EPA'S BAN ON SEWERING PHARMACEUTICALS

FACT SHEET FOR PUBLICLY OWNED TREATMENT WORKS (POTWS)[1]

Background

Effective on August 21, 2019, EPA prohibited all healthcare facilities and reverse distributors from disposing of their hazardous waste pharmaceuticals down the drain (e.g., no flushing or pouring down a sink). This "sewer ban" is in effect at healthcare facilities and reverse distributors of all sizes in all states, territories, and Indian country. In addition to the sewer ban, EPA strongly discourages the sewering of any pharmaceutical, with very few exceptions, by residents or by any type of facility.

Who is responsible for enforcing the sewer prohibition?

The sewer prohibition of Subpart P will be enforced through Resource Conservation and Recovery Act (RCRA) inspections of healthcare facilities and reverse distributors by state or federal officials. The Clean Water Act's National Pollutant Discharge Elimination System (NPDES) pretreatment program could also potentially apply and result in enforcement of requirements of the sewer prohibition if such requirements are adopted as part of a POTW's approved pretreatment program.

The Clean Water Act (CWA) General Pretreatment Regulations for Existing and New Sources of Pollution already contain several sewer bans of hazardous wastes under 40 CFR section 403.5(b). Is the sewer prohibition for hazardous waste pharmaceuticals required to be incorporated as another "Specific Prohibition" into local Sewer Use Ordinances (SUOs)?

No. The sewer prohibition for hazardous waste pharmaceuticals is not required to be added to local SUOs. However, a locality may elect to add a new sewer prohibition to its SUO if it has legal authority to do so.

EPA notes that the existing CWA specific discharge prohibitions at Title 40 of the Code of Federal Register (CFR) section 403.5(b) are broader than just pharmaceuticals and apply beyond healthcare facilities and reverse distributors. Specifically, these CWA prohibitions (e.g., discharge of pollutants creating a fire or explosive hazard, causing corrosive damage) would typically ban any industrial user discharges of the following RCRA characteristic hazardous wastes (RCRA and CWA regulatory citations, respectively, are included):

- Hazardous waste discharges of D001 ignitable liquids (40 CFR sections 261.21(a)(1) and 403.5(b)(1))
- Acidic D002 (corrosive) hazardous wastes (40 CFR sections 261.22(a)(1) and 403.5(b)(2))

[1] The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

- D003 reactive hazardous wastes that:

  (1) react violently with water (40 CFR sections 261.23(a)(2) and 403.5(b)(1)) or

  (2) form potentially explosive mixtures with water (40 CFR sections 261.23(a)(3) and 403.5(b)(1)) or

  (3) when mixed with water, result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems (40 CFR sections 261.23(a)(4) and 403.5(b)(7)) or

  (4) are cyanide or sulfide bearing wastes which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment (40 CFR sections 261.23(a)(5) and 403.5(b)(7)).

What are the oversight and enforcement responsibilities of a Clean Water Act control authority regarding healthcare facilities?

EPA has not established technology-based standards for discharges from healthcare facilities to POTWs, thus healthcare facilities are not categorical industrial users (CIUs). Healthcare facilities continue to be industrial users (IUs), defined broadly at 40 CFR section 403.3(j) as a "Source of Indirect Discharge," and may be significant industrial users (SIU), defined at 40 CFR section 403.3(v).

40 CFR section 403.8(f) directs POTWs to establish procedures and standards to identify all IUs to ensure compliance with the general and specific prohibitions to protect against pass through and interference. Control authorities, however, have discretion and flexibility on what those requirements should be for IUs (non-CIUs and non-SIUs). As a POTW's procedures are uniquely tailored to the capacity and capability of each POTW, as well as the NPDES permit requirements for the individual receiving water body, control authorities should refer to their programs' procedures and NPDES permit conditions to understand their requirements as they relate to all industrial users. Control authorities have the option to modify their programs to adapt their otherwise applicable procedures. This option may be considered a substantial modification, which has special requirements described in 40 CFR section 403.18. Control authorities may work with their approval authority for assistance with questions on handling specific oversight, enforcement, or program modification questions.

How can POTWs use EPA's RCRA Hazardous Waste Pharmaceutical "sewer ban" as a tool to enhance water quality?

In the preamble to the Hazardous Waste Pharmaceuticals final rule (February 22, 2019; 84 FR 5816) EPA provides the basis for the sewer ban (see page 5893 for the full discussion):

> "traditional wastewater treatment operations implemented at POTWs are designed to remove conventional pollutants, such as suspended solids and biodegradable organic compounds. They are not designed to remove pharmaceuticals that are present in discharges from medical and veterinary facilities…[T]he pharmaceuticals entering the environment, through flushing or other means, are having a negative effect on aquatic ecosystems and on fish and animal populations."

Additionally, EPA summarized the basis for the sewer ban in a statement that accompanied the publication of the final rule:

> "This action will help address the issue highlighted by a growing body of publicly available studies documenting the presence of pharmaceuticals in drinking and surface waters as well as their negative impacts to aquatic and riparian ecosystems."

If a POTW determines that the presence of pharmaceuticals disrupts its treatment process (interference) or causes an NPDES permit violation (for example, a violation of a Whole Effluent Toxicity or "WET" limit [pass through]), the POTW would have local evidence that is consistent with EPA's basis for enacting the sewer ban under the Agency's RCRA authority. Whether it is to address or prevent a violation, a POTW, as allowed under its own legal authorities, may use this evidence as a basis to adopt a sewer flushing ban as a local limit (which, under the National Pretreatment Program, includes best management practices). This local limit would control the introduction of hazardous pharmaceuticals into the POTW to protect its treatment processes and to minimize the presence of pharmaceuticals in its effluent (potential recycled water) and biosolids.

Even if a POTW does not have specific NPDES permit limits for pharmaceutical compounds, a POTW may find that instituting and overseeing sewer ban controls and offering alternatives to flushing, such as sponsoring waste pharmaceutical "take-back programs" (in conjunction with law enforcement) for both hazardous and non-hazardous pharmaceuticals, may be tools it can use to meet state or local water recycling objectives or permit requirements. Additionally, these measures may be pursued to achieve compliance and/or a higher level of consumer confidence where the recycled water will be used as a source water by a drinking water utility for potable reuse or for other types of reuse, such as irrigation. In this manner, a POTW may adopt the pretreatment program's pollutant source controls (permits; local limits, best management practices, and spill protocols; inspections and monitoring) in its larger suite of water resource management techniques to support water recycling.

> POTWs have discretion over requirements for industrial users and may implement permit conditions or programs to control pharmaceutical discharges to protect the quality of recycled water, as appropriate and within their legal authorities.

Where can I find additional information on EPA's sewer ban?

For additional information on EPA's ban on sewering pharmaceuticals, see EPA's Frequent Questions.