

ILLINOIS POLLUTION CONTROL BOARD
May 16, 2024

IN THE MATTER OF:)
SDWA UPDATE, USEPA) R24-6
AMENDMENTS (January 1, 2023 through) (Identical-in-Substance
June 30, 2023)) Rulemaking - Wastewater)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by M.D. Mankowski):

The Board today adopts amendments to Illinois rules that are “identical in substance” (IIS) to wastewater pretreatment regulations adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2023.

Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2022)) require the Board to adopt regulations that are “identical in substance” to federal wastewater pretreatment regulations. The wastewater pretreatment regulations are rules adopted by the USEPA pursuant to sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2021)). Section 13.3 also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2022)) do not apply to the Board’s adoption of identical-in-substance regulations. The federal wastewater pretreatment regulations are found at 40 C.F.R. 400 through 499.

USEPA amended the effluent limitation guidelines for the steam electric power generating point source category to extend the date for existing coal-fired power plants to submit a notice of planned participation (NOPP) for the permanent cessation of coal combustion subcategory in the 2020 Steam electric Reconsideration Rule. The Board today revises the Illinois sewer discharge criteria rules for steam electric power generating, by adding the extended NOPP deadline.

The Board adopted a proposal for public comment on December 7, 2023. A Notice of Proposed Amendments appeared in the *Illinois Register* on December 26, 2023 at 47 Ill. Reg. 18866. The 45-day public comment period ended February 13, 2024, the first business day following the deadline.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds it necessary to extend the due date for final Board adoption of amendments from March 29, 2024, to today’s date, May 16, 2024.

Under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2022)), the Board must complete this rulemaking within one year after the corresponding federal action. Based on the date

USEPA extended the deadline to submit a Notice of Planned Participation (NOPP), the Board's deadline to adopt final rules in this docket was March 29, 2024.

The Board's resources were used to begin training a new attorney to handle the IIS rulemakings. The Board also completed other complicated and extensive rulemakings during the last few months. The Board now adopts the amendments. Therefore, the Board extends the deadline until May 16, 2024, the date of this final order.

SUMMARY OF PROPOSED AMENDMENTS

Section 1318(a)(A) of the FWPCA requires the owner and operator of any point source to: (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the USEPA shall prescribe), and (v) provide such other information as USEPA may reasonably require. See 33 U.S.C. § 1318(a)(A) (2022).

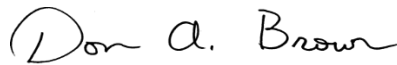
40 CFR § 423.19 provides reporting and recordkeeping requirements for steam electric power generating point sources. On March 29, 2023, USEPA adopted an amendment to 40 CFR § 423.19(f)(1) which extended the deadline for point sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2028, to submit a NOPP from October 13, 2021, to June 27, 2023. 88 Fed. Reg. 18440 (March 29, 2023).

The Board incorporates by reference the new NOPP deadline into the Illinois wastewater pretreatment rules.

ORDER

The Board directs the Clerk to file the adopted amendments with the Office of the Secretary of State and provide notice in the *Illinois Register* of the appended adopted amendments to the Illinois wastewater pretreatment rules.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 16, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE C: WATER POLLUTION
 CHAPTER I: POLLUTION CONTROL BOARD
 PART 307
 SEWER DISCHARGE CRITERIA
 SUBPART A: GENERAL PROVISIONS

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307.101	Preamble (Renumbered)
307.102	General Requirements (Renumbered)
307.103	Mercury (Renumbered)
307.104	Cyanide (STORET number 00720) (Renumbered)
307.105	Pretreatment Requirements (Repealed)
307.1001	Preamble
307.1002	Definitions
307.1003	Test Procedures for Measurement
307.1005	Toxic Pollutants
307.1006	Electronic Reporting

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307.1507	Fluid Mix for Ice Cream and Other Frozen Desserts
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307.1603	Normal Wheat Flour Milling
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307.4023	Wastepaper-Molded Products (Repealed)
307.4024	Nonintegrated-Lightweight Papers (Repealed)

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Section
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307.8110	Metal Powders

307.APPENDIX A References to Previous Rules (Repealed)

AUTHORITY: Implementing Sections 7.2, 13, and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 13.3, and 27].

SOURCE: Adopted in R70-5, March 31, 1971; amended in R70-8/R71-14/R71-20, March 7, 1972; amended in R74-3, October 30, 1975; amended in R74-15/R74-16 at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended in R76-17 at 2 Ill. Reg. 45, p. 101, effective November 5, 1978; amended in R76-21 at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5/R82-10 at 8 Ill. Reg. 1625, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2592, effective January 13, 1988; amended in R88-11 at 12 Ill. Reg. 13094, effective July 29, 1988; amended in R88-18 at 13 Ill. Reg. 1794, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19288, effective November 17, 1989; amended in R88-9 at 14 Ill. Reg. 3100, effective February 20, 1990; amended in R89-12 at 14 Ill. Reg. 7620, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7377, effective April 27, 1992; amended in R93-2 at 17 Ill. Reg. 19483, effective October 29, 1993; amended in R94-10 at 19 Ill. Reg. 9142, effective June 23, 1995; amended in R95-22 at 20 Ill. Reg. 5549, effective April 1, 1996; amended in R97-23 at 21 Ill. Reg. 11930, effective August 12, 1997; amended in R99-4 at 23 Ill. Reg. 4413, effective March 31, 1999; amended in R99-17 at 23 Ill. Reg. 8421, effective July 12, 1999; amended in R00-15 at 24 Ill. Reg. 11640, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1735, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10867, effective August 14, 2001; amended in R03-13 at 27 Ill. Reg. 15095, effective September 10, 2003; amended in R04-1 at 28 Ill. Reg. 3076, effective February 6, 2004; amended in R04-18 at 28 Ill. Reg. 10661, effective July 13, 2004; amended in R05-4/R05-15 at 29 Ill. Reg. 6921, effective April 26, 2005; amended in R06-13 at 30 Ill. Reg. 17811, effective October 26, 2006; amended in R08-5/R08-7/R08-13 at 32 Ill. Reg. 18986, effective November 26, 2008; amended in R13-7

at 37 Ill. Reg. 1936, effective February 4, 2013; amended in R16-9 and R17-8 at 41 Ill. Reg. 1129, effective January 23, 2017; amended in R18-6/R18-14 at 42 Ill. Reg. 10676, effective May 29, 2018; amended in R21-15 at 45 Ill. Reg. 8035, effective June 21, 2021; amended in R18-23 at 47 Ill. Reg. 4662, effective March 23, 2023; amended in R24-6 at 48 Ill. Reg. _____, effective _____.

SUBPART X: STEAM ELECTRIC POWER GENERATING

Section 307.3301 Steam Electric Power Generating

- a) **Applicability.** This Section applies to discharges resulting from the operation of a generating unit by an establishment whose generation of electricity is the predominant source of revenue or principal reason for operation, and whose generation of electricity results primarily from a process using fossil-type fuel (coal, oil, or gas), fuel derived from fossil fuel (e.g., petroleum coke, synthesis gas), or nuclear fuel in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium. This Section applies to discharges associated with both the combustion turbine and steam turbine portions of a combined cycle generating unit.
- b) **Specialized Definitions.** The Board incorporates by reference 40 CFR 423.11 (2020), as amended at 85 Fed. Reg. 64650 (Oct. 13, 2020). This incorporation includes no later amendments or editions.
- c) **Existing Sources**
 - 1) The Board incorporates by reference 40 CFR 423.13(g)(3)(i) and 423.16 (2020), as amended at 85 Fed. Reg. 64650 (Oct. 13, 2020); 40 CFR 423.13(k)(3) and (o), 423.18, and 423.19, as added at 85 Fed. Reg. 64650 (Oct. 13, 2020); 40 CFR 423.19(f)(1) as amended at 88 Fed. Reg. 18440 (March 29, 2023); and appendix A to 40 CFR 423 (2020). These incorporations include no later amendments or editions.
 - A) **Flue Gas Desulfurization (FGD) Wastewater Discharges by Electric Generating Units (EGUs) Seeking Voluntary Incentives Participation (VIP).** The owner or operator of an EGU opting into VIP may seek to operate under alternative standards for discharges of FGD wastewater, as defined in 40 CFR 423.11(n), incorporated by reference in subsection (b), as provided in 40 CFR 423.13(g)(3)(i) after fulfilling the certification requirements in 40 CFR 423.19(a), (b), and (h).

BOARD NOTE: This subsection (c)(1)(A) derives from 40 CFR 423.13(g)(3)(i) and 423.19(h). USEPA calls VIP “Voluntary Incentives Program,” and the Board evokes enough of that name as is evocative but stops short of using the same name. USEPA

stated that its Voluntary Incentives Program applies only to direct discharges and is not finalized as to indirect discharges. 85 Fed. Reg. 64650, 64660, 64675 (Oct. 13, 2020). USEPA's rules, however, expressly contemplate applying its elements to indirect discharges. See 40 CFR 423.19(h)(3).

- B) Flue Gas Desulfurization (FGD) Wastewater Discharges by EGUs Initiating Cessation of Coal Burning. The owner or operator of an EGU that will undergo permanent cessation of coal combustion, as defined in 40 CFR 423.11(w), incorporated by reference in subsection (b), may seek to operate under alternative standards for discharges of FGD wastewater, as defined in 40 CFR 423.11(n), incorporated by reference in subsection (b), as provided in 40 CFR 423.16(e)(1) after fulfilling the certification requirements in 40 CFR 423.19(a), (b), and (f).

BOARD NOTE: This subsection (c)(1)(B) derives from 40 CFR 423.16(e)(1) and 423.19(f).

- C) Notice of Material Delay. An EGU that will undergo permanent cessation of coal combustion or one that opted into VIP under alternative standards under subsection (c)(1)(A) operating under alternative standards under subsection (c)(1)(B) must submit a notice of significant delay as required by 40 CFR 423.19(j).

BOARD NOTE: This subsection (c)(1)(C) derives from 40 CFR 423.19(j).

- D) FGD Wastewater Discharges by Low Utilization EGUs (LUEGUs). The owner or operator of an EGU that qualifies as a LUEGU, as defined in 40 CFR 423.11(z), incorporated by reference in subsection (b), may seek to operate under the alternative standards for discharges of FGD wastewater, as defined in 40 CFR 423.11(n), incorporated by reference in subsection (b), provided in 40 CFR 423.16(e)(2) after fulfilling the certification requirements in 40 CFR 423.19(a), (b), and (e).

BOARD NOTE: This subsection (c)(1)(D) derives from 40 CFR 423.16(e)(2) and 423.19(e).

- E) Bottom Ash (BA) Transport Water Discharges. Discharge of BA transport water, as defined in 40 CFR 423.11(p), incorporated by reference in subsection (b), is prohibited and only allowed as provided in 40 CFR 423.16(g) after complying with the best management practices requirements of 40 CFR 423.13(k)(3) and

fulfilling the certification requirements in 40 CFR 423.19(a) through (d).

BOARD NOTE: This subsection (c)(1)(E) derives from 40 CFR 423.13(k)(3), 423.16(g), and 423.19(c) and (d).

- F) EGUs Seeking to Transfer Between Applicable Discharge Limitations. Subject to the limitations in subsection (c)(1)(G), the owner or operator of an EGU may seek to transfer applicable discharge standards, as provided in 40 CFR 423.13(o), after fulfilling the certification requirements in 40 CFR 423.19(a), (b), and (i). The permissible transfers are the following:
- i) Before December 31, 2023, from limitations applicable to an EGU initiating cessation of coal combustion under subsection (c)(1)(B) to those applicable to a LUEGU under subsection (c)(1)(D);
 - ii) Before December 31, 2023, from VIP limitations under subsection (c)(1)(A) to those applicable to a LUEGU under subsection (c)(1)(D);
 - iii) Before December 31, 2025, from VIP limitations under subsection (c)(1)(A) to those applicable to an EGU initiating cessation of coal combustion under subsection (c)(1)(D);
 - iv) Before December 31, 2025, from limitations applicable to an EGU initiating cessation of coal combustion under subsection (c)(1)(B) to VIP limitations under subsection (c)(1)(A);
 - v) Before December 31, 2025, from limitations applicable to a LUEGU under subsection (c)(1)(D) to generally applicable limitations for discharges of FGD wastewater and BA transport water under 40 CFR 423.16;
 - vi) Before December 31, 2025, from limitations applicable to a LUEGU under subsection (c)(1)(D) to VIP limitations under subsection (c)(1)(A); and
 - vii) Before December 31, 2025, from limitations applicable to a LUEGU under subsection (c)(1)(D) to those applicable to an EGU initiating cessation of coal combustion under subsection (c)(1)(B).

BOARD NOTE: This subsection (c)(1)(F) derives from 40 CFR 423.13(o) and 423.19(i). USEPA calls VIP “Voluntary Incentives Program,” and the Board evokes enough of that name as is evocative but stops short of using the same name. USEPA stated that its Voluntary Incentives Program applies only to direct discharges and is not finalized as to indirect discharges. 85 Fed. Reg. 64650, 64708 n. 166 (Oct. 13, 2020). USEPA’s rules, however, expressly contemplate applying its elements to indirect discharges. See 40 CFR 423.19(i)(1).

- G) Conditions for Transfer Between Applicable Discharge Limitations. Conditions apply to transfer between applicable discharge limitations:
- i) An EGU must comply with all currently applicable requirements before filing a notice under 40 CFR 423.19(i) seeking transfer to other applicable discharge limitations, as provided in 40 CFR 423.13(o)(2); and
 - ii) An EGU seeking a transfer described in subsections (c)(1)(F)(iii) through (c)(1)(F)(vii) must comply with more stringent limitations that already apply, instead of the less stringent limitations sought.

BOARD NOTE: This subsection (c)(1)(G) derives from 40 CFR 423.13(o)(2) and (o)(3).

- H) An EGU that would otherwise qualify as a LUEGU or as ceasing combustion of coal before December 31, 2028 will continue to qualify if the conditions in 40 CFR 423.18 are true and after the owner or operator fulfills the certification requirements in 40 CFR 423.19(a), (b), and (g).

BOARD NOTE: This subsection (c)(1)(H) derives from 40 CFR 423.16(e)(1) and (e)(2), 423.18, and 423.19(g). The requirements of 40 CFR 423.18 directly apply to conditions in NPDES permits. The certification requirement of 40 CFR 423.19(g) allows the discharge standards for the LUEGU or EGU ceasing coal combustion subcategory continue to continue to apply to indirect dischargers under the same circumstances and conditions.

- 2) No person subject to the pretreatment standards incorporated by reference in subsection (c)(1) may cause, threaten, or allow the discharge of any contaminant to a POTW in violation of those standards.

- d) New Sources

- 1) The Board incorporates by reference 40 CFR 423.17 and appendix A to 40 CFR 423 (2020). This incorporation includes no later amendments or editions.
- 2) No person subject to the pretreatment standards incorporated by reference in subsection (d)(1) may cause, threaten, or allow the discharge of any contaminant to a POTW in violation of those standards.
- 3) "New source" means any building, structure, facility, or installation whose construction commenced after October 14, 1980.

(Source: Amended at 48 Ill. Reg. _____, effective _____)