

ILLINOIS POLLUTION CONTROL BOARD

September 17, 2020

IN THE MATTER OF:)	
WASTEWATER PRETREATMENT)	R21-8
UPDATE, USEPA AMENDMENTS (January)	(Identical-in-Substance
1, 2020 through June 30, 2020))	Rulemaking - Water)

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by C.M. Santos):

The Board today proposes amendments to Illinois regulations that are “identical in substance” (IIS) to wastewater pretreatment regulations adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2020.

Sections 7.2 and 13.3 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2018)) provide for quick adoption by the Board of regulations that are “identical in substance” to regulations that USEPA adopts to implement sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the federal Clean Water Act (CWA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1412(b)(8) and (b)(9) (2018)). Section 13.3 of the Act also provides that Title VII of the Act and Section 5 of the Illinois Administrative Procedure Act (5 ILCS 100/5-35 and 5-40 (2018)) do not apply to the Board’s adoption of identical-in-substance regulations.

The federal wastewater pretreatment standards implement these sections of the CWA and are found in segments of 40 C.F.R. 401, 403, 405 through 415, 417 through 430, 432 through 455, 457 through 461, 463 through 469, and 471.

USEPA took one action related to wastewater pretreatment during the first half of 2020 that requires Board attention. The USEPA action requires the Board to update one incorporation by reference in 35 Ill. Adm. Code 310.107. The Board further proposes updating other incorporations by reference as a routine matter to keep them current; repealing 35 Ill. Adm. Code 310.930, which may be obsolete; and making limited corrections in the incorporations by reference.

The Board will publish the proposed amendments in the *Illinois Register* and will receive public comments for at least 45 days after publication. The Board expects to adopt final rules long before the statutory due date of April 15, 2021. The Board specifically requests comment on two specific aspects of the rules.

This opinion has five main segments. First, the Board provides its timetable for completing this rulemaking. Second, the Board identifies USEPA’s action that resulted in this rulemaking and discusses the proposed amendments. Third, the Board finds that limited corrections and amendments are needed and considers repealing a provision regarding a program that USEPA terminated. Finally, the Board invites public comment on the proposed amendments, which are found in the order following this opinion.

TIMETABLE TO COMPLETE RULEMAKING

Under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2018)), the Board must complete this rulemaking within one year after the corresponding federal action by April 15, 2021.

Adopting this proposal for public comment today may allow the Board to complete rulemaking action as early as December 15, 2020.

Assuming no delay occurs, the Board hopes to follow the schedule below:

Board order proposing amendments:	September 17, 2020
Submission for <i>Illinois Register</i> publication:	September 28, 2020
Estimated <i>Illinois Register</i> publication:	October 9, 2020
Estimated end of 45-day public comment period:	November 23, 2020
Board order adopting amendments:	December 4, 2020
Estimate of when the rules take effect:	December 15, 2020
Estimated <i>Illinois Register</i> publication:	December 31, 2020

DISCUSSION

The discussion includes two segments. In the first, the Board considers incorporating into the Illinois wastewater pretreatment regulations amendments adopted by USEPA. In the second, the Board considers various corrections and amendments that do not derive from the USEPA amendments.

Federal Action Implemented

The USEPA action that requires an amendment to the Illinois regulations is summarized below.

April 15, 2020 (85 Fed. Reg. 20873): USEPA updated its NPDES digital reporting rule as it relates to reporting for municipal separate storm sewer systems (MS4s).

The USEPA action affects implementation of wastewater pretreatment standards: USEPA amended general reporting provisions that relate to wastewater pretreatment programs.

Updating the Incorporation by Reference for NPDES e-Reporting

USEPA adopted its NPDES digital reporting rule in 2015. 80 Fed. Reg. 64064 (Oct. 22, 2015). The rule embraced reporting under all NPDES programs, including MS4 and wastewater pretreatment. The Board incorporated the wastewater pretreatment-related portions into the Illinois pretreatment rules in 2017. Wastewater Pretreatment Update, USEPA Amendments (July 1, 2015 through December 31, 2015), R16-9 (Jan. 19, 2017).

USEPA reporting rules required data listed in appendix A to 40 C.F.R. 127. The Board incorporated appendix A by reference into the Illinois rules.

USEPA's April 15, 2020 MS4-related amendments revised general reporting-related entries in appendix A to 40 C.F.R. 127. The Illinois pretreatment rules rely on the general reporting portions of appendix A.

Updating the version of appendix A to 40 C.F.R. 127 incorporated by reference to include the April 15, 2020 USEPA amendments will complete Board action on them.

Amendments and Corrections to Background Text

The Board finds that it is necessary to propose limited amendments and corrections to background text that are not based on the USEPA action described above. The corrections include updating all incorporations by reference of *Code of Federal Regulations* and *United States Code* provisions and removing 35 Ill. Adm. Code 310.930 as obsolete.

Removing the Rule for Project XL Pilot Projects. USEPA initiated the Regulatory Reinvention (XL) Community Pilot Program (Project XL) in 1995. USEPA described the program as follows:

EPA will provide an opportunity to test flexible and innovative strategies in the implementation of environmental regulatory requirements in exchange for a commitment to achieve greater environmental quality than would have been realized under traditional approaches. 60 Fed. Reg. 55569 (Nov. 1, 1995).

In 2001, USEPA adopted 40 C.F.R. § 403.20 for Project XL wastewater pretreatment pilot projects at the request of five publicly owned treatment works (POTWs), including the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC). 66 Fed. Reg. 50334, 50336 (Oct. 3, 2001).

The Board incorporated 40 C.F.R. § 403.20 into the Illinois rules as 35 Ill. Adm. Code 310.930 on petition of MWRDGC in 2002. Wastewater Pretreatment Update, USEPA Amendments (October 3, 2001), R02-9 (Mar. 7, 2002).

In 2004, MWRDGC agreed to terminate its Project XL pilot final project agreement, as acknowledged by USEPA.¹ USEPA terminated the Project XL program in 2009. 74 Fed. Reg. 22741 (May 14, 2009). USEPA has since removed obsolete rules implementing Project XL.²

¹ January 20, 2005 letter from Director, Water Division, USEPA Region 5 to Richard Lanyon, Director, Research and Development, MWRDGC (archive.epa.gov/projectxl/web/pdf/1202005.pdf; accessed September 9, 2020).

² See 81 Fed. Reg. 85732, 85783, 85819 (Nov. 28, 2016); 75 Fed. Reg. 79304, 79306 (Dec. 20, 2010) (projects rendered obsolete by the Academic Laboratories Rule); see also 75 Fed. Reg. 51188, 51189 (Aug. 19, 2010) (disapproving an Indiana SIP revision relying on Project XL elements).

The Board removes 35 Ill. Adm. Code 310.930 as obsolete. Because Section 310.930 is the only section in Subpart L of the Board's pretreatment program rules, the Board will seek JCAR approval to recodify Part 310 by removing Subpart L: Federal Project XL Agreements.

PUBLIC COMMENTS

The Board invites public comments on this proposal. The Board will receive public comments for at least 45 days following the proposal's publication in the *Illinois Register*. The Board specifically requests comments on the following:

1. Does updating the incorporation by reference of appendix A to 40 C.F.R. 127 fully incorporate the necessary elements of USEPA's April 14, 2020 action into the Illinois wastewater pretreatment rules?
2. Is it appropriate to remove 35 Ill. Adm. Code 310.930 as obsolete?

IIS Rulemaking Addendum

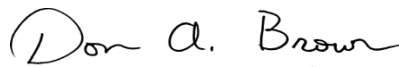
The IIS Rulemaking Addendum to the Proposed Opinion and Order of the Board (IIS-RA (P)) fully lists the differences between the text of the USEPA amendments and the Board's language in this rulemaking. Entries in the tables briefly explain the differences. The first table lists deviations from the text of federal rules. The second table lists corrections and clarifications to rules not prompted by USEPA amendments, but which the Board finds are needed.

The Board included the IIS-RA (P) in the docket for this rulemaking, available on the Board's website (www.pcb.illinois.gov). The Board directs interested persons to the IIS-RA (P) for information about deviations from the federal text and amendments not directly derived from current federal amendments.

ORDER

The Board directs the Clerk to provide notice in the *Illinois Register* of the appended proposed amendments to the Illinois wastewater pretreatment regulations at 35 Ill. Adm. Code 310.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 17, 2020, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

TEXT OF PROPOSED AMENDMENTS

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

PART 310 PRETREATMENT PROGRAMS

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310.522	Contents of Program Submission
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SUBPART F: REPORTING REQUIREMENTS

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310.610	Monitoring and Analysis
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310.612	Annual POTW Reports
310.613	Notification of Changed Discharge
310.621	Compliance Schedule for POTWs
310.631	Signatory Requirements for Industrial User Reports
310.632	Signatory Requirements for POTW Reports
310.633	Fraud and False Statements
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SUBPART G: FUNDAMENTALLY DIFFERENT FACTORS

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310.703	Criteria
310.704	Fundamentally Different Factors
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Section

310.910 Definitions
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 310.921 Substantial Modifications Defined
 310.922 Approval Procedures for Substantial Modifications
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 310.924 Incorporation of Modifications into the Permit

SUBPART L: FEDERAL PROJECT XL AGREEMENTS

Section

310.930 Federally Approved Pretreatment Program Reinvention Pilot Projects Under Project XL (Repealed)

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. 4653, effective March 18, 2002; amended in R03-13 at 27 Ill. Reg. 15137, effective September 10, 2003; amended in R04-1 at 28 Ill. Reg. 3390, effective February 6, 2004; amended in R04-18 at 28 Ill. Reg. 10684, effective July 13, 2004; amended in R06-13 at 30 Ill. Reg. 17847, effective October 26, 2006; amended in R08-5/R08-7/R08-13 at 32 Ill. Reg. 19008, effective November 26, 2008; amended in R13-7 at 37 Ill. Reg. 1962, effective February 4, 2013; amended in R15-13 at 39 Ill. Reg. 12357, effective August 24, 2015; amended in R16-9 at 41 Ill. Reg. 1155, effective January 23, 2017; amended in R21-8 at 44 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 310.107 Incorporations by Reference

- a) The following publications are incorporated by reference for the purposes of this Part and 35 Ill. Adm. Code 307:

Combined Sewer Overflow (CSO) Control Policy (April 1994) (USEPA document number EPA-830-B-94-001), available from National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419, 800-490-9198 or online for download in an electronic format at <http://nepis.epa.gov/EPA/html/pubindex.html>, referenced in Section 310.320.

BOARD NOTE: USEPA published the Combined Sewer Overflow (CSO) Control Policy in the Federal Register at 59 Fed. Reg. 18688 (Apr. 19, 1994).

Standard Industrial Classification Manual (1987) (document no. PB87-100012) (referred to as “1987 SIC Manual”), available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, referenced in 35 Ill. Adm. Code 307.2201, 307.2400, 307.2402 through 307.2407, and 307.3901 and Section 310.602.

BOARD NOTE: The 1987 SIC Manual is available for online search through the U.S. Department of Labor, at http://www.osha.gov/pls/imis/sic_manual.html. In 1997, the federal Office of Management and Budget (OMB) announced that the North American Industry Classification System (NAICS) was replacing the SIC (62 Fed. Reg. 17288 (Apr. 9, 1997)) for statistical purposes. OMB announced adoption of a 2012 edition of NAICS (76 Fed. Reg. 51240 (Aug. 17, 2011)). The 1997 NAICS Manual is available for online search or purchase (as electronic or hard copy) at <http://www.naics.com>. Until USEPA amends its regulations to change references to SIC codes to references to NAICS codes, the Board will continue to use the 1987 SIC codes.

- b) The following provisions of the Code of Federal Regulations are incorporated by reference for the purposes of this Part and 35 Ill. Adm. Code 307:

40 CFR 2.302 ~~(2019)~~~~(2016)~~ (Special Rules Governing Certain Information Obtained Under the Clean Water Act), referenced in Section 310.105.

40 CFR 3.2 ~~(2019)~~~~(2016)~~ (How Does This Part Provide for Electronic Reporting?), referenced in Section 310.106.

40 CFR 3.3 ~~(2019)~~~~(2016)~~ (What Definitions Are Applicable to This Part?), referenced in Section 310.106.

40 CFR 3.10 ~~(2019)-(2016)~~ (What Are the Requirements for Electronic Reporting to EPA?), referenced in Section 310.106.

40 CFR 3.2000 ~~(2019)-(2016)~~ (What Are the Requirements Authorized State, Tribe, and Local Programs' Reporting Systems Must Meet?), referenced in Section 310.106.

40 CFR 25 ~~(2019)-(2016)~~ (Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act), referenced in Section 310.510.

Tables II (Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)) and III (Other Toxic Pollutants (Metals and Cyanide) and Total Phenols) in appendix D to 40 CFR 122 ~~(2019)-(2016)~~ (NPDES Permit Application Testing Requirements), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 122.23(b) and (c) ~~(2019)-(2016)~~ (Concentrated Animal Feeding Operations), referenced in 35 Ill. Adm. Code 307.2201.

Appendix A to 40 CFR 127 ~~(2019)~~, as amended at 85 Fed. Reg. 20873 ~~(Apr. 15, 2020)-(2016)~~ (Minimum Set of NPDES Data), referenced in 35 Ill. Adm. Code 310.106 and 310.612.

BOARD NOTE: Only those segments relevant to electronic reporting under the wastewater pretreatment program (NPDES data groups 1, 2, 3, 7, and 8) are intended.

40 CFR 136 ~~(2019)-(2016)~~ (Guidelines Establishing Test Procedures for the Analysis of Pollutants), referenced in 35 Ill. Adm. Code 307.1003 and 307.6500 and Sections 310.605, 310.610, and 310.611.

40 CFR 401.15 ~~(2019)-(2016)~~ (Toxic Pollutants), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 403 ~~(2019)-(2016)~~ (General Pretreatment Regulations for Existing and New Sources of Pollution), referenced in Section 310.432.

40 CFR 403.12(b) ~~(2019)-(2016)~~ (Reporting Requirements for POTWs and Industrial Users), referenced in Section 310.602.

40 CFR 403.15 ~~(2019)-(2016)~~ (Net/Gross Calculation), referenced in Section 310.801.

Appendix D to 40 CFR 403 ~~(2019)-(2016)~~ (Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula), referenced in Section 310.233.

Appendix G to 40 CFR 403 ~~(2019)-(2016)~~ (Pollutants Eligible for a Removal Credit), referenced in Section 310.303.

40 CFR 503 ~~(2019)-(2016)~~ (Standards for the Use or Disposal of Sewage Sludge), referenced in Section 310.303.

- c) The following federal statutes are incorporated by reference:

Section 1001 of federal Crimes and Criminal Procedure (18 USC 1001 ~~(2018)-(2015)~~), referenced in Section 310.633.

The federal Clean Water Act (CWA) (33 USC 1251 et seq. ~~(2018)~~ ~~(2014)~~), referenced in ~~Sections~~ Section 310.110 and 310.705.

Section 204(b) of the federal Clean Water Act (33 USC 1284(b) ~~(2018)~~ ~~(2014)~~), referenced in Section 310.510.

Section 212(2) of the federal Clean Water Act (33 USC 1292(2) ~~(2018)~~ ~~(2014)~~), referenced in Section 310.110.

Section 307(b), (c), and (d) of the federal Clean Water Act (33 USC 1317(b), (c), and (d) ~~(2018)-(2014)~~), referenced in Section 310.110.

Section 308 of the federal Clean Water Act (33 USC 1318 ~~(2018)-(2014)~~), referenced in Section 310.510.

Section 309(c)(4) of the federal Clean Water Act (33 USC 1319(c)(4) ~~(2018)-(2014)~~), referenced in Section 310.633.

Section 309(c)(6) of the federal Clean Water Act (33 USC 1319(c)(6) ~~(2018)-(2014)~~), referenced in Section 310.633.

Section 405 of the federal Clean Water Act (33 USC 1345 ~~(2018)-(2014)~~), referenced in Section 310.510.

Subtitles C and D of the federal Resource Conservation and Recovery Act (42 USC ~~6921-6939g~~ ~~6921-6939e~~ and 6941-6949a) ~~(2018)-(2014)~~), referenced in Section 310.510.

- d) This Part incorporates no future editions or amendments.

BOARD NOTE: The Board has located ~~all of the~~ incorporations by reference for the purposes of this Part and the more general incorporations by reference for the purposes of 35 Ill. Adm. Code 307 in this Section to aid future review and updates. The Board has located the incorporations by reference of the federal categorical standards scattered throughout 35 Ill. Adm. Code 307 at the segments appropriate to each individual categorical standard. This aids future review and updates of the categorical standards.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART L: FEDERAL PROJECT XL AGREEMENTS

Section 310.930 Federally Approved Pretreatment Program Reinvention Pilot Projects Under Project XL (Repealed)

~~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 (2003). 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: Repealed at 44 Ill. Reg. _____, effective _____)