

Administrative Options for POTWs

- (1) Reinterpret the term “publicly owned treatment works” to include all treatment works primarily engaged in the treatment of domestic sewage, regardless of ownership. Revise EPA’s regulatory definition of POTW at 40 CFR 403.3(q) (revisions in red).

(q) The term Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act) or treatment works that is owned or operated by a State-regulated public utility. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. In the case of such a facility that is privately owned, such term includes only those facilities that, with respect to such industrial wastes, are carrying out a pretreatment program meeting all the requirements established under section 307 and paragraphs (8) and (9) of section 402(b) for pretreatment programs (whether or not the treatment works would be required to implement a pretreatment program pursuant to such sections.)

- (2) Issue new guidance from EPA Headquarters (joint OW/OGC) for the Regional Offices that

(a) clarifies that treatment standards and RCRA domestic sewage exclusion applicable to POTWs are applicable to a new private owner, under specific circumstances, including, for example:

- i. Private owner agrees to step into the shoes of the POTW and continue to operate the system in substantial compliance with all terms/conditions of applicable NPDES permit.
- ii. NPDES permit will be transferred to the new owner as the new permittee with substantially similar requirements that applied to the municipality.
- iii. The disposition agreement between the municipality and the private owner includes a contractual provision, acceptable to EPA, regarding the new owner’s willingness and capacity to assume responsibilities of the pretreatment program. The pretreatment program can be outlined in the NPDES permit and the permittee’s rate schedule.

(b) streamlines administrative procedures, including time frames for EPA to review and sign-off on disposition agreement and any grant deviation procedures; and

(c) expressly rescinds 1987 Prothro Memo.

- (3) Clarify that domestic sewage exclusion is applicable to privately or publicly owned treatment works primarily treating domestic sewage. This would require EPA to change its current interpretation and reinterpret RCRA as not excluding private systems primarily engaged in the treatment of domestic sewage.

- (4) Other