

ILLINOIS POLLUTION CONTROL BOARD

March 7, 2002

IN THE MATTER OF: )  
)  
WASTEWATER PRETREATMENT ) R02-9  
UPDATE, USEPA AMENDMENTS ) (Identical-in-Substance  
(October 3, 2001) ) Rulemaking - Public Water Supply)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

The Board received a motion for expedited consideration from the Illinois Environmental Protection Agency (Agency) and the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) on October 31, 2001. By that motion, the Agency and the MWRDGC requested that the Board expedite consideration of certain amendments adopted by United States Environmental Protection Agency (USEPA) on October 3, 2001. Those federal amendments are intended to implement the federal Project eXcellence and Leadership (Project XL). The joint motion requested that the Board incorporate the October 3, 2001 federal amendments into the wastewater pretreatment amendments proposed by the Board in Wastewater Pretreatment Update, USEPA Amendments (January 1, 2001 through June 30, 2001), R02-3 (Oct. 4, 2001).

In its November 15, 2001 opinion and order, the Board granted this request and proposed corresponding amendments to the Illinois wastewater pretreatment regulations. A Notice of Proposed Amendments appeared in the November 30, 2001 issue of the *Illinois Register*, at 25 Ill. Reg. 15365. The public comment period would have expired after 45 days, on January 14, 2002. The Illinois Environmental Protection Agency (Agency) filed comments on January 14, 2002. However, on January 24, 2002, the Board granted the January 11, 2002 request from USEPA that it be allowed to file comments until February 15, 2002. USEPA filed its comments on February 15, 2002.

In this opinion and order, the Board adopts as final amendments based on the October 3, 2001 federal amendments. In response to the Agency and USEPA comments that portions of the Board's proposal were not truly "identical-in-substance" to the USEPA rules, the Board has deleted a segment of the rule proposed as 35 Ill. Adm. Code 310.930(b).

Under Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2000)), the Board today proposes amendments to the Illinois regulations that are "identical in substance" to wastewater pretreatment regulations that the USEPA adopted to implement 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) (1994)). The federal action that underlies this docket includes the federal wastewater pretreatment amendments that USEPA adopted on October 3, 2001.

Sections 7.2 and 13.3 provide for quick adoption of regulations that are identical in substance to federal wastewater pretreatment regulations that USEPA adopts to implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the FWPCA. 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 (2000)) 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.

The Board will promptly file these amendments with the Office of the Secretary of State.

### **THE FEDERAL ACTION CONSIDERED IN THIS RULEMAKING**

On October 3, 2001 (at 66 Fed. Reg. 50334), USEPA amended the federal wastewater pretreatment regulations to facilitate its Project XL. Project XL allows the imposition of alternative requirements to the generally applicable environmental regulations for the sake of achieving greater environmental benefits by alternative means. The specific October 3, 2001 Project XL action incorporated a new provision in the federal wastewater pretreatment regulations that would allow the State to issue permits that relax the generally applicable regulations in favor of imposing alternative requirements that would confer greater environmental benefits than would compliance with the generally applicable rules. USEPA undertook the October 3, 2001 Project XL action for the immediate benefit of five publicly owned treatment works (POTWs), including the MWRDGC, which is regulated under the Illinois wastewater pretreatment program.<sup>1</sup> The new provision added to the federal regulations, however, is drafted broadly enough that it would apply to other POTWs in the future.

### **PUBLIC COMMENTS**

The Board adopted a proposal for public comment in this matter on November 15, 2001. A Notice of Proposed Amendments appeared in the November 30, 2001 issue of the *Illinois Register*, at 25 Ill. Reg. 15365. The public comment period would have expired on January 14, 2002, but the Board extended the public comment period until February 14, 2002 based on the January 11, 2002 request of USEPA. The Board received public comments on this proposal until February 15, 2002. During the comment period, the Board received the following two public comments:

- PC 1 Connie Tonsor, Associate Counsel, Special Assistant Attorney General, Division of Legal Counsel, Illinois Environmental Protection Agency (received January 14, 2002)
- PC 2 David A Ullrich, Deputy Regional Administrator, United States Environmental Protection Agency (received February 15, 2002)

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<sup>1</sup> The other four POTWs are the following: The Narragansett Bay Commission in Rhode Island, the Jeffersontown Wastewater Treatment Plant in Kentucky, the City of Albuquerque, New Mexico, and the City of Denton, Texas.

Both the Agency (by PC 1) and USEPA (by PC 2) requested that the Board change the proposal by removing proposed subsection (b). The comments received and the Board's response are described below in the discussion of the amendments.

### **DISCUSSION**

The Board incorporated the October 3, 2001 federal amendments to the wastewater pretreatment regulations into the Illinois wastewater pretreatment regulations with minimal deviation from the federal text. Persons interested in the substance of the underlying federal action should refer to the notice that appeared in the October 3, 2001 issue of the *Federal Register*. This discussion considers only incorporating the federal Project XL provision into the Illinois regulations. The Board has found it necessary to deviate from the text of the federal regulations, and this discussion focuses on those deviations.

The first addition to the federal text is the addition of a definition of "Project XL" to the Illinois regulations. We added this definition to Section 310.110, the centralized body of definitions intended for use with the wastewater pretreatment regulations. To define "Project XL" the Board referred to the federal "Project for eXcellence and Leadership" and facility-based and community-based regulatory reinvention projects as described in the two *Federal Register* notices that announced initiation of the federal program. On May 23, 1995, at 60 Fed. Reg. 27282, USEPA announced the program for facility-based projects, and on November 1, 1995, at 60 Fed. Reg. 55569, USEPA announced expansion of the program to include community-based projects. The definition refers to both *Federal Register* notices. The Board invites comment on our added definition of "Project XL."

A second deviation from the federal text relates to the structural changes made in adapting 40 C.F.R. 403 into the Illinois rules at 35 Ill. Adm. Code 310. Many of the federal provisions have been divided into several Sections in the Illinois regulations. Often, a single federal provision equates to a Subpart of Part 310 of the Illinois rules. In codifying the new Project XL-related federal provision, 40 C.F.R. 403.20, the Board has modified the federal text to make the rule conform to this existing codification scheme. The Board has codified new 40 C.F.R. 403.20 as a single Section, 35 Ill. Adm. Code 310.930, but placed it in a new Subpart L, pertaining to federal Project XL agreements.

A less desirable alternative was to place this new Section in existing Subpart K, which currently includes a few Sections based on 40 C.F.R. 403.18, relating to modification of pretreatment programs. This alternative, however, would have required deviation from the existing structure of the Part 310, and it could lead to confusion of the two distinct subject matters of existing Subpart K and Section 310.930. The Board requested comments on our creation of a new Subpart L for new Section 310.930, and none of the comments objected to this aspect of the proposal.

A third set of deviations from the federal text relates to the structure of the rule. The Board has divided the federal text into a preamble and two subsections, (a) and (b). We believe that this division enhances the clarity of the text by separating the general ability of the Agency to issue permits based on Project XL agreements (in the preamble), the requirement for the

POTW to submit alternative requirements as a substantial program modification (in subsection (a)), and the requirement for inclusion of a reopener clause in the permit (in subsection (b)). The Board invited comment on our division of the federally derived text into three segments to enhance the clarity of the rule, and none of the comments objected to this aspect of the proposal.

### **Objections to and Deletion of Section 310.930(b)**

In this opinion and order the Board is eliminating a fourth set of deviations from the text of 40 C.F.R. 403.20 that appeared in the November 15, 2001 proposal for public comment. Those related to differences in the federal and Illinois regulatory schemes. The Board is eliminating that fourth set of deviations from the text of the federal rule in response to the comments from the Agency and USEPA. Despite the elimination of these deviations, the Board explains this set of amendments and considers the comments received in this segment of this opinion.

At the federal level, one agency, USEPA, establishes general regulations, issues environmental permits, and grants exceptions or variances from the generally applicable rules. In Illinois, these functions are divided between the Agency and the Board. The Board establishes the Illinois environmental standards and grants variances or adjusted standards from those standards. 415 ILCS 5/5 (1998). The Agency issues all environmental permits and participates directly with USEPA to resolve issues relating to the implementation of federal programs in Illinois. 415 ILCS 5/4 (1998). Basically, this means that although the Agency participates with USEPA in the development of any Project XL agreement relating to an Illinois facility, which confers relief from the federal wastewater pretreatment requirements, the Board must grant any necessary relief from the Illinois regulations that may be needed to implement that Project XL agreement.

The Act establishes the mechanisms that the Board must use to grant regulatory relief. These are by rulemaking (415 ILCS 5/27 and 28 (1998)), by an adjusted standard (415 ILCS 5/28.1 (1998)), or by a variance (415 ILCS 5/35 through 28 (1998)). In order for the implementation of a Project XL agreement to occur in accordance with Illinois law, the Board must grant one form of this relief or another from any regulation that would stand as an impediment to that implementation. For this reason, in the proposal for public comment the Board had conditioned the authority of the Agency to authorize alternative requirements on fulfillment of the requirements of an added subsection (b).

Subsection (b), as proposed, essentially provided for prior Board approval of a Project XL agreement before the Agency and the affected POTW may proceed to implement the agreement. In this provision, the Board differentiated between the Project XL agreement involving the MWRDGC, which USEPA has essentially endorsed by rule, and any subsequent Project XL agreements for which such federal approval by rule is unlikely. In proposed subsection (b)(1) the Board approved (using the identical-in-substance rulemaking authority) to the August 30, 2001 agreement among the Agency, USEPA, and MWRDGC that prompted this action. In proposed subsection (b)(2) the Board provided for Board approval of any subsequent Project XL agreements by alternative means.

The Board invited comment on proposed Section 310.930(b)(1) and (b)(2). USEPA and the Agency both submitted adverse comments on the proposal. Those comments have caused the Board to eliminate proposed subsection (b) in its entirety and make other corresponding changes in the text of this Section to reflect the removal. Thus, proposed subsections (a)(1) and (a)(2) have become subsections (a) and (b), respectively, in the adopted amendments, and subsection (b), which included proposed subsections (b)(1) and (b)(2), has been removed.

In PC 1, the Agency asserted that the Board exhibited a misunderstanding of the Project XL process in the pretreatment area. The Agency further observed that the Board appeared to position itself to review USEPA actions. The Agency further criticized the proposal in that it elevated the Project XL agreement to the status of an enforceable agreement, while the agreement itself provides that it is not enforceable against any party.

In PC 2, USEPA similarly criticizes the addition of proposed subsection (b) as making the rule not identical-in-substance to the corresponding federal rule. USEPA acknowledged that states may need to modify their regulations or statutes to allow for implementation of Project XL agreements, but took issue with the fact that proposed subsection (b) would have required the Board to grant relief from the Illinois regulations based on any future Project XL agreement.

In response to the comments from USEPA and the Agency, proposed subsection (b) has been removed from the text of the amendments as adopted.

### **General Revisions and Deviations from the Federal Text**

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by a discussion of the amendments and actions undertaken in direct response to the federal actions involved in this proceeding. This first series of discussions is organized by federal subject matter, generally appearing in chronological order of the relevant *Federal Register* notices involved. Finally, this discussion closes with a description of the amendments and actions that are not directly derived from the federal actions.

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors that we see in the text as we engage in these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the Illinois Administrative Code.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As of the date of this opinion, the most recent version of the *Code of Federal Regulations* available to the Board is the July 1, 2000 version. Thus, we have updated all citations to the 2000 version, adding references to later amendments using their appropriate *Federal Register* citation, where necessary.

The Board has assembled a table to aid in the location of these alterations and to briefly outline their intended purpose. The table sets forth the miscellaneous corrections to the pre-amended base text of the rules in detail. The table is set forth and explained beginning on the next page of this opinion and order. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

### **Discussion of Miscellaneous Housekeeping Amendments**

The tables below list numerous corrections and amendments that are not based on current federal amendments. The first table (beginning immediately below) includes deviations made in this Proposal for Public Comment from the verbatim text of the federal amendments. The second table (beginning below at page 7) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in this second table are not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 4 of this opinion. Table 3 (beginning on page 11 below) is a listing of revisions made to the text of the amendments from that proposed and set forth in the Board’s opinion and order of November 15, 2001. Table 3 indicates the changes made, as well as the source that suggested each of the changes.

**Table 1:  
Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
310.930 preamble	403.20	Added the precondition “once the POTW . . .”; changed “approval authority” to “Agency”; added parenthetical “by a permit. . . the Act” offset by commas; changed “publicly owned treatment works (POTW)” to the defined abbreviation “POTW”; removed the quotation marks from the defined term, “Project XL”; added the precondition “approved under subsection (b)”; removed unnecessary capitalization from pretreatment program”
310.930(a)	403.20	Subdivided the text and added the subsection designation; changed “§ 403.18” to “Subpart K of this Part”; added “before the POTW may implement it”

310.930(b)	403.20	Subdivided the text and added the subsection designation; changed “approval authority” to “Agency” (twice); used lower-case “local pilot pretreatment program”; added “embodied in the Project XL agreement”; removed the quotation marks from the defined term, “Project XL”; added “pursuant to its own terms”
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**Table2 :**  
**Board Housekeeping Amendments**

Section	Source	Revision(s)
310. table of contents	Board	Added new Subpart L designation
310.110 “Act”	Board	Changed the Illinois Revised Statutes citation to the Illinois Compiled Statutes citation
310.110 “Approval Authority” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “approved POTW pretreatment program” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “approved POTW pretreatment program”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “authorization to discharge”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “blowdown” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “CWA” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “indirect discharge” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “industrial user”	Board	Removed the quotation marks from the subsequent appearance of the defined term, “industrial user”; added “the person” to complete the sentence in each paragraph subdivision (six times); changed the ending periods to semicolons (five times); used lower case for the conjunction “or” and deleted the ending comma
310.110 “industrial user” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available

310.110 “interference”	Board	Changed “which” to “that” for a restrictive relative clause; changed “both” to “for which both of the following is true”; added “the discharge” (three times); changed “therefore” to “as a result of the inhibition of disruption” as a parenthetical offset by a comma; removed the quotation marks from the term, “sludge requirements”
310.110 “interference” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “new source”	Board	Removed the quotation marks from the term, “new source”
310.110 “new source” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “noncontact cooling water”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “noncontact cooling water” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “noncontact cooling water pollutants” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “NPDES permit” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “pass through”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “pass through” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “person”	Board	Added a comma to separate the final element of a series
310.110 “person” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “pollutant”	Board	Changed commas to semicolons to separate the elements of a series containing a sub-series (15 times); added a semicolon to separate the final element of a series containing a sub-series; added a comma to separate the final element of a series
310.110 “pollutant” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “pollution”	Board	Added a comma to separate the final element of a series
310.110 “pollution” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “POTW treatment plant”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “POTW treatment plant” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available

310.110 “pretreatment”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “pretreatment” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “pretreatment permit”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “pretreatment requirements” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “pretreatment standard”	Board	Added a comma to separate the final element of a series; changed “which” to “that” for a restrictive relative clause
310.110 “pretreatment standard” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “process wastewater”	Board	Changed “which” to “that” for a restrictive relative clause
310.110 “process wastewater” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “process wastewater pollutants” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “Project XL”	Board	Added the definition of the term “Project XL”
310.110 “publicly owned treatment works”	Board	Added a comma to separate the final element of a series (twice); changed “which” to “that” for a restrictive relative clause (twice)
310.110 “publicly owned treatment works” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “schedule of compliance” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “significant industrial user”	Board	Added a comma to separate the final element of a series; changed “which” to “that” for a restrictive relative clause
310.110 “significant industrial user” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “sludge requirements” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “submission” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available

310.110 “treatment works”	Board	Added a comma to separate the final element of a series (twice)
310.110 “treatment works” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.110 “unit of local government”	Board	Removed the quotation marks from the subsequent appearance of the defined term, “industrial user”
310.110 “unit of local government” Board note	Board	Updated the cited version of the <i>Code of Federal Regulations</i> to the latest edition available
310.Subpart L	Board	Added the new Subpart heading

Table 3:  
Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
310 table of contents Section 310.930 heading	Board	Changed “federally-approved” to “federally approved”
310.930 heading	Board	Changed “federally-approved” to “federally approved”
310.930 preamble	Board, USEPA, Agency	Changed “fulfilled the requirements of subsection (b) of this Section” to “entered into a federally approved pretreatment program reinvention pilot project under Project XL”; changed “any” to “that”; removed “that has a final Project XL agreement approved under Subsection (b)”
310.930(a)	Board, USEPA, Agency	Renumbered the subsection from subsection (a)(1) to reflect the deletion of proposed subsection (b)
310.930(b)	Board, USEPA, Agency	Renumbered the subsection from subsection (a)(2) to reflect the deletion of proposed subsection (b)
310.930 Board note	Board	Added a reference to the federal provision from which this Section derives and referencing the Project XL agreement relating to the MWRDGC

### **ORDER**

The complete text of the proposed amendments follows:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 310  
PRETREATMENT PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section	
310.101	Applicability
310.102	Objectives
310.103	Federal Law
310.104	State Law
310.105	Confidentiality
310.107	Incorporations by Reference
310.110	Definitions
310.111	New Source

SUBPART B: PRETREATMENT STANDARDS

Section	
310.201	General Prohibitions
310.202	Specific Prohibitions
310.210	Specific Limits Developed by POTW
310.211	Local Limits
310.220	Categorical Standards
310.221	Category Determination Request
310.222	Deadline for Compliance with Categorical Standards
310.230	Concentration and Mass Limits
310.232	Dilution
310.233	Combined Wastestream Formula

SUBPART C: REMOVAL CREDITS

Section	
310.301	Special Definitions
310.302	Authority
310.303	Conditions for Authorization to Grant Removal Credits
310.310	Calculation of Revised Discharge Limits
310.311	Demonstration of Consistent Removal
310.312	Provisional Credits
310.320	Compensation for Overflow
310.330	Exception to POTW Pretreatment Program
310.340	Application for Removal Credits Authorization
310.341	Agency Review
310.343	Assistance of POTW
310.350	Continuation of Authorization
310.351	Modification or Withdrawal of Removal Credits

SUBPART D: PRETREATMENT PERMITS

Section	
310.400	Preamble

310.401	Pretreatment Permits
310.402	Time to Apply
310.403	Imminent Endangerment
310.410	Application
310.411	Certification of Capacity
310.412	Signatures
310.413	Site Visit
310.414	Completeness
310.415	Time Limits
310.420	Standard for Issuance
310.421	Final Action
310.430	Conditions
310.431	Duration of Permits
310.432	Schedules of Compliance
310.441	Effect of a Permit
310.442	Modification
310.443	Revocation
310.444	Appeal

#### SUBPART E: POTW PRETREATMENT PROGRAMS

Section	
310.501	Pretreatment Programs Required
310.502	Deadline for Program Approval
310.503	Incorporation of Approved Programs in Permits
310.504	Incorporation of Compliance Schedules in Permits
310.505	Reissuance or Modification of Permits
310.510	Pretreatment Program Requirements
310.521	Program Approval
310.522	Contents of Program Submission
310.524	Content of Removal Allowance Submission
310.531	Agency Action
310.532	Defective Submission
310.533	Water Quality Management
310.541	Deadline for Review
310.542	Public Notice and Hearing
310.543	Agency Decision
310.544	USEPA Objection
310.545	Notice of Decision
310.546	Public Access to Submission
310.547	Appeal

#### SUBPART F: REPORTING REQUIREMENTS

Section	
310.601	Definition of Control Authority
310.602	Baseline Report
310.603	Compliance Schedule

310.604	Report on Compliance with Deadline
310.605	Periodic Reports on Compliance
310.606	Notice of Potential Problems
310.610	Monitoring and Analysis
310.611	Requirements for Non-Categorical Standard Users
310.612	Annual POTW Reports
310.613	Notification of Changed Discharge
310.621	Compliance Schedule for POTW's
310.631	Signatory Requirements for Industrial User Reports
310.632	Signatory Requirements for POTW Reports
310.633	Fraud and False Statements
310.634	Recordkeeping Requirements
310.635	Notification of Discharge of Hazardous Waste

#### SUBPART G: FUNDAMENTALLY DIFFERENT FACTORS

Section	
310.701	Definition of Requester
310.702	Purpose and Scope
310.703	Criteria
310.704	Fundamentally Different Factors
310.705	Factors which are Not Fundamentally Different
310.706	More Stringent State Law
310.711	Application Deadline
310.712	Contents of FDF Request
310.713	Deficient Requests
310.714	Public Notice
310.721	Agency Review of FDF Requests
310.722	USEPA Review of FDF Requests

#### SUBPART H: ADJUSTMENTS FOR POLLUTANTS IN INTAKE

Section	
310.801	Net/Gross Calculation by USEPA

#### SUBPART I: UPSETS

Section	
310.901	Definition
310.902	Effect of an Upset
310.903	Conditions Necessary for an Upset
310.904	Burden of Proof
310.905	Reviewability of Claims of Upset
310.906	User Responsibility in Case of Upset

#### SUBPART J: BYPASS

Section	
310.910	Definition
310.911	Bypass Not Violating Applicable Pretreatment Standards or Requirements

- 310.912 Notice  
310.913 Prohibition of Bypass

#### SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

- Section  
310.920 General  
310.921 Substantial Modifications Defined  
310.922 Approval Procedures for Substantial Modifications  
310.923 Approval Procedures for Non-Substantial Modifications  
310.924 Incorporation of Modifications into the Permit  
310.930 Federally-Approved Pretreatment Program Reinvention Pilot Projects Under Project XL

#### SUBPART L: FEDERAL PROJECT XL AGREEMENTS

- Section  
310.930 Federally Approved Pretreatment Program Reinvention Pilot Projects Under Project XL

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

SOURCE: Adopted in R86-44 at 12 Ill. Reg. 2502, effective January 13, 1988; amended in R88-18 at 13 Ill. Reg. 2463, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19243, effective November 27, 1989; amended in R89-12 at 14 Ill. Reg. 7608, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7346, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5533, effective April 1, 1996; amended in R96-12 at 20 Ill. Reg. 10671, effective July 24, 1996; amended in R97-7 at 21 Ill. Reg. 5163, effective April 10, 1997; amended in R98-23 at 22 Ill. Reg. 11465, effective June 22, 1998; amended in R99-17 at 23 Ill. Reg. 8412, effective July 12, 1999; amended in R00-7 at 24 Ill. Reg. 2372, effective January 26, 2000; amended in R00-15 at 24 Ill. Reg. 11633, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1322, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10860, effective August 14, 2001; amended in R02-3 at 26 Ill. Reg. 4008, effective February 28, 2002; amended in R02-9 at 26 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART A: GENERAL PROVISIONS

- Section 310.110 Definitions

“Act” means the Environmental Protection Act (~~Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.~~) [415 ILCS 5].

“Agency” means the Illinois Environmental Protection Agency.

“Approval Authority” means the Agency.

BOARD NOTE: Derived from 40 CFR 403.3(c) (~~1994~~) (2000).

“Approved POTW Pretreatment Program” or “Program” or “POTW Pretreatment Program” means a program administered by a POTW ~~which~~that has been approved by the Agency in accordance with Sections 310.541 through 310.546.  
BOARD NOTE: Derived from 40 CFR 403.3(d)~~(1991)~~ (2000).

“Authorization to discharge” means an authorization issued to an industrial user by a POTW ~~which~~that has an approved pretreatment program. The authorization may consist of a permit, license, ordinance or other mechanism as specified in the approved pretreatment program.

“Blowdown” means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.

BOARD NOTE: Derived from 40 CFR 401.11(p)~~(1991)~~ (2000).

“Board” means the Illinois Pollution Control Board.

“CWA” means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, incorporated by reference in Section 310.107.

BOARD NOTE: Derived from 40 CFR 403.3(b)~~(1991)~~ (2000).

“Control authority” is as defined in Section 310.601.

“Indirect Discharge” or “Discharge” means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA (33 U.S.C. 1317(b), (c) or (d)).

BOARD NOTE: Derived from 40 CFR 403.3(g)~~(1991)~~ (2000).

“Industrial User” or “User” means a source of indirect discharge. As used in this Part, an “industrial user” includes any person who meets any of the following criteria:

~~Discharges-~~The person discharges toxic pollutants as defined by 35 Ill. Adm. Code 307.1005-;

~~Is-~~The person is subject to a categorical standard adopted or incorporated by reference in 35 Ill. Adm. Code 307-;

~~Discharges-~~The person discharges more than 15% of the total hydraulic flow received by the POTW treatment plant-;

~~Discharges-~~The person discharges more than 15% of the total biological loading of the POTW treatment plant as measured by the 5-day biochemical oxygen demand-;

~~Has~~ The person has caused pass through or interference. ~~Or; or~~

~~Has~~ The person has presented an imminent endangerment to the health or welfare of persons.

BOARD NOTE: Derived from 40 CFR 403.3(h) ~~(1991)~~ (2000).

“Industrial wastewater” means waste of a liquid nature discharged by an industrial user to a sewer tributary to a POTW.

“Interference” means a discharge ~~which~~, alone or in conjunction with a discharge or discharges from other sources, for which both of the following is true:

~~Inhibits~~ The discharge inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

~~Therefore~~ As a result of the inhibition of disruption, the discharge is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge disposal in compliance with any “sludge requirements.”

BOARD NOTE: Derived from 40 CFR 403.3(i) ~~(1991)~~ (2000).

“Municipal sewage” is sewage treated by a POTW exclusive of its industrial component.

“Municipal sludge” is sludge produced by a POTW treatment works.

“Municipality.” See “unit of local government.”

“New source” means “new source” as defined in Section 310.111.

BOARD NOTE: Derived from 40 CFR 401.11(c) and 403.3(k) ~~(1991)~~ (2000).

“Noncontact cooling water” means water used for cooling ~~which~~ that does not come into direct contact with any raw material, intermediate product, waste product or finished product.

BOARD NOTE: Derived from 40 CFR 401.11(n) ~~(1991)~~ (2000).

“Noncontact cooling water pollutants” means pollutants present in noncontact cooling waters.

BOARD NOTE: Derived from 40 CFR 401.11(o) ~~(1991)~~ (2000).

“NPDES Permit” means a permit issued to a POTW pursuant to Section 402 of the CWA, or Section 12(f) of the Act and 35 Ill. Adm. Code 309.Subpart A.

BOARD NOTE: Derived from 40 CFR 403.3(l) ~~(1991)~~ (2000).

“O and M” means operation and maintenance.

“Pass through” means a discharge of pollutants ~~which that~~ exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

BOARD NOTE: Derived from 40 CFR 403.3(n)-~~(1991)~~ (2000).

“Person” means an individual, corporation, partnership, association, State, “unit of local government” or any interstate body. This term includes the United States government, the State of Illinois, and their political subdivisions.

BOARD NOTE: Derived from 40 CFR 401.11(m)-~~(1991)~~ (2000) and 33 U.S.C. 1362(5).

“Pollutant” means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into a sewer.

BOARD NOTE: Derived from 40 CFR 401.11(f)-~~(1991)~~ (2000).

“Pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

BOARD NOTE: Derived from 40 CFR 401.11(g)-~~(1991)~~ (2000).

“POTW” means “Publicly Owned Treatment Works,” which is defined below.

“POTW Treatment Plant” means that portion of the POTW ~~which that~~ is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial wastewater.

BOARD NOTE: Derived from 40 CFR 403.3(p)-~~(1991)~~ (2000).

“Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Section 310.232. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings ~~which that~~ might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Section 310.233.

BOARD NOTE: Derived from 40 CFR 403.3(q)-~~(1991)~~ (2000).

“Pretreatment permit” means an authorization to discharge to a sewer ~~which~~that is issued by the Agency as the control authority.

“Pretreatment requirements” means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

BOARD NOTE: Derived from 40 CFR 403.3(r)~~(1994)~~ (2000).

“Pretreatment standard,” or “standard” means any regulation containing pollutant discharge limits promulgated by USEPA, and incorporated by reference in 35 Ill. Adm. Code 307. This term includes prohibitive discharge limits established pursuant to Section 310.201 through 310.213 or 35 Ill. Adm. Code 307.1101. This term also includes more stringent prohibitions and standards adopted by the Board in this Part or 35 Ill. Adm. Code 307, including 35 Ill. Adm. Code 307.1101, 307.1102, and 307.1103. The term also includes local limits pursuant to Section 310.211 ~~which~~that are a part of an approved pretreatment program.

BOARD NOTE: Derived from 40 CFR 403.3(j)~~(1994)~~ (2000).

“Process wastewater” means any water ~~which~~that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

BOARD NOTE: Derived from 40 CFR 401.11(q)~~(1994)~~ (2000).

“Process wastewater pollutants” means pollutants present in process wastewater.

BOARD NOTE: Derived from 40 CFR 401.11(r)~~(1994)~~ (2000).

“Project XL” means the federal Project for eXcellence and Leadership or a federally approved facility- or community-based regulatory reinvention (XL) pilot project, as such are described in the Federal Register notices of May 23, 1995 (60 Fed. Reg. 27282) and November 1, 1995 (60 Fed. Reg. 55569).

“Publicly owned treatment works” or “POTW” means a “treatment works” ~~which~~that is owned by the State of Illinois or a “unit of local government.” This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastewater. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the “unit of local government” ~~which~~that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

BOARD NOTE: Derived from 40 CFR 403.3(o)~~(1994)~~ (2000).

“Schedule of compliance” means a schedule of remedial measures included in an authorization to discharge or a pretreatment permit, or an NPDES permit, including an enforceable sequence of interim requirements (for example, actions,

operations or milestone events) leading to compliance with this Part and 35 Ill. Adm. Code 307. A schedule of compliance does not protect an industrial user or POTW from enforcement.

BOARD NOTE: Derived from 40 CFR 401.11(m)-~~(1991)~~ (2000) and 33 U.S.C. 1362(17).

“Significant industrial user” means as follows:

All industrial users subject to categorical pretreatment standards under Section 310.220 through 310.233 and 35 Ill. Adm. Code 307, and

Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater); contributes a process wastestream ~~which~~ that makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, as defined in Section 310.601, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with Section 310.510(f)); except, upon a finding that an industrial user meeting the criteria of this second subsection of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority, as defined in Section 310.601, may at any time, on its own initiative or in response to a petition received from an industrial user or POTW may determine in accordance with Section 310.510(f) that such industrial user is not a significant industrial user.

BOARD NOTE: Derived from 40 CFR 403.3(t)-~~(1991)~~ (2000).

“Sludge requirements” means any of the following permits or regulations: 35 Ill. Adm. Code 309.155 (NPDES Permits), 309.208 (Permits for Sites Receiving Sludge for Land Application), 703.121 (RCRA Permits), 807.202 (Solid Waste Permits), the Toxic Substances Control Act (15 U.S.C. 2601) or the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401), Section 39(b) of the Act (NPDES Permits), and Section 405(b) of the Clean Water Act (federally-imposed sludge use and management requirements).

BOARD NOTE: Derived from 40 CFR 403.3(i) and 403.7(a)-~~(1991)~~ (2000).

“Submission” means a request to the Agency by a POTW for approval of a pretreatment program, or for authorization to grant removal credits.

BOARD NOTE: Derived from 40 CFR 403.3(t)-~~(1991)~~ (2000).

“Treatment works” is as defined in 33 U.S.C. 1292(2) (1987). It includes any devices and systems used in the storage, treatment, recycling, and reclamation of

municipal or industrial wastewater to implement 33 U.S.C. 1281, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment.

BOARD NOTE: Derived from 40 CFR 403.3(o)-(1991) (2000) and 33 U.S.C. 1292(2).

“Unit of local government” means a unit of local government, as defined by Art. 7, Sec. 1 of the Illinois Constitution, having jurisdiction over disposal of sewage. “Unit of local government” includes, but is not limited to, municipalities and sanitary districts.

BOARD NOTE: Derived from 40 CFR 401.11(m)-(1991) (2000) and 33 U.S.C. 1362(4).

“USEPA” means the United States Environmental Protection Agency.

(Source: Amended at 26 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART L: FEDERAL PROJECT XL AGREEMENTS

##### Section 310.930 Federally Approved Pretreatment Program Reintervention Pilot Projects Under Project XL

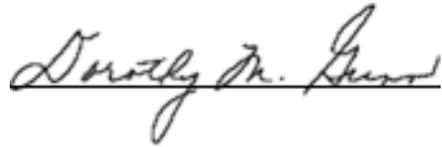
Once a POTW has entered into a federally approved pretreatment program reinvention pilot project under Project XL, the Agency may, by a permit issued pursuant to Section 39 of the Act, allow that POTW to implement a pretreatment program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this Part.

- a) The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in Subpart K of this Part. The approved modified program must be incorporated as an enforceable part of the POTW’s NPDES permit before the POTW may implement it.
- b) The Agency must include a reopener clause in the POTW’s NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the Agency determines that the primary objectives of the local pilot pretreatment program embodied in the Project XL agreement are not being met or the Project XL agreement expires or is otherwise terminated pursuant to its own terms.

BOARD NOTE: Derived from 40 CFR 403.20, as added at 66 Fed. Reg. 50336 (October 3, 2001). A Project XL agreement among the Metropolitan Water Reclamation District of Greater Chicago, the Agency, and USEPA and described at 66 Fed. Reg. 50336 (October 3, 2001) received final approval by USEPA and the Agency on August 30, 2001.

(Source: Added at 26 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 7, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board