
 - Toxic gases/vapor/fumes;
- 3. Prohibition against dilution as treatment;
- 4. Individual control mechanism's permit content for slug discharge requirements;
- 5. Periodic reports on continued compliance from both categorical users and significant non-categorical users;
- 6. Notice of potential problems to be reported immediately (including slug loads);
- 7. Immediately halt actual/threatened discharge as an emergency response remedies for non-compliance;
- 8. Access to data by the government and the public;
- 9. Upset notification (optional);
- 10. Hauled waste reporting/requirements (optional);
- 11. Grease interceptor reporting/requirements (optional);
- 12. Authority to issue (all optional):
 - Notice of Violation (NOVs);
 - Administrative Orders (AOs); and

- Administrative Penalties;
- 13. Permit appeal procedures (optional);
- 14. Penalty or enforcement appeals procedures (optional); and
- 15. Bypass notification (optional).

Please refer to the EPA Final Legal Review Document Checklist (Attachment B) for further details.

Requirement 19

The City must update its Sewer Use Ordinance to be inclusive of all Federal pretreatment requirements. The City should also update the Sewer Use Ordinance to improve the clarity of the document. The federal regulations at 40 CFR 403.8(f)(1) require the City to have the legal authority to implement its pretreatment program. As a component of this PCA, the Auditor compared the SUO with the provisions of 40 CFR Part 403 (see Attachment B, Legal Authority Review Checklist). The above deficiencies and inconsistencies were observed with the SUO.

3. Are there any contributing jurisdictions discharging wastewater to the POTW? Does the CA have an agreement in place that addresses pretreatment program responsibilities?

Finding D.3 – The City does have agreements in place with its contributing jurisdictions; the agreements do not contain provisions related to implementing the pretreatment program.

As noted above, the City receives domestic wastewater and does not receive nondomestic dischargers from the Town of Fishkill. The agreement in place does not discuss pretreatment or whether nondomestic discharges are allowed from the contributing jurisdictions. If nondomestic discharge is allowed in these jurisdictions, the intermunicipal agreement would specify which entity is responsible for program implementation, including identifying nondomestic dischargers and permitting, inspecting, sampling, and taking enforcement action (as needed) against industrial users.

Regulatory Requirement

The federal pretreatment regulations at 40 CFR 403.8(f)(1) require that the POTW operate pursuant to its legal authority, enforceable in federal, state, and local courts, which authorizes or enables the POTW to apply and to enforce the requirements of 40 CFR 403. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements.

Requirement 20

The City is required to ensure that it has a written agreement with each of its contributing jurisdictions that clearly state the responsibilities of each entity to ensure that nondomestic dischargers are properly regulated, or which do not allow the discharge of industrial wastewater. The City and its contributing jurisdictions also must ensure that they have the proper legal authority to implement the pretreatment program per 40 CFR 403.8(f)(1). If the City intends to administer the program and regulate industrial users in the contributing jurisdictions' service areas, the contributing jurisdictions must have legal authority that is consistent with that of the City.

Recommendation 7

The auditor recommends that the City ensure that all SUOs for contributing agencies are at least as stringent as the City's SUO.

4. What is the control authority's definition of SNC?
(40 CFR 403.8(f)(2)(viii))

Finding D.4 - The definition of significant violation is missing in the City of Beacon's SUO.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(viii) define SNC.

Requirement 21

The City is required to revise the SUO to include a clear definition of SNC, as found at 40 CFR 403.8(f)(2)(viii), with the exception of reporting frequencies, which must be at least as stringent as New York State law.

E. Application of Pretreatment Standards and Requirements

1. Does the CA apply all applicable pretreatment standards?
(40 CFR 403.8(f)(1)(ii) and 403.8(5))

Finding E.1 – The City of Beacon has not applied all applicable pretreatment standards.

Based on the files reviewed, the City has not applied all applicable pretreatment standards to its SIUs. The BOD limits in both industrial user permits reviewed were higher than those in the SUO. In the EarthCare permit the Toluene limit was lower and the TSS limit higher than the limits established in the Beacon SUO.

Regulatory Requirement

The federal regulations at 403.8(f)(1)(iii)(B) state that “Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions: ...

(3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;”

Requirement 22

The City of Beacon must apply the appropriate local limits from the Beacon SUO in the industrial user permits.

2. Has the CA evaluated the need for SIUs to develop slug discharge control plans?
(40 CFR 403.8(f)(2)(vi))

According to the City representative all SIUs have been evaluated for the need to develop SDCPs. However, the City has not documented these evaluations. EarthCare does have a spill control plan;

which this could be a part of a slug discharge control plan but is not a substitute for a slug discharge control plan.

Finding E.2 – The City does not document annual evaluations of the need for each SIU to develop a SDCP.

According to the City representative, all SIUs have been evaluated for the need to develop SDCPs. However, there is no information included in the permit or permit files that document any assessment of whether each SIU should or should not develop a SDCP. The inspection forms reviewed by the Auditor did not include a space to document if the SIU needs to develop a SDCP.

Recommendation 8

The City of Beacon should document the determination that the current SIUs do not need a SDCP.

Recommendation 9

The Auditor recommends that the City includes an evaluation whether the facility needs a SDCP in its inspection forms.

F. Compliance Monitoring

**1. Has the CA inspected and independently sampled each SIU at least once a year? Middle tier CIUs at least once every two years? Sample once during term of CIU control mechanism if CIU sampling waived for pollutants not present?
(40 CFR 403.8(f)(2)(v), 403.12(e)(2), 403.12(e)(2))**

For this Audit, we reviewed the laboratory results from 2021 for Downstate (10/13/21), Fishkill (10/20/21), and EarthCare (11/10/21) and the City of Beacon's annual inspection reports from 2019 and 2021.

The City had not designated any CIUs as middle-tier CIUs. The CIU files reviewed did not contain sampling waivers for pollutants not present.

Finding F.1.a – The City has difficulty scheduling sampling at the penitentiaries and does not conduct in-person inspections of the facilities.

In-person site inspections for the penitentiary facilities have been difficult to initiate. The City of Beacon staff contacts the Superintendent of the Correctional Facility. Sometimes this is difficult because they do not receive email or accept voicemail, and therefore they need to be called repeatedly. Once Beacon staff gets through, it takes a week to schedule the inspection. For Downstate, the situation is more difficult due to the impending closure of the facility and because a new person temporarily became the Superintendent prior to the facility's closure. For the Fishkill Correctional Facility, the City has a point of contact who works in the Powerhouse. However, they previously have not been able to conduct inspections within the penitentiary and conduct sampling only.

At the Fishkill Correctional Facility, the City of Beacon sets up a composite sampler in the building and picks it up 24 hours later. For the Downstate Correctional Facility, the sampling point is the wet well in the middle of the parking lot. The prison staff do not unlock the wet well ahead of time; when the City staff arrives they need to find somebody to open it. The City staff uses a composite sampler which is

locked in the wet well; they return to retrieve the sampler the next day.

Recommendation 10

If phone calls or emails are proving ineffective, then the City should consider either sending official certified mail or visit the penitentiary in-person to schedule inspections and sampling events. For facilities without security concerns and where there is difficulty in scheduling inspections, unannounced inspections would be recommended if arranging visits ahead of time proves difficult.

Finding F.1.b – City staff did not conduct a complete inspection of all industrial wastewater generating processes and pretreatment facilities within the Fishkill and Downstate Penitentiary Facilities.

Based on the files reviewed and the responses from the City representative during the interview, all SIUs were sampled at least once in 2020 and 2021. However, the City of Beacon staff have not entered the penitentiaries and inspected industrial wastewater generating activities and chemical storage areas. There are difficulties with regards to communication with the penitentiaries and a reluctance of the penitentiaries of allowing access to the facilities and of the City of Beacon staff of pressing the issue.

Beacon SUO Section 179-9(G)(2) states that areas where wastewater is created to discharged must be accessible to the City's pretreatment staff: "Monitoring facilities shall be inspected by the City to ensure that compliance is being met by the user. Persons or occupants of premises where wastewater is created or discharged shall allow representatives of the City, EPA, DEC and the Dutchess County Department of Health ready access at all reasonable times to all parts of the premises for the purposes of inspection, monitoring, sampling, examination and/or copying of discharge records or in the performance of any of their duties. Where a user has security measures that require proper identification, the user shall make the necessary arrangements so that, upon presentation of suitable identification, the City, Dutchess County Department of Health, DEC or EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities."

Regulatory Requirement

POTWs are required to inspect all SIUs at least once a year pursuant to 40 CFR 403.8(f)(2)(v). Although EPA regulations establish a minimum frequency for inspections, additional inspections by the POTW might be necessary depending on issues such as the variability of an SIU's effluent, the effect of the SIU's discharge on the POTW, and the facility's compliance history. Inspection considerations (figure 4-3) hinge on the type of inspection performed (e.g., scheduled, unscheduled, or on-demand).

40 CFR 403.8(f)(1)(v) states that a POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented. This includes "(c)arry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of

the Act;”

Requirement 23

The City must conduct in-person inspections of the facility to ensure compliance with the industrial user permit conditions. The permittees must allow inspectors access to all areas of their facilities where non-domestic wastewater is being generated. If personal health and safety is a serious concern (i.e. due to a pandemic), one option is to conduct inspections by video chat with the facility’s representative.

Finding F.1.c – The City’s inspection report sheet is missing several components and the inspection report sheets are not completely filled out.

The inspection sheets do not include any sections for describing water source to the facility, slug discharge and slug discharge control plans (or where one is not needed),

Some parts of the inspection report sheets reviewed were inadequately filled out or not filled out at all. For example, the 2019 and 2021 Fishkill Correctional Facility inspection reports were missing information on flow, chemical/waste storage tanks, SIU monitoring and/or metering equipment calibrations and records, and hazardous waste records. Also, the description of operations that are generating wastewater were “common wastes from toilets, sinks and showers”; during the Auditor’s inspection wastewater flow sources identified included the dental and medical clinic, the kitchen and potentially the steel fabrication areas. The only area inspected during the City’s inspections was the screenings building.

In the 2019 EarthCare inspection report, flow was not recorded, and the list of pollutants discharged into the wastewater were listed as BOD and suspended solids; meanwhile there are metals and other pollutants in the discharge from EarthCare. In the EarthCare 2021 inspection report, some sections were left blank (hazardous wastes, etc...) and no measurements of pH, flow, or temperature were included.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(v) require the City to develop and implement procedures to evaluate occasional and continuing noncompliance with pretreatment standards, including inspecting and sampling the effluent from each SIU at least once a year. The regulations at 40 CFR 403.8(4)(2)(vii) state that the collection of information in investigations of noncompliance “shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.”

Recommendation 11

The Auditor strongly recommends that the City completely fill out each section of the inspection report for all SIU inspections. Additionally, the City should take appropriate actions to ensure that the information documented on the inspection reports is accurate.

Recommendation 12 The City of Beacon should consider updating its annual industrial user inspection forms.

- 2. Has the CA used proper sampling and analysis procedures (40 CFR Part 136) and inspection procedures? Were the procedures done with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions?**
(40 CFR 403.8(f)(2)(v) and (vii), 40 CFR 403.12(g)(5))

Finding F.2.a – The City failed to sample for temperature, flow and pH, which are SIU permit parameters.

During the City inspections for EarthCare (11/10/21), Fishkill (10/20/21) and Downstate (10/13/21), a pH reading was not taken in the field or the laboratory, and the water temperature and flow at the time of sampling was not recorded in the field.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(v) require the City to randomly sample and analyze the effluent from each SIU at least once a year. Additionally, the federal regulations at 40 CFR 403.12(e) require CIUs to conduct self-monitoring semi-annually, and 40 CFR 403.12(h) requires non-categorical SIUs to conduct self-monitoring semi-annually.

40 CFR 403.12(b)(5)(v) states: “All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, §§ 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 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 POTW or other parties, approved by the Administrator.”

Requirement 24

The City of Beacon must sample all parameters listed in the industrial user permits during their annual inspection.

Finding F.2.b – For annual sampling, the VOC samples did not comply with 40 CFR 136. The method used for BOD and TSS is not the most recent method in 40 CFR 136.

For Volatile Organic Compounds, the approved method in 40 CFR 136 for Volatile Organic Compounds by GC/MS is 1624B: Volatile Organic Compounds by Isotope Dilution GC/MS. However, in the 2021 EnviroTest Laboratories final reports for Fishkill, Downstate, and EarthCare, method SW846 8260C which is the method used for solid waste matrices.

The BOD and TSS methods used are SM22 SM 5210B-2011 and SM22 SM2540D-2011, respectively. Although these methods are still commonly used, the most recent methods in 40 CFR 136 are 40 CFR 136 is 5210 B-2016 for BOD and Standard Method (SM) 2540 D-2015 for TSS.

Please refer to <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-136#136.3> for more information.

Regulatory Requirement

40 CFR 403.12(b)(5)(v) states that all analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator.

Requirement 25

The City of Beacon must sample all parameters listed in the industrial user permit when conducting its annual inspections according to 40 CFR 136 or as approved by the Administrator. It is preferable to use the most up-to-date analytical techniques as well. The City must examine the laboratory reports and ensure that the proper analytical methods are used.

3. Has the CA kept records for three years including the following?

- a. Period compliance reports and other reports/notices**
- b. All monitoring records including: sample date, place, method, time, personnel; analysis date, personnel, method; results**
- c. BMP compliance documentation**
- d. Other monitoring records**

(40 CFR 403.12(o))

Based on the files reviewed, the City maintains records for at least three years. The City representative stated that pretreatment files are maintained for a minimum of ten years electronically.

4. Has the CA evaluated, at least once per year, whether NSCIUs continue to meet the criteria of an NSCIU?

(40 CFR 403.8(f)(2)(v)(b), 403.3(v)(2))

N/A. The City does not have the legal authority to classify industries as NSCIUs.

5. Has the CA required, received, and analyzed reports and other notices from SIUs?

- a. Self-monitoring reports**
- b. BMRs and 90-day compliance reports**
- c. Compliance schedules reports**
- d. Notice of slug loading or potential problems at POTW**
- e. Notification of spills, bypasses, upsets, etc.**
- f. Notification of significant change in discharge**
- g. 24-hour notification of effluent violation**
- h. Resampling results within 30-days**
- i. Other reports/notifications required by the CA**

(40 CFR 403.8(f)(2)(iv))

Finding F.5.a – The City did not receive proper semi-annual reports from their industrial users.

The City received laboratory reports directly from the laboratories rather than as part of a signed semi-annual report from the industrial user. Industry reports must be submitted on a semi-annual basis for non-categorical industrial users; currently the industry only submits the laboratory reports. The self-monitoring reports consisted of laboratory reports submitted electronically and therefore did not include the certification statement at 40 CFR 403.6(a)(2)(ii) required by 40 CFR 403.12(l) and the

permits issued by Beacon.

Regulatory Requirement

40 CFR 403.12(h) states:

“Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User.”

Requirement 26

Currently, a hard copy of the self-monitoring report must be submitted by the industry and include all necessary statements and signatures as specified in their industrial user permits. Digital copies can be sent to the City of Beacon, but not in lieu of submittal of the hard copy. Laboratories should preferably not be submitting their results directly to the City of Beacon. Beacon must ensure that industries include the certification statement at 40 CFR 403.6(a)(2)(ii) in all periodic monitoring reports, including resampling reports, as required by 40 CFR 403.12(l).

Finding F.5.b – The City did not receive annual reports from the Fishkill and Downstate Correctional Facilities in 2020.

Fishkill and Downstate were both in noncompliance for not completing required monitoring due to difficulties with access to the site (COVID-related) in 2020. The lack of access to the site was because of COVID protocols.

On March 26, 2020, EPA issued guidance in a memo from Susan Bodine entitled [COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program](#), which (while not specific to pretreatment) basically granted flexibility in terms of enforcement when regulatory programs are not able to conduct business as usual given the coronavirus epidemic.

EPA’s guidance at the time was that if IUs are discharging, then sampling and reporting is still required and any failure to comply with the IUs permit conditions will result in having some sort of enforcement action taken, such as a NOV. However, if a SIU were having difficulty collecting samples, obtaining analytical analyses, or obtaining the appropriate signatures, they should have submitted a hardship letter to the POTW the POTW should decide how to handle on a case-by-case basis.

The City of Beacon should have documented instances when sampling and inspections were not conducted as planned and provided reasons why there was a suspension of regulatory oversight. One option available to the City of Beacon was to contact the IUs and do a remote interview or email exchange to answer information covered in the inspection sheet.

In addition, compliance documents were allowed to be submitted/received as PDF of the original signed document with the original to be retained and submitted once we are all back to normal. EPA Region 2 gave an extension for submitting the hard-copy documents for the Annual Report until business operations return to normal.

Recommendation 13

The City should document temporary noncompliance with industrial user sampling and reporting requirements during the coronavirus pandemic with letters and emails that are saved to the industrial user file.

Finding F.5.c – EarthCare did not self-monitor for all pollutants listed in their permit. Sampling did not occur monthly as required in their industrial user permit.

In 2018, EarthCare was in noncompliance due to not self-monitoring for metals and toluene. It is not clear if enforcement actions occurred. On September 23, 2021, EarthCare did not sample for mercury and toluene; however, the December 18, 2021 sampling did include results for mercury and toluene, so there is one result in the second-half of the year.

There is no monthly sampling data from EarthCare in the files shared with the Auditor and therefore it is assumed that EarthCare is not complying with their permit conditions and not conducting monthly sampling. Nor was daily flow data for EarthCare provided by the City of Beacon to the Auditor.

Regulatory Requirement

Please refer to 40 CFR 403.12(h).

Requirement 27

EarthCare must sample for all parameters listed in their permit, including flow, pH and temperature, on a monthly basis.

Finding F.5.d – EarthCare’s 9/23/21 analytical report chain-of-custody sheet lacks pertinent information; the 2021 Fishkill analytical reports did not include a chain-of-custody.

The 9/23/2021 analytical report for EarthCare chain-of-custody sheet did not specify what container was used for which analyte and did not include field measurements of pH and temperature. The Fishkill 5/27 and 11/16/2021 reports did not include a chain-of-custody. The 12/18/2021 EarthCare analytical report included an acceptable chain-of-custody sheet. Meanwhile, all 2021 Downstate laboratory reports included a chain-of-custody sheet and pH and temperature data.

Regulatory Requirement

40 CFR 403.12(o)(1) covers record-keeping requirements for all monitoring activities associated with industrial user reports. Such records shall include 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/methods use; and
- (v) The results of such analyses.

Requirement 28

Adherence to proper sample collection and handling protocols, 40 CFR Part 136-approved analytical methodologies, and record-keeping requirements [40 CFR 403.12(o)(1)] (see figure 4-4) can be verified by reviewing field measurement records, chain-of-custody forms, and lab reports. Chain-of-custody forms are a link between field personnel and the laboratory, and they contain information regarding sample matrix, type, and handling. Lab reports should contain the minimum information specified in 40 CFR 403.12(o)(1)(ii-iv) and any additional information necessary to demonstrate compliance with 40 CFR Part 136 requirements (e.g., analytical methodology, sample preparation date and time, time of analysis).

Finding F.5.e – The industrial user’s laboratory analysis did not comply with 40 CFR 136. For analysis of samples collected on behalf of the industrial users, the VOC samples did not comply with 40 CFR 136. The method used for BOD and TSS is not the most recent method in 40 CFR 136.

For Volatile Organic Compounds, the approved method in 40 CFR 136 for Volatile Organic Compounds by GC/MS is 1624B: Volatile Organic Compounds by Isotope Dilution GC/MS. The analytical method used for the Fishkill 5/27/2021 samples was method SW846 8260C which is appropriate for solid waste matrices but not for wastewater. Meanwhile the analytical method used for all other volatile organic compound samples were correct (EPA 624.1) at Fishkill, Downstate and EarthCare.

The BOD and TSS methods used are SM22 SM 5210B-2011 and SM22 SM2540D-2011, respectively. Although these methods are still commonly used, the most recent methods in 40 CFR 136 are 40 CFR 136 is 5210 B-2016 for BOD and Standard Method (SM) 2540 D-2015 for TSS.

EarthCare and Fishkill did not have field pH and field temperatures included in its analytical report. EarthCare did have a laboratory measurement of pH in their data with the qualifier “Sample was prepped or analyzed beyond the specified holding time”. Downstate did include field pH and temperature data in their reports.

Please refer to <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-136#136.3> for more information.

Regulatory Requirement

40 CFR 403.12(b)(5)(v) states that all analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator.

Requirement 29

The City of Beacon must sample all parameters listed in the industrial user permit while conducting its annual inspections according to 40 CFR 136 or as approved by the Administrator. It is preferable to use the most up-to-date analytical techniques as well. The City must examine the laboratory data and reports and ensure that the proper analytical methods are used.

- 6. Have SIUs monitored to demonstrate continued compliance and re-sampled after violation(s)?**
(40 CFR 403.12(g)(1) & (2))

Finding F.6 – There was no documentation of resampling performed by EarthCare or Downstate within 30 days of a pollutant exceedance.

In 2021 self-monitoring reports, EarthCare was in noncompliance for BOD (900 mg/l) on 9/23/21 and BOD (260 mg/l) and TSS (360 mg/l) on 12/18/21. The City of Beacon found that EarthCare was in noncompliance with BOD (542 mg/l) on 11/10/21 during annual sampling by the City.

Downstate was in noncompliance for TSS (792 mg/l) on 10/13/21 during annual sampling by the City. The same sample measured BOD at “>72 mg/l”. All self-monitoring results for Downstate in 2021 were in compliance (3/26/21, 6/4/21, and 9/17/21). According to the City of Beacon Representative, it was surmised that the high reading might have been due to the poor sampling procedures with the sampling apparatus sucking up sediment from the bottom of the wet well.

In both instances, there is no written documentation of a notification to the City of Beacon of an exceedance within 24 hours and no resampling occurring within 30 days of the exceedance.

Regulatory Requirement

40 CFR 403.12(g)(2) covers noncompliance notification and repeat sampling reports. If monitoring performed by an IU indicates noncompliance, the IU is required to notify the POTW within 24 hours of becoming aware of the violation. In addition, the IU must repeat the sampling and analysis for the pollutant in violation and report the results of the resampling within 30 days of becoming aware of the original violation. The repeat sampling is not required if the POTW samples the IU at least once per month or if the POTW samples the IU between the time of the original sample and the time the results of the sampling were received.

Requirement 30 Industrial users must notify Beacon of any exceedances and conduct sampling within 30 days of an exceedance.

- 7. Has the CA ensured CIUs report on all regulated pollutants at least once every 6 months?**
(40 CFR 403.12(e)(1) & (g)(1))

No CIUs are discharging to the City of Beacon POTW.

- 8. Has the CA ensured non-categorical SIUs self-monitor and report at least once every 6 months with a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority?**
(40 CFR 403.12(h) & (g)(1))

Finding F.8 – Non-categorical SIUs have not been self-monitoring and reporting every 6 months.

The Auditor only received laboratory results which were submitted by the laboratories directly to the City of Beacon and no semi-annual reports submitted to Beacon with the required affidavits and signatures.

In 2021, self-monitoring took place at Downstate on March 26, June 4, and September 17; at Fishkill on May 27 and November 16; and at EarthCare on September 23 and December 18. There were no sampling data provided from EarthCare in the first half of 2021.

Regulatory Requirement

40 CFR 402.12(h) establishes reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR part 136.

Requirement 31

SIUs not subject to categorical pretreatment standards must submit a periodic compliance report to the POTW at least once every 6 months (on dates specified by the POTW) which include a description of the nature, concentration, and flow of the pollutants that are required to be reported to the POTW. EPA established a minimum frequency of once every 6 months for industrial user report submittals. EPA determined the frequency to be adequate for IUs that have little potential to cause pass through or interference, to contaminate the sewage sludge, or to otherwise violate pretreatment standards or requirements. EPA assumes that larger IUs and those that have more potential to cause problems or violate standards would be required by the POTW to sample and report more frequently. All results for self-monitoring performed must be reported to the POTW, even if the IU is monitoring more frequently than required (40 CFR 403.12(g)(6)). Periodic compliance reports must include the following:

- The nature and concentration of pollutants as required by the POTW;
- Flow data (average and maximum daily) as required by the POTW; and
- Documentation required by the POTW necessary to determine the compliance status of the IU (applies to SIUs with local limits or other requirements that require compliance with a BMP).

9. Has the CA required self-monitoring reports from CIUs to be signed and certified? (40 CFR 403.12(b)(6), 403.12(l))

There are no CIUs discharging to the City of Beacon.

10. Has the CA received notification of hazardous waste discharges? (40 CFR 403.12(j) & (p))

Based on the files reviewed during the audit and discussion with City representatives, no hazardous waste discharge notifications were received, nor was there an indication that such notifications should have been received.

Notification of Discharge of Hazardous Wastes [40 CFR 403.12(p)] are required for IUs discharging more than 15 kilograms per month of a waste that, if otherwise disposed of, would be a hazardous waste pursuant to the Resource Conservation and Recovery Act (RCRA) requirements under 40 CFR Part 261 are required to provide a one-time written notification of such discharge to the POTW, state, and EPA. IUs discharging any amount of waste that, if disposed of otherwise, would be an acutely hazardous

waste pursuant to RCRA must also provide the notification.

Finding F.10 – It is not clear whether the SIUs have been notified of the hazardous waste reporting requirements.

The City representative believed that the hazardous waste reporting requirements may have been included in the SIU permits. However, upon review, the permits lacked this information.

Regulatory Requirements

The federal regulations at 40 CFR 403.8(f)(2)(iii) require that control authorities “notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.”

Recommendation 14

It is recommended that the City follow up with its SIUs to ensure that they are aware of the hazardous waste reporting requirements, per 40 CFR 403.8(f)(2)(iii).

**11. Does the CA accept electronic reporting?
(40 CFR 403.8(g) and 40 CFR Part 3)**

Finding F.11 – The City has accepted electronic reports from its SIUs.

The laboratory reports being submitted in lieu of semi-annual industrial user reports were submitted electronically; no hard copy of the reports were sent to the City of Beacon.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(iv) require the City to receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with self-monitoring requirements in 40 CFR 403.12.

Only control authorities that meet the requirements at 40 CFR Part 3, the Cross-Media Electronic Reporting Rule (CROMERR), are allowed to accept electronic reports.

Requirement 32

The City is required to cease accepting electronic-only reporting from its industrial users. The City is required to obtain hard copy reports with wet-ink signatures from its industrial users. Electronic copies can be sent to the City of Beacon in addition to the hard copy.

G. Enforcement

**1. Has the CA implemented its enforcement response plan (ERP)?
(40 CFR 403.8(f)(5))**

The City does not have a copy of its ERP available. In general, the City is not conducting enforcement for non-reporting, late reporting, and exceedances of pollutant limits. While an ERP provides a clear

and consistent framework for the City to deal with cases of noncompliance, the SUO and Federal Regulations also provide a basis for enforcement by the Beacon pretreatment program.

Finding G.1 – The City did not take enforcement for all industrial wastewater effluent exceedances.

In 2021, both Downstate and EarthCare were found to be in noncompliance (see Section F.6) for effluent exceedances. There was no follow-up monitoring or notice of violation issued by the City of Beacon.

Regulatory Requirement

The federal regulations at 40 CFR §403.8(f)(5) require that the POTW develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance.

Requirement 33

The City is required to ensure that it is properly implementing its ERP in response to industrial user noncompliance.

2. Does the City’s ERP contain the minimum elements required by 40 CFR 403.8(f)(5)?

Since the City cannot locate its ERP, the Auditors cannot determine if the ERP includes the minimum elements required by 40 CFR 403.8(f)(5).

Finding G.2 – The City’s Enforcement Response Plan needs to be written and approved.

The Enforcement Response Plan (ERP) provides details on the types of escalating enforcement responses the POTW can take in response to all anticipated types of industrial user violations. Please refer to EPA’s Guidance for Developing Control Authority Enforcement Response Plans (1989) for more information.

Regulatory Requirement

The federal regulations at 40 CFR Part 403.8(f)(5) require that “the POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW’s primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

Requirement 34

The City is required to create an Enforcement Response Plan to include the minimum elements outlined in 40 CFR Part 403.8(f)(5). The ERP must describe how the POTW will investigate instances of noncompliance and provide additional detail on the types of escalating enforcement responses along with the time period within which the responses take place. Furthermore, the City must identify (by

title) the official(s) responsible for each type of response and update the ERP when there are changes in personnel.

3. Does the CA evaluate both numeric and narrative criteria for significant non-compliance (SNC) and annually publish a list of IUs in SNC?
(40 CFR 403.8(f)(2)(viii))

Finding G.3 – The City failed to evaluate SIUs for SNC for violations of concentration limits.

The City did not evaluate both numeric and narrative criteria for SNC for EarthCare and Downstate in 2021. The City has not published in the last five years the list of industrial users in SNC in a paper of record.

Regulatory Requirement

The federal regulations at 40 CFR 403.8(f)(2)(viii) define SNC and require evaluation of all numeric limits.

Requirement 35

The City is required to evaluate all SIUs for SNC for exceedances of their pollutant limits. In addition, industrial users can be in SNC for failure to accurately report noncompliance and not submitting periodic self-monitoring reports. When necessary, Beacon is required to publish a notice of noncompliance in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW.

3a. Were any SIUs in SNC in the past year? Include name of industry, type of SNC, and current compliance status.

In 2021, EarthCare had a chronic violation for their BOD limit, defined as when 66 percent or more of all the measurements for each pollutant parameter taken during a 6-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l).

A Technical Review Criteria (TRC) violation for TSS occurred for both EarthCare and at Downstate in 2021. A Technical Review Criteria (TRC) violation occurs when 33 percent or more of all the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH).

EarthCare was in significant noncompliance for failure to accurately report noncompliance, and not conducting monthly self-monitoring. All SIUs were in noncompliance for failure to submit complete periodic self-monitoring reports in 2021.

4. Has the CA developed IU compliance schedules?
(40 CFR 403.8(f)(1)(iv)(A))

According to the City representative, the City has the authority to issue compliance schedules.

However, the City has not issued a compliance schedule in the past five years.

**5. Has the CA ensured CIU compliance within 3 years of standards effective date (or less than 3 years where required by standard)?
(40 CFR 403.6(b))**

N/A. No new CIU regulations have been promulgated in the last three years.

**6. Has the CA ensured CIUs submit complete baseline monitoring reports and 90-day compliance reports within the required time frames?
(40 CFR 403.12(b) & (d))**

There are no CIUs discharging to the City of Beacon.

H. Additional Evaluations

1. Submittal of Annual Pretreatment Report to EPA Region 2

On August 17, 2018, EPA issued an Administrative Compliance Order (CWA-02-2018-3049) to the City of Beacon for failure to submit their annual pretreatment report in a timely manner. A periodic report covering the reporting period from February 1, 2017, through January 31, 2018 ("2017 Periodic Report"), was due on April 1, 2018. EPA did not receive the 2017 Periodic Report by the due date and had not received it as of August 8, 2018. Subsequent annual pretreatment reports have been submitted in a timely manner.

2. Hauled Waste

The City accepts hauled landfill leachate, sludge and septage, including septage from non-domestic sources such as the McDonald's in Hyde Park. The City does not accept hauled waste from UST, CERCLA, RCRA corrective action sites and/or other contaminated groundwater discharge wastewater. Hauled waste is transported by truck and discharged at one station with separate septic and leachate intakes. The City maintains a hauled waste transportation permit list. The City also maintains a manifest that includes the company/hauler, permit number, origin, size of load, driver, and who is being billed. When there is high flow, the City still accepts hauled septic and leachate except for landfill leachate.

For leachate disposal, truck drivers have to stop and come into the office, sign a ticket and proceed to the leachate intake pipe area. There are cameras capturing the truck coming in and out of the facility.

Leachate is charged at a lower rate than septic waste. The leachate should not be high in solids; however, sometimes the haulers discharge loads with relatively high solids content. The City performs spot checks by taking a grab sample of the leachate and taking it to the in-house lab to see the solids concentration. City staff will check some leachate loads for pH and do a visual inspection for oil and grease and the intake pipe is looked at daily. The City also conducts quarterly grab samples of leachate from the haulers. The City requests current analytics of the leachate beforehand and does not accept much landfill leachate in general.

For septic waste discharge, haulers schedule disposal by phone (Beacon is working on a web portal) and then the driver confirms delivery of the septic. Occasionally a pH check is performed, and staff will visually check hauled waste and will reject the load if it has a high grease and oil content or if they see something abnormal they alert the plant and a sample is taken.

Leachate intake goes directly to the WWTP headworks. Meanwhile, the septic intake discharges into a 300,000-gallon holding tank. There is separate digester reserve for septic which gets suctioned to the press. The side stream filtrate goes into the plant.

3. Surcharges

Finding H.3 – Beacon does not have a surcharge program.

The City of Beacon does not have a surcharge program. However, surcharges might be worth considering in conjunction with developing new local limits in light of the EarthCare discharge limits were increased from 250 mg/l BOD and TSS to 1,000 mg/l BOD and 500 mg/l by the City Administrator in the most recent permit.

Recommendation 15

The City of Beacon could consider the use of surcharges and incorporate surcharges in the SUO in order to increase flexibility in managing conventional pollutant loadings.

4. Fact Sheets in Industrial User Files

Finding H.4 - The City of Beacon does not include fact sheets in their industrial user files.

While using fact sheets is optional, it is a recommended practice and are used to collect information that would otherwise not be spelled out in the industrial user permit and industrial user reports. An example of an industrial user fact sheet can be found in Appendix E of The Industrial User Permitting Guidance Manual (<https://www.epa.gov/npdes/industrial-user-permitting-guidance-manual>).

Recommendation 16

The City of Beacon could consider developing fact sheets for each of its industrial users and would update the fact sheets as needed.

5. Dental Mercury Program and Mercury Minimization

In September 2018, the City of Beacon Sewage Treatment Plant issued a *Mercury Minimization Plan* which identified sources of mercury to the WWTP and described current and future strategies for controlling mercury. It focused on inspecting dental facilities, promoting household hazardous waste collection events, promoting mercury recycling, and implementing outreach and education programs for schools, healthcare facilities, laboratories, and for commercial and residential customers.

Finding H.5 – The City has not identified all dental facilities and has not received one-time certification forms from all dental facilities.

The City representative was unaware of the number of dental facilities located in the City's service area. At the time of the PCA, the City had not received any one-time certification reports.

Regulatory Requirement

The EPA promulgated pretreatment standards for dental offices on June 14, 2017; those standards can be found at 40 CFR Part 441. The rule became effective on July 14, 2017. The rule specifies that dental facilities are not considered SIUs or CIUs; therefore, POTWs are not required to permit or inspect dental facilities but may choose to do so. However, 40 CFR 403.8(f)(2)(b)(i) requires control authorities to identify and locate all industrial users which includes dental facilities. According to the rule, control authorities must receive the one-time certification report from dental facilities and ensure that dental facilities are implementing BMPs. Information on this rule can be viewed at <https://www.epa.gov/eg/dental-effluent-guidelines>, including the Frequently Asked Questions for Control Authorities on the Dental Rule, found at <https://www.epa.gov/npdes/frequently-asked-questions-control-authorities-dental-rule-40-cfr-part-441>.

Requirement 36

The City is required to identify all dental facilities in its service area. Additionally, the City is required to receive the one-time certification from its dental facilities and ensure that the dental facilities are implementing BMPs.

Attachment A

Industrial User Site Visit Data Sheet

Industrial User Visit – EarthCare

Basic Information:

Name of Facility: EarthCare (operated by Wind River Environmental doing business as Residual Management Services, LLC)

Address: 78 Dennings Avenue, Beacon, NY 12508

Date and Time of Visit: 3/22/2022 9:23 AM

Inspectors: Alexandre Remnek, EPA Region 2; David Tavernier and Greg Post, City of Beacon

Industry Representatives: Keith Egli, Operations Manager

IU Permit Number: Contract No. 2021-046 (12/13/21) including Permit 003

Expiration Date: 12/31/2022

IU Classification: Non-Categorical SIU

Inspection Type/Purpose	x	Scheduled		Unscheduled	x	PCA
		PCI		New Company		Complaint

Number of Employees: 2 at the plant

Number of Shifts: 2 Hours of Operation: 4 AM-4 PM 5.5 days (M-F + 1/2 day Sat)

Water Source: City of Beacon. The facility also recycles water from the belt press to clean the belt press.

Nature of Operation:

EarthCare trucks haul septage and sludge from clients including package plants from condominiums. Approximately 15 trucks deliver wastewater per day; all of the trucks are operated by EarthCare. The wastewater comes from Dutchess, Putnam, Ulster, Orange and Westchester Counties. The facility also accepts digester waste and sludge; the source wastewater treatment plants do not have presses, so they ship their sludge to EarthCare for processing. EarthCare also pumps grease traps, but the grease trap waste is processed in a separate building without floor drains. The grease is stored in a tank and sent to a facility in Albany, NY.

EarthCare is a dewatering facility for septic and sludge waste from residential and commercial wastewater sources only.

The delivery of wastewater by the trucks could be delayed if the Beacon POTW is at capacity.

Process area description (identify raw materials and processes used):

Wastewater is pumped to one of two 30,000-gallon tanks from pump trucks with 4,000-, 7,000- and 8,000-gallon capacity. The wasteway is filtered from rags and grit and pumped to a second tank. Two 500-gallon per minute floor pumps deliver wastewater from the floor tanks into the press and sludge pump. The press capacity is 300 gpm, and normally operates at 150 gpm. Polymer is injected in-line and waste is pumped to a belt thickener (press). The Polymer used is Stafloc 128 is kept in metal tanks and then injected with the septic water before going to press. An iPad is used to change the settings for the polymers; the operator looks at the consistency of what is coming off the belt by observing and using best professional judgement based on the operator's experience.

The wastewater from the belt is discharged to the sewer via a 6" sewer pipe and sludge from the belt is stored in a hopper where it is put onto a tractor trailer for disposal. Wastewater that falls through the belt gets put back into the tank at the start of the process. On the belt the heavier sludge goes to trailers, and water falls through and is effluent gets put back into the floor.

The floor is pitched in the building, and the basement serves to contain the wastewater; according to EarthCare's staff there have never been any issues with spills from the facility.

General housekeeping in process area (describe):

The facility washes and cleans the press and the floors every day in the morning between 6 am and 8 am. Normally only water is used with a garden hose; sometimes bleach is used as well, especially during the summer and when the tanks are cleaned out. The area is somewhat messy but acceptable, given the nature of the operation.

Condition/operation of process area:	x	Good		Fair		Poor
General housekeeping:		Good	x	Fair		Poor

Wastestream flow(s) discharged to the POTW:

The primary source of wastewater is liquid effluent from the single press and belt dewatering. The press receives both septic system wastewater or light sludge (3% solids). The sludge that comes out is at 7% to 8% solids. De minimus sanitary wastewater sources are toilets, sinks, and showers.

Sanitary ~100 (gpd) + Process 40,000 to 70,000 (gpd) (daily maximum of 82,500 gpd) = Combined 40,000 to 70,000 (gpd) (82.5k gpd max)

Type of pretreatment system:

The facility doesn't pretreat its effluent. There is a deodorizer spray for odor control (Neutrole® Cinnamon Vanilla formula which is blended with ordenone). The wastewater goes into a box and rags and debris go into a dumpster.

In the past, 30,000-gallon holding tanks were used for aeration but are not being used currently because of problems with odor control from the tanks.

- Flow (Continuous/batch/combined): Continuous
- Condition/operation of pretreatment system (Good/Fair/Poor): Not applicable

Describe any significant changes in process or flow:

There have been no significant changes since the press changed in 2017 (newer model which replaced the older version). There are no changes expected in the near or mid-term future. The improvements circa 2017 included a new dewatering belt press, odor control, screening removal box, Muffin Monster, sludge pumps and piping.

Chemical storage area (identify the chemicals that are maintained on site and how they are stored):

The polymer used is Stafloc 128 which is powder kept in 25 kg bags on wood pallets in the spill control area.

- Any floor drains? Yes, to holding tanks
- Any spill control measures? None observed

Hazardous waste:

- Are hazardous wastes drummed and labeled? No hazardous waste is generated.
- Does the IU have hazardous waste manifests?
- Any problems associated with hazardous waste: None

Solid waste (Solid waste production/solid waste disposal method(s)):

Sludge is produced and sent to the North Bergen Sewer Authority where it is incinerated. Approximately 2 trailers on Saturday are sent to out (approximately 13,000 gallons average).

Sampling and Data Retention:

- Description of sample location: Sampling is done through the pan drain.
- Sampling method/technique: Time-proportional composite sampling every half hour; flow is consistent when the facility is running.
- Are files and data kept on site for three years? Yes, sampling data is stored electronically; at least two of data are kept.

- Evaluation of self-monitoring data (Yes/No/ N/A): Yes
- If yes, was self-monitoring adequate? Yes; there is a daily and monthly worksheet. For sludge there is an annual sample which is taken from the backside of the belt which is tested for TSS, BOD, percent solids and basic metals.
- Who performs the self-monitoring analysis? Envirolab in Newburgh

Notes and Other Comments:

- 70 facilities similar to EarthCare in Beacon are operated by Wind River from Maine to Florida. Wind River is a private investment group/acquisition company). The facility was purchased by Wind River in 2016; John O'Connell owned it before. It has been in operation since the 1980s and has expanded progressively. No recent expansion of facilities and no plans to change much in the future.
- The City of Beacon redid the industrial user permit for EarthCare in 2016 at which time it was decided that the aeration tanks would no longer be in use.
- EarthCare periodically tests the septic and sludge that comes in, and always conduct a visual inspection.
- EarthCare has made many capital investments into their facility during the past several years, but Beacon staff believed that they still needed to do some improvements on their odor mitigation systems.

EarthCare has a permit issued by NYSDEC for solid waste management effective August 11, 2020, which expires on August 10, 2025.

The permit specifies that the facility is authorized to process septage/sewage sludge at a rate of 82,500 gallons per day. The facility is authorized to discharge a maximum of 385,000 gallons per week of dewatering filtrate to the City of Beacon sanitary sewer. The facility may accept only septage from portable toilets, septic tanks, cesspools or other similar individual sewage treatment systems which only receive domestic sewage/sanitary wastes and sewage sludge from private sanitary wastes having design flows of 100,000 gallons per day or less that only treat wastes received directly from connected sources through tributary sewer lines.

Requirements and Recommendations:

Residuals Management Services, LLC dba EarthCare was not in compliance in 2021 with their industrial user permit due to two BOD excursions (900 mg/l on 9/8/21 and 542 mg/l on 11/10/21). Neither the City of Beacon or EarthCare resampled after the BOD exceedances. Instead, the BOD limits were raised to 1,000 mg/l in December 2021 to accommodate the loadings from EarthCare.

EarthCare processes domestically generated sludge and septage (via gravity belt) and as a result has high BOD. However, the facility does not have any additional on-site pretreatment for its effluent.

Recommendation 17

As discussed above, industrial user permit limits must be technically based and can be updated when new local limits are developed and incorporated in the City's SUO. Different industries could be given different limits as long as the total industrial loading is less than the Maximum Allowable Industrial Loading (MAIL). That said, higher copper, BOD, and TSS limits for EarthCare might not ensure that EarthCare will be in compliance. Another option is that EarthCare installs pretreatment equipment as well. As a first step, the Auditor recommends that the City of Beacon contact other municipalities with similar septic and sludge operations by Wind River/EarthCare and see what their effluent loadings are and if any wastewater pretreatment systems have been installed at those locations.

Industrial User Visit – Fishkill Correctional Facility

Basic Information:

Name of Facility: Fishkill Correctional Facility

Address: 271 Matteawan Road, Beacon, NY 12508

Date and Time of Visit: 3/22/2022 10:30 AM

Inspectors: Alexandre Remnek, EPA Region 2; David Tavernier and Greg Post, City of Beacon

Industry Representatives: Michael Bo, Maintenance Supervisor 3

IU Permit Number: 002?? Expiration Date: 12/31/2025

IU Classification: Non-Categorical SIU

Inspection Type/Purpose	☒	Scheduled	☐	Unscheduled	☒	PCA
	☐	PCI	☐	New Company	☐	Complaint

Number of Employees: 300 correctional officers and 500 civilian staff

Number of Shifts: 3 Hours of Operation: 24/7

Water Source: City of Beacon

Nature of Operation:

The correctional facility occupies 738 acres and includes 1.6 million square feet of space. The facility currently detains 1,400 incarcerated individuals. The prison population can vary over time. The capacity of the facility is 2,000 inmates, but that has not been reached for a long time. The facility has a steel furniture and material manufacturing operation, and medical (including dental), laundry, and kitchen facilities.

Process area description (identify raw materials and processes used):

The Division of Industry at the Fishkill Correctional Facility has a steelwork focus. Their products are sold under the CorCraft (a State company) brand to New York City and other municipalities. The facility manufactures penitentiary cells, steel police barriers, and stainless-steel tables. The steel comes from outside vendors to an outside warehouse; most often Buffalo wire, plate steel and square tubing. The steel is cut and weld at the location. A turret punch steel is used for specialty work. Water at high pressure cuts through the steel.

The commercial kitchens include 4 steam kettles (??) and 12 steam ovens. There is a new kitchen where prebagged cook-chill meals from Oneida are prepared. The kitchen has a 6-month schedule for servicing grease traps by an outside vendor. There are two traps,

the temporary trap is estimated at 100 gallons and the permanent trap is estimated at 500 gallons by the facility's staff. They will be using the original grease trap in the soon to be rebuilt new kitchen. According to the facility staff, there are no operational issues with the grease traps. However, the review of the purchase vendor log indicates that servicing sometimes happens in 4-month intervals and there is physical manifestation of oil and grease backup in the kitchen. Food waste is picked up by an outside vendor and turned into compost. The small grease trap will be shut down this month. According to the facility staff, the old grease trap might have been installed in the 1970s.

The medical facility has 200 beds and is the Regional medical unit for the New York State Department of Corrections and Community Supervision. Inmates from Fishkill and other facilities receive eye care, physical therapy and dental services at the facility. The dental department is handled by the medical department. The dental area has 6 chairs; all of the chairs discharge into one separator. The separator is cleaned out once per year. The evacuation line is cleaned every week on Friday.

Henry Schein 102-6316 Or-Evac 102-6316 Concentrated Liquid Evacuation System Cleaner is mixed with water and put into the line; the expiration date of the cleaner is April 2023. The cleaner contains alkyl dimethyl benzyl and ammonium chloride. The current canister was installed on December 6, 2021.

The laundry uses chlorine, bleach and detergent. No dry cleaning is performed; only steam dryers are used.

For heating a steam system is used, where water is recirculated and cooled in a closed loop system which is not flushed out.

Condition/operation of process area:		Good	x	Fair		Poor
General housekeeping:		Good	x	Fair		Poor

Wastestream flow(s) discharged to the POTW:

Wastewater comes from the kitchen, laundry and medical facilities along with domestic wastewater

Sanitary (gpd) + Process (gpd) = Combined (gpd)

Type of pretreatment system:

The "Sewer Plant" consists of a separate one room building. An automatic rigging system (made by Hydro-dyne Engineering) consists of a bar screen and a fine mesh with fingers which takes out solid materials into a debris bag using an automatic rake system with a water regulated valve. The processor squeezes the water out of the rags and recirculates the water into the pretreatment system. The facility removes the bag as needed and checks the system periodically. The chute is cleaned every week. Water is used to clean the screens and heating system (to avoid freeze-ups).

Chemicals in the room include liquid chlorine bleach in 1-gallon jugs and Mobil SHC 634 synthetic gear and bearing oils in 5-gallon containers.

Bypass only occurs during routine maintenance performed for 1 hour (2 hours max) on a quarterly basis. The facility does not notify the POTW when maintenance shall occur and a bypass will happen.

According to the facility's staff, the equipment is replaced when wear and tear occurs, and everything is operating well. However, the inspectors observed that despite the manifold not being more than 6 months old it is rusting. There are only two open pipes to vent air outside the room and since ventilation is limited the room likely is often very humid which leads to rapid oxidization of equipment in the room.

- Flow (Continuous/batch/combined): Continuous
- Condition/operation of pretreatment system (Good/Fair/Poor): Fair; issues with rusting equipment but the system appears to function as designed.

Describe any significant changes in process or flow:

The only change has been to the steam system (which is a closed system). The new heater is a convection heater instead of a fan for heat which was upgraded in November, 2021.

Chemical storage area (identify the chemicals that are maintained on site and how they are stored):

The Powerhouse is the only place where bulk chemicals are stored. The chemicals come primarily from CorCraft and are predominantly chemical and cleaning supplies. The bulk storage is on secondary containment and is monitored by staff. Spill kits are available at the Powerhouse.

- Any floor drains? None observed.
- Any spill control measures? Yes, spill kit.

Hazardous waste:

- Are hazardous wastes drummed and labeled? No hazardous waste is generated.
- Does the IU have hazardous waste manifests?
- Any problems associated with hazardous waste: None

Solid waste (Solid waste production/solid waste disposal method(s)):

Recycled materials such as cardboard and cans are sent to the Wallkill Correctional Facility for recycling. The maintenance facility does not generate any hazardous waste. There is mercury in light bulb and other waste products; these are treated as universal waste. Waste parts cleaners in the garage are treated as envirowaste.

Sampling and Data Retention:

- Description of sample location: At wastewater treatment plant in the rear of the prison complex.
- Sampling method/technique:
- Are files and data kept on site for three years?
- Evaluation of self-monitoring data: Yes/No/ N/A (what does this mean)
- If yes, was self-monitoring adequate?
- Who performs the self-monitoring analysis? Envirolab in Newburgh, twice per year.

Notes and Other Comments:

The Fishkill Correctional Facility has a stormwater MS4 SPDES permit for discharge into Wappingers Creek.

Requirements and Recommendations:

There seems to be rapid corrosion of the wastewater treatment equipment which requires an accelerated maintenance and replacement schedule.

Grease traps should normally be replaced every five years. The inspectors' visual observations indicate that the grease trap in the kitchen was either not properly maintained or did not perform as expected in the past.

Recommendation 18

The auditor recommends that the Fishkill Correctional Facility determines why their wastewater treatment equipment is corroding more rapidly than expected. Causes may include the type of equipment being installed and the aeration and ventilation in the "Sewer Plant" room.

Recommendation 19

The Auditor strongly recommends that the Fishkill Correctional Facility considers replacing the current grease trap and plans a schedule for adequate grease removal, maintenance and replacement of the grease trap henceforth.

Attachment B

Legal Authority Review Checklist

CHECKLIST – PRETREATMENT PROGRAM LEGAL AUTHORITY REVIEWS

NAME OF POTW: City of Beacon

DATE OF REVIEW: August 5, 2022

Note: Several changes to the National Pretreatment Regulations made as a result of the Streamlining Rule are more stringent than the previous Federal requirements and therefore are considered required modifications for the POTW. Therefore, to the extent that existing POTW legal authorities are inconsistent with these required changes, they must be revised. Where local authorities are already consistent with these required provisions, further changes are not necessary.

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
A. Definitions [403.3 & 403.8(f)(2)]							
1. Act, Clean Water Act	403.3(b)	§ 1.4 A	X			179-2(A)	
2. Authorized or Duly Authorized Representative of the User	403.12(l)	§ 1.4 C		X		179-2(A)	Not the updated definition, does not cover government ownership, sole proprietorship, etc...
3. Best Management Practices or BMPs	403.3(e)	§ 1.4 E		X		N/A	Missing
4. Categorical Pretreatment Standard or Categorical Standard		§ 1.4 F			X	179-2(A)	Adequate. Model SUO has more specific language.
5. Indirect Discharge or Discharge	403.3(i)	§ 1.4 M	X			179-2(A)	
6. Industrial User (or equivalent)	403.3(j)	§ 1.4 LL	X			179-2(A)	
7. Interference	403.3(k)	§ 1.4 O	X			179-2(A)	
8. National Pretreatment Standard, Pretreatment Standard or Standard	403.3(l)	§ 1.4 BB		X		N/A	Missing
9. New Source	403.3(m)	§ 1.4 T		X		179-2(A)	Only includes first part of 403.3(l).
10. Pass Through	403.3(p)	§ 1.4 V		X		N/A	Missing
11. Pretreatment Requirement	403.3(t)	§ 1.4 AA	X			179-2(A)	

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
12. Publicly Owned Treatment Works or POTW	403.3(q)	§ 1.4 DD	X			179-2(A)	
13. Significant Industrial User <i>[NOTE: §1.4 GG(3) is an optional streamlining provision for Non-Significant Categorical Industrial User classification.]</i>	403.3(v)	§ 1.4 GG		X		179-2(A)	
Missing “Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant.”							
14. Significant Noncompliance	403.8(f)(2)(vii)	§ 9 (A-H)		X		N/A	Missing
15. Slug Load or Slug Discharge	403.8(f)(2)(vi)	§ 1.4 HH		X		N/A	Missing
16. Other definitions based on terms used in the POTW Ordinance						N/A	
B. National Pretreatment Standards – Prohibited Discharges							
1. General Prohibitions							
a. Interference	403.5(a)	§ 2.1A		X		179-4(D)(2)	
There is a reference regarding solid or viscous substances, but the language referring directly to interference is missing.							
b. Pass Through	403.5(a)	§ 2.1A		X		N/A	
Missing; pass through is mentioned in 179-1(3)-Purpose; findings. But general prohibitions for pass through needs to be included in “General Sewer Use Requirements.”							
2. Specific Prohibitions [403.5(b)]							
a. Fire/Explosion Hazard (60° C or 140° F flashpoint)	403.5(b)(1)	§ 2.1B(1)		X		179-4(D)(1)	Section does not include the closed-cup flashpoint of less than 140 F using the test methods specified in 40 CFR 261.21.

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
b. pH/Corrosion	403.5(b)(2)	§ 2.1B(2)			X	179-4(D)(3)	Adequate. Could include “or wastewater that may have any corrosive properties that may be damaging...”
c. Solid or Viscous/Obstruction	403.5(b)(3)	§ 2.1B(3)	X			179-4(D)(2)	
d. Flow Rate/Concentration (BOD, etc.)	403.5(b)(4)	§ 2.1B(4)			X	179-4(D)(10)	The Model SUO refers to pollutants rather than slug load like the Beacon SUO does.
e. Heat; exceeds 40° C (104°F)	403.5(b)(5)	§ 2.1B(5)	X			179-4(D)(4)	
f. Petroleum/Nonbiodegradable Cutting/Mineral Oils	403.5(b)(6)	§ 2.1B(6)		X		N/A	Missing
g. Toxic Gases/Vapor/Fumes	403.5(b)(7)	§ 2.1B(7)			X	179-4(D)(5)	Acceptable, but stated differently in Model SUO; could include “...may cause acute worker health and safety problems.”
h. Trucked/Hauled Waste	403.5(b)(8)	§ 2.1B(8)		X		N/A	Missing
3. National Categorical Standards	403.8(f)(1)(ii)	§ 2.2		X		N/A	SUO does not refer to CWA, 40 CFR Chapter I, Subchapter N, Parts 405–471.

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
4. Local Limits Development [NOTE: POTWs may develop Best Management Practices (BMPs) to implement the prohibitions listed in 40 CFR 403.5(a)(1). Such BMPs shall be considered local limits and Pretreatment Standards.]	403.5(c) & (d)	§ 2.4		X		N/A	
The SUO does not refer to local limits or 40 CFR 403.5(c). Limits set in 179-5 are expressed in “concentration” and it is unclear whether they are instantaneous or maximum daily or monthly average.							
5. Prohibition Against Dilution as Treatment	403.6(d)	§ 2.6			X	179-5(C)	
Could add: “...unless expressly authorized by an applicable Pretreatment Standard or Requirement. [The Superintendent] may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.”							
6. Best Management Practices Development [NOTE: Optional streamlining provision.]	403.5(c)(4)	§ 2.4C				N/A	Optional streamlining rule not yet adopted by NY State.
C. Control Discharges to POTW System							
1. Deny/Condition New or Increased Contributions	403.8(f)(1)(i)	§§ 4.8 & 5.2		X			Missing
2. Individual Control Mechanism (e.g., permit) to ensure compliance - <u>Permit Content:</u>	403.8(f)(1)(iii)	§ 4.2		X		179-9(C)	The Beacon SUO uses “may contain” for all the conditions; instead, it should be “must contain” for many conditions and “may contain” for some others.
a. Statement of Duration	403.8(f)(1)(B)(1)	§§ 5.1 & 5.2A(1)		X		N/A	
The Statement of Duration must be included in the list of topics to be included in the permit. This is different from the permit duration language in 179-9(D).							

NONE = No revision necessary

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
b. Statement of Nontransferability	403.8(f)(1)(B) (2)	§ 5.2A(2)		X		N/A	
Missing, this must be included in the list of topics included in the permit; language with regards to nontransferability is included at Section 179-9(E).							
c. Effluent Limits	403.8(f)(1)(B) (3)	§ 5.2A(3)		X		N/A	Missing
d. Best Management Practices <i>[Note: This is a required streamlining provision for CIUs with BMP requirements as part of its Categorical Standards. But if BMPs are being applied to other CIUs or noncategorical SIUs without categorical BMP requirements, then this provision would be optional and is only required if the POTW has incorporated the use of BMPs (§ 2.4 C).]</i>	403.8(f)(1)(B) (3)	§ 5.2A(3)		X			Missing
e. Self-Monitoring Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)		X		179-9(C) (4)	
Beacon SUO has “monitoring programs” rather than “self monitoring”. Could also specify if monitoring is performed by Beacon or the IU.							
f. Reporting & Notification Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)	X			179-9(C) (4), (5) & (8)	
g. Recordkeeping Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)	X			179-9(C) (7)	
h. Process for Seeking a Waiver for Pollutants Not Present or Expected to be Present <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated § 6.4B of the Model SUO.]</i>	403.8(f)(1)(B) (4) & 403.12(e) (2)	§ 5.2A(5)	N/A				
i. Statement of Applicable Civil and Criminal Penalties	403.8(f)(1)(B) (5)	§ 5.2A(6)		X		N/A	Section 179-9(C)(10) is insufficient and additional language must be included in the SUO.

NONE = No revision necessary

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REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
j. Slug Discharge Requirements (if necessary) <i>[NOTE: Required streamlining change. Where the POTW has determined that slug controls are necessary, the ordinance must provide authority for the POTW to include such requirements in IU permits.]</i>	403.8(f)(1)(B)(6)	§ 5.2A(7)			X	179-9(C)(9)	Could include in the Beacon SUO: "Requirements to control Slug Discharge, if determined by the [Superintendent] to be necessary."
k. Specific waived pollutant <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated § 6.4B of the Model SUO.]</i>	403.8(f)(1)(B)(4)	§ 5.2A(9)	N/A				
l. Permit Application/Reapplication Requirements <i>[Note: Optional permit provision]</i>		§§ 5.3 & 5.7	N/A				
m. Permit Modification <i>[Note: Optional permit provision]</i>		§ 5.4	N/A				
n. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>		§§ 5.6 & 10.8	N/A				
o. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>		§ 3.1	N/A				
p. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>		§ 10.7	N/A				
q. Requirement to submit Chain-of-Custody forms with monitoring data <i>[Note: Optional permit provision]</i>			N/A				
3. General Control Mechanism to ensure compliance <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated the use of General Permits (§ 4.6 of the Model SUO).] - Permit Content</i>	403.8(f)(1)(iii)(A)	§ 4.2 & 4.6					Not Applicable, no general control mechanisms used in Beacon.
a. Statement of Duration	403.8(f)(1)(B)(1)	§§ 5.1 & 5.2A(1)					

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
b. Statement of Nontransferability	403.8(f)(1)(B) (2)	§ 5.2A(2)					
c. Effluent Limits	403.8(f)(1)(B) (3)	§ 5.2A(3)					
d. Best Management Practices <i>[Note: This is a required streamlining provision for CIUs with BMP requirements as part of its Categorical Standards. But if BMPs are being applied to other CIUs or noncategorical SIUs without categorical BMP requirements, then this provision would be optional and is only required if the POTW has incorporated the use of BMPs (§2.4C).]</i>	403.8(f)(1)(B) (3)	§ 5.2A(3)					
e. Self-Monitoring Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)					
f. Reporting & Notification Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)					
g. Recordkeeping Requirements	403.8(f)(1)(B) (4)	§ 5.2A(4)					
h. Process for Seeking a Waiver for Pollutants Not Present or Expected to be Present <i>[Note: Required only if POTW has incorporated the use of Pollutants Not Present and § 6.4 of the Model SUO.]</i>	403.8(f)(1)(B) (4) & 403.12(e) (2)	§ 5.2A(5)					
i. Statement of Applicable Civil and Criminal Penalties	403.8(f)(1)(B) (5)	§ 5.2A(7)					
j. Slug Discharge Requirements (if necessary) <i>[NOTE: Required streamlining change. The ordinance should indicate that a user is required to develop a slug discharge control plan if determined by the POTW to be necessary.]</i>	403.8(f)(1)(B) (6)	§ 5.2A(8)					
k. Permit Application/Reapplication Requirements <i>[Note: Optional permit provision]</i>		§§ 5.3 & 5.7					

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
l. Permit Modification <i>[Note: Optional permit provision]</i>		§ 5.4					
m. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>		§§ 5.6 & 10.8					
n. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>		§ 3.1					
o. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>		§ 10.7					
p. Requirement to submit Chain-of-Custody forms with monitoring data <i>[Note: Optional permit provision]</i>							
D. Required Reports							
1. Develop compliance schedule for installation of technology	403.8(f)(1)(iv)	§§ 5.2b(2) & 10.4		X		179-9(A) (8)	
Section includes the term “compliance schedule” but does include the terms ‘installation of technology” or “Compliance Order”. Please refer to the Model SUO.							
2. Reporting Requirements [403.12] <i>Types of Reports</i>							
a. Baseline monitoring report	403.12(b)	§ 6.1		X		179-9(A)	
The SUO does not have a description of what should be included in baseline monitoring report; the SUO has information on permit application which does include some of the same information.							
(i) Identifying Information	403.12(b)(1)	§ 6.1B(1) & § 4.5A(1)a		X		179-9(A)(1)	
The SUO correctly includes name, address and location of facility is correct. However, contact information is needed as well since this might refer to a different facility.							
(ii) Other Environmental Permits Held	403.12(b)(2)	§§ 6.1B(1) & 4.5A(2)		X		N/A	Missing
(iii) Description of operations	403.12(b)(3)	§§ 6.1B(1) & 4.5A(3)a	X			179-9(A)(5), (9) & (10)	

NONE = No revision necessary

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REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
(iv) Flow measurements	403.12(b)(4)	§§ 6.1(b)(2) & 4.5A(6)		X		179-9(A)(4)	Does not differentiate flows from regulated process stream and other streams as necessary.
b. Compliance schedule progress report	403.12(c)	§ 6.2	X			179-9(A)(8)	
c. Report on compliance with categorical Pretreatment Standard deadline	403.12(d)	§ 6.3	X			179-9(F)(1)	
d. Periodic reports on continued compliance							
- From categorical users	403.12(e)	§ 6.4A			X	179-9(F)(2)	Missing information on BMPs, could be revised.
- From significant non-categorical users	403.12(h)	§ 6.4A			X	179-9(F)(2)	Could use the terms “categorical user” and “significant non-categorical user” in the SUO.
e. Notice of potential problems to be reported immediately (including slug loads)	403.12(f)	§ 6.6			X	179-5(D)	
Does not include a list of types of discharge that might cause potential problems for the POTW. Should include “nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.”							
f. Notification of changes affecting potential for a slug discharge <i>[NOTE: Required streamlining revision]</i>	403.8(f)(2)(vi)	§ § 6.5 & 6.6		X			Missing
g. Notice of violation/sampling requirement <i>[NOTE: Required streamlining revision.]</i>	403.12(g)(2)	§ 6.8		X			Missing
h. Requirement to conduct representative sampling	403.12(g)(3)	§ 6.4E		X			Missing
i. Notification of changed discharge	403.12(j)	§ 6.5		X			
SUO includes information on permit suspension due to failure to notify at 179-10(C)(2) but an explicit requirement to notify is missing.							

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
j. Notification of discharge of hazardous waste	403.12(p)	§ 6.9		X		N/A	
<i>Other Reporting Requirements</i>							
k. Data accuracy certification & authorized signatory	403.6(a)(2)(ii) & 403.12(l)	§§ 6.4D & 6.14		X		179.9(F)(1)	The certification statement is missing: "I certify under penalty of law..."
l. Recordkeeping Requirement (3 years or longer)	403.12(o)	§ 6.13		X			Missing
- Including documentation associated with Best Management Practices <i>[NOTE: Required streamlining provision.]</i>	403.12(o)	§ 6.13		X			Missing
m. Submission of all monitoring data <i>[NOTE: Required streamlining revision]</i>	403.12(g)(6)	§ 6.4F		X			Missing
n. Annual certification by Non-significant categorical Industrial Users <i>[Note: Optional provision, required only if the POTW has incorporated §1.4GG(3) of the Model SUO.]</i>	403.3(v)(2)	§§ 4.7C & 6.14B					N/A optional streamlining
o. Certification of pollutant not present <i>[NOTE: Optional provision, required only if the POTW has incorporated § 6.4 B of the Model SUO]</i>	403.12(e)(2)(v)	§ 6.14C					N/A optional streamlining
E. Test Procedures [40 CFR Part 136 & 403.12(g)]							
1. Analytical procedures (40 CFR Part 136) <i>[NOTE: Required streamlining provisions]</i>	403.12(g)	§ 6.10	X			179-9(F)(2)	
2. Sample collection procedures <i>[NOTE: Required streamlining provisions]</i>	403.12(g)(3) & (4)	§ 6.11		X		179-9(F)(2)	Missing the statement "representative of conditions occurring during the reporting period."

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
F. Inspection and Monitoring Procedures [403.8(f)]							
1. Right to enter all parts of the facility at reasonable times	403.8(f)(1)(v)	§ 7.1		X		179-9(G)(2)	SUO is not specific enough and could include another section on inspection and monitoring procedures.
2. Right to inspect generally for compliance	403.8(f)(1)(v)	§ 7.1	X			179-9(G)(2)	
3. Right to take independent samples	403.8(f)(1)(v), 403.8(f)(2)(v) & 403.8(f)(2)(vii)	§ 7.1		X		N/A	Missing
4. Right to require installation of monitoring Equipment	403.8(f)(1)(iv)	§ 7.1		X		179-9(G)(2)	Need to specify at owner's own expense, calibration of equipment, etc...
5. Right to inspect and copy records	403.12(o)(2)	§ 7.1	X			179-9(G)(2)	
G. Remedies for Non-compliance (Enforcement) [403.8(f)(1)(vi)]							
1. Non-emergency response							
a. Injunctive relief	403.8(f)(1)(vi)	§ 11.1		X		179-10	Missing definition and language
b. Civil/Criminal penalties	403.8(f)(1)(vi)	§§ 11.2 & 11.3		X		179-10	Need to update, and include minimum penalty of \$1000, etc.
2. Emergency response							
a. Immediately halt actual/threatened discharged	403.8(f)(1)(vi) (B)	§ 10.7			X	179-10(A)	Language could be more robust and comprehensive.

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
3. Legal authority to enforce Enforcement Response Plan	403.8(f)(1)(vi)	§ 11.4		X			Enforcement Response Plan not identified in SUO, nor that the “remedies provided for in this ordinance are not exclusive.”
H. Public Participation							
1. Publish list of Industrial Users in Significant Noncompliance <i>[NOTE: Required streamlining revision]</i>	403.8(f)(2)(viii)	§ 9		X		179-9(H)(3)	SUO not updated.
2. Access to data [403.8(f)(1)(vii) & 403.14]							
a. Government	403.14(a) & (c)	§ 8			X	179-9(I)	
b. Public	403.14(b)	§ 8			X	179-9(I)	Could use the term “confidential business information” and refer to 40 CFR 2.302, etc...
I. Optional Provisions							
1. Net/Gross adjustments <i>[streamlining provision]</i>	403.15	§ 2.2 D	N/A				Optional streamlining provision
2. Equivalent mass limits for concentration Limits <i>[streamlining provision]</i>	403.6(c)	§ 2.2 E	N/A				Optional streamlining
3. Equivalent concentration limits for mass limits <i>[streamlining provision]</i>	403.6(c)	§ 2.2 F	N/A				Optional streamlining
4. Upset Notification	403.16	§ 13.1			X	N/A	Missing; optional
5. Waive monitoring for pollutant not present or expected to the present <i>[streamlining provision]</i>	403.12(e)(2)	§ 6.4B	N/A				Optional streamlining
6. Reduce periodic compliance reporting <i>[streamlining provision]</i>	403.12(e)(3)	§ 6.4C	N/A				Optional streamlining

NONE = No revision necessary

REQ = Require Revision

REC = Recommend Revision

	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
7. Other special agreement or waivers (excluding wavier of National Categorical Pretreatment Standards and Requirements)			N/A				
8. Hauled Waste Reporting/Requirements		§ 3.4			X		Beacon could include hauled waste reporting and requirements in its SUO.
9. Grease Interceptor Reporting/Requirements		§ 3.2 C			X	N/A	Beacon could consider including grease trap/ interceptor language,
10. Authority to issue Notice of Violations (NOVs)		§ 10.1			X		Missing, optional.
11. Authority to issue Administrative Orders (AOs)					X	179-10(D)	Terminology could be updated.
12. Authority to issue Administrative Penalties		§ 10.6			X	179-11(A)	Terminology could be updated.
13. Authority to enforce against falsification or tampering			X			179-11(B)	
14. Any other supplemental enforcement actions as noted in the POTW's enforcement response plan			N/A				
15. Permit Appeals Procedures					X	N/A	Not in SUO, optional
16. Penalty or Enforcement Appeals Procedures					X	N/A	Not in SUO, optional
17. Bypass Notification	403.17	§ 13.3			X	N/A	Language regarding bypass not in SUO.

The list of components required under the 2005 amendments to the General Pretreatment Regulations are as follows:

- Slug control requirements in control mechanisms. [40 CFR 403.8(f)(1)(iii)(B)(6)]
- Notification requirements to include changes that might affect the potential for a slug discharge. [40 CFR 403.8(f)(2)(vi)]
- Revised SNC definition. [40 CFR 403.8(f)(2)(viii)]
- Clarification that SIU reports must include any applicable BMP compliance information. [40 CFR 40.12(b), (e), (h)]
- SIU control mechanisms must contain any BMPs required by a Pretreatment Standard, local limits, state, or local law. [40 CFR 403.8(f)(1)(iii)(B)(3)]
- Record-keeping requirements for BMPs. [40 CFR 403.12(o)]
- Clarification that CAs that perform sampling for SIUs must perform any required repeat sampling and analysis within 30 days of becoming aware of a violation. [40 CFR 403.12(g)(2)]
- Modifications to the sampling requirements. [40 CFR 403.12(g)]
- Requirement to report all monitoring results. [40 CFR 403.12(g)]

Document(s) submitted for review:

Name of Reviewers

City of Beacon Administrative Code, Part II-
General Legislation, Chapter 179 – Sewers
[HISTORY: Adopted by the Council of the City
of Beacon 9-18-1985; amended in
its entirety 7-18-2011 by L.L. No. 11-2011.
Amendments noted where applicable.]

Alexandre Remnek