

ILLINOIS POLLUTION CONTROL BOARD
June 16, 1988

IN THE MATTER OF:)
)
PRETREATMENT UPDATE) R88-11
(4/1/87 through 12/31/87))

FINAL ORDER. ADOPTED RULE

OPINION OF THE BOARD (by J. Marlin):

The Board is amending the pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act (Act). The text of the rules is contained in a separate Order of this same day.

Section 13.3 of the Act requires the Board to adopt regulations which are "identical in substance" with federal regulations promulgated by the United States Environmental Protection Agency (USEPA) to implement the pretreatment requirements of Sections 307 and 402 of the Clean Water Act, which was previously known as the Federal Water Pollution Control Act. Section 13.3 provides that Title VII of the Act and Sections 5 and 6.02 of the Administrative Procedure Act (APA) do not apply to identical in substance regulations adopted to establish the pretreatment program. However, Section 13.3 of the Act does require the Board to provide for notice and public comment before rules are filed with the Secretary of State.

This rulemaking updates the pretreatment rules to cover USEPA rules adopted between April 1, 1987 and December 31, 1987. The following Federal Registers are included:

52 Fed. Reg. 25556	July 7, 1987
52 Fed. Reg. 28432	July 29, 1987
52 Fed. Reg. 42568	November 5, 1987

The Board adopted a Proposed Opinion and Order on April 7, 1988. In order to provide the public with notice and the opportunity to comment, the Board published the text of the proposed rules in the Illinois Register, and mailed copies to the persons on the R86-44 mailing list. The proposal appeared on April 29, 1988, at 12 Ill. Reg. 7494. The Board received no public comment. The Board did receive codification comments from the Administrative Code Unit.

The Board appreciates the assistance of Morton Dorothy in drafting the rules and Opinion.

The pretreatment rules govern discharges by industrial users to publicly owned treatment works (POTWs). The rules are intended to prevent industrial discharges from passing through POTW treatment plants without adequate treatment to waters of the State, and to prevent industrial discharges from interfering with the operation of the treatment plant.

The Illinois pretreatment rules are contained in 35 Ill. Adm. Code 307 and 310. Part 307 includes the categorical pretreatment standards, which are incorporated by reference from the USEPA rules. Part 310 specifies how a POTW sets up a pretreatment program, and how industrial users get pretreatment permits or authorizations to discharge.

The Illinois pretreatment rules were adopted in R86-44, Opinion and Order of the Board of December 3, 1987. The rules appeared on January 29, 1988 at 12 Ill. Reg. 2502. They were filed with the Secretary of State on January 13, 1988.

The specific amendments encompassed by this update affect only the categorical pretreatment standards reflected in Part 307; there are no amendments to the program requirements of Part 310. The following is a summary of the amendments:

July 7	Nonferrous metals category
July 29	Fertilizer category
November 5	Organic chemicals, plastics and synthetic fibers category

The July 7 amendments are minor revisions to existing regulations governing aluminum smelting. The November 5 amendments include new rules defining and regulating new subcategories related to organic chemical manufacturing. The July 29 amendments are site specific federal rules relating only to the Louisiana pretreatment program.

DETAILED DISCUSSION

Section 307.2400 et seq. Organic Chemicals

This Subpart is drawn from 40 CFR 414, which was amended at 52 Fed. Reg. 42568, November 5, 1987. The Part has been expanded to regulate discharges from the manufacture of organic chemicals, plastics and synthetic fibers.

40 CFR 414 previously contained a single subpart which governed the manufacture of butadiene by the oxidative dehydrogenation of butene. This is reflected in Section 307.2402, which is repealed in this rulemaking. Butadiene is now regulated as a commodity organic chemical under 40 CFR 414.60, which will now be reflected in Section 307.2405.

The general outline of the Board's sections incorporating the categorical standards by reference is discussed starting at page 12 of the December 5 Opinion in R86-44. These amendments present some difficulties.

The Board has generally edited the applicability statements to remove references to point source effluent discharges. These are regulated under Part 309 of the Board's rules. Part 310 addresses only discharges to sewers.

40 CFR 414, Subparts I and J address effluent discharges only. As discussed on page 15 of the R86-44 Opinion, the Board generally adopts a definition of all subcategories even if there are no pretreatment standards imposed on the subcategory. This avoids interpretations of the Board's rules which might place a discharger from the omitted subcategory into one of the included subcategories. Also, it assures that any sewer dischargers which may exist are subject to the pretreatment permit requirement even though there might be no specific pretreatment standards. However, Subparts I and J differ from most of the Subparts in the USEPA rules in that they do not define and regulate a subcategory. Rather, they appear to contain additional requirements that certain direct dischargers within the other subcategories must meet. The Board has therefore not adopted any equivalent to these Subparts.

The category and subcategories are defined in terms of SIC codes. The Board has previously incorporated the Standard Industrial Classification Manual by reference in Part 310. The Board has referenced that here in order to comply with APA incorporation by reference requirements.

The USEPA applicability statements include a lot of minor editorial problems, as is the case with all of the pretreatment standards. Some of these will be discussed in this Opinion.

40 CFR 414.11(a) defines the category regulated. The Board has eliminated unnecessary verbiage from the introductory language, consistent with the rest of the Part. The Board has also edited the introductory language to correct grammatical deficiencies.

The applicability statement includes establishments which manufacture OCPSF products which are covered by the subcategories "and" which are included in certain major SIC groups. The Board has looked at this closely, since the USEPA rules often use "and" to mean "or". The effect of "and" is to impose a global limitation on the entire Part, so that if one of the lists in a Subpart specifically includes something outside of the SIC major groups, the specific inclusion is cancelled by the global applicability statement. In this Part the subcategories appear to all belong within the listed SIC major groups. Therefore, the Board has retained "and" in the global applicability statement. The alternative would be to substitute "or", so that the

applicability would be controlled by the individual Subparts. The Board solicited comment as to whether USEPA intended "and" or "or" in this applicability statement. The Board received no response, and has left this as "and".

The remaining applicability statements generally use "and" to mean "or". For example, 40 CFR 414, Subpart F applies to discharges resulting from the manufacture of "SIC 2865 and 2869 commodity organic chemicals". The SIC categories are intended to define non-overlapping sets, so that the group of dischargers manufacturing something in both sets is probably very small. USEPA certainly means "or" instead of "and". The Board has corrected this consistent error.

The applicability statements are mainly lists of chemicals. USEPA has not followed the generally accepted format which it uses in 40 CFR 261. Chemical lists are supposed to be alphabetized according to the first letters of the name, ignoring numbers and certain other prefixes, such as "n-", "N-", "o-", "cis-", etc. Many of the lists have been alphabetized by prefix. Following the main list is a sublist of chemicals which start with a numerical prefix, arranged in numerical order. Finally, there is a third sublist of chemicals which apparently were too difficult to arrange in either sublist. Also, USEPA has used creative capitalization. In some cases this changes a chemical name ("n" is for normal, "N" is for nitrogen). The usual practice is to capitalize the letter by which the name is alphabetized, which makes it a lot easier to use the list.

It would be very difficult for someone used to seeing alphabetical lists of chemicals to find a given chemical in the list. However, properly alphabetizing the list would make comparison with the USEPA list more difficult. The Board solicited comment as to whether it would be better to leave the lists in the order presented in the USEPA rules, or to attempt to properly alphabetize them. The Board received no comment, and will therefore leave the order generally the same as that used by USEPA.

40 CFR 414.70(d) is a list of halogenated bulk organic chemicals. USEPA has included 1,4-Phenylenediamine dihydrochloride. This is not a halogenated organic in the usual meaning of the term, or as defined in 40 CFR 268, or 35 Ill. Adm. Code 728 or 729, since there is no carbon-halogen bond. Rather, it is the salt of an amine, and belongs in Section 414.70(b) with the other amines. This placement is so misleading that the Board has moved it to the correct heading.

40 CFR 414.12 requires existing sources to come into compliance within three years. The Board has substituted the actual date, November 5, 1990.

As was discussed on page 16 of the R86-44 Opinion, the USEPA rules define "new source" by reference to the date a proposal to

regulate the subcategory appeared in the Federal Register. (40 CFR 403.3(k)). Since these proposal dates are not readily available, the Board included the actual dates for each subcategory in the rules. There are difficulties in determining these dates for the OCPSF category.

40 CFR 414 was originally proposed on December 17, 1973. The Part was adopted, and the subject of a lawsuit. As a result, the entire Part was repealed, except the portion regulating the oxidative dehydrogenation of butene to butadiene. At about the same time USEPA adopted 40 CFR 416, which regulated the plastics and synthetics point source category. As a result of litigation, most of the effluent standards in Part 416 were "suspended." Parts 414 and 416 have now been combined into new Part 414. The new source date for the current proposal is March 21, 1983. (See 52 Fed. Reg. 42526, November 5, 1987.)

The definition of "new source" in 40 CFR 403.3(k) provides that the date standards are proposed under section 307(c) of the Clean Water Act is the new source date "if such Standards are thereafter promulgated in accordance with that section." Since the Part 414 standards were repealed as a result of litigation, the proposed date is not the new source date, except with respect to butadiene.

40 CFR 403 includes a definition of "new source" which overrides the similar definition of "new source" in 40 CFR 401, which applies only to point source, effluent discharges to waters of the U.S. 40 CFR 416 included no pretreatment standards. Therefore, the proposed date has no impact on the new source date for the pretreatment standards.

The Board has used the date of the current Part 414 proposal, March 21, 1983, as the new source date for all of the OCPSF subcategories, except for oxidative dehydrogenation of butene to butadiene. The new source date for the latter will be December 17, 1973, which is the date cited in the Federal Register as the proposal date for Part 414. Repealed Section 307.2402 used April 25, 1974 as the new source date for butadiene manufacture. This was a later version of the Part 414 proposal which the Board inadvertently referenced in R86-44.

Section 307.2801 Fertilizer Manufacturing

This Section is drawn from 40 CFR 418, which was amended at 52 Fed. Reg. 28432, July 29, 1987. The amendments exclude certain phosphoric acid plants in Louisiana from Part 418. Since this has no impact in Illinois, the Board has adopted no revisions. However, the Board has updated the incorporation by reference to include the 1987 CFR.

Section 307.3102 et seq. Aluminum Smelting

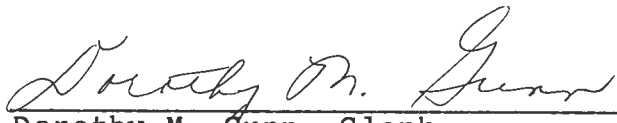
These Sections are drawn from 40 CFR 421, which was amended

at 52 Fed. Reg. 25556, July 7, 1987. The amendments set new pretreatment standards for primary and secondary aluminum smelting. The Board has updated the incorporations by reference to include the amendments.

This Opinion supports the Board's Order of this same day. The Board will withhold filing of these rules until July 1, 1988, to allow time for motions for reconsideration by the agencies involved in the authorization process.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 16th day of June, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board