BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

P.C. #1

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Michael G. Rosenberg
Alan J. Cook
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60611

Michael McCambridge
Hearing Officer
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Tom Skinner, R. A.
David A. Ullrich, D.R.A.
US Environmental Protection Agency Region V
77 West Jackson Street, Suite B-19
Chicago, Illinois 60604

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the COMMENT of the Illinois Environmental Protection Agency in the above matter, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: Connie L. Tonsor

Connie L. Tonsor
Associate Counsel
Special Assistant Attorney General
Division of Legal Counsel
ARDC # 6186313

Date: January 11, 2002

Illinois Environmental
Protection Agency
1021 North Grand Ave East
P.O. Box 19276
Springfield, IL 62794-9276

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WASTE WATER PRETREATMENT	)	R02-9
UPDATE, USEPA AMENDMENTS	)	(Identical-in-Substance
(October 3, 2001)	)	Rulemaking)
	)	

COMMENT OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by its attorney, Connie L. Tonsor, and hereby submits comments in the above rulemaking.

1) The Illinois EPA appreciates the Illinois Pollution Control Board's ("Board") efforts to expedite consideration of the October 3, 2001 federal amendments to the pretreatment program.

2) The Illinois EPA has grave concerns that the Board's process in adopting additional requirements of Board approval of project XL pretreatment agreements found in proposed 35 Ill. Adm. Code 310.930 (b),1 evidences a fundamental misunderstanding of the project XL process in the pretreatment area. It, in essence, appears to give the Board authority to review U.S. EPA pretreatment plan approval decisions; appears to go beyond the scope of Sections 7.2 and 13.3 of the Act, 415 ILCS 5/7.2, 13.3; is not otherwise authorized by the Act; is contrary to the regulatory scheme established by the Board in the 35 Ill. Adm. Code 310; is unnecessary to implement the federally approved XL pretreatment project plans through the National Pollutant Discharge Elimination System ("NPDES") permitting

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The language of Section 310.930(b) is not found in the pretreatment XL amendments adopted by the U.S. EPA at 40 CFR 403.20, 66 Fed. Reg. 50334, at 50339 (October 3, 2001).

process; and may vitiate the purpose of innovative pretreatment by rendering it ineffective.[2] The Illinois EPA strongly urges the Board to delete proposed Section 310.930(b) and modify its definition of the XL agreements.

THE XL AGREEMENT

3. A full understanding of the XL agreement is necessary to comprehend the Illinois EPA's concerns. The agreement states on pages 3 and 23-24 that it does not "create or modify legal rights or obligations, is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any Party. Rather, it expresses the plans and intentions of the Parties without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters."

4. On its face, the XL agreement is a proposal for implementing pretreatment requirements in an innovative fashion. It is not enforceable as a contract. It is not a rule. It does not change or purport to change any legal obligation of any party to the agreement. The Illinois EPA is, therefore, perplexed by the Board's conclusion that it must change the specific agreement into a regulation and, thus, by some rulemaking or regulatory relief activity, give it the status of law. The agreement on its face also presumes that the project

[2] The Board in its November 15, 2001, opinion and order stated that it believed the XL agreements would be ineffective without some type of rulemaking specifically allowing for the Board's substantive review of the agreements. It suggested an adjusted standard, variance, site-specific rulemaking or regular rulemaking procedure. No rulemaking or regulatory relief is needed, other than the federal docket as adopted pursuant to Sections 7.2 and 13.3 of the Act. The specific agreement regarding the MWRDGC demonstrates this process. The agreement is not a change in the generally applicable regulations. The U.S. EPA changed the rule of general applicability to address XL innovative projects. MWRDGC will propose a modification of its pretreatment program. The U.S. EPA will approve the XL-based modification based on existing regulations. The Illinois EPA will issue permits to the MWRDGC that include its local program requirements. Finally, the Board's adoption of the pass through language will fulfill the mandate of Section 13.3 of the Act, 415 ILCS 5/13.3 (2000), that the Board adopt regulations that are identical in substance to the federal regulations relating to pretreatment.

may be altered to adjust to innovative methods of meeting pretreatment requirements. It may be changed by the parties at any time and is not enforceable against any party.

> "This Project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this Project. Therefore, it may be appropriate to amend this Agreement at some point during its duration. Issues and amendments may be raised by the Parties or the Stakeholders. This Final Project Agreement may be amended by mutual agreement of all Parties at any time during the duration of the Project." [3]

Once the specific agreement is changed to a regulation, it will be binding upon the parties, have the force of law, and its specific terms may be used as the basis for third party enforcement actions pursuant to Section 31 of the Act, 415 ILCS 5/31, and 35 Ill. Adm. Code 103.200 of the Board's procedural regulations. Thus, it may not be amended absent Board action. The Illinois EPA does not believe that the Board intended such a consequence from its change of the specific Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") agreement to the status of law.

5. The Illinois EPA notes that the Board may have thought that this addition of Board approval of the agreement was simply a "more stringent" requirement than the federal regulation. However, although the Board may make the Illinois regulations more stringent than federal regulations, the more stringent regulations must be based upon some state

[3]Project XL Agreement, p. 24. As noted in Footnote 2, the Agreement does not of itself modify the pretreatment plan of the POTW. The modified pretreatment plan must be approved by U.S. EPA. The modification approval process follows the existing requirements, contained in the Board regulations at 35 Ill. Adm. Code 310subpart K.

law requirement. Generally, they are not used to totally change the structure of the federal program for which the Act requires identical-in-substance rulemaking.[4]

6. The regulatory mechanism for implementing the XL based pretreatment projects, selected by U.S. EPA pursuant to the Clean Water Act, was to change the rule of general applicability, specifically providing for the approval of Publicly Owned Treatment Works' ("POTW") pretreatment programs that are based upon innovative measures. The U.S. EPA met this goal on October 3, 2001 by adopting amendments to 40 CFR 403.3, concerning pretreatment plan approval for POTWs. The Board, pursuant to Section 13.3 of the Act and Section 7.2 of the Act, had a statutory obligation to adopt this amendment through identical-in-substance rulemaking. The addition of a Board approval requirement, contained within proposed Section 310.309(b) which changed the agreement itself to the status of a regulation, substantively changed the U.S. EPA amendment of the 40 CFR .3 by negating U.S. EPA's regulatory format for approval of XL based pretreatment programs. Such an action should not take place pursuant to Section 7.2 of the Act. It is also contrary to the directive of Section 13.3 of the Act, 415 ILCS 5/13.3.

7. Since U.S. EPA changed the rule of general applicability, the "environmental standard," to encompass XL based pretreatment programs, no regulatory relief mechanism or further specific Board approval of the agreement is necessary. The only action necessary is that the Board must adopt the federal October 3, 2001 amendments.

PRETREATMENT PROGRAM BACKGROUND

8. An explanation of the pretreatment program and its implementation through existing regulations will further illustrate the Illinois EPA's concerns.

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[4] See generally, 415 ILCS 5/7.2 (2000).

9. The Illinois EPA is not the authorized entity for approval of pretreatment programs in the State. (Attachment A) POTWs in Illinois have their pretreatment programs directly approved by U.S. EPA. The pretreatment program of the MWRDGC has been approved by U.S. EPA.

10. 35 Ill. Adm. Code 310 addresses Pretreatment Programs. Section 310.103 states in pertinent part:

"a) *The Board intends that this Part be identical in substance with the pretreatment requirements of the Clean Water Act (33 USC 1251 et seq.) and United States Environmental Protection Agency (USEPA) regulations at 40 CFR 401 et seq.*

b) *This Part will allow the Agency to issue pretreatment permits, review POTW pretreatment plans and authorize POTWs to issue authorizations to discharge to industrial users when and to the extent USEPA authorizes the Illinois pretreatment program pursuant to the Clean Water Act. After authorization the requirements of the Clean Water Act and 40 CFR 401 et seq. will continue in Illinois. In particular, USEPA will:*

1) Retain the right to request information pursuant to 40 CFR 403.8(f); and

2) Retain the right to inspect and take samples pursuant to 40 CFR 403.12(l).

c) This part shall not be construed as exempting any person from compliance, prior to authorization of the Illinois pretreatment program, with the pretreatment

requirements of the Clean Water Act, USEPA regulations and NPDES permit conditions.

d) POTW pretreatment programs which have been approved by USEPA pursuant to 40 CFR 403 will be deemed approved pursuant to this Part, unless the Agency determines that it is necessary to modify the pretreatment program to be consistent with State law...."

11. In Section 310.102, the Board stated the basic objective of Part 310 as fulfilling the statutory requirement of Section 13.3 of the Act, 415 ILCS 5 13.3, that the Board adopt regulations that are identical in substance to federal regulations or amendments promulgated by the U.S. EPA to implement Sections 307(b), (c), (d), 402(b)(8) and 402(b)(9) of the Federal Water Pollution Control Act, as amended.[5]

12. In R86-44,[6] the Board acknowledged that the Illinois EPA was not the authorized entity for approval of the pretreatment program plans of POTWs pursuant to the 40 CFR .3. It addressed the relationship of federal and state law, the approval of POTWs pretreatment programs, the requirements in 40 CFR .3 for authorization of the Illinois EPA as the approval authority for POTW pretreatment plans and the effect of modifying the definition of "approval authority" to include U.S. EPA. The Board noted that its language, 35 Ill. Adm. Code 310.103, specifically removed any implication that the U.S. EPA was acting pursuant to Board rules when it approved POTW pretreatment program plans prior to the Agency becoming the authorized entity for POTW pretreatment program plan

[5] 33 U.S.C. §§1317, 1342(b)(8) (NPDES permits to include conditions to require the identification of significant sources introducing pollutants into a POTW); 1342(b)(9) (NPDES permit for the POTW to include insurance that any industrial user comply with effluent standards for toxic and reporting.

[6] IN THE MATTER OF: PRETREATMENT REGULATIONS (December 3, 1987) 1987 WL 107413

approval. It also specifically acknowledged that it did not have the authority to "regulate" the U.S. EPA.[7]

13. The Board, through the addition of proposed Section 310.930(b), has folded into Part 310 both the implication of authority to regulate the U.S. EPA and the actuality of that regulation. Proposed Section 310.930(b) states that the Board must approve by regulation, Section 310.930(b)(1), (MWRDGC), or by some other regulatory action, Section 310.930(b)(2), an agreement that the U.S. EPA clearly did not promulgate as a regulation.

14. Additionally, the regulatory scheme of Part 310 notes that the Illinois EPA is the approval authority for POTW program plans after authorization.[8] Therefore, the Agency, without Board action, is charged with specifically reviewing plan submissions. Part 310 further provides that those programs approved by the U.S. EPA shall be deemed approved pursuant to Part 310. The Board's opinion clarifies that the Board believes that it must review the substance of these XL agreements. (R02-9, pp.4-5). A substantive review of the U.S. EPA's action in approving an XL pretreatment agreement is not authorized by the Act nor is it authorized by the Board's existing regulations in Part 310. Additionally, a

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[7] See R86-44 at 1987 WL 107413 *13-16; R86-44 at pp. 21-25 (October 1, 1987). The Board initially entered a "final order" adopting the pretreatment regulations on July 16, 1987. The Board vacated this order on September 4, 1987. On October 1, 1987 the B1/11/2002oard entered a revised Proposed Opinion and order to adopt the pretreatment program with provisions for removal credits. Prior to adoption of the October 1, 1987 proposed rule, the U.S. EPA amended its removal credits rule. On November 19, 1987, the Board postponed action on the pretreatment rules until December 3, 1987. The pretreatment rules were subsequently adopted and became effective on January 13, 1988. The explanation of the interrelation of state and federal law in the pretreatment process contained within Section 310.103 was unchanged from the proposed (October 1, 1987) opinion. Both the interim and the final opinion have been referenced in this note.

The Illinois EPA has also not found any federal or state statutory authority that would permit the Board to substantively review and approve of U.S. EPA actions in pretreatment program plan submissions by POTWs.

The Board subsequently addressed Section 310.103 in R91-5. However, it noted that pursuant to the directive of Section 7.2 of the Act, requirements for program approval had not been placed in Section 310.103.

[8] The Illinois EPA notes for the Board that the XL agreement is not the request for program modification.

review by the Board of the Illinois EPA's approval after authorization, of a POTW pretreatment plan would only occur in the context of a permit appeal. [9]

15. The language of proposed Section 310.930(b) is not authorized by Sections 13.3 or 7.2 of the Act. 415 ILCS 5/13.3, 7.2 (2000). For the reasons stated in this comment, the Illinois EPA believes that the Board is obligated to delete the additional language as unnecessary and as beyond the statutory authority afforded it in the Act.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Connie L. Tonsor by NDL
Connie L. Tonsor

January 11, 2002

Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

[9] Until the Illinois EPA becomes authorized as the approval authority for pretreatment, a strong argument may be made that that the board's action in adding Section 310.930(b) in not in effect.

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached COMMENT upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Michael G. Rosenberg
Alan J. Cook
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60611

Michael McCambridge
Hearing Officer
James R. Thompson Center
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Chicago, Illinois 60601

Tom Skinner, R. A.
David A. Ullrich, D.R.A.
US Environmental Protection Agency Region V
77 West Jackson Street, Suite B-19
Chicago, Illinois 60604

and mailing it from Springfield, Illinois on January 11, 2002 with sufficient postage affixed first class mail.

Nancy J. D. Lamport

SUBSCRIBED AND SWORN TO BEFORE ME

this 11th day of January, 2002.

Toni I. Leigh

NOTARY PUBLIC

OFFICIAL SEAL
TONI I. LEIGH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-20-2005

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AUG 22 1997

WN-16J

Thomas McSwiggin, Manager
Permits Section
Division of Water Pollution Control
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62794-9276

Dear Mr. McSwiggin:

Enclosed are the comments from the United States Environmental Protection Agency (USEPA), Region 5 on your April 8, 1997, submittal for Pretreatment Authority. These comments were developed by my staff in coordination with our Enforcement and Compliance Assistance Branch, Office of Regional Counsel and Headquarters Pretreatment Section.

As you will see, these comments primarily seek clarification of various aspects of program implementation, particularly with respect to issuance of Industrial User (IU) permits, and functional responsibilities for carrying out programmatic activities. A number of comments on the State's pretreatment regulations have also been provided. While these comments identify the need to revise certain regulatory provisions before final approval can be granted, we are hopeful that these revisions can be readily addressed by the Illinois Pollution Control Board as we work through the remaining issues identified and proceed toward approval of the State program. Should it become necessary, we are willing to explore options for some form of interim or conditional approval pending resolution of these regulatory issues.

We are encouraged by the State's renewed efforts to seek approval for implementation of this important Clean Water Act program, and look forward to working closely with you to complete this process. After reviewing these comments, please contact me, or Matt Gluckman at (312) 886-6089 to discuss the next steps.

Sincerely yours,

Eugene I. Chaiken, Chief
NPDES Support and Technical Assistance Branch

Enclosure

cc: Elaine Brenner, 4203

Illinois Application for Pretreatment Authority
Comments on April 8, 1997 Submittal
(Updated August 4, 1997)

Outline of Comments:

Section I: Introduction and Summary
Section II: Program Outline and Implementation Plan
Section III: Organization
Section IV: Funding and Staffing
Section V: Attorney General's Statement
Section VI: Modified Memorandum of Agreement
Recommendations for Additional Attachments
Statutory Provisions
Regulatory Provisions

Section I: Introduction and Summary

State Pretreatment Permit System (p. 5). The differences between Operating Permits (309.204) and Pretreatment Permits (310.401) remain unclear. Specifically, which provisions provide the underlying authority for the "Pretreatment" Permits discussed on pages 10-11?

Market Trading (p. 5-6). How does the State foresee these concepts affecting delegation?

Section II: Program Outline and Implementation Plan

List of POTWs required to implement pretreatment programs (p.7). Attachment 4 needs to be updated. Aurora Sanitary District is now Fox Metro Water Reclamation District; Robinson has been approved, and O'fallon and others have been required.

Inventory of CIUs tributary to POTWs without pretreatment programs. Regional staff has reviewed the referenced inventory, and identified certain facilities that are not CIUs. This narrowed list will be provided if it has not been provided previously.

Operating Permit applications (p. 10). The program description indicates that the requirements for operating permit applications requires most of the same information as Baseline Monitoring Reports, and will be used as BMRs as appropriate. While the "catchall provision" in the Operating Permit Application requirements, section 309.221(b) appears to provide the authority to require all necessary information for BMRs, it is recommended that that provision be revised to reference 403.12(b) or to reflect the specific information necessary for BMRs.

Issuance of Pretreatment Permits (p. 10). The end of the first full paragraph says that Pretreatment Permits will be required for all SIUs. This does not appear to be fully consistent

with section 310.401, which limits those needing such permits to those notified by the Agency that they have caused pass through or interference, or that their discharge poses an imminent endangerment to the health or welfare of persons. This gets back to the question of whether section 309.204 or 310.401 is the basis for issuance of these permits.

The second paragraph refers to compliance monitoring procedures. Please identify the specific NPDES procedures being referenced, and indicate if they are being updated.

The last sentence on this page refers to incorporation of compliance schedules into IU permits following delegation. Where such schedules are needed prior to final approval, the Region is willing to provide its assistance.

Status of BMRs (p. 11). The statement that all BMRs are overdue is overly broad, as certain CIUs have been reporting to the Region as required. A list of such facilities can be provided if necessary. In addition, BMRs for Pesticide Formulating Packaging and Repackaging facilities were due July 7, 1997.

Sampling and Inspection of CIUs outside of approved pretreatment programs (p.12). While the specific annual commitments for inspection and sampling of these IUs will be addressed through the performance partnership agreement process, we would strongly recommnend some form of contact with each CIU at least once a year.

Sampling of Influents, effluents and sludge to verify removal rates and sludge requirements (p. 14). The discussion should clarify that this information, along with POTW information, may be used as a basis for modification or withdrawl of removal credits during the permit term.

Annual Report Form (p. 15). Please indicate the nature of additional refinements that are being made to the Annual Report form. DRSP and NPP

Procedures for response to pretreatment violations (p. 17). Please identify the specific procedures being referenced, and whether they are being updated. Also, this section should address entry of Pretreatment Program Enforcement Tracking System (PPETS) and Water Enforcement National Database (WEND-B) data elements into PCS.

Just 3/3, 31

Section III: Organization

At various points the program description discusses how various activities to implement the pretreatment program will be carried out. It is not clear from the description, however, which Section or unit within the Bureau of Water will have the primary responsibility for ensuring the various activities are performed. This identification of functions would be especially useful in light of the Agency's apparent intention to not have a designated primary contact, or Pretreatment Coordinator, and would assist both U.S. EPA and the regulated community in knowing which part of the Agency to contact on a specific matter. Particularly useful would be the identificaton of the Section(s) or Unit(s) responsible for the following:

- Industrial User Permits
- Tracking compliance with IU permits, including review of reports, inspections and sampling, enforcement
- Technical assistance, in particular for category determinations, interpretations of regulatory requirements, local limits development, technical issues associated with industrial discharges, adjustment of pretreatment standards (i.e. removal credits, net credits and FDFs)
- Review and follow-up on Annual Reports
- Review and approval of program modifications

Section IV: Funding and Staffing

In light of the static resources discussed in this Section, how does the State foresee managing the increased workload involved in managing the pretreatment program, particularly with regard to IU permitting, review of local limits revisions and other program modifications, IU oversight and technical assistance?

Section V: Attorney General's Statement

A signed version of the Attorney General's statement will be necessary prior to public noticing of U.S.EPA proposed approval of the State's Program.

Section VI: Modification to Memorandum of Agreement

General comments. References in the MOA to Pretreatment Standards should be revised where appropriate to also refer to Pretreatment Requirements (e.g. reporting requirements).

Commitments on pages 23 and 25 to approve and deny POTW programs should be revised to include modifications to such programs.

Incorporating POTW Pretreatment Program Conditions (p. 24). This section states that U.S. EPA approval is not required for additions and deletions to the list of POTWs required to have programs. In contrast, MOAs with other States in the Region provide that POTWs will not be deleted without U.S. EPA's approval. While it shouldn't be necessary for the Region to affirmatively respond to such changes, notice and opportunity to respond should be provided. Such prior notification is all the more important in light of Region's deemphasis on real-time review of NPDES permits.

Removal Credits (p. 26). This section provides for State review of applications and forwarding to U.S. EPA for approval. Under 40 CFR 403.7, the State, as the Approval Authority, would approve authorizations for removal credits, and forward to U.S. EPA for review.

Net Credits (p. 27). This section indicates the state will forward net credit requests to U.S. EPA for approval. 40 CFR 403.15 has been revised so that Control Authorities (either the POTW or State) would approve such requests, not the Region.

Recommendations for Additional Attachments

- BMR or Pretreatment Permit application form
- IU permit format for CIUs
- Narrowed list of CIUs to be issued Pretreatment Permits, and if available, the IEPA's plan for permit issuance
- Pretreatment follow-up inspection checklist
- Sample NPDES permit language where new POTW Pretreatment Program will be required (where new programs are required, phased approach used in the past will not be utilized)
- Definitions of terms used in enforcement schematic
- Organizational chart with primary responsibilities with respect to pretreatment, indicating organizational leads for various program activities.

Regulatory Provisions

General comments. The following comments are based on review of the March 1995 version of Title 35: Environmental Protection, Subtitle C: Water Pollution, Chapter I: Pollution Control Board. It appears that in some cases, subsequent revisions may have been made which could address these comments; later versions of the regulations, however, were not available for review.

While the comments are significant, we are hopeful that they can be readily addressed by the IPCB's regulatory revision process while we work through any other outstanding issues and proceed toward approval of the State program. Should it become necessary, we are willing to explore options for some form of interim or conditional approval pending resolution of these regulatory issues.

Specific comments.

310.110 Definitions.
Pretreatment Standard. This definition includes local limits pursuant to 310.211 which are part of an approved pretreatment program. While section 310.211 includes local limits developed by POTWs without pretreatment programs, the reference to approved programs should be deleted, as once any POTW has adopted local limits pursuant to 310.210, they are Pretreatment Standards.

310.211 Category Determination Requests. The timeframe for filing such requests should begin when the Federal Standards become effective, not when adopted by the IPCB.

310.222 Compliance date for categorical standards. This provision establishes different dates

for compliance with categorical standards based on adoption of the standards by the IPCB, once U.S. EPA has given approval of the State's program. National Categorical Pretreatment Standards are self-implementing standards, and compliance deadlines cannot be extended by the State. This provision should be revised to simply reference the compliance date in the Federal Register publication for the categorical standard.

310.232 Dilution prohibition. The last phrase of this provision, that POTW's may allow dilution to meet local limits established by 3109.210, must be deleted. The dilution prohibition applies to all Pretreatment Standards, including local limits. Clarification of terms in this case is useful, as determining compliance with local limits after comingling of dilute wastestreams (e.g. sanitary wastestreams) is appropriate, whereas adding water, say with a hose, to comply with standards would be considered prohibited dilution.

310.303 Conditions for Authorization to Grant Removal Credits. Subpart d of this provision has not been updated to incorporate the Federal sludge requirements, including the pollutants for which POTWs may obtain authorization to grant removal credits.

310.401 Pretreatment Permits. The two criteria for the Agency to require such a permit put the burden on it to show that a user has caused pass through or interference or poses an imminent threat to health or welfare. While it is our understanding that section 309.204 would at least in part provide the authority for permit issuance, this provision does not appear to provide the authority to issue Pretreatment Permits to any SIU, or even to any CIU, unless the above criteria can be met.

310.410 Application. While subpart (a)(8) provides adequate authority to require all BMR information required under 403.12(b), it is recommended that this provision be revised to either incorporate 403.12(b) by reference or specify all information required by that provision, including sampling data on the effluent, and information in support of applicable categorical standards.

310.413 Site Visit. This provision requires that IEPA notify a user prior to conducting a site visit to evaluate a Pretreatment Permit application. Such a requirement unnecessarily limits the Agency's authority to inspect IUs, and should be deleted.

310.430 Conditions. Similar to the comment re 310.410, the authority to include necessary provisions in Pretreatment Permits seems adequate, but it is recommended that this provision be revised to specify that such permits will include sampling locations, various notification requirements, transferability requirements, and penalties available for noncompliance.

310.521 Program Approval and 310.522 Contents of Program Submission. Both sections should be revised to reference the POTW's enforcement response plan and SIU list as part of the program to be approved.

310.602 Baseline Monitoring Reports. Subpart (h)(2)(A) states that BMRs for existing IUs must be submitted within 180 days of adoption by the Board (or final category determination) for standards adopted after delegation. As discussed above, the reporting requirements for

categorical users are self-implementing, and cannot be extended by a State. This provision should be revised to incorporate the general timeframes specified in 403.12(b).

310.634 Recordkeeping Requirements- Hazardous waste notification. The address provided for notification to U.S. EPA Region 5 needs to be updated to our current address.

310.711 FDF Application Deadline. Under subpart (b)(2), FDFs must be submitted within 180 days of incorporation of categorical standards by the IPCB, once the state program is delegated. As in the comment above, this would improperly extend the Federal date for requesting FDFs, and would be inconsistent with EPA's criteria for approving these variances.

310.801 Net/Gross Calculations. As a result of the PIRT revisions to the General Pretreatment regulations, the authority to grant intake credits was shifted to Control Authorities; retention of the old reference to the Approval Authority has caused delays in at least one IU obtaining such credits from the MWRDGC.

310.920 Modification of POTW Pretreatment Programs. Language from 403.18 regarding nonsubstantial program modifications is not included in the IPCB regulations, and should be revised to do so. In addition, please note that revisions to 403.18 were finalized on July 17, 1997.

Citation Search Result Rank 17 of 20 Database
1987 WL 107413 ILENV-ADMIN
(Cite as: 1987 WL 107413 (Ill.Pol.Control.Bd.))

Illinois Pollution Control Board
State of Illinois

*1 IN THE MATTER OF: PRETREATMENT REGULATIONS
R86-44
December 3, 1987

FINAL ORDER. ADOPTED RULES

OPINION OF THE BOARD

On October 9, 1986, the Board opened this Docket for the purpose of promulgating regulations establishing a pretreatment program pursuant to Section 13.3 of the Environmental Protection Act (Act), as amended by P.A. 84- 1320. On March 5, 1987 the Board proposed, and on July 16, 1987 adopted, amendments to 35 Ill. Adm. Code 307 and 309, and a new 35 Ill. Adm. Code 310. On September 4, 1987 the Board vacated the July 16 Opinion and Order. On October 1, 1987 the Board adopted a revised Proposed Opinion and Order, requesting public comment through October 30, 1987. As is discussed below, the comment period is over, and the Board is now adopting this revised Opinion and accompanying Order.

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 (CWA), which was previously known as the Federal Water Pollution Control Act. Section 13.3 creates an abbreviated procedure similar to that provided by Sections 13(c) and 22.4(a) of the Environmental Protection Act (Act) for the UIC and RCRA programs. Section 13.3 provides that Title VII of the Act and Sections 5 and 6.02 of the Admin strative Procedure Act (APA) do not apply to "identical in substance" regulations adopted to establish the pretreatment program. Section 13.3 requires the Board to provide for notice and public comment before rules are filed with the Secretary of State. The Board provided for such notice and comment by way of the Proposed Opinion and Order. As provided by Section 13.3, the rules are not subject to the first notice requirements or to second notice review by the Joint Committee on Administrative Rules (JCAR). Section 13.3 also provides that the Department of Energy and Natural Resources (DENR) may conduct an economic impact study (EcIS) on the rules, but the study and hearings are not required before the rules are filed.

To avoid confusion, the Board published its proposal of March 5, 1987 in the Illinois Register utilizing a format similar to the "first notice" procedures under the APA. The Board allowed 45 days for public comment.

PUBLIC COMMENT ON MARCH 5 PROPOSAL

PC 1 through PC 8 were preliminary comments which were referenced in the Proposed Opinion. Preliminary comments referenced in this Opinion will be liste

for convenience of readers:

PC 1 Illinois Environmental Protection Agency (IEPA) preliminary draft proposal, July 24, 1986

PC 4 Letter from David Rankin (USEPA) to Angela Tin (IEPA), August 11, 1986

PC 7 IEPA revised preliminary draft proposal, November 12, 1986

PC 8 Summaries of Categorical Pretreatment Standards, prepared by Angela Tin and Joe Subsits, IEPA, February 5, 1987

***2** The March 5, 1987 proposal appeared on April 3, 1987, at 11 Ill. Reg. 5453. The Board received the following public comment in response to the March 5 Order and publication in the Illinois Register: [FN1,2]

PC 9 USEPA, March 27, 1987

PC 10 USEPA, May 18, 1987 (USEPA)

PC 11 Metropolitan Sanitary District of Greater Chicago, May 18, 1987 (MSD)

PC 12 IEPA, May 20, 1987 (IEPA)

PC 13 Illinois Steel Group, May 21, 1987 (Steel)

PC 14 Chicago Association of Commerce and Industry and Illinois Manufacturer's Association, May 21, 1987 (IMA)

PC 15 JCAR, May 6, 1987.

PC 16 North Shore Sanitary District, June 1, 1987 (NSSD)

These comments will sometimes be referenced by the initials or abbreviated name of the commenter in parentheses rather than the PC number.

During the public comment period the Board received a series of questions from JCAR. Although Section 22.4(a) of the Act exempts these fast-track "identical in substance" rulemakings from formal interaction with JCAR, the Board will attempt to respond to JCAR's general questions at the end of the Opinion.

The Board also received codification comments from the Administrative Code Unit.

MOTIONS FOR RECONSIDERATION

On July 16, 1987, the Board adopted a final Opinion and Order in this matter. The Board indicated that it would withhold filing the rules until after the opportunity for motions for reconsideration. As is detailed in the Orders of August 20 and September 4, 1987, the Board granted motions for reconsideration and vacated the July 16, 1987 Opinion and Order. The Agency filed and withdrew several motions for reconsideration. IMA and Steel similarly filed several documents which, to the extent not dealt with in the earlier Orders, are now moot. The post-adoption filings relating to the vacated July 16 Order which are discussed in this Opinion are as follows:

PC 17 Letter from Charles H. Sutfin, USEPA, August 5, 1987

* Amended Motion for Reconsideration, Agency, August 20, 1987

PC 18 Sanitary District of Rockford, August 19, 1987

* Removal Credit Regulatory Proposal, IMA and Steel, September 2, 1987

* Letter from James B. Park, Agency, September 3, 1987.

PC 18 was simply a public comment on the Board's proposal which arrived months after the close of the comment period on May 18, 1987, and after the Board's action of July 16. The Board therefore struck it. [FN3]

In the July 16, 1987 Order the Board solicited motions for reconsideration fro

the agencies involved in the authorization process. In PC 17 USEPA reiterated some of its earlier comments, which are fully addressed in the July 16 Opinion and in this Opinion. The letter is not framed as a motion for reconsideration, and references further review to be conducted by USEPA. The Board therefore di not address the letter. If necessary, the Board will open another Docket to address any issues USEPA may raise in the future.

The Agency's amended motion for reconsideration raised a number of minor issu which are discussed below in connection with the Sections involved. This is referenced below as "IEPA Motion forReconsideration."

*3 The major issue on reconsideration concerned whether to include removal credits in the proposal. This was first raised by IMA and Steel, which ultimately filed proposed regulatory language. The Agency eventually endorsed this change in the letter of September 3, 1987. As is discussed below, the Boa included removal credits in the revised proposal. The Board solicited addition comment for before taking final action.

APPEALS

The Board has received notice of two appeals of the July 16 Order. These are mooted by the Board's action in vacating the July 16 Opinion and Order. On October 1, 1987 the Rockford Sanitary District moved to dismiss its appeal. Th Board assumes that the IMA and Steel appeal will also be dismissed promptly. However, because of the need for prompt adoption of a pretreatment program to meet the requirements of Section 13.3, the Board will not await the dismissal before adopting this revised Opinion and Order.

PUBLIC COMMENT ON REVISED PROPOSAL

The Board requested public comment through October 30 on the revised Opinion and Order adopted October 1, 1987. [FN4] The Board received the following publ comment:

PC 19 IEPA, November 2, 1987.

PC 20 Illinois Steel Group, LTV Steel Company, Inc., and Acme Steel Company November 5, 1987

PC 21 USEPA, November 19, 1987

All of the comments were filed significantly late. However, on November 19, 1987 the Board extended the comment period to afford everyone an opportunity t review their comments in light of USEPA's amendments which appeared at 52 Fed. Reg. 42434, November 5, 1987, and which related to removal credits, the major issue at this stage of this proceeding which is discussed below in connection with Section 310.300 et seq.

FEDERAL TEXT USED

The federal pretreatment program is contained in 40 CFR 401 through 471. The proposal should be consistent with the 1986 edition of the Code of Federal Regulations, Title 40 of which is current through June 30, 1986. The Board has incorporated amendments through March 30, 1987. [FN5] These include:

51 Fed. Reg. 23759, July 1, 1986
51 Fed. Reg. 30816, August 28, 1986
51 Fed. Reg. 40421, November 7, 1986
51 Fed. Reg. 44911, December 15, 1986
52 Fed. Reg. 1600, January 14, 1987.

The Board intends to update the rules in a new docket to be opened as soon as possible after these rules are adopted. The Board will not attempt to play keep up with USEPA in this Docket, which involves a large volume of paper leading to original adoption of the program. The Board's long experience with the RCRA and UIC programs has taught that it would be a futile effort to try to keep up. By the time the Board completed the process of revising the proposal to accomodate new amendments, USEPA would be ready with another set. (PC 19)

RESPONSE TO GENERAL COMMENTS

The Agency and USEPA comments on the March 5, 1987 Order include some general comments to which the Board responded in the October 1 revised Proposed Opinion and earlier Opinions. Of special note was PC 9 from USEPA. The Board believes that PC 21 was intended to replace this earlier comment which was obscured by a major misunderstanding of the March 5 Proposal. The Board will include only a summary in this Final Opinion. To the extent this may still be relevant, interested persons are referred to the October 1 revised Proposed Opinion.

***4** In summary, Section 13.3 of the Act does not allow the contents of the regulations to be finally determined by negotiation between the Agency and USEPA. The Agency filed no proposal with the Board, and did not seek to inform the Board of any agreements. On the points in question the Board's proposal appears to be consistent with USEPA rules and comments, and with the supposed agreement. However, the Board does not understand why USEPA is concerned about much of this, since matters such as appeal routes seem to be intrinsically a matter of State law.

OVERVIEW OF PRETREATMENT PROGRAM

The following is a general discussion of the pretreatment program. A detailed discussion appears after this portion of the Opinion.

When the Board adopted regulations protecting water quality it focused primarily on discharges to surface waters. These are regulated through the NPDE permit program under Section 12(f) of the Act and 35 Ill. Adm. Code 309. Surfac dischargers include industries which discharge directly to surface waters, and publicly-owned treatment plants (POTW's) which receive wastewater from households, businesses and industry, treat the wastewater and discharge it to surface waters. The pretreatment program greatly expands Board regulation of industries which discharge to a POTW rather than directly to surface waters.

POTW's are generally designed to provide biological treatment of household wastewater. They can also treat much industrial wastewater. However, some industrial wastewater is of a nature such that it should not be discharged to the POTW without pretreatment. Some wastewater, such as strong acids, would damage physical structures such as iron and concrete sewers. Flammable solvents

pose dangers to persons working on sewers or in the treatment plant. Toxic materials may kill bacteria in the treatment works so that biological treatment ceases, allowing household wastewater to be discharged without adequate treatment. Toxic materials may accumulate in sludge, preventing its use or disposal as a soil additive. Other industrial pollutants may pass through the treatment works and cause water quality violations in the receiving stream. The pretreatment rules are designed to prevent interference with or pass through at the POTW.

The Board already has some general pretreatment rules in 35 Ill. Adm. Code 30 Section 307.105 prohibits discharges to POTW's in violation of USEPA pretreatment requirements. The Agency has a rudimentary pretreatment program which includes review of 102 municipal pretreatment programs which has resulte in the establishment of 48 pretreatment programs operated by POTW's. (IEPA). These have apparently been established through direct application of federal l through USEPA intervention in the NPDES surface discharge permit process.

The rules require that the larger POTW's serving industrial users prepare a pretreatment program proposal for submission to the Agency. The approved progr will become a part of the POTW's NPDES surface discharge permit. Following approval of the program the POTW will administer the pretreatment program at t local level. Industrial users will be required to obtain an authorization to discharge from the POTW before discharging wastewater to sewers.

***5** The rules also involve incorporation by reference of detailed USEPA pretreatment regulations for several hundred types of industrial dischargers. Through the pretreatment program the POTW will require that industrial users comply with these detailed pretreatment requirements.

The Board has set up the pretreatment program in a manner parallel with the NPDES program. The requirements for program approval and permit issuance will placed in a new Part 310, which will follow the similar Part 309 NPDES rules. The sewer discharge standards will be added to the existing requirements in Pa 307.

PART 307: PRETREATMENT STANDARDS

The Board's existing pretreatment regulations have been renumbered and incorporated into the framework of the pretreatment program.

Section 307.1001 Preamble

The existing language of Section 307.101 is preserved in paragraph (a). The Board's pretreatment rules have been merged with the general USEPA pretreatmen rules from Part 403 and placed in Subpart B. While existing Section 307.102 an the USEPA pretreatment rules apply to discharges to publicly owned treatment works (POTW's), the Board's mercury and cyanide rules have a broader scope.

The general [FN6] standards of Subpart B will function as back-up standards f the categorical standards. Except where the contrary is indicated, a categoric discharger will have to comply with any more stringent general requirement. Dischargers which do not fit into any of the categories will also have to comp with the general standards.

The Illinois Administrative Procedure Act prohibits incorporation by reference of future amendments to federal rules ("forward incorporation"). Also, it requires the Board to so state each time it makes an incorporation by reference and requires prior approval of incorporated material by the Joint Committee on Administrative Rules. Section 13.3 generally exempts the Board from compliance with the incorporation by reference procedures. For the reasons discussed below the Board construes this as exempting only the JCAR prior approval, but not as allowing forward incorporations by reference.

The USEPA standards usually contain references to other USEPA rules. USEPA intends to refer to future amendments of the referenced Sections. The Board's incorporation of these Sections raises a possibility of an "imbedded forward incorporation:" the indirect incorporation of future amendments to the Section referred to in the reference. These imbedded forward incorporations are mostly procedural requirements which the Board will adopt in Part 310. Section 307.1001(c)(2) provides that these are to be construed as references to the comparable Board rules, or, if there are none, as references to the USEPA rules as they existed when referenced. The Board intends to adopt complete procedural rules, utilizing incorporation only for standards, requirements and definitions. In no instance does the Board intend to make a forward incorporation.

Section 307.1002 Definitions

***6** The Board will utilize a separate definition set for the pretreatment rules rather than the Part 301 definitions. Alteration of the general definitions would require a review to ascertain whether the changes were modifying the other water rules. The preferable course is to utilize the USEPA definition sets associated with the pretreatment program.

The 40 CFR 401 definitions include terms which relate only to the surface water program. It is not necessary to include these. The Board has identified the definitions which are relevant to pretreatment, and set them out in the Part 31 definitions which are discussed below. The Board will utilize the same definition set for Part 307.

Section 307.1003 Test Procedures

This Section is drawn from 40 CFR 401.13, which in turn references 40 CFR 136, which establishes test procedures for measurement of pollutant concentrations. 40 CFR 401.13 contains an imbedded forward incorporation by reference. Simply incorporating this provision would be open to the interpretation that the Board was indirectly making a forward incorporation. As noted above, the Board believes this would violate the APA. For this reason the Board has incorporated by reference 40 CFR 136.

IEPA has suggested that it is not necessary to incorporate 40 CFR 136 by reference. However, USEPA has indicated that it will retain exclusive authority to approve alternatives, thereby implying that the test methods are indeed an important portion of the program. (IEPA and USEPA). (IEPA Motion for Reconsideration)

IEPA has asked that the Board update the incorporation by reference of 40 CFR

136, to include a September 3, 1987 amendment. The Board has advanced the incorporation to include the 1987 edition of the Code of Federal Regulations, which includes amendments through June 30, 1987, but declines to further advanc the date at this time for the reasons noted above. The Board will instead open new Docket to include recent amendments. (PC 19)

IEPA has correctly pointed out that it would be difficult to maintain the references to Part 136 in the Proposal. Most of the Sections in Part 307, and some of Part 310, reference federal rules in the order they appear in the CFR, so it will be easy to update them in future rulemakings. However, there are a few references, mainly to Part 136, which could only be found after extensive searching. The Board has therefore reviewed the incorporations by reference an consolidated the odd ones in Section 310.107. (PC 19)

As finally adopted, Section 307.1003 paraphrases 40 CFR 401.13, referencing 4 CFR 136, which is now incorporated by reference in Section 310.107. All references to 40 CFR 136 have been changed to Section 307.1003. Section 310.602(e)(6) now incorporates by reference the USEPA procedure for adjusting analytical methods (40 CFR 403.12(b)). All other references to Section 403.12(have been changed to reference Section 310.602.

Section 307.1005

This incorporates 40 CFR 401.15 which lists toxic pollutants. The Board solicited comment as to the necessity of this in the Illinois pretreatment program. The Board has retained Section 307.1005, the definition of "toxic pollutant," since it is needed for the definition of "industrial user" and for Section 310.401. [FN7]

*7 In its earlier comments, the Agency suggested that the definition of "tox pollutants" is controlled by "40 CFR 122.21, Appendix D," (sic) rather than 40 CFR 401.15, which the Board incorporated by reference in Section 307.1005. (PC 12) On page 10 of the July 16 Opinion the Board asked the Agency for its rationale. The Agency responded in its Motion for Reconsideration that the lis of toxic pollutants is controlled by NRDC v. Train, 8 ERC 2120 (District of Columbia, June 8, 1976.

The list of toxic pollutants on 40 CFR 401.15 appears to be identical to the list in Appendix A of NRDC v. Train, except for certain modifications which ar identical to the modifications the Agency mentions in its motion. The Board therefore believes that the list of 40 CFR 401.15 is a current, valid reflecti of the settlement agreement in NRDC v. Train.

After considerable vacillation the Agency has settled on 40 CFR 122, Appendix D, Tables II and III as what it believes constitutes the list of toxic pollutants from the settlement agreement in NRDC v. Train as updated. (IEPA Motion for Reconsideration)

Section 401.15 includes several generic listings, such as "halomethanes," whi Appendix D includes specific listings within the generic class, such as bromoform and carbon tetrachloride. Although the Section 401.15 list appears t be much shorter than the Appendix D lists, it is actually much more inclusive than the Appendix D list. [FN8]

The 40 CFR 122, Appendix D lists are also not framed as listings of toxic

pollutants. Rather, they are a part of the NPDES permit application testing requirements. Table II is oriented toward referencing specific test methods. Th apparent equivalence with Section 401.15 could be accidental. [FN9]

The Board therefore concludes that not only is 40 CFR 401.15 the correct definition of "toxic pollutant" for purposes of the pretreatment program, but that use of 40 CFR 122, Appendix D, Tables II and III alone would be incorrect. However, the Board will include an alternative reference to Appendix D, recognizing that it presently appears to be an equivalent list which is set out in a clearer form for actual use by people who have to deal with these rules.

Due to a clerical error, the revised Proposed Order did not conform with the discussion in the Opinion. The Board has corrected this. Also, for the same reasons as discussed in connection with the references to 40 CFR 136, the odd reference to 40 CFR 122 has been moved to Section 310.107. (PC 19)

Section 307.1007 pH Monitoring (Not adopted)

The Board earlier proposed to adopt the equivalent of 40 CFR 401.17, which contains the averaging rule for pH. However, it appears that this is not necessary for the pretreatment program, since USEPA does not regulate pH with the categorical standards. Note, however, that Section 307.1101 prohibits the discharge of corrosives and other materials which would be injurious to structures or equipment. (IEPA Motion for Reconsideration)

Section 307.1101 General and Specific Requirements [FN10]

*8 Subpart B contains the generic pretreatment standards. These are derived from existing Part 307 and from 40 CFR 403. They function as back-ups to the categorical standards.

The Proposal tracked 40 CFR 403.5(b) in stating these prohibitions in terms of "persons other than domestic sources." However, existing Section 307.102 prohibits essentially the same actions by any person, domestic or not. [FN11] The Board has therefore modified this Section to apply to all persons.

Existing Section 307.102 includes pretreatment requirements which are similar to 40 CFR 403.5(b). The Board has merged these provisions. The language is mainly drawn from 40 CFR 403.5. The Section 307.102 language which is not fully present in Section 403.5 has been inserted at the appropriate places. The additional requirements in existing Board rules are included in the following subsections:

(b)(2) Pollutants which would cause safety hazards other than fire or explosion.

(b)(5) Pollutants other than low pH which would be injurious to structures.

(b)(10) Pollutants which would cause the effluent to violate NPDES permit conditions.

One commenter suggested that Section 307.1101(b)(7) did not adequately address slug loading or interference with sludge disposal. (NSSD) The Board has reviewe this Section and finds that it adequately reflects 40 CFR 403.5(b)(4).

Another commenter suggested confusion as to whether Section 307.1101(b)(9) regulates temperature at the influent or effluent to the POTW. (IEPA) The Boarc

has modified this to indicate expressly that the influent temperature is intended, and to reference the pretreatment plan as the portion of the NPDES permit in which the influent temperature would be specified.

Section 307.1102 Mercury

This Section has been moved more or less verbatim from Section 307.103. It applies to publicly regulated sewers, as well as POTW's. Categorical discharge would have to meet this standard even if there is no mercury standard specifie in the categorical standards. The generic standard would override any less stringent categorical standard, unless the Board in adopting the categorical standard expressly stated that it was to be applied in lieu of the generic standard.

Section 307.1103 Cyanide

This Section has been moved more or less verbatim from Section 307.104. It applies to publicly regulated sewers, as well as POTW's. It would function lik the mercury standards with the categorical standards.

Section 307.1501 et seq. Categorical Standards

What follows in the rules is the Board's equivalent of the USEPA categorical pretreatment rules. The text is around 250 pages long. These will be discussed in summary only, except where the Board received a comment on a specific Section. [FN12]

The USEPA pretreatment standards are contained in 40 CFR 405 et seq. They are arranged by industry category and subcategory, which follow the scheme established by the federal SIC Codes. The USEPA rules devote a Subpart to each industry subcategory, with individual Sections typically used to state the sco of the Subpart, special definitions, surface effluent standards and pretreatme standards for existing and new sources. The Board has incorporated the necessa material by reference.

GENERAL OUTLINE OF CATEGORICAL PRETREATMENT STANDARDS

*9 The Board rules are arranged in the same order as the USEPA rules. However, the levels of subdivision are one step lower than in the USEPA rules: In the Board rules, one Subpart is devoted to each regulated industry category, and o Section is devoted to each regulated industry subcategory. Most Sections follo the following outline:

1. The subcategory is defined in an applicability statement.
2. Specialized definitions are incorporated by reference.
3. The pretreatment standards for existing sources (PSES) are incorporated reference, and existing sources are required to comply with the standards.
4. The pretreatment standards for new sources (PSNS) are incorporated by reference, and new sources are required to comply with the standards.
5. The cut-off date for new sources for the subcategory is specified.

There are a few isolated instances in which the incorporations do not follow the above outline. These should be self-explanatory.

A few of the USEPA Parts have applicability statements defining the entire category, along with specialized definitions and rules affecting the entire category. These USEPA provisions are reflected in Sections with two zeros at tl end. For example, Section 307.2000 is drawn from the introductory material 40 CFR 410.

Some of these introductory provisions include Sections on "compliance dates." [FN13] These have generally been incorporated by reference where they are present. (IEPA) (For example, 40 CFR 415.01/Section 307.2500.) Compliance date: are discussed further in connection with Section 310.222 below.

ALTERNATIVE APPROACHES

The above general outline resulted in several hundred pages of rules. The Boa addressed alternative approaches and solicited comment in the proposed Opinion. The Agency requested that the Board reconsider the format of PC 1 as a templat for adopting categorical standards. (IEPA). The Board cannot find the "templat in PC 1.

Although it is lengthy, the approach taken by the Board has several desirable features. It avoids incorporation of irrelevant surface discharge provisions. During maintenance rulemaking it will allow publication in the Illinois Regist of short Sections which will include a clear description of the subcategory affected. "New source" dates will be clearly set out without reference to old Federal Registers which are not readily available to the public. The approach also is clearly in compliance with the incorporation by reference requirements of the APA.

The Agency has suggested that Section 13.3 of the Act empowers the Board to ignore all incorporation by reference requirements provided the regulatory process meets the due process notice requirements in the APA. (IEPA). However, the Board believes that incorporation by reference of unavailable material, su as "new source" dates, and of future amendments is a regulatory process which does not meet the due process notice requirements.

APPLICABILITY STATEMENT

***10** Each Section starts with an applicability statement which defines the subcategory. Because the USEPA equivalent also functions to define the applicability of the surface discharge standards, and in order to provide noti to dischargers in Illinois, the Board has set the applicability statement out full rather than incorporating it by reference.

The Board received some specific comments which will be discussed below in connection with specific Sections.

The Board also received a general comment from the Agency as to which USEPA Subparts, or subcategories, the Board is required to adopt. The Agency recommends that the list of industrial categories be limited to those listed i 40 CFR 403, Appendix C. (IEPA) Apparently adoption of rules for these categori would be sufficient for authorization. [FN14]

The "identical in substance" mandate of Section 13.3 of the Act is similar to the mandate of Sections 13(c) and 22.4(a) with respect to UIC and RCRA. It is not related to USEPA's standard for deciding whether the pretreatment program sufficient for authorization. The Board has not interpreteted the UIC and RCRA mandate as being one of adopting a minimally sufficient program. Indeed, the Board has held that the UIC mandate is "to maintain its rules as nearly verbat as possible with the UIC rules as applied by USEPA in States where USEPA administers the UIC program." (R85-23, Opinion of June 20, 1986). Therefore, t Board will not attempt to restrict the categorical standards to those which ar necessary for program approval, but will adopt all USEPA standards which appea to apply in Illinois.

DEFINITIONS

A "definitions" subsection follows "applicability" in the outline of each subcategory. The Board has incorporated by reference any special definitions applicable to the subcategory. If there is no special definitions Section in t USEPA rules for the subcategory, the Board has inserted "none" after the headi for definitions. [FN15]

PRETREATMENT STANDARDS

The next portion of the general outline is the incorporation by reference of the pretreatment standards for existing sources ("PSES") and for new sources ("PSNS"). There are five possibilities, all of which exist in the rules:

1. There are no pretreatment standards for any subcategory in a category, b only surface discharge standards.
2. There are pretreatment standards for at least one subcategory within a category, but another subcategory has no pretreatment standards.
3. There is a PSNS, but no PSES for a subcategory.
4. There are both a PSNS and a PSES for a subcategory.
5. There is a PSES, but no PSNS for a subcategory.

In the first case, the Board has completely excluded those industry categorie for which there are no pretreatment standards in any subcategory. An example i the coal mining category, for which there are surface discharge standards only Any dischargers to a POTW in these categories would have to comply with the general and specific pretreatment rules.

***11** In the second case, in which there are pretreatment standards for some, b not all subcategories, the Board has adopted a Section defining each USEPA subcategory. If there is no pretreatment standard for a subcategory, the Board has provided a reference to the general and specific pretreatment standards of Subpart B.

In the third case, where there is a PSNS but no PSES, the Board has incorporated the PSNS by reference, and provided a reference to the general an specific pretreatment standards of Subpart B for existing sources.

In the fourth case the Board has incorporated the PSES and PSNS by reference.

In the fifth case USEPA has promulgated a standard for existing sources, but none for new sources. Where USEPA has proposed no new source rule, all sources

are "existing sources," including those built after the existing source standar is adopted. In this case the Board rule provides that all sources are regulated as existing sources. [FN16]

Some of the USEPA standards reference other standards. This carries a risk of an imbedded forward incorporation by reference similar to that discussed in connection with the definitions above. Where the reference is to another pretreatment standard which the Board is incorporating elsewhere, the Board wil construe these as referencing the related Board standard. If the Board has not adopted the referenced provision, the reference will be construed as a referenc to the USEPA rule as it existed when the Board referenced it.

NEW SOURCE DATES

USEPA rules define "new source" in terms of the date the proposal to regulate the subcategory appeared in the Federal Register. These dates are not readily available to the public. The Board has therefore adopted for each subcategory a definition of "new source" containing the actual date. [FN17]

These dates go back to 1973. There may be people who have been in business for as much as 14 years who are to be regulated as new sources. The Agency indicate that it has only a "rudimentary" pretreatment program in Illinois. (IEPA). Ther may be thousands of dischargers subject to these rules who have not yet been brought into a formal pretreatment program. It seems to be asking a lot for eac of them to journey to a major law library to find back issues of the Federal Register to discover whether they are a new or existing source.

COMMENTS ON SPECIFIC SECTIONS IN PART 307

The following are responses to comments on specific Sections in the categorica pretreatment standards portion of Part 307. Comments which just address typographical errors in the Order are not discussed here.

Section 307.2004

40 CFR 410.50 is reflected in the language of Section 307.2005(a). (USEPA).

Section 307.2300

The applicability Section for the electroplating industry has been updated to include amendments at 51 Fed. Reg. 40421, November 7, 1986.

The electroplating rules are a category for which USEPA has promulgated a PSES but no PSNS. The Board's generic approach, which is discussed above, of stating that all sources are regulated as existing sources appears to be misleading. (P 10, 11, IEPA Amended Motion for Reconsideration, PC 19 and 21) In fact certain electroplaters are regulated as new source metal finishers if they are "new" as defined in the metal finishing rules, the new source date for which is August 31, 1982. IEPA and USEPA have offered specific regulatory language to fix this problem. (PC 19 and 21) This is rejected, in part because both suggestions misuse the term "new". The Board has fixed this problem by stating for each

electroplating subcategory that "Sources the construction of which commenced after August 31, 1982 are subject to Subpart BH." [FN18]

Section 307.2501

***12** The Board has generally edited the applicability statements to remove language relating to the surface discharge program and to establish a uniform style. The Board believes that the applicability statement in this Section is identical to the substance of 40 CFR 415.10 as applied to pretreatment. (USEPA

Section 307.2801

The Water Quality Act has recently been amended to mandate the repeal of the NSPS for phosphate fertilizer manufacturing. This has not yet been reflected i amendments to 40 CFR 418. Since this standard applies only to four facilities Louisiana, the Board will not attempt to modify its rules until USEPA modifies Part 418. (USEPA)

Section 307.3000

This Section has been modified to include a reference to removal credits, whi are discussed below in connection with Section 310.300 et seq.

Section 307.3100

The Board has reviewed the applicability statement for the nonferrous metals manufacturing category against 40 CFR 421.1. The Board deleted material concerning surface discharges, and edited the statement to remove unnecessary circular language. The Board cannot find any difference in the substance of th and the USEPA Section. (NSSD)
This Section has been modified to include a reference to removal credits, whi are discussed below in connection with Section 310.300 et seq.

Section 307.4300

This Section has been updated to include USEPA amendments at 51 Fed. Reg. 40421, November 7, 1987.

Section 307.6500

This Subpart has been updated to include USEPA amendments at 51 Fed. Reg. 44911, December 15, 1986, which resulted from a remand of the pesticide chemicals category standards. The amendments virtually eliminate this Subpart. (USEPA)

Section 307.7700

This Section has been modified to include a reference to removal credits, whi

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are discussed below in connection with Section 310.300 et seq.

PART 309: MODIFICATION OF EXISTING PERMIT REQUIREMENT

Subpart B of existing Part 309 requires construction and operating permits for certain pretreatment facilities. (IEPA) As is discussed below in connection with Section 310.401 et seq., the Board has modified the proposed pretreatment permit requirement to track the existing permit requirements of Part 309. Since this would create a duplicative permit requirement, the Board has modified Part 309 to exempt discharges covered by Part 310 permits. As adopted, this would include both pretreatment permits issued by the Agency as the control authority, and authorizations to discharge issued by the POTW.

Part 309 includes both a construction and an operating permit requirement. Because Part 310 does not include an explicit construction permit requirement, the Board will retain the Part 309 construction permit requirement. (IEPA) Therefore, new pretreatment facilities will continue to require an Agency construction permit, even if the discharge is to a POTW with an approved pretreatment plan. However, the Part 310 pretreatment permit or authorization to discharge will replace the Part 309 operating permit.

PART 310: PRETREATMENT PROGRAMS

***13** Part 310 establishes the pretreatment program. It specifies how POTW's set up pretreatment programs, and sets requirements which users must meet to get "authorizations to discharge" from the POTW, or "pretreatment permits" from the Agency in some cases.

Part 310 is drawn from 40 CFR 403. Immediately following is a general discussion of how Part 403 was modified to form Part 310. Following on this is detailed discussion of the Sections involved.

40 CFR 403 serves a larger function than Part 310: In addition to the function noted above for Part 310, Part 403 specifies how a state obtains approval of its pretreatment program from USEPA, specifies certain minimal requirements which must be present in state law for program approval, specifies how USEPA acts in certain situations with an approved state program and how USEPA acts in the absence of an approved program. Part 403 also includes broad introductory material and statements of purpose relating to the national program. This type of material has generally been deleted. In particular, Part 310:

1. Assumes that the Agency will administer an approved program. (See 40 CFR 403.3(c))
2. Does not purport to regulate actions to be taken by USEPA. (See 40 CFR 403.6(a)(4))
3. Does not purport to specify which offices within USEPA approve various aspects of the pretreatment program. (See 40 CFR 403.6(a)(4))
4. Does not include introductory material or statements of intent broader than the Illinois program. (See 40 CFR 403.13(b))
5. Specifies what State law is to be applied in pretreatment permits. (See 40 CFR 403.4)
6. Specifies procedures to be followed in situations in which USEPA allows a

range of procedures within an approved program. (See 40 CFR 403.6(a)(1))
7. Adopts substantive requirements in situations in which USEPA requires th a rule be adopted, but allows a range of options. (See 40 CFR 403.12(b))
8. Translates general directives into specific State requirements. (See 40 CFR 403.9(g))
9. Specifies procedural steps which must be taken under State law. (See 40 CFR 403.13)
10. Modifies Part 403 to the extent necessary to comport with Illinois constitutional, statutory and administrative law. (See 40 CFR 403.8(e))
11. Rewords provisions for clarity.

The text of Part 310 is drawn from Part 403 as nearly verbatim as possible. T text is in nearly the same order as in Part 403. However, in order to comply with codification requirements, the first level of subdivision of USEPA sectio has been promoted to Sections in Part 310. USEPA Sections generally correspond with Subparts in Part 310. The Board has added notes to each Section referenci the Part 403 subsection from which it is drawn.

Section 310.101

This Section has no close USEPA counterpart. It has been added to state the applicability of the Part in a short fashion to aid readers. Commenters objecte that the proposed Section seemed to change the scope of the program from the federal. (USEPA and IEPA). The Board has rewritten this Section to address the concerns in two ways. First, the Board has added a statement that this Section is only a general guide to aid the reader. Second, the Board has modified the language to more closely track and cite the operative Sections.

Section 310.102

***14** This Section is drawn from 40 CFR 403.2. Unnecessary USEPA introductory material has been deleted. Some of the provisions have been reworded for clarity.

The Board's objective is to comply with the mandate of Section 13.3 of the Ac The Board has added a statement to that effect.

Section 310.103

The Board received several comments from IEPA and USEPA concerning interactio with USEPA following program approval. Among the matters mentioned are the following:
1. Are pretreatment programs approved by USEPA prior to approval of the Illinois program valid?
2. Does the proposal extend federal compliance dates?
3. Do the rules prevent USEPA from having access to records?
4. Do the rules prevent USEPA from conducting inspections and sampling afte authorization?

As a specific example, USEPA suggests that it be added to the definition of "approval authority," which is discussed below in connection with Section

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310.110, to recognize that it will actually approve program submissions until the Illinois program is authorized. This would imply that USEPA would be acting pursuant to Board rules when it approved program submissions prior to authorization of the Illinois program. This would violate two of the general propositions discussed above: the rule would place the Board in the position of regulating USEPA, and would regulate activities prior to the time the Agency is authorized to administer the program. Since nobody objected to the general propositions, which were stated in the Proposed Opinion, the Board will retain them and attempt to reconcile the comments within the general framework.

Another example is federal compliance dates. The Board could attempt to adopt past compliance dates as State law retroactively. These probably would not withstand appeal. It will probably be a more efficient use of enforcement resources to provide for federal enforcement at the outset. [FN19]

In response to these comments, the Board has added a Section dealing specifically with the relationship to federal law. This appears to be preferable to attempting to restate what may be very complex at several points within the rules.

Section 310.103(a) first states the obvious intent to adopt an identical in substance program meeting the mandate of Section 13.3 of the Act.

Section 310.103(b) provides that the Clean Water Act and USEPA rules continue in effect after authorization. Specifically, USEPA retains the right to inspect and take samples. (IEPA Motion for Reconsideration)

These rules will be fully effective as State rules as soon as they are filed with the Secretary of State shortly after adoption of this Final Opinion and Order. However, they will not function to allow IEPA to issue pretreatment permits, review pretreatment program submissions or authorize POTW's to issue authorizations to discharge until the program is delegated to IEPA by USEPA. Section 310.103(b) has been reworded to avoid any misinterpretation on this point. (PC 21)

***15** As is discussed below in connection with removal credits, there is a very real possibility that the program will be authorized without removal credits. That is, USEPA will retain authority to issue removal credits pending completion of its sludge disposal rules and State action modifying these rules to include the sludge rules. The Board has therefore modified Section 310.103(b) to provide that the rules will allow action "when and to the extent USEPA authorizes." (PC 19, 20, 21)

Section 310.103(c) provides that the Board's rules are not to be construed as exempting anybody from compliance with federal law prior to authorization. Specifically, as suggested by USEPA, USEPA's compliance dates will be enforceable as federal law for violations prior to authorization. Also, NPDES and Part 309 pretreatment permit conditions established pursuant to Section 307.105 will continue to be enforceable under existing State law.

As noted above, the Agency presently manages the pretreatment program under contract with USEPA. Section 310.103(d) provides that programs approved by USEPA through this mechanism will automatically become approved Illinois programs, unless the Agency objects within 60 days after Illinois program approval. The Board has also allowed 60 days after USEPA approves a program, to cover the possibility that USEPA will continue to retain some approval authority after

authorization, as it does with NPDES permits. This provision will probably neve be used, since the Agency works closely with USEPA in approving pretreatment programs.

Section 310.103(e) provides that the memorandum of agreement (MOA) will contro USEPA's access to records and information in the possession of the Agency. [FN20] USEPA will have to agree to abide by the confidentiality requirements associated with such information, which are discussed below in connection with Section 310.105. This rule is not necessary, since the Agency has independent authority under the Act to enter into a memorandum of agreement. However, the Board has included it since it was an issue in USEPA's comments.

Section 310.104

This Section is drawn from 40 CFR 403.4. The USEPA rule has been applied to th Illinois situation, but is not repeated.

The USEPA rule governs conflicts between State, and local, law and USEPA rules USEPA allows more stringent State or local law to override its requirements. With respect to State requirements, the Board has identified the more stringent requirements.

Section 5 of the Act requires the Board to "determine, define and implement th environmental control standards applicable in the State." The Board cannot subdelegate this authority to local government. The POTW must apply the Board rules in the issuance of pretreatment permits. [FN21,22]

As discussed above, there are three types of prohibitions and standards. In Section 307.1101 the Board combined the USEPA general and specific pretreatment requirements with the existing Board general requirements. POTWs and users will be able to refer to this rule without further consideration of stringency, unless there is a local requirement. Sections 307.1102 and 307.1103 contain concentration based standards for mercury and cyanide which will apply to all POTWs. Sections 307.1501 et seq. include the USEPA categorical standards, which are often expressed as mass discharge limits dependent on production rates. The control authority will have to determine which of these two types is more stringent as applied in the permit or authorization. [FN23]

Section 310.105

***16** This Section is drawn from 40 CFR 403.14. The USEPA rule has been applied, rather than repeated.

Section 310.105(a) is drawn from 40 CFR 403.14(b). It provides that "effluent data shall be available to the public without restriction." [FN24]

Section 310.105(b) provides that, for information in the hands of the Board or Agency, confidentiality is governed by Part 120, if it deals with trade secrets The Board notes that Sections 120.102 and 120.330 of its trade secrets rules allow for the program anticipated here. [FN25]

POTWs will need to adopt procedures to protect confidentiality before pretreatment programs are approved. The Agency will review these procedures to assure that they meet the minimum requirements specified by this Section, 40 CF 403.14 and other State and federal laws governing disclosure. Section 310.105(c

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has been modified to make it clear that the Agency itself is subject to the sam minimum requirements. (USEPA). [FN26]

Section 310.107

This Section will include all materials which must be incorporated by referenc for use in the later Sections. The Board has incorporated the Standard Industrial Classification Manual in that SIC Codes are requested in a subsequer Section. Also, as is discussed above in connection with Section 307.1003, the Board has consolidated in this Section all of the "odd" references to federal rules and statutes which are found in these regulations, that is all of the references which could not be found by simple comparison with the text of the USEPA rules.

Section 13.3 of the Act exempts this rulemaking from the requirements of the APA concerning incorporations by reference. However, the Board has nonetheless taken an expansive interpretation of what is meant by an "incorporation by reference" under the APA. Some of these materials are probably not true incorporations by reference. However, it is not worth the risk to the program t try to avoid these requirements.

Section 310.110 Definitions

The 40 CFR 401 definitions have been consolidated with the Part 403 definitior for inclusion in Section 310.110. Definitions which seem to apply only to NPDES discharges have been omitted. The Board has added a number of definitions appropriate to the Illinois program.

The definition of "approval authority" has been modified on the assumption tha the Agency will administer an approved program in Illinois. Therefore, "approva authority" is equivalent to "Agency". The Board has addressed USEPA's concerns in Section 310.103 above. (USEPA).

"Approved POTW pretreatment program" is drawn from 40 CFR 403.3(d). It has bee modified on the assumption that the Agency will be the approval authority. [FN27,28]

The Board has added a definition of "authorization to discharge" in response t several comments concerning ambiguities created by use of the term "pretreatmer permit" to describe the action taken by the POTW to allow a discharge. As is discussed below in connection with the definition of "pretreatment permit," the Board has reserved that term for the document issued to the discharger by the Agency as the control authority, and will use the term "authorization to discharge" to describe the POTW's action. The "authorization to discharge" may consist of a permit, license or ordinance, as specified in the approved pretreatment program. The specific comments will be discussed below where they occur.

*17 The Board has included a formal incorporation by reference of the Clean Water Act in Section 307.107. This will be defined by reference to the incorporations by reference Section. Since "CWA" is so defined, it will not be necessary to repeat the incorporations by reference litany each time it is usec [FN29]

In the July 16 Opinion the Board suggested that the rules could be made much simpler and clearer if the term "industrial user" were defined globally and use to replace "discharger," "user" and "non-domestic source." The Board suggested using the definition implied by Section 310.401, which was drawn from the Agency's comments. (IEPA) In its motions for reconsideration, the Agency endorsed this change. (IEPA Motion for Reconsideration) [FN30]

As modified, the definition of industrial user specifically includes certain types of discharger. The specifications are taken from the existing pretreatmer permit requirement of 35 Ill. Adm. Code 309.Subpart B. Specifically included ar persons who: discharge toxic pollutants; are subject to a categorical standard; discharge more than 15% of the flow or biological loading to the POTW; have caused pass through or interference; or, have presented an imminent endangermer to the health or welfare of persons.

The Board has added a definition of "industrial wastewater." This is a shortened term used in place of "industrial wastes of a liquid nature," which i used in several places in the USEPA rules. This follows the general terminology used in the Board rules, under which "wastewater" is regulated under Subtitle C while "wastes" are regulated under Subtitle G.

The definition of "interference" is drawn from 40 CFR 403.3(i), which was amended at 52 Fed. Reg. 1586, January 14, 1987. The Board has defined a term "sludge requirements," which is discussed below.

40 CFR 401.11(m) defines "municipality" by reference to the CWA. As is discussed below, the Board has replaced this with the term "unit of local government," an all-inclusive term defined by Art. 7, Sec. 1 of the Illinois Constitution. [FN31]

The Board has added definitions of "municipal sewage" and "municipal sludge," undefined terms used at several places in the USEPA rules. There is a possibility of confusion in Illinois because of the term "municipal," which could be construed as related to "municipality." "Municipal sludge" has been defined as the sludge produced by a POTW. "Municipal sewage" is the sewage received by a POTW, exclusive of its industrial component.

The term "new source" is drawn from 40 CFR 401.11(c). The USEPA definition references the date a proposal for a categorical standard appeared in the Federal Register. As is discussed above, the Board has proposed to specify the dates in Part 307. The comments on this definition are also discussed above. (IEPA and USEPA).

"Permit" has been stricken as an alternative to "NPDES Permit." This could cause confusion with "pretreatment permit." Whenever the rules mean "NPDES permit," they will so state. (IEPA).

***18** The definition of "pass through" is drawn from 40 CFR 403.3(n), which was amended at 52 Fed. Reg. 1586, January 14, 1987.

The definition of "person" is drawn from 40 CFR 401.11(m) and the CWA. [FN32, 33]]]] The Board has used the term "unit of local government" in place of the types mentioned in the USEPA definition.

The definition of "pollutant" is drawn from 40 CFR 401.11(f). That definition specifies discharges into "water", and as such seems to be inapplicable to the pretreatment program. However, in that the term is essential, the Board has modified the definition to include discharges to "sewers." [FN34]

The Board has added a definition of "pretreatment permit" in response to comments indicating confusion as to whether this encompassed authorizations to discharge issued by a POTW. As defined, the term will apply only to permits issued by the Agency as the "control authority." Authorizations issued by a POT will be called "authorizations to discharge," which is defined above.

The definition of "pretreatment standard" is drawn from 40 CFR 403.3(j). The Board has dropped the equivalent term "national pretreatment standard." As thes terms are used in the rules, more stringent Board standards would also be "national," which would be confusing. There is no need for terms distinguishing the USEPA standards from the Board standards, since their function does not depend on their origin.

The Board has conditioned this definition on adoption of USEPA standards by th Board. Therefore additional categorical standards will not become "pretreatment standards" until the Board adopts them as State rules.

"Pretreatment standard" also includes local limits which are part of an approved pretreatment program pursuant to Section 310.211. (USEPA, IEPA, MSD).

The definition of "POTW" is drawn from 40 CFR 403.3(o). It has been made more specific so it applies in Illinois. It has been simplified through the additior of definitions for "treatment works" and "unit of local government".

The definition of "schedule of compliance" is referenced in 40 CFR 401.11(m). It has been set out in the rules, with some modification as is discussed below. The rules allow the Agency and POTW to establish compliance schedules in permit within certain bounds.

The Board has modified this definition in response to comment. (NSSD). A "schedule of compliance" can be included either in an "authorization to discharge" issued by a POTW, or in a "pretreatment permit" issued by the Agency (Section 310.510(a) (4) and 310.432). "Schedules of compliance" to develop a pretreatment program can also be placed in the POTW's NPDES permit. (Section 310.504)

The earlier versions of the proposal included a sentence referencing the sources of schedules of compliance, including the traditional methods of establishing such schedules in Illinois, which have been temporary hardship variances and Board enforcement Orders. However, it appears that, as intended b USEPA in the pretreatment program, schedules of compliance do not protect a POT or industrial user from enforcement for failure to meet the original compliance date. (PC 21) It is therefore not appropriate to base the schedule of compliance on a Board variance. The Board has therefore deleted this reference from the definition. The Board has also added a statement that schedules of compliance d not protect the POTW or industrial user from enforcement, so as to afford notic to the public.

*19 The Board has added a definition of "SIC Code", a term which is used in th rules.

The Board has added a definition of "sludge requirements" as a part of the modification of these rules to add removal credits, which is discussed in detai below in connection with Section 310.300. The definition was contained in the definition of "interference" in the July 16, 1987 proposal. The Board has made this a global definition to be used both in defining interference and in limiting removal credits. The Board has specified the Part 309 sludge

application permits, RCRA permits and Part 807 solid waste permits as those, which if violated, would result in interference. These are the State equivalent of the federal programs listed in the USEPA definition of "interference." In addition, the Board has retained references to the federal TSCA and Marine Protection Acts, which have no State equivalents. [FN35]

USEPA has asked that the Board also reference the USEPA sludge disposal regulations which it will promulgate in the future. As is discussed below in connection with Section 310.300 et seq., authorization and issuance of removal credits will probably be delayed pending USEPA adoption of these future regulations. This would be a forward incorporation prohibited under the APA. It will be necessary for the Board to update this definition once USEPA completes its rulemaking. (PC 21)

The Board has reviewed the text of Part 310 to identify and replace various phrases which appear to mean the same thing as the defined term "sludge requirements." For example, "applicable requirements for sewage sludge use or disposal" in Section 310.201(b) (2) (B) has been changed to "sludge requirements." Other examples occur in Section 310.210.

The definition of "submission" has been narrowed from that of 40 CFR 403.3(t) [FN36] As defined, it will include only the request from the POTW to the Agency for approval of a pretreatment program, or for authorization to issue removal credits. The submission from the Agency to USEPA for approval of the State program is not the subject of these rules.

The Board has added a definition for "treatment works", a term that is essential to the applicability of the pretreatment program. The definition is implied by the definition of "POTW," which references Section 212 of the CWA. The Board has defined the term by reference to the CWA, with the first sentence of the CWA definition set out in full for clarity. [FN37]

The definition of "unit of local government" replaces the definition of "municipality" in 40 CFR 401.11(m), which references the CWA. The definition ha been modified to use the term "unit of local government," an all-inclusive ter defined by Art. 7, Sec. 1 of the Illinois Constitution.

Section 310.201 General Provisions

This Section includes the general prohibition against introduction of pollutants which pass through or interfere with the operation of the POTW. This Section is drawn from 40 CFR 403.5(a), which was amended at 52 Fed. Reg. 1586, January 14, 1987. Some of the provisions have been reworded for clarity.

***20** One comment suggested substituting "non-residential" for "non-domestic" source, but did not provide a definition. (NSSD) The January 14 amendments use "user," the term which has been adopted here and elsewhere in the proposal.

The Board has revised this and the following Section to utilize the defined term "sludge requirements."

Section 310.202

The "general and specific" prohibitions of 40 CFR 403.5(b) have been combined with the similar existing Board requirements in Section 307.1102. These are pa

of the "general and specific" pretreatment requirements of Subpart B of Part 307.

Section 310.210

This Section is drawn from 40 CFR 403.5(c), which was amended at 52 Fed. Reg. 1586, January 14, 1987. It has been reworded for clarity. POTW's which are required to develop pretreatment programs have to evaluate their system with respect to the cumulative effect of discharges upon it. They may have to develo and enforce more stringent specific limits based on this evaluation. The Board has modifed the language in Section 310.210(a) to make it clear that this evaluation and the more stringent limits are to be a part of the pretreatment program submission. As such, the limits will be reviewed by the Agency and subject to appeal to the Board.

IEPA and USEPA filed earlier comments which indicated confusion over program approval versus authorization to discharge and over variances versus permit appeals. This is discussed in summary at the beginning of this Opinion. In that these issues appear to have been resolved, the Board has dropped the discussion which appeared here in the October 1 Proposed Opinion. Persons are referred to that, and earlier Opinions, for that discussion.

As is discussed above in connection with Section 310.104, only the Board has authority to adopt environmental control standards. [FN38] The Board has therefore added Section 310.210(d) to the USEPA text. The Board has modified th text in response to comment. (IEPA and USEPA). Specific limits developed by the POTW are to be based on the characteristics and treatability of the wastewater by the POTW, effluent limitations which the POTW must meet, sludge disposal practices, water quality standards in the receiving stream and the Part 307 pretreatment standards.

IEPA has cited as authority for local limits Ill. Rev. Stat. 1985, ch. 24, par 11-141-7 and ch. 42, par. 317(h). [FN39] These are consistent with the Board's interpretation that its role is to develop environmental control standards, while the unit of local government is to meet these standards and protect its system.

40 CFR 403.5(c) (2) refers to the POTW developing "specific discharge limits for industrial users, and all other users, ..." Howeve, as defined in 40 CFR 403.3(h), "industrial user" is the equivalent of "user." To avoid the interpretation that there is yet another class of "users," Board has deleted th phrase "and all other users." [FN40]

Section 310.210(c) is drawn from 40 CFR 403.5(c)(3), which the Board reworded for clarity. As reworded, the Section reads in part:

> ***21** Prior to developing or enforcing ... limits, POTW's shall give ... individual notice ...

USEPA wants this changed to "developing and enforcing." However, its reason is that it "is not the intent of §403.5(c) to give interested parties a chance to comment on pending enforcement actions." The suggested change would accomplish precisely that result. The intent of the USEPA Section can most efficiently be stated simply by deleting the phrase "or enforcing." The notice has to be giver before the limits are developed, If they are not correctly deveoped, they are

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not enforceable. [FN41]

Section 310.211

This Section is drawn from 40 CFR 403.5(d). The additional pretreatment standards which the POTW develops from the characteristics of the treatment plant and discharges will function the same as categorical pretreatment standards.

The Board reworded Section 310.211 so that it reads:

If a POTW develops ... limits, such limits shall be deemed pretreatment standards for purposes of this Part.

40 CFR 403.5(d) actually reads, "Where." USEPA suggests that the Board change this to "When." The Board believes that "If" captures the true intent best. As provided in other Sections, some POTW's have to develop local limits, others do not. "If" captures the meaning of a true conditional with no connotation of place or time. [FN42]

Section 310.212 (Not adopted)

This proposed Section was drawn from 40 CFR 403.5(e). It would have required a 30 day notice before the Agency could assume enforcement responsibility if a POTW failed to take action. The Board has deleted this as inconsistent with the Agency's right to enforce under the Act. (IEPA). The Agency and USEPA will address specific enforcement responsibilities in the MOA. (USEPA).

40 CFR 403.5(f) sets a compliance date for the USEPA rules. This has been omitted, since it is long since past. [FN43]

Section 310.220

This Section is drawn from 40 CFR 403.6. This general, introductory material unnecessary, but seems to provide a useful cross reference to Part 307. (IEPA) The Board has corrected an erroneous cross-reference. (NSSD).

Section 310.221

This Section is drawn from 40 CFR 403.6(a). A user can request a category determination after a new categorical standard is adopted.

The Board has modified Section 310.221(a)(1) in response to comments to change the deadline for submission of the category determination request. (USEPA) For standards adopted by USEPA prior to Illinois program authorization, category determination requests should be made pursuant to USEPA rules within 60 days after USEPA adoption. After Illinois is authorized, the deadline will be keyed to the Board's adoption of the standard, which will happen a few months after USEPA acts. This will avoid giving another 60-day period for category determination requests with respect to old USEPA standards adopted by the Boar at the beginning of the program, but will not ask industrial users to monitor the Federal Register as well as the Illinois Register for future actions.

***22** Section 310.221(a)(3) has been modified to change "submission" to

"application," the term used in the next paragraph. (USEPA).

Section 310.221(b)(2) allows either the industrial user or the POTW to request a category determination. No action is necessarily required of the POTW. (NSSD)

Some of the provisions have been reworded for clarity. Paragraph (d)(1) has been edited to allow for the possibility that the Agency might determine that a submission is not complete.

The Board edited this Section on the assumption that the Agency will be delegated the authority to make these category determinations. IEPA and USEPA apparently agree that IEPA will be delegated the basic authority, although USEP has indicated that it will not waive oversight authority, as is allowed under 4 CFR 403.6(a). (USEPA) The Board has edited to delete this possibility.

USEPA will retain a case-by-case oversight authority on category determinations. If the Agency refuses or fails to make a determination, the action can be appealed to the Board. Agency determinations, however, are subjec to review by USEPA. If USEPA accepts the Agency determination, the determinatio is appealable to the Board for 35 days after notification of the Agency decisio to the user. [FN44] If USEPA modifies the Agency determination, the user must utilise USEPA procedures to challenge USEPA's decision. The user cannot appeal the USEPA action to the Board, or appeal the Agency's action to the Board if modified by USEPA. [FN45]

Paragraph (d)(2) has been edited so that it does not purport to regulate actions by USEPA, but only actions by the POTW and IEPA prior to the time the Agency forwards its decision to USEPA, and actions taken in the absence of USEP modification. [FN46]

Section 310.222

This Section is related to 40 CFR 403.6(b). Compliance dates were discussed above. For the earlier standards, USEPA was silent as to the compliance date. 4 CFR 403.6(b) operated to give three years for existing sources to come into compliance with new standards. For the more recent standards, USEPA has specified the compliance dates with the categorical standards.

Compliance dates at the State level are somewhat more complex. The standards are not enforceable as State law until the Board has adopted them or incorporated them by reference, and until USEPA has approved the Illinois pretreatment program. [FN47]

The Board cannot adopt the text of the USEPA rule. First, it would not adequately state the situation with respect to compliance dates at the State level. Second, since USEPA now specifies the dates with the standards, there would be a possibility of a conflict between this Section and the date specifie by USEPA. [FN48] For these reasons the Board has drafted a State rule with no close federal counterpart.

There are basically three situations with respect to compliance dates. Where compliance is already required at the federal level, compliance will be require at the State level as soon as USEPA approves the Illinois program. For standard which are adopted after program approval, the Board will adopt or incorporate the USEPA compliance date with the standard. The intermediate case is the most complex: categories for which compliance will be required at the USEPA level

during the pendency of program approval. For these sources compliance will be required as of the latest of the following dates: USEPA compliance date; [FN49] Board adoption or incorporation; and program approval.

***23** As is discussed above, this Section refers only to compliance dates for purposes of enforcement of Board rules. The Board has added Section 310.222(c) to make it clear that these standards are enforceable as federal law prior to authorization of the Illinois program. (USEPA, IEPA, NSSD). [FN50]

Section 310.230

This Section is drawn from 40 CFR 403.6(c). The Board has dropped introductory language reflecting USEPA's intentions in adopting categorical standards. The Board has also edited "effluent" to "discharge" in the last sentence. (IEPA)

Section 310.232

This Section is drawn from 40 CFR 403.6(d). This contains the anti-dilution rule. The USEPA rule is limited to "categorical" pretreatment standards. The Board proposed to make this applicable to all the pretreatment standards, including the Board's concentration-based standards for mercury and cyanide. The Agency supported applying the anti-dilution rule to these standards, but pointed out that, as worded, the anti-dilution rule would also apply to local limits. The Agency suggested that this was beyond the Board's authority, while MSD specifically endorsed it. (IEPA and MSD)

35 Ill. Adm. Code 304.121(a) prohibits dilution "of the effluent from a treatment works or from any wastewater source." This applies to the Board's existing Part 307 standards. As far as these standards are concerned, there is no change from the existing rules by making this Section apply to all standards.

With respect to local limits, it is possible that dilution might be an acceptable treatment, although this would be highly unusual. The Board has added a sentence allowing the POTW to override the anti-dilution rule. However, the Board will leave it as a general rule which applies if the POTW is silent in its ordinance.

Section 310.233

This Section is drawn from 40 CFR 403.6(e). It specifies the methods for deriving discharge limits where wastewater from more than one source is combined prior to discharge. Most of the changes to this Section involve format. [FN51,52]

Section 310.233(a) defines "average daily flow" as a "reasonable measure of the average daily flow for a 30-day period." One commenter suggested insertion of "minimum" in front of "30" because USEPA sometimes insists on a five year average. The Board believes that this would change the intent of the rule. [FN53] (NSSD).

Section 310.233(c) spells out the type of self monitoring required to show compliance with an alternative standard set under the formula. It does not deal with the question of whether a program submission should provide for self-

monitoring. This is contained in Section 310.510. (NSSD).

40 CFR 403.6(e) contains two large asides in the definitions of the terms used in each of the formulas. It is impossible to meet codification requirements wit this format. The asides have been moved to Section 310.233(d) and (e). This als avoids unnecessary repetition of the asides. The asides include references to NRDC v. Costle and to 40 CFR 403, Appendix D, which have been moved to the incorporations by reference Section.

***24** Section 310.233(d) has been modified to remove discretionary language. The control authority will have to make the dilution determination if the user aske for one. [FN54,55]

Section 310.301 Removal Credits

As was discussed above, the Board received a motion to reconsider from IMA and Steel requesting that the Board add removal credits based on 40 CFR 403.7. Eventually IMA and Steel filed proposed language with the Board, and the Agency concurred as to the desirability of addressing removal credits in this Docket. [FN56] On September 4, 1987, the Board granted the motion to reconsider, vacate the July 16 Opinion and Order and indicated that it would adopt an Opinion and Order including removal credits.

Removal credits were adopted by USEPA at 46 Fed. Reg. 9439, January 28, 1981. This version can be found in 40 CFR 403.7 (1983). USEPA suspended these rules a a result of litigation. USEPA revised the removal credits rules at 49 Fed. Reg. 31212, August 3, 1984. This resulted in an appeal in the federal courts. NRDC v USEPA, 790 F. 2d 289 (Third Circuit, 1986) The result is a remand to USEPA with instructions to correct deficiencies in the removal credits provisions.

The pretreatment program is designed in part to prevent toxic pollutants discharged by industry from passing through a POTW to be discharged to "navigable waters," and to prevent contamination of POTW sludge. A POTW may be able to remove toxic pollutants to a certain extent without contaminating its sludge. If this is so, 40 CFR 403.7 would allow the POTW to apply for authorization to grant "removal credits." If authorized, a POTW could allow dischargers to increase pollutant loadings beyond that allowed by the categorical standards. [FN57]

The Appeals Court remanded the rules to USEPA based on several flaws. First, the method of measuring the removal efficiency of the POTW had a lower confidence level than that required for USEPA effluent guidelines, violating a specific requirement of the Clean Water Act. Second, the rules ignore the effec of direct discharge of toxic pollutants by way of sewer overflows. Third, the rules allow the approval authority to withdraw from the POTW authorization to grant removal credits only if the POTW's removal rate drops consistently and substantially below the rate claimed in the application. Fourth, USEPA has not yet promulgated sludge disposal rules, a condition precedent to granting remova credits under the Clean Water Act.

The October 1 Proposed Opinion, and PC 19, 20 and 21, included speculation about how USEPA would respond to the remand. This was resolved by USEPA's actic on November 5, 1987. (52 Fed. Reg. 42434) USEPA reinstated the 1981 rules at th necessary points. However, USEPA acknowledged that it had to adopt "a more

comprehensive set of sludge regulations under Section 405 of the Clean Water A as a precondition for granting removal credits." USEPA indicated that it will proposing such.

USEPA's comment was drafted prior to the Federal Register action. However, USEPA believed the Board's October 1 Proposal to be consistent with the rules then anticipated. (PC 21)

*25 USEPA indicated that it would accept the Illinois pretreatment program authorization application with or without removal credits. However, Illinois would not be authorized to issue removal credits until USEPA adopts comprehensive sludge disposal regulations. (PC 21)

Adoption of removal credits rules at this time is not necessary to obtain program approval. However, as noted above, the Board interprets the "identical in substance" mandate of Section 13.3 of the Act as requiring it to go beyond adoption of a minimally approvable program. The Board attempts to adopt a regulatory program which has the same substance as the rules applied by USEPA states without authorization. The Board will therefore adopt the removal credit rules, even though they are inoperative because they are missing an essential component, the sludge regulations. [FN58,59,60]

The Board's proposal for the most part followed the IMA and Steel proposal (which will be referred to as "the proposal" in the remainder of the discussion of this Subpart). [FN61]

The Board has added Section 310.301 to the proposal. This is based on 40 CFR 403.7(a), which contains definitions applicable only to removal credits. The proposal suggested making all of the 40 CFR 403.7 definitions global by adding them to Section 310.110. The Board has instead proposed to keep most of them as local definitions, specifically to keep the prohibition on dilution in "removal from affecting other portions of the rules.

The Board has moved "sludge requirements" to Section 310.110. USEPA uses similar language in its global definition of"interference." The Board believes that USEPA intends the sludge requirements to be the same in both places. The Board wants to consolidate these references in a single place to make certain that its rendering is consistent in both places.

The Board has included State sludge disposal regulations in the definition. This is mandated by the Clean Water Act. [FN62] However, as noted above, this will not suffice to allow issuance of removal credits until USEPA issues sludge disposal rules. USEPA has indicated that the Board's definition should include reference to its sludge rules to be proposed in the future. (PC 21) As noted above, the Board cannot make a forward incorporation by reference under the APA The Board will have to amend this definition after USEPA completes its rulemaking.

The definitions of "consistent removal" and "overflow" are not found in the current version of 40 CFR 403.7. The proposal draws on the 1981 amendments, as mandated by the opinion in NRDC v. USEPA.

40 CFR 403.7 contains frequent references to "industrial user(s)" and "pretreatment standard(s)." This type of unconventional usage has come under attack in the 1987 edition of the Administrative Code Style Manual. The Board has added definitions to make it clear that the singular means the plural, so as to avoid this usage.

Section 310.303

The Board has used the defined term "sludge requirements," instead of attempting a partial redefinition here.

Section 310.310

***26** The Board has rewritten the formula to use percents and so that it all fit on a single line. [FN63]

Section 310.311

This Section is drawn from 40 CFR 403.7(b), with modifications to meet NRDC v. USEPA, which criticized the method required to establish "consistent removal". The proposal is based on the 1981 rules. [FN64]

Section 310.311(c)(2)(B), which was Section 310.304(d) of the proposal, allowe the use of historical data "amassed prior to the effective date of this Sectior as a substitute for sampling. This was copied from the USEPA rule, which was effective in 1981. Pursuant to the Agency's suggestion, the Board has modified this to allow historical data amassed within three years prior to application b a POTW for removal credit authorization.

Section 310.311(e) includes references to test methods. As is discussed above in connection with Section 307.1003, the Board has modified these to reference Sections 307.1003 and 310.602, in order to avoid scattering odd references abou the rules.

Section 310.312

This Section is drawn from 40 CFR 403.7(c). It allows the POTW to grant provisional removal credits to new or modified facilities, subject to a demonstration of consistent removal within 18 months after the discharge commences. The Board has restored the final sentence, which was omitted from th proposal. This requires the Agency to terminate authority to grant removal credits under certain circumstances.

Section 310.320

This Section is drawn from 40 CFR 403.7 (1983), pursuant to NRDC v. USEPA. It requires the POTW to compensate for overflow of untreated wastewater between th user and the POTW. The removal credit either has to be reduced to compensate fc overflow events, or the users have to cease discharging in anticipation of overflow events. [FN64]

The proposal provided that the Section does not apply if users "can demonstrate" that overflow does not occur between the users and the POTW. The Board has changed it to "demonstrates" to make it clear that the Section contemplates an actual prior demonstration by the user.

The proposal would also have allowed the Agency to grant allowances where the POTW "submits to the Agency evidence" that, for example, users have the abilit

cease discharging to prevent overflows. The Board has modified this to make it clear that the POTW has to "demonstrate" such ability. [FN65]
The formula of Section 310.320(b)(1) has been modified so it can be written or one line.

Section 310.340

This Section is drawn from 40 CFR 407(e)(1)-(4), which specifies the contents of the application from the POTW to the Agency for authority to grant removal credits.

Section 310.351

This Section is drawn from 40 CFR 403.7(f)(5) (1983), as required by NRDC v. USEPA, instead of 40 CFR 403.7(f)(4) (1986). This governs modification or withdrawal of removal credit authority from the POTW, and credits from users. The Agency can withdraw authority if it determines that the POTW has granted credits in violation of the rules, or if credits granted are causing pass through or interference.

Section 310.400 Pretreatment Permits [FN66]

***27** The Agency suggested alternative language for this entire Subpart. (IEPA) The Board has made extensive changes in response to comments, mainly from the Agency.
The Board has added a preamble in the form of Section 307.400. This will help avoid the incorrect interpretation that this Subpart applies in the presence of an approved POTW pretreatment program. (NSSD).
The Agency pointed out that many users would be subject to the construction ar operating permit requirement of 35 Ill. Adm. Code 309.Subpart B. The Board has added a reference to that Subpart, which has been amended as discussed above. Users who have pretreatment permits will be exempt from the Part 309 operating permit. However, new construction will continue to require a Part 309 construction permit.
The following Sections govern issuance of pretreatment permits by the Agency. These permits will be required of dischargers unless and until the Agency approves a pretreatment program.

Section 310.401

The March 5, 1987 Proposal used the term "non-domestic" source to state the scope of the pretreatment permit requirement. Pursuant to the Agency's comments the July 16 rules drew on the language of the existing 35 Ill. Adm. Code 309.Subpart B pretreatment permit requirement to state the scope of the new Pa 310 requirement. In the July 16 Opinion the Board noted that the rules could be greatly simplified and clarified if the term "industrial user" were defined globally, drawing on the language of existing 35 Ill. Adm. Code 309.Subpart B. As is discussed above in connection with the definitions in Section 310.110, th

Board has made this change. As a result of this change much of the proposed language of Section 310.401 is now found in the definition of "industrial user. However, there is no substantive change from the July 16 rules.

There are three categories of "industrial user" which are addressed in Section 310.401. [FN67]

The first category is for dischargers to a POTW with an approved program. Thes users will be exempt from the pretreatment permit requirement, and will have tc obtain an authorization to discharge from the POTW pursuant to whatever mechanism is approved in the program submission. [FN68]

The second category are users who meet any of the criteria for an operating permit under Section 309.202(b). Pretreatment permits will be required if the user discharges "toxic pollutants," if the user is subject to a categorical standard or if the user discharges more than 15% of the total hydraulic flow or organic loading to a plant. Rather than reference the Clean Water Act for the definition of "toxic" and for the categorical standards, the Board has referenced the equivalent rules adopted in this Docket in Part 307.

The third category includes users who don't meet the above criteria, but whom the Agency determines have caused pass through or interference, or have presented an imminent endangerment to public health. This category is again drawn from Section 309.202(b), although the Board has used the terminology of the new rules instead of referencing the Clean Water Act. The Board has also added a requirement of notice to the discharger before a permit is required, in order to give the discharger time to apply before being in violation of the permit requirement itself. [FN69]

Section 310.402

***28** Pursuant to the Agency's comments, the Board has added a Section specifyir that applications must be received at least 90 days before a permit is needed, or 90 days before a permit expires. These times coincide with the 90 days the Agency has to review applications under Section 39(a) of the Act. If the user files a timely, complete application, he will be able to continue to discharge pending Agency action (Section 310.422).

Section 310.403

The Board has added this Section to make sure the Agency has authority to address imminent endangerment to public health. Section 34(a) of the Act allows the Agency to declare an emergency and seal facilities "upon a finding that episode or emergency conditions specified in Board regulations exist." [FN70]

Section 310.410

This Section contains the minimum information requirements to get a pretreatment permit. This is drawn from the Agency's comment. The Agency will l expected to promulgate application forms. The Agency can request additional necessary information either in the forms or through individual requests to applicants. [FN71]

Section 310.411

As suggested by the Agency, the Board has added a Section requiring that the user obtain from the POTW and owners of any intervening sewers certifications that they have capacity to transport and treat the discharge.

Section 310.412

As suggested by the Agency, the Board has specified the identity of the persor who can sign the application. This is drawn from other signatory requirements, such as 40 CFR 403.12(i).

Section 310.413

The Board has added this Section at the Agency's suggestion. If the Agency determines that a site visit is necessary to evaluate the application, it shoul notify the discharger. If this is done within 30 days after receipt of the application, the failure to allow a site visit results in an incomplete application, which the Agency can deny.

Section 310.414

The Board has added a Section on completeness at the Agency's suggestion. The Board has added a requirement that the Agency notify the applicant of an incomplete application within 30 days after receipt. This is drawn from Sectior 309.225(a). If the Agency fails to so notify, it cannot reject the application as incomplete, although it can deny it for failure to provide adequate proof.

Section 310.415

The Board has added this Section after reflecting on Section 310.402. This references the 90-day decision period of Section 39(a) of the Act. It also states the result of Section 16(b) of the APA.

Section 39(a) provides that the applicant "may deem the permit issued," but does not say for how long. The Board has construed this consistent with the purposes of the Act and the APA. The decision period is intended to avoid inconvenience to the public from delays by the Agency, but is not intended to provide a reward for Agency errors. [FN72]

If the application is for renewal of a permit, Section 310.415 provides that the old permit continues in effect pending issuance of the new permit. If the application is for a new permit, the applicant may deem the permit issued for a period of one year, starting at the end of the 90-day period. This should allov adequate time to restart the application process. [FN73]

Section 310.420

*29 The Board proposed the classical standard for permit issuance, that the applicant prove that the discharge will meet regulatory requirements. At the

Agency's suggestion the Board has expanded this to specifically authorize the Agency to issue permits with compliance schedules, and other conditions which will result in compliance, to users who cannot demonstrate present compliance. The Board has retained the classical standard to make it clear that the Agency can deny permits when, for example, it does not have enough information to establish conditions leading to compliance.

Section 310.421

Pursuant to the Agency's comments, the Board has added a Section specifying th form of the Agency's final action. This will either be a written permit or a letter of denial with the reasons as specified in Section 39(a).

Section 310.430

The Board has retained this Section, although the Agency asked that it be shortened to the general statement of conditions the Agency can impose. The Board believes that the Agency should have a list of conditions similar to that which the POTW should have in the program submission.

The Board has added Section 310.430(e) to allow inspections at reasonable time upon presentation of credentials, consistent with existing Section 309.147. (USEPA).

The Board has added references to three additional types of conditions referenced in the Agency's comments. Section 310.430(f), (g) and (h) reference more extensive rules on expiration dates, compliance plans and modification. These are discussed below.

Section 310.431

As suggested by the Agency, the Board has provided that pretreatment permits can be issued for up to five years. The Agency can shorten this to coordinate with future compliance dates. The Agency can also issue short-term permits for experimental processes and to cover emergency situations.

Section 310.432

The Board has added a Section on compliance plans at the Agency's suggestion. This is drawn from 40 CFR 403.8(d), which applies to the POTW's program submission.

The Board earlier proposed to require variances prior to establishment of certain schedules of compliance. As noted above in connection with the definition of "schedule of compliance" in Section 310.110, USEPA intends that schedules of compliance not protect industrial users from enforcement. (PC 21) There is therefore no reason to require variances prior to establishment of these schedules of compliance. The Board has therefore dropped the references t variances, and has replaced these with provisions warning industrial users that schedules of compliance do not protect them from enforcement.

Section 310.441

The Board has added this Section in response to Agency comments. Pretreatment permits will function only as a defense to the permit requirement. Permit compliance will not excuse a person from complying with the underlying rules.

Section 310.442

The Board has added a Section on modification at the Agency's suggestion. Paragraph (a) makes it clear that modification at the request of the permittee is always allowed. Paragraph (b) allows the Agency to reopen the permit if it obtains new information, or if new rules are adopted. The Agency has to give notice to the permittee that it is reviewing the application, and allow the permittee to file a new application. [FN74]

Section 310.443

***30** At the Agency's suggestion the Board has added a Section on revocation. This references the Act and Board procedures for enforcement. It includes a li of causes for revocation which is drawn from existing Section 309.182(b) and 309.264.

Section 310.444

The applicant can appeal the denial of a pretreatment permit, or its issuance with conditions. [FN75]

Section 310.501 Pretreatment Program Development

This Section is drawn from 40 CFR 403.8(a). [FN76] This Section determines which POTW's are required to develop pretreatment programs: those above 5 mgd which receive from industrial users pollutants which pass through or interfere with the POTW, or which receive discharges from users which are subject to pretreatment standards. The Agency can also require smaller POTW's to develop programs under certain stated circumstances.

The Board has changed Section 310.501(a)(2) to make it clear that it referenc the categorical standards of 35 Ill. Adm. Code 307.

40 CFR 403.8(a) exempts POTW's if the State assumes direct responsibility for pretreatment permits. The Board questioned whether the Agency wanted to exerci this option. The Agency indicated that it did. (IEPA). The Board has therefore added Section 310.501(c) to allow the Agency to waive the requirement that POTW's develop programs. [FN77] The waiver has to be written. The Agency will have to allow the POTW time to develop a program if it rescinds a waiver.

Section 310.502

This Section is drawn from 40 CFR 403.8(b). The USEPA rule requires POTW's to develop pretreatment programs no later than July 1, 1983, which has already

passed. The Board proposed to substitute July 1, 1988, as the Illinois deadline and solicited comment. The Board received adverse comment. (IEPA and USEPA). Th Board has adopted the Agency's suggestion of keying the deadline for having an approved program to one year after the issuance of an NPDES permit requiring program development.

Section 310.503

This Section is drawn from 40 CFR 403.8(c). The USEPA rule treats modification of the POTW's NPDES permit to incorporate an approved pretreatment program as a "minor modification." As such it is not subject to the detailed procedures for permit issuance of 40 CFR 122. The Agency asked the Board to delete this provision, noting that any future program approvals will come years after the programs should have been in place under 40 CFR 403, and therefore should be treated as major. (IEPA). The Board agrees.

One commenter asked that the Board allow POTW's with multiple treatment works to establish a pretreatment program in the NPDES permit for only one facility. (NSSD). This appears to be contrary to the intent of the federal rules.

Section 310.504

This Section is drawn from 40 CFR 403.8(d). If the Agency issues an NPDES permit for a POTW required to establish a pretreatment program, but which has not done so, the Agency is to include a compliance schedule in the permit. The compliance schedule is to lead to an approved program within one year for consistency with Section 310.502. This date is intrinsically keyed to permit reissuance. (IEPA).

***31** As discussed above in connection with the definition of "schedule of compliance" in Section 310.110 and in Section 310.432, USEPA has objected to th presence of Board variances in the pretreatment program. USEPA intends that schedules of compliance established under the pretreatment program not protect POTW's from enforcement. (PC 21) The Board has therefore deleted references to variances as a method by which a POTW establishes a schedule of compliance. The Board has also added a statement that schedules of compliance do not protect from enforcement so as to afford notice of this to POTW's.

Section 310.505

This Section is drawn from 40 CFR 403.8(e). It requires the Agency to modify c reissue permits to incorporate an approved pretreatment program or to place the POTW on a compliance schedule leading to an approved program.

The USEPA rule uses the phrase "revoke and reissue" instead of "reissue" to describe the process by which the Agency replaces an earlier permit with a new permit. The Board has modifed the term to avoid confusion with permit revocatic as a penalty for violation of the Act. [FN78]

The Board has deleted references to coordination with the grants program, sinc grants are no longer available anyway. (IEPA).

The Board has added a reference to the removal credits program rules of Subpar

C. (Section 310.505(e).)

Section 310.510

This Section is drawn from 40 CFR 403.8(f). This Section establishes the requirements for an approvable pretreatment program.

40 CFR 403.8(f)(1) establishes the legal authority which a POTW must have for program approval. Generally the POTW has to have legal authority to enforce Parts 307 and 310. The Board has specified in Section 310.510(a) only its own rules, without requiring the POTW to have the authority to enforce the USEPA rules or CWA directly.

40 CFR 403.8(f)(1)(v) requires that the POTW have authority to enter any plac where records are required to be kept under 40 CFR 403.12(m). The correct reference should be to Section 403.12(1), whose equivalent is Section 310.634.

40 CFR 403.8(f)(1)(vi) requires that the POTW's have authority to seek civil criminal penalties against dischargers which do not comply with pretreatment requirements if the state has laws which allow POTW's to seek such penalties. [FN79]

Municipalities may pass ordinances with fines and penalties of up to $500 and six months imprisonment. (Ill. Rev. Stat. 1985, ch. 24, Sec. 1-2-1 and 1-2-1.1). Sanitary Districts have similar powers. (Ill. Rev. Stat. 1985, ch. 42, Sec. 305.1, and Section 46(c) of the Act. (IEPA). [FN80]

The Board has deleted the option of regulating through contracts from the proposal. Units of local government appear to have adequate authority to regulate by ordinance, and this seems to be the clear preference of all commenters. (USEPA, IEPA, NSSD and MSD).

40 CFR 403.8(f)(1)(iii), reflected in Section 310.510(a)(3), requires the POT to control discharges through "permit, contract, order or similar means." One commenter pointed out that this appears to be inconsistent with control throug ordinances. (MSD). The Board has therefore added "ordinances" to the list, and removed "contracts". There are similar problems in several other sentences in this Section.

***32** Section 310.510(a)(4)(B) requires that POTW's have authority to require t development of compliance plans by industrial dischargers. Neither the Board's rules nor the USEPA rules specify the details of the procedures which the POTW must follow to develop such compliance plans. Individual POTW's will propose mechanisms to the Agency for individual approval. The Board assumes this will typically consist of a decision by the POTW's governing body, subject to appea by way of suing in Circuit Court. However, the Board's rules do not require variances from the categorical standards before the POTW approves a local compliance plan. (PC 21)

40 CFR 403.8(f)(2) contains several provisions requiring the POTW to share information with USEPA or the State agency. As is discussed above in connectio with Section 310.103, USEPA will retain authority to request information pursuant to federal law. Information sharing between IEPA and USEPA will be governed by the MOA. (IEPA and USEPA).

40 CFR 403.8(f)(2)(vii) requires notices to be published in the largest daily newspaper "published" in the unit of local government in which the POTW is

located. This is reflected in Section 310.510(b)(7). The Board has modified thi to track Section 309.109(a)(2)(C). There are situations in Illinois in which newspapers are "published" in certain municipalities, but are wholly inappropriate for a notice of local importance. (IEPA) The Board has dropped th requirement of publication in a daily newspaper, recognizing that less frequently published papers may actually be the most appropriate place for notice. (IEPA Motion for Reconsideration).

40 CFR 403.8(f)(3), reflected in Section 310.510(c), includes language which allows POTW's to have limited program approval without adequate funding. This has been deleted since further delays are not appropriate at this late date. (IEPA).

Section 310.522

This Section is drawn from 40 CFR 403.9(b). The Board has changed "city attorney or a city official acting in a comparable capacity ... " to "attorney or official acting in a comparable capacity for the unit of local government". (MSD).

Section 310.524

This Section is drawn from 40 CFR 403.9(d). The Board has added this Section t require the POTW to submit the removal credits application. The reference in 4(CFR 403.9(d) to Section 403.7(d) should be corrected to read 403.7(e).

Section 310.531 and 310.532

These Sections are drawn from 40 CFR 403.9(e) and (f). The Board has added references to the removal credits program rules of Subpart C.

Section 310.533

This Section implements 40 CFR 403.9(g). The Section is simple because the Agency is the water quality management agency in Illinois.

Section 310.541

This Section is drawn from 40 CFR 403.11(a). [FN81] This and the following Sections set up the procedures which the Agency follows in approving pretreatment programs. As provided above, this results in a modification of the POTW's NPDES permit.

***33** The Board has added references to the removal credits program rules of Subpart C. The references in 40 CFR 403.11(a) to 40 CFR 403.7(d) and 403.9(b) should be corrected to read Sections 403.7(e) and 403.9(d).

Section 310.542

This Section is drawn from 40 CFR 403.11(b). The Board has implemented the

USEPA rule by specifying certain agencies which are to receive public notice o
the pretreatment program. [FN82]
The Board has added a reference to the removal credits program rules of Subpa
C.

Section 310.544

This Section leads into 40 CFR 403.11(d). The Board has not adopted the USEPA text, since it specifies only procedures to be followed by USEPA.
USEPA has the right to object to a proposed pretreatment program. The program proposal has to be modified to meet this objection. The POTW can contest the objection in accordance with USEPA rules, but cannot appeal the USEPA objectio to the Board.
The Board has added a reference to the removal credits program rules of Subpa C. USEPA has the authority to object to each removal credit application from t POTW, as well as to the basic pretreatment program.

Section 310.545

This Section is drawn from 40 CFR 403.11(e). The Board has added a reference t the removal credits program rules of Subpart C. The notice of approval of the pretreatment program has to identify any removal credits authorized.

Section 310.547

POTW pretreatment program approval will be a part of NPDES permit issuance pursuant to Part 309. The program can be appealed to the Board only as a part the appeal of a final NPDES permit action. (IEPA).

Section 310.601 Reporting Requirements

This and the following Sections specify reporting requirements. Section 310.6 is drawn from 40 CFR 403.12(a). [FN83]
As is discussed above, the Board has changed "approval authority" to "Agency" throughout these rules, which will become effective upon program authorization Until that time USEPA will act as the approval authority pursuant to 40 CFR 40 (USEPA)

Section 310.602

This Section is drawn from 40 CFR 403.12(b). It requires the user to prepare "baseline report" describing the wastewater and wastewater source.
Section 310.602(e)(1) requires the industrial user to identify the applicable pretreatment standards. [FN84]
Section 310.602(e)(6) governs sampling and analysis. 40 CFR 403.12(b)(5)(vi) appears to contain a reference to future amendments to 40 CFR 136. The Board believes these are precluded by the APA. Instead, the Board has referenced Section 307.1003, which requires the use of Part 136 methods, and which in tur

references Section 310.107, which includes the formal incorporation by referenc of Part 136. That Section will be periodically updated as these rules are maintained.

The USEPA rules allow the Administrator to approve alternative sampling and analysis methods. USEPA has indicated that it will retain authority to approve alternative sampling techniques. (IEPA and USEPA) The Board has added a formal incorporation by reference of 40 CFR 403.12(b). This has not been placed with the incorporations by reference Section since it occurs within the equivalent c 40 CFR 403.12(b), and will hence be easy to find during rule maintenance.

***34** The Board has added a reference to the removal credits program rules of Subpart C. (Section 310.602(g)). Industrial user's compliance schedules should to take account of any removal credits. [FN85]

Under the federal rule, existing industrial users are required to prepare a "baseline report" within 180 days after adoption of a new pretreatment standarc or within 180 days after a category determination is made.

In Section 310.602(h) [FN86] the Board has followed the general approach discussed above in connection with compliance dates. Up to the time of program authorization, baseline reports are to be submitted to USEPA pursuant to 40 CFF 403. For standards adopted by USEPA after the Illinois program is authorized, the baseline report due date will be keyed to the time Illinois adopts the standard, which will be a few months after USEPA. In particular, the Board will not require new baseline reports for the standards it adopts with the initial program. (USEPA)

Section 310.605

This Section is drawn from 40 CFR 403.12(e), which allows the control authorit to "agree" to alter the requirement of reports in June and December at its discretion, in consideration of such things as budget cycles. It is not clear with whom the agreement is to be made. The Board has simplified and clarified the language, to provide that the control authority "may alter" the due months. The reports will still be due every six months, except for the initial period i which an alternative schedule is established.

Section 310.610

This Section is drawn from 40 CFR 403.12(g). The first sentence of the USEPA rule contains a "therein" which has been rendered as "in the discharge" for clarity. For the reasons noted above, the Section has been edited to reference Sections 307.1003 and 310.602, rather than repeating references to USEPA regulations found in those Sections. (IEPA and USEPA, PC 19)

Section 310.631

This Section is drawn from 40 CFR 403.12(i). The introductory language has bee modified to replace "may be" with "is" in the definition of "authorized representative."

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(Cite as: 1987 WL 107413, *34 (Ill.Pol.Control.Bd.))

Section 310.634

This Section is drawn from 40 CFR 403.12(1). Paragraph (c) has been modified s that the Agency will control retention of documents by the POTW. As is discusse above, USEPA will retain control pursuant to 40 CFR 403 and will be able instruct the Agency to request longer retention pursuant to the MOA. (IEPA and USEPA)

One commenter suggested that this be amended to allow the POTW to extend the retention period. (MSD). This is clearly not provided under the federal rules. The POTW could provide for this by ordinance.

Section 310.701 Fundamentally Different Factors

This Section is drawn from 40 CFR 403.13(a). This and the following Sections deal with "fundamentally different factors" ("FDF") variances. The Board has modified the rules to avoid describing these as "variances," a term which would be confusing in light of Board variances granted pursuant to Title IX of the Act. [FN87] (PC 21) The Board has instead used "determination" to describe the fundamentally different factors process.

*35 As is explained in the introductory material to 40 CFR 403.13(b), the need for FDF determinations arises because of the method USEPA chose to establish pretreatment standards. USEPA chose to regulate by industry categories, rather than by pollutant. Industry categories, established by SIC codes, are mainly defined by products, without consideration of pollution potential. This raises the possibility that a discharger may meet the definition for inclusion in an industry category, yet have little in common with the industries which USEPA sampled in establishing the pretreatment standards for the category. USEPA has provided a mechanism by way of the FDF determination for arriving at permit limitations for users which fit into a regulated category, but which have factors fundamentally different than those looked at by USEPA in arriving at th categorical pretreatment standards.

Sections 310.703 et seq. spell out in great detail the factors to be considere by the Agency in making an FDF determination. Section 310.722 allows the requester to appeal a denial to the Board. The specified factors appear to be sufficiently detailed to allow the Board to review the Agency's decision in a meaningful way. The Board therefore concludes that the FDF determination is in the nature of a permit review action which is within the Agency's authority. [FN88], [FN89]

The Agency's comments seek to place the Agency in the position of simply assembling the materials and recommending a decision to USEPA. As adopted, the rules require the Agency to actually make a decision to grant or deny, subject to USEPA approval. [FN90] USEPA did not object to this aspect of the Board's proposal.

Section 310.702

This Section is drawn from 40 CFR 403.13(b). Much of the basic introductory material, which was referenced above, has been dropped. This relates to the

rationale of USEPA in adopting the categorical standards, and is not appropriat in the Board rule, since the Board has merely incorporated the standards by reference.

Section 310.703 and 310.704

USEPA asked that the Board remove references to treatment costs from the FDF factors to comply with recent amendments to the Clean Water Act. (USEPA). These occur in 40 CFR 403.13(c) and (d). Based on the specific request from USEPA, th Board has done this. However, this may cause confusion when USEPA actually amends its rules.

Section 310.706

This Section is drawn from 40 CFR 403.13(f), which allows more stringent State and local requirements to override FDF determinations. Rather than repeat the directive of the USEPA rule, the Board has implemented it by stating the Illinois law on this. The Agency cannot grant an FDF determination with respect to the more stringent requirements established pursuant to independent Board authority. This presently consists of the cyanide and mercury standards discussed above. Also, the FDF determination could not be used to override any more stringent local limitations based on an evaluation of the system and discharges to it.

Section 310.711

*36 This Section is drawn from 40 CFR 403.13(g), which sets the application deadline for FDF requests. The Board has modified this consistent with the abov discussion of compliance deadlines and category request deadlines. Prior to program authorization, FDF requests will be directed to USEPA pursuant to 40 CF 403. The Board rules will apply only to USEPA standards adopted after program authorization, and times will be keyed to the date of Board adoption. The Boarc will not allow a new FDF period for the old standards adopted with the program (USEPA and IEPA).

Section 310.713

This Section is drawn from 40 CFR 403.13(i). It has been reworded for clarity

Section 310.714

This Section is drawn from 40 CFR 403.13(j). For the reasons noted above, the Board has implemented the USEPA notice requirements with a more specific list c entities to be notified.

Section 310.722

This Section is drawn from 40 CFR 403.13(1). The preceding Section requires t

Agency to notify the requester if it denies an FDF determination, or to otherwise forward the request to USEPA with an approval recommendation. Sectio 310.722(a) references the USEPA procedures for review of FDF determinations, b does not purport to specify them. Section 310.722(b) prohibits the Agency from granting any FDF approval unless USEPA approves.

Section 310.722(c)(1) allows the requester to appeal to the Board any finding of the Agency that FDF do not exist. [FN91] Section 310.722(c)(2) provides tha the requester may contest USEPA decisions only as allowed by USEPA.

Section 310.801

This Section references the USEPA procedures of 40 CFR 403.15 for adjusting categorical standards to reflect the presence of pollutants in intake waters.

Section 310.901 et seq.

These provisions are drawn from 40 CFR 403.16, governing "upsets." An upset i an affirmative defense in the event of an enforcement action. However, to clai an upset, the discharger has to notify the POTW within 24 hours after the upse and provide certain specified information. If the discharger fails to notify t POTW within 24 hours, the discharger is barred from later claiming that non-compliance resulted from an upset.

Section 310.905 provides that the Agency is to review upset claims, although any determinations are not final actions subject to review. The only review would come in the event of an enforcement action, at which time the Board woul decide whether an upset occurred.

JCAR QUESTIONS

The JCAR questions consist of three identical questions for each Part, Parts 307 and 310. These are general questions, and the response is the same for eac Part. The Board will therefore answer them in this section of the Opinion.

JCAR first questions how a rule can be adopted more than 180 days after USEPA has adopted it. JCAR asks if Section 5 of the APA applies after 180 days. The Board has held that similar identical insubstance rules are not subject to second notice review by JCAR. [FN92] In addition, most of the USEPA rules involved in R86-44 were adopted long before the authorizing statute, P.A. 84-1320. It was impossible for the Board to have met the 180 day requirement duri this intitial rulemaking.

***37** The second question concerns the statement of statewide policy objectives in the notices in the Register. Section 13.3 of the Act gives the Board no alternative but to adopt the rules in question. The policies behind the decisi to adopt the rules are those of the General Assembly and not the Board. The policy objectives were set forth in Section 11 of the Act, which was reference in the Notice, as required by the APA.

Recognizing that the pretreatment program will have a major impact on units o local government, the Board elaborated on the policy objectives in the notice the Register.

The third question concerns whether the Board "received" any public comment, and whether it ever considers changing a rule in response to comment. The publi comment is detailed above. As is detailed above, the Board has made numerous changes in response to comments.

This Opinion supports the Board's Final Order of this same day. The Board will withhold filing the final rules with the Secretary of State until December 17, 1987, to allow time for final review and motions to reconsider by the agencies involved in the authorization process.

J. Marlin

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

FN1. Most of the public comment arrived after the close of the comment period c May 18, 1987. Motions to file late were granted.

FN2. The Proposed Opinion included specific requests for comment from the Attorney General. The Board received no comment in response to the request.

FN3. However, the Board has added the Sanitary District of Rockford to the notice list to receive this and future Opinions and Orders.

FN4. The Board mailed copies of the October 1 revised Opinion and Order to persons on the mailing list in this matter. The Board did not republish the Proposal in the Illinois Register, or allow the 45 days for public comment whic would be required by Section 5 of the APA. The Board did this for several reasons. Full APA publication would have introduced an additional delay of at least 60 days. Section 13.3 of the Act exempts this rulemaking from the APA. And, the Board assumes that everyone interested in the proposal placed themselves on the mailing list as a result of the earlier Illinois Register publication.

FN5. The proposal utilized a September 30, 1986 cut-off date for USEPA amendments. It was necessary to extend the cut-off date to include USEPA amendments to the important definitions of "interference" and "pass through" ir the January 14, 1987 amendments.

FN6. As is discussed below, the USEPA rules differentiate "general" from "specific" and "categorical" standards. As used in this Opinion, the Board mear "general and specific" in the sense used in the USEPA rules.

FN7. The Board has dropped the definition of "conventional pollutant," from 40 CFR 401.16, since it is not used in the proposal.

FN8. For example, iodoform would fall within the generic listing of "halomethanes" in Section 401.15, but is not specifically listed in Appendix D The absence of iodoform from Appendix D may have resulted from USEPA's

determination that it is not actually produced or used in sufficient amounts to justify promulgation of standards or testing. However, its discharge would amount to the discharge of a toxic pollutant under 40 CFR 401.15, triggering the requirement that the receiving POTW develop a pretreatment plan, and the requirement of a pretreatment permit or authorization to discharge.

FN9. What would happen if USEPA added to the list of toxics, but took a totally different approach to deciding whether the new toxics were present in NPDES discharges?

FN10. The Proposal referenced these as the "general standards." However, the USEPA rules differentiate "general" and "specific" standards within the subject matter of this Section. The "general" standards prohibit interference and pass through, while the "specific" standards prohibit such things as causing fire or explosion. The Board has corrected the title of this Subpart and Section to recognize this distinction.

FN11. As is discussed below, the Board equates "non-domestic source" with "industrial user."

FN12. The March 5 Proposed Opinion included substantial discussion of alternatives and solicited comment, most of which went unanswered. The Board has made no major changes in the general outline of this portion of the rules. The Board has therefore shortened this discussion in the Final Opinion. Persons who may be interested in a more complete discussion are referred to the Proposed Opinion.

FN13. These "compliance dates" should not be confused with the "new source" dates in item 5 above.

FN14. At first sight this seems to be a minor change, since many of the optional provisions just require compliance with general requirements, which would be the same result as omitting the categories. However, under Sections 310.401 and 310.501, the existence of a categorical standard makes the discharger subject to the pretreatment permit requirement and the receiving POTW subject to the pretreatment plan requirement.

FN15. Some of the special definitions reference the special definitions used for another subcategory. This raises the possibility of an imbedded forward incorporation by reference. For example, see 40 CFR 419.31/ Section 307.2903, which reference 40 CFR 419.11/ Section 307.2901. In these situations, as provided by Section 307.1001, the Board's incorporation of the USEPA reference is to be construed as a reference to the equivalent Board rule, rather than the imbedded USEPA reference. If the Board has not adopted the equivalent, the reference will be to the USEPA rule at the time of adoption of the reference.

FN16. In the proposal, the Board provided a heading for "new sources," and provided that they were subject to the PSES. This was not quite accurate, since

strictly speaking, there are no new sources. The Board modified this to provide that all sources are regulated as "existing sources." (USEPA and MSD) This form at may have produced a problem which is discussed below in connection with Sections 307.2300.

FN17. In the March 5 Proposed Opinion the Board noted a number of problems with ascertaining what these dates are, and solicited comment. USEPA has apparently reviewed these rules, and has noted some specific problems which are discussed below. USEPA urged the Board to review the dates and make sure they are correct (USEPA) On the other hand, IEPA simply recommended that the dates be deleted. (IEPA). The uncertainty these agencies have for whether the Board's dates are correct underscores the problem which the public would face if it were forced t research the dates.

FN18. This really is fixing a problem which exists within the USEPA rules. An electroplater searching the USEPA rules would come first to the 40 CFR 413 standards, determine that there were no new source standards and conclude that he was an existing source electroplater. Only through a complete reading of the rules would he find that he was also a new source metal finisher subject to 40 CFR 433.

FN19. In R86-46, USEPA indicated that in RCRA similar dates are strictly federally enforceable. (Opinion and Order of July 16, 1987)

FN20. Under the rules USEPA has two methods to get information from POTW's and industrial dischargers: it can inspect or request information directly under Section 310.103(b), or it can ask the Agency to request the information and obtain it through the MOA.

FN21. However, as is discussed below in connection with Sections 310.210 and 310.211, the POTW must evaluate its system and develop more stringent standards based on its capacity to treat discharges, from the cumulative effect of actual dischargers, so as to avoid interference or pass through.

FN22. The pretreatment program should not be construed as in any way superseding any existing powers of a unit of local government to charge a user fee or to refuse to accept discharges which it does not believe the treatment plant can handle.

FN23. Because of the different method of expressing the standards, the POTW will have to apply each set of rules to a given situation to decide which type of standard is more stringent. For example, it may be necessary to determine a production rate, calculate an allowable mass discharge limit and divide by flow to obtain a concentration limit to compare with the Board standards. (Peabody Coal v. IEPA, PCB 78-296, 38 PCB 131, May 1, 1980.)

FN24. In the proposed Opinion the Board asked for comment as to what this means in the context of the pretreatment program. The Board received no response,

except from IEPA, which said it was important. The Board has left this in, sinc it doesn't seem to hurt anything. However, if it's effluent data, it is governe by Part 309, rather than 310.

FN25. The Agency has asked that the Board reference the Agency's Part 161 rules at this point. The Board declines to do so. For other confidential matters, the Agency should use its confidentiality rules to the extent applicable without a Board rule. (IEPA).

FN26. Confidential information will often first come into possession of the POT from a discharger, subject to the POTW's confidentiality rules, which will have been approved with the program. The Board, Agency and USEPA will protect this information unless there is a final determination that the POTW's decision to protect the information was wrong under applicable State and federal laws, or under the POTW's own rules. (NSSD).

FN27. The USEPA rule includes a condition that the program meet the criteria fo approval, as well as having been approved. This has been omitted as redundant. The Agency cannot approve a program unless it meets the criteria. Once approved a program will remain "approved" until the Agency takes steps to cancel the approval.

FN28. Under Section 310.103, programs which have been approved by USEPA will become "approved" programs unless the Agency objects. (USEPA).

FN29. At first sight the term "discharge of pollutants" appears to belong with the pretreatment rules. (40 CFR 401.11(h)) However, on closer examination, it applies only to effluent discharges.

FN30. In the body of the rules the Board has generally changed "discharger" to "industrial user." The Board has retained "user" as a shortened form where "industrial user" has already been used in the subsection and it is clear from the context that "industrial user" is intended. The Board has retained "non-domestic source" in the definition of "indirect discharge." This is a reference to terminology used in the Clean Water Act, and serves in part to define "industrial user."

FN31. As is discussed below, different Illinois statutes govern "municipalities and "sanitary districts," both of which are "units of local government." (IEPA) Use of the term "municipality" in the rules to mean something other than what i meant in a closely related statute would invite confusion.

FN32. Section 13(h) of the Act provides that no person shall discharge to a sewer except in compliance with Board rules. Section 13.3 requires the Board to adopt identical in substance rules. The Board construes this to mean that it is to adopt a definition of "person" consistent with the USEPA program, and that that definition will control the the scope of Section 13(h). If the definition of "person" found in the Act were to control Section 13(h), the scope of the

pretreatment program might be different than the program mandated by USEPA, violating Section 13.3.

FN33. The CWA definition does not include the U.S. Government. However, the definition in 40 CFR 122.2, applicable to the NPDES program, which seems to be based on the same CWA definition, specifically includes the U.S. Government. Th Board received no comment in response to its request for comment on this in the Proposed Opinion.

FN34. The Board has also omitted the exclusion of injections to facilitate oil production and sewage from vessels. These seem to be relevant only to the surface discharge program. It would not be physically possible to facilitate oi production by injecting water or other material into a sewer. Also, it would seem appropriate to apply the pretreatment rules if sewage from a vessel were somehow discharged to a sewer.

FN35. The Board has omitted the Clean Air Act, since it does have a State equivalent, but the Board is not aware of any Clean Air Act limitations on sludge disposal.

FN36. The USEPA rules use "submittal" as a substitute for "submission" in several places. The Board has used the defined term throughout. Also, it should be noted that the USEPA rules actually use "submission" in contexts other than those listed.

FN37. The rest of the definition in Section 212 seems to be specifying what is or is not eligible for the grants program, and is not particularly appropriate for inclusion.

FN38. There is an important distinction between environmental control standards and standards based on evaluation of a given system. New categorical pretreatment standards would be based on evaluation, or reevaluation, of treatment technology similar to that done by USEPA in adopting the categorical standards. On the other hand, treatment technology would be a secondary consideration for the POTW after evaluation of its system. Also, the Board, and USEPA, have developed effluent standards, water quality standards and effluent guidelines which the POTW must meet to protect the environment beyond its point of discharge. The local limits must be designed to meet these environmental control standards, but should not reevaluate them.

FN39. IEPA states that MSD has authority to adopt environmental control standards, but cites no authority. MSD did not comment on this Section.

FN40. As defined above, "industrial user" includes persons who have caused pass through or interference, so that the POTW would be able to develop specific limits directed at such industrial users, which is probably what the USEPA rule means.

FN41. One comment asked for greater specificity as to the method of calculating the limits and giving notice. The Board does not believe it can adopt additional requirements under its identical in substance mandate. The method of giving notice should be tailored to local needs, and reviewed by the Agency in the program submission. (NSSD).

FN42. The specific problem with "When" is that it seems to imply that the local limits become pretreatment standards at the moment they are "developed," as opposed to when the Agency approves the program submission.

FN43. As noted above in connection with Section 310.103(b), the rules will actually become effective when filed with the Secretary of State shortly after adoption of this Opinion. However, they will not allow issuance of permits, authorizations or program approvals until USEPA delegates the program.

FN44. To avoid confusion, the Agency should not notify the user of a determination until USEPA review is complete.

FN45. 40 CFR 403.6(a)(5) refers to a request for hearing "and/or" legal decision. This has been replaced with "or", since "and/or" is now prohibited by the Administrative Code Unit. Similar changes have been made at several points in the Proposal. Generally, "A or B" is to be understood to mean "A or B, or both" in these rules, unless the contrary is clearly stated.

FN46. IEPA says this Section "limits USEPA's oversight authority" and "makes th USEPA determination subject to Board authority." USEPA did not comment on this aspect of the Board proposal. Since the Agency's problems are not clear, and th language is acceptable to USEPA, the Board will not modify it.

FN47. As noted above in connection with Section 310.103(b), the rules will actually become effective when filed with the Secretary of State shortly after adoption of this Opinion. However, they will not allow issuance of permits, authorizations or program approvals until USEPA delegates the program.

FN48. 40 CFR 403.6(b) is best interpreted as a formula used by USEPA to decide what dates to include with the standards. The Board cannot adopt a rule which purports to regulate USEPA.

FN49. This scheme assumes that USEPA will continue to specify the compliance date with the standards, as is its current practice. If USEPA stops doing this, it will be necessary for the Board to determine the date and specify it when it incorporates the standard. In the absence of a specified date, immediate compliance will be required upon adoption or incorporation by the Board.

FN50. Also, as discussed above, NPDES and pretreatment permit conditions established pursuant to old Section 307.105 will remain enforceable as State law.

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1987

IN THE MATTER OF:)
) R86-44
PRETREATMENT REGULATIONS)

INTERIM ORDER OF THE BOARD (by J. Marlin):

On July 16, 1987 the Board entered an Opinion and Order adopting pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act. Two appeals were filed, based on the absence from the regulations of provisions for removal credits. On September 4, 1987 the Board vacated the July 16 Opinion and Order, and, on October 1, 1987, entered a revised Proposed Opinion and Order to adopt the pretreatment regulations with provisions for removal credits.

The October 1 proposal requested comment through October 30, 1987. The Board has received late comments from the Illinois Environmental Protection Agency (November 2), and from the Illinois Steel Group, LTV Steel, Inc. and Acme Steel Company (November 5) The United States Environmental Protection Agency (USEPA) has indicated that it intends to comment, but has not done so.

On November 5, 1987 USEPA amended its removal credits rules, which are found at 40 CFR 403.7. (52 Fed. Reg. 42434). The amendments are intended to modify the removal credits rules to reflect part of the decision in NRDC v. USEPA, 790 F.2d 289, 3rd Circuit, 1986, which is discussed in the October 1 Proposed Opinion. The Federal Register indicates that removal credits will not be authorized until USEPA promulgates a more comprehensive set of sludge regulations.

It appears that the comments which the Board has received were drafted prior to the November 5th publication in the Federal Register. The Board will postpone action on this matter until December 3, 1987, to give commenters, particularly the USEPA, the opportunity to review the Proposal against the revised USEPA rules and policy statements.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 19th day of November, 1987, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

11

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1987

IN THE MATTER OF:)
) R86-44
PRETREATMENT REGULATIONS)

REVISED PROPOSAL FOR PUBLIC COMMENT

PROPOSED OPINION OF THE BOARD (by J. Marlin):

On October 9, 1986, the Board opened this Docket for the purpose of promulgating regulations establishing a pretreatment program pursuant to Section 13.3 of the Environmental Protection Act (Act), as amended by P.A. 84-1320. On July 16, 1987 the Board adopted amendments to 35 Ill. Adm. Code 307 and 309, and a new 35 Ill. Adm. Code 310. On September 4, 1987 the Board vacated the July 16 Opinion and Order. The Board is now proposing to adopt a revised Opinion and Order. The Board solicits public comment on this Proposed Opinion and Order through October 30, 1987.

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 (CWA), which was previously known as the Federal Water Pollution Control Act. Section 13.3 creates an abbreviated procedure similar to that provided by Sections 13(c) and 22.4(a) of the Environmental Protection Act (Act) for the UIC and RCRA programs. 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. Section 13.3 requires the Board to provide for notice and public comment before rules are filed with the Secretary of State. The Board provided for such notice and comment by way of the Proposed Opinion and Order. As provided by Section 13.3, the rules are not subject to the first notice requirements or to second notice review by the Joint Committee on Administrative Rules (JCAR). Section 13.3 also provides that the Department of Energy and Natural Resources (DENR) may conduct an economic impact study (EcIS) on the rules, but the study and hearings are not required before the rules are filed.

Prior to opening the Docket, the Board staff conducted procedural discussions with the Illinois Environmental Protection Agency (Agency or IEPA). The result was the Board's decision to develop a proposal as indicated in the October 9 Order. At that time the Board entered various documents as PC 1 through PC 6.

PC 1 was a preliminary draft proposal which the Agency had prepared, but which the Agency was not prepared to file as a formal proposal. On November 12, 1986 the Agency filed a revised preliminary draft proposal which the Board docketed as PC 7.

The Agency also transmitted the text of its preliminary draft proposal to the Board electronically in the hope that it could form the basis of the Board's proposal, saving typing time. However, because of technical difficulties and the necessity of revising the format to meet codification requirements, it was simpler to start over, rather than to utilize the Agency's preliminary draft as a starting point. This is discussed further below in the response to general comments section of this Opinion.

To avoid confusion, the Board to published its proposal in the Illinois Register utilizing a format similar to the "first notice" procedures under the APA. The Board allowed 45 days for public comment.

PUBLIC COMMENT ON MARCH 5 PROPOSAL

PC 1 through PC 8 were preliminary comments which were referenced in the Proposed Opinion. Preliminary comments referenced in this Opinion will be listed for convenience of readers:

PC 1	IEPA preliminary draft proposal, July 24, 1986
PC 4	Letter from David Rankin (USEPA) to Angela Tin (IEPA), August 11, 1986
PC 7	IEPA revised preliminary draft proposal, November 12, 1986
PC 8	Summaries of Categorical Pretreatment Standards, prepared by Angela Tin and Joe Subsits, IEPA, February 5, 1987

The proposal appeared on April 3, 1987, at 11 Ill. Reg. 5453. The Board received the following public comment in response to the March 5 Order and publication in the Illinois Register:

PC 9	USEPA, March 27, 1987
PC 10	USEPA, May 18, 1987 (USEPA)
PC 11	Metropolitan Sanitary District of Greater Chicago, May 18, 1987 (MSD)
PC 12	IEPA, May 20, 1987 (IEPA)
PC 13	Illinois Steel Group, May 21, 1987 (Steel)
PC 14	Chicago Association of Commerce and Industry and Illinois Manufacturer's Assosciation, May 21, 1987 (IMA)
PC 15	JCAR, May 6, 1987.
PC 16	North Shore Sanitary District, June 1, 1987 (NSSD)

These comments will sometimes be referenced by the initials or abbreviated name of the commenter in parentheses rather than the PC number.

Most of the public comment arrived after the close of the comment period on May 18, 1987. Motions to file late are granted.

The Proposed Opinion included specific requests for comment from the Attorney General. The Board received no comment in response to the request.

During the public comment period the Board received a series of questions from JCAR. Although Section 22.4(a) of the Act exempts these fast-track "identical in substance" rulemakings from formal interaction with JCAR, the Board will attempt to respond to JCAR's general questions at the end of the Opinion.

The Board also received codification comments from the Administrative Code Unit.

MOTIONS FOR RECONSIDERATION

On July 16, 1987, the Board adopted a final Opinion and Order in this matter. The Board indicated that it would withhold filing the rules until after the opportunity for motions for reconsideration. As is detailed in the Orders of August 20 and September 4, 1987, the Board granted motions for reconsideration and vacated the July 16, 1987 Opinion and Order. The Agency filed and withdrew several motions for reconsideration. IMA and Steel similarly filed several documents which, to the extent not dealt with in the earlier Orders, are now moot. The post-adoption filings which are still before the Board are as follows:

PC 17	Letter from Charles H. Sutfin, USEPA, August 5, 1987
*	Amended Motion for Reconsideration, Agency, August 20, 1987
PC 18	Sanitary District of Rockford, August 19, 1987
*	Removal Credit Regulatory Proposal, IMA and Steel, September 2, 1987
*	Letter from James B. Park, Agency, September 3, 1987.

PC 18 is simply a public comment on the Board's proposal which arrived months after the close of the comment period on May 18, 1987, and after the Board's action of July 16. The Board will therefore strike it. However, the Board has added the

Sanitary District of Rockford to the notice list to receive this and future Opinions and Orders.

In the July 16, 1987 Order the Board solicited motions for reconsideration from the agencies involved in the authorization process. In PC 17 USEPA reiterated some of its earlier comments, which are fully addressed in the July 16 Opinion, and in this Opinion. The letter is not framed as a motion for reconsideration, and references further review to be conducted by USEPA. The Board will therefore not address the letter at this point. If necessary, the Board will open another Docket to address any issues USEPA may raise in the future.

The Agency's amended motion for reconsideration raises a number of minor issues which are discussed below in connection with the Sections involved. This is referenced below as "IEPA Motion for Reconsideration."

The major issue on reconsideration concerns whether to include removal credits in the proposal at this time. This was first raised by IMA and Steel, which ultimately filed proposed regulatory language. The Agency eventually endorsed this change in the letter of September 3, 1987. As is discussed below, the Board has included removal credits in this revised proposal. The Board will solicit comment for an additional 29 days before taking final action.

APPEALS

The Board has received notice of two appeals of the July 16 Order. These are mooted by the Board's action in vacating the July 16 Opinion and Order. On October 1, 1987 the Rockford Sanitary District moved to dismiss its appeal. The Board assumes that the IMA and Steel appeal will also be dismissed promptly. However, because of the need for prompt adoption of a pretreatment program to meet the requirements of Section 13.3, the Board will not await the dismissal before requesting comment on this revised proposed Opinion and Order.

FEDERAL TEXT USED

The federal pretreatment program is contained in 40 CFR 401 through 471. The proposal should be consistent with the 1986 edition of the Code of Federal Regulations, Title 40 of which is current through June 30, 1986. The Board has incorporated amendments through March 30, 1987. These include:

51 Fed. Reg. 23759, July 1, 1986
51 Fed. Reg. 30816, August 28, 1986
51 Fed. Reg. 40421, November 7, 1986
51 Fed. Reg. 44911, December 15, 1986
52 Fed. Reg. 1600, January 14, 1987.

The proposal utilized a September 30, 1986 cut-off date for USEPA amendments. It was necessary to extend the cut-off date to include USEPA amendments to the important definitions of "interference" and "pass through" in the January 14, 1987 amendments.

RENUMBERING

For reasons which are discussed below, it was necessary for the Board to renumber some of the Sections in the Proposal. Section numbers greater than 310.240 have generally had 0.200 added to them. Also, the Subparts of Part 307 have been relettered at the request of the Code Unit.

RESPONSE TO GENERAL COMMENTS

The Agency and USEPA comments include some general comments to which the Board will respond. In particular, the Board received PC 9 from USEPA prior to publication in the Illinois Register. The comment asked that the Board withhold publication of the proposal. In addition it stated the following:

> The IEPA previously submitted to the Board, proposed regulations that were subsequently amended by the Board, against the advice of IEPA. The proposed regulations include provisions for appeal of local limits to the Board in direct contradiction to advice provided to IEPA by U.S. EPA in August 1986. This provision in and of itself renders the State program incapable of being approved for delegation. (sic)
>
> ... we believe that the Board should follow the advice of IEPA on the U.S. EPA's position on program delegation. The IEPA has worked with the U.S. EPA to determine the requirements necessary for program delegation.

The reference to the "advice" provided in August is apparently to PC 4, a letter from USEPA to the Agency which apparently arose because of questions which were asked of the Agency at the meeting beween the Board and Agency staffs noted above. This letter included the following:

> ... the State is evaluating an option for relief of local limits through the ... Board. Such a provision would be inconsistent with the letter of 40 CFR 403.5 ...
>
> Because both the regulated industrial community and the pretreatment approval authority both have input in the development of specific local limits, after the fact waivers or variances, are completely inappropriate. Additionally, since standards developed under the authority of 403.5 and are Federal pretreatment standards, no State waivers can be provided. (sic)

The Act assigns to the Board the responsibility to develop regulations which will become a part of the program package to be submitted to USEPA for approval. This was discussed on pages 16 and 24 of the Proposed Opinion. The Board asked for USEPA comments on the regulatory package in the hope that any problems which might stand in the way of program authorization could be resolved early on, thus avoiding the delay which would result if it were to be necessary to amend the rules later to meet USEPA objections. The Board followed procedures to which USEPA and the Agency have long agreed in the RCRA and UIC programs.

PC 9 says that the Board should "follow the advice of IEPA on U.S. EPA's position on program delegation." However, IEPA and USEPA are opposed on several issues in their comments (PC 10 and 12). For example, IEPA says the Board should not incorporate the 40 CFR 136 test methods, while USEPA says we not only should, but that USEPA intends to retain authority to approve requests to deviate from these test methods. This confirms the wisdom of soliciting USEPA comment at a preliminary stage.

It would have been much simpler in this matter if the Agency had worked out the details in advance with USEPA and filed a formal proposal with the Board. However, Section 13.3 of the Act does not provide that the contents of the pretreatment regulations can be finally determined by negotiations between the Agency and USEPA. Nor does it give the Agency any authority to adopt regulations subject to "amendment" by the Board.

Section 28 of the Act and 35 Ill. Adm. Code 102 allow the Agency to propose regulations to the Board. This entails filing the text of the proposed rules with the Board. The Agency did not file a proposal with the Board. Rather, it placed a preliminary draft into the record as PC 1, and a revised preliminary draft as PC 7.

The Board and Agency staffs discussed at the staff meeting mentioned above whether the Agency should file a proposal with the Board or whether the Board should prepare a proposal for Agency and public comment. The latter course was chosen by mutual agreement. This is the way the RCRA and UIC rules are presently handled. In staff discussions the Agency indicated that it had not reached a final position on some issues and was thus not able to file the preliminary draft as a formal proposal. The main reason for placing the preliminary draft in the record was to form a legal basis for electronic transmission of the text, in the hope that this would speed the mechanical process of drafting a Board proposal.

At no point did the Agency inform the Board that its preliminary draft had been reviewed and approved by USEPA. Nor did the Agency seek to make any agreements with USEPA a part of the record in this matter.

The Board is still uncertain as to the basic issue in PC 4 and 9 quoted above. The Board suspects that there has been a failure in communication caused by a difference in USEPA and Illinois procedural terminology, and in failure to distinguish clearly between approval of a POTW's program submission to IEPA and authorization from the POTW to the discharger.

The Board issues "variances" under Title IX of the Act. These are temporary and require a plan for eventual compliance. As noted on page 20 of the Proposed Opinion, these are roughly the equivalent of "schedules of compliance" in the USEPA rules.

Under Title X of the Act, the Board hears appeals of permits issued by IEPA. In a permit appeal the question before the Board is whether the Agency was correct in issuing or denying the permit in question. This is roughly the equivalent of an appeal from the Regional Administrator's decision under 40 CFR 124. Permit appeal is not a method for issuing "after the fact waivers or variances." In reviewing permits issued or denied by the Agency, the Board applies the same law as the Agency. If the Board were to review local pretreatment decisions, the question would be whether the POTW correctly applied its ordinances.

PC 4 had the concepts of variance and permit appeal so confused that the Board did not understand it or specifically address it in the Proposed Opinion. However, the Board did address in the Proposed Opinion both the question of appeal of authorizations to discharge and the question of appeal of program approval. The Board will respond to comments in greater detail below, but will provide a summary in this introductory section.

Under the Board rules, either the Agency or the POTW could be the "control authority" which approves local applications to discharge to the POTW. When the Agency is the control authority, Section 310.444 allows appeal of the Agency's decisions to the Board, pursuant to Section 39(a) of the Act. It is not clear if USEPA objects to this, and it is less clear what basis USEPA might have for objecting.

When the POTW is the control authority, the rules are silent as to appeal mechanisms. Section 310.510 governs the contents of the program submission. It is derived from 40 CFR 403.8(f). Neither of these Sections contain any requirement that the POTW specify an appeal mechanism in the program submission. The Board discussed this at its meetings concerning the Proposed Order, and decided that this was best left to local law. The Board agrees with USEPA that any appeal of this decision should take place in Circuit Court. However, the Board does not understand the basis for USEPA's contention that appeal to the Board would somehow violate the Clean Water Act or USEPA rules, both of which are silent on this question which seems to be intrinsically a matter of State law.

The proposal also addresses appeal of the Agency's action in approving or denying the POTW's program submission. Section 310.547 provides that the final action may be appealed to the Board pursuant to the NPDES permit appeal route. 40 CFR 403 is vague as to appeal. However, as the Board understands it, the pretreatment program is a portion of the NPDES program. Indeed, 40 CFR 403.8(c) provides that the POTW's pretreatment program is to be incorporated into the POTW's NPDES permit. A long time ago USEPA authorized Illinois' NPDES program, including appeal to the Board. Again, the Board believes that its proposal is as mandated by USEPA, and does not understand the basis of any objection.

Conceivably the problem lies in the question of appeal of adoption of local limitations as discussed in connection with Section 310.210 on page 21 of the March 5, 1987 Proposed Opinion. As the Board understands it, under USEPA rules local limitations must be a portion of the POTW's program submission. (40 CFR 403.5(d) and 403.8(a)). As such, they are appealable to the Board as NPDES permit modifications as discussed above. Again, the Board believes its proposal is as mandated by USEPA rules, and does not understand the basis for any objection.

The Board has reviewed PC 1 to determine if USEPA is correct at least to the extent that the Board's proposal failed to follow IEPA's preliminary draft on these points. The Board believes its proposal was wholly consistent with PC 1, although more specific. PC 1 did not provide any mechanism for the Agency to issue pretreatment permits in the absence of an approved program, and hence did not specify any appeal mechanism. PC 1 tracked the language of Section 403.8(f) and, like the Board's proposal, was silent as to appeal of similar decisions by the POTW. PC 1, like the Board's proposal, required development of local requirements as part of the program submission, and placed program submission within the NPDES approval process. PC 1 was vague as to appeal of program approval actions, but by inference allowed appeal to the Board pursuant to Part 309.

In summary, Section 13.3 of the Act does not allow the contents of the regulations to be finally determined by negotiation between the Agency and USEPA. The Agency filed no proposal with the Board, and did not seek to inform the Board of any agreements. On the points in question the Board's proposal appears to be consistent with USEPA rules and comments, and with the supposed agreement. However, the Board does not understand why USEPA is concerned about much of this, since matters such as appeal routes seem to be intrinsically a matter of State law.

OVERVIEW OF PRETREATMENT PROGRAM

The following is a general discussion of the pretreatment program. A detailed discussion appears after this portion of the Opinion.

When the Board adopted regulations protecting water quality it focused primarily on discharges to surface waters. These are regulated through the NPDES permit program under Section 12(f) of the Act and 35 Ill. Adm. Code 309. Surface dischargers include industries which discharge directly to surface waters, and publicly-owned treatment plants (POTW's) which receive wastewater from households, businesses and industry, treat the wastewater and discharge it to surface waters. The pretreatment program greatly expands Board regulation of industries which discharge to a POTW rather than directly to surface waters.

POTW's are generally designed to provide biological treatment of household wastewater. They can also treat much industrial wastewater. However, some industrial wastewater is of a nature such that it should not be discharged to the POTW without pretreatment. Some wastewater, such as strong acids, would damage physical structures such as iron and concrete sewers. Flammable solvents pose dangers to persons working on sewers or in the treatment plant. Toxic materials may kill bacteria in the treatment works so that biological treatment ceases, allowing household wastewater to be discharged without adequate treatment. Toxic materials may accumulate in sludge, preventing its use or disposal as a soil additive. Other industrial pollutants may pass through the treatment works and cause water quality violations in the receiving stream. The pretreatment rules are designed to prevent interference with or pass through at the POTW.

The Board already has some general pretreatment rules in 35 Ill. Adm. Code 307. Section 307.105 prohibits discharges to POTW's in violation of USEPA pretreatment requirements. The Agency has a rudimentary pretreatment program which includes review of 102 municipal pretreatment programs which has resulted in the establishment of 48 pretreatment programs operated by POTW's. (IEPA). These have apparently been established through direct application of federal law through USEPA intervention in the NPDES surface discharge permit process.

The rules require that the larger POTW's serving industrial users prepare a pretreatment program proposal for submission to the Agency. The approved program will become a part of the POTW's NPDES surface discharge permit. Following approval of the program the POTW will administer the pretreatment program at the local level. Industrial users will be required to obtain an authorization to discharge from the POTW before discharging wastewater to sewers.

The rules also involve incorporation by reference of detailed USEPA pretreatment regulations for several hundred types of industrial dischargers. Through the pretreatment program the POTW will require that industrial users comply with these detailed pretreatment requirements.

The Board has set up the pretreatment program in a manner parallel with the NPDES program. The requirements for program approval and permit issuance will be placed in a new Part 310, which will follow the similar Part 309 NPDES rules. The sewer discharge standards will be added to the existing requirements in Part 307.

PART 307: PRETREATMENT STANDARDS

The Board's existing pretreatment regulations have been renumbered and incorporated into the framework of the pretreatment program. Pursuant to comments from the Administrative Code Unit, the format has been changed to show striking and underlining more clearly in the renumbered rules.

Section 307.1001 Preamble

The existing language of Section 307.101 is preserved in paragraph (a). The Board's pretreatment rules have been merged with the general USEPA pretreatment rules from Part 403 and placed in Subpart B. While existing Section 307.102 and the USEPA pretreatment rules apply to discharges to publicly owned treatment works (POTW's), the Board's mercury and cyanide rules have a broader scope.

The general standards of Subpart B will function as back-up standards for the categorical standards. Except where the contrary is indicated, a categorical discharger will have to comply with any more stringent general requirement. Dischargers which do not fit into any of the categories will also have to comply with the general standards.

The Illinois Administrative Procedure Act prohibits incorporation by reference of future amendments to federal rules ("forward incorporation"). Also, it requires the Board to so state each time it makes an incorporation by reference, and requires prior approval of incorporated material by the Joint Committee on Administrative Rules. Section 13.3 generally exempts the Board from compliance with the incorporation by reference procedures. For the reasons discussed below, the Board construes this as exempting only the JCAR prior approval, but not as allowing forward incorporations by reference.

The USEPA standards usually contain references to other USEPA rules. USEPA intends to refer to future amendments of the referenced Sections. The Board's incorporation of these Sections raises a possibility of an "imbedded forward incorporation:" the indirect incorporation of future amendments to the Section referred to in the reference. These imbedded forward incorporations are mostly procedural requirements which the Board will adopt in Part 310. Section 307.1001(c)(2) provides that these are to be construed as references to the comparable Board rules, or, if there are none, as references to the USEPA rules as

they existed when referenced. The Board intends to adopt complete procedural rules, utilizing incorporation only for standards, requirements and definitions. In no instance does the Board intend to make a forward incorporation.

Section 307.1002 Definitions

The Board will utilize a separate definition set for the pretreatment rules rather than the Part 301 definitions. Alteration of the general definitions would require a review to ascertain whether the changes were modifying the other water rules. The preferable course is to utilize the USEPA definition sets associated with the pretreatment program.

The 40 CFR 401 definitions include terms which relate only to the surface water program. It is not necessary to include these. The Board has identified the definitions which are relevant to pretreatment, and set them out in the Part 310 definitions which are discussed below. The Board will utilize the same definition set for Part 307.

Section 307.1003 Test Procedures

This Section is drawn from 40 CFR 401.13, which in turn references 40 CFR 136, which establishes test procedures for measurement of pollutant concentrations. 40 CFR 401.13 contains an imbedded forward incorporation by reference. Simply incorporating this provision would be open to the interpretation that the Board was indirectly making a forward incorporation. As noted above, the Board believes this would violate the APA. For this reason the Board has incorporated the 1986 edition of 40 CFR 136 as well as 401.13. It will be necessary to amend this Section to update the incorporation to include future amendments to Part 136.

IEPA has suggested that it is not necessary to incorporate 40 CFR 136 by reference. However, USEPA has indicated that it will retain exclusive authority to approve alternatives, thereby implying that the test methods are indeed an important portion of the program. (IEPA and USEPA). (IEPA Motion for Reconsideration)

Section 307.1005 and 307.1006

These Sections incorporate 40 CFR 401.15 and 401.16, which list toxic and conventional pollutants. The Board solicited comment as to the necessity of these in the Illinois pretreatment program. The Board has dropped the definition of "conventional pollutant," since it is not used in the proposal. However, the Board has retained Section 307.1005, the definition of "toxic pollutant," since it is needed for the definition of "industrial user" and for Section 310.401.

In its earlier comments, the Agency suggested that the definition of "toxic pollutants" is controlled by "40 CFR 122.21, Appendix D," (sic) rather than 40 CFR 401.15, which the Board incorporated by reference in Section 307.1005. (PC 12) On page 10 of the July 16 Opinion the Board asked the Agency for its rationale. The Agency responded in its Motion for Reconsideration that the list of toxic pollutants is controlled by NRDC v. Train, 8 ERC 2120 (District of Columbia, June 8, 1976.

The list of toxic pollutants on 40 CFR 401.15 appears to be identical to the list in Appendix A of NRDC v. Train, except for certain modifications which are identical to the modifications the Agency mentions in its motion. The Board therefore believes that the list of 40 CFR 401.15 is a current, valid reflection of the settlement agreement in NRDC v. Train.

After considerable vacillation the Agency has settled on 40 CFR 122, Appendix D, Tables II and III as what it believes constitutes the list of toxic pollutants from the settlement agreement in NRDC v. Train as updated. (IEPA Motion for Reconsideration)

Section 401.15 includes several generic listings, such as "halomethanes," while Appendix D includes specific listings within the generic class, such as bromoform and carbon tetrachloride. Although the Section 401.15 list appears to be much shorter than the Appendix D lists, it is actually much more inclusive than the Appendix D list. For example, iodoform would fall within the generic listing of "halomethanes" in Section 401.15, but is not specifically listed in Appendix D. The absence of iodoform from Appendix D may have resulted from USEPA's determination that it is not actually produced or used in sufficient amounts to justify promulgation of standards or testing. However, its discharge would amount to the discharge of a toxic pollutant under 40 CFR 401.15, triggering the requirement that the receiving POTW develop a pretreatment plan, and the requirement of a pretreatment permit or authorization to discharge.

The 40 CFR 122, Appendix D lists are also not framed as listings of toxic pollutants. Rather, they are a part of the NPDES permit application testing requirements. Table II is oriented toward referencing specific test methods. The apparent equivalence with Section 401.15 could be accidental. What would happen if USEPA added to the list of toxics, but took a totally different approach to deciding whether the new toxics were present in NPDES discharges?

The Board therefore concludes that not only is 40 CFR 401.15 the correct definition of "toxic pollutant" for purposes of the pretreatment program, but that use of 40 CFR 122, Appendix D, Tables II and III alone would be incorrect. However, the Board

will include an alternative reference to Appendix D, recognizing that it presently appears to be an equivalent list which is set out in a clearer form for actual use by people who have to deal with these rules.

Section 307.1007 pH Monitoring (Not adopted)

The Board earlier proposed to adopt the equivalent of 40 CFR 401.17, which contains the averaging rule for pH. However, it appears that this is not necessary for the pretreatment program, since USEPA does not regulate pH with respect to sewer discharges. Note, however, that Section 307.1101 prohibits the discharge of corrosives and other materials which would be injurious to structures or equipment. (IEPA Motion for Reconsideration)

Section 307.1101 General Requirements

Subpart B contains the generic pretreatment standards. These are derived from existing Part 307 and from 40 CFR 403. They function as back-ups to the categorical standards.

The Proposal referenced these as the "general standards." However, the USEPA rules differentiate "general" and "specific" standards within the subject matter of this Section. The "general" standards prohibit interference and pass through, while the "specific" standards prohibit such things as causing fire or explosion. The Board has corrected the title of this Subpart and Section to recognize this distinction.

The Proposal tracked 40 CFR 403.5(b) in stating these prohibitions in terms of "persons other than domestic sources." However, existing Section 307.102 prohibits essentially the same actions by any person, domestic or not. The Board has therefore modified this Section to apply to all persons. As is discussed below, the Board equates "non-domestic source" with "industrial user."

Existing Section 307.102 includes pretreatment requirements which are similar to 40 CFR 403.5(b). The Board has merged these provisions. The language is mainly drawn from 40 CFR 403.5. The Section 307.102 language which is not fully present in Section 403.5 has been inserted at the appropriate places. The additional requirements in existing Board rules are included in the following subsections:

(b)(2) Pollutants which would cause safety hazards other than fire or explosion.

(b)(5) Pollutants other than low pH which would be injurious to structures.

(b)(10) Pollutants which would cause the effluent to violate NPDES permit conditions.

One commenter suggested that Section 307.1101(b)(7) did not adequately address slug loading or interference with sludge disposal. (NSSD) The Board has reviewed this Section and finds that it adequatly reflects 40 CFR 403.5(b)(4).

Another commenter suggested confusion as to whether Section 307.1101(b)(9) regulates temperature at the influent or effluent to the POTW. (IEPA) The Board has modified this to indicate expressly that the influent temperature is intended, and to reference the pretreatment plan as the portion of the NPDES permit in which the influent temperature would be specified.

Section 307.1102 Mercury

This Section has been moved more or less verbatim from Section 307.103. It applies to publicly regulated sewers, as well as POTW's. Categorical discharges would have to meet this standard even if there is no mercury standard specified in the categorical standards. The generic standard would override any less stringent categorical standard, unless the Board in adopting the categorical standard expressly stated that it was to be applied in lieu of the generic standard.

Section 307.1103 Cyanide

This Section has been moved more or less verbatim from Section 307.104. It applies to publicly regulated sewers, as well as POTW's. It would function like the mercury standards with the categorical standards.

Section 307.1501 et seq. Categorical Standards

What follows in the rules is the Board's equivalent of the USEPA categorical pretreatment rules. The text is around 250 pages long. These will be discussed in summary only, except where the Board received a comment on a specific Section.

The Proposed Opinion included substantial discussion of alternatives and solicited comment, most of which went unanswered. The Board has made no major changes in the general outline of this portion of the rules. The Board has therefore shortened this discussion in the Final Opinion. Persons who may be interested in a more complete discussion are referred to the Proposed Opinion.

The USEPA pretreatment standards are contained in 40 CFR 405 et seq. They are arranged by industry category and subcategory, which follow the scheme established by the federal SIC Codes. The USEPA rules devote a Subpart to each industry subcategory, with individual Sections typically used to state the scope of the

Subpart, special definitions, surface effluent standards and pretreatment standards for existing and new sources. The Board has incorporated the necessary material by reference.

GENERAL OUTLINE OF CATEGORICAL PRETREATMENT STANDARDS

The Board rules are arranged in the same order as the USEPA rules. However, the levels of subdivision are one step lower than in the USEPA rules: In the Board rules, one Subpart is devoted to each regulated industry category, and one Section is devoted to each regulated industry subcategory. Most Sections follow the following outline:

1. The subcategory is defined in an applicability statement.

2. Specialized definitions are incorporated by reference.

3. The pretreatment standards for existing sources (PSES) are incorporated by reference, and existing sources are required to comply with the standards.

4. The pretreatment standards for new sources (PSNS) are incorporated by reference, and new sources are required to comply with the standards.

5. The cut-off date for new sources for the subcategory is specified.

There are a few isolated instances in which the incorporations do not follow the above outline. These should be self-explanatory.

A few of the USEPA Parts have applicability statements defining the entire category, along with specialized definitions and rules affecting the entire category. These USEPA provisions are reflected in Sections with two zeros at the end. For example, Section 307.2000 is drawn from the introductory material 40 CFR 410.

Some of these introductory provisions include Sections on "compliance dates." These have generally been incorporated by reference where they are present. (IEPA) (For example, 40 CFR 415.01/Section 307.2500.) These "compliance dates" should not be confused with the "new source" dates in item 5 above. Compliance dates are discussed further in connection with Section 310.222 below.

ALTERNATIVE APPROACHES

The above general outline resulted in several hundred pages of rules. The Board addressed alternative approaches and solicited comment in the proposed Opinion. The Agency requested

that the Board reconsider the format of PC 1 as a template for adopting categorical standards. (IEPA). The Board cannot find the "template" in PC 1.

Although it is lengthy, the approach taken by the Board has several desireable features. It avoids incorporation of irrelevant surface discharge provisions. During maintenance rulemaking it will allow publication in the Illinois Register of short Sections which will include a clear description of the subcategory affected. "New source" dates will be clearly set out without reference to old Federal Registers which are not readily available to the public. The approach also is clearly in compliance with the incorporation by reference requirements of the APA.

The Agency has suggested that Section 13.3 of the Act empowers the Board to ignore all incorporation by reference requirements provided the regulatory process meets the due process notice requirements in the APA. (IEPA). However, the Board believes that incorporation by reference of unavailable material, such as "new source" dates, and of future amendments is a regulatory process which does not meet the due process notice requirements.

APPLICABILITY STATEMENT

Each Section starts with an applicability statement which defines the subcategory. Because the USEPA equivalent also functions to define the applicability of the surface discharge standards, and in order to provide notice to dischargers in Illinois, the Board has set the applicability statement out in full rather than incorporating it by reference.

The Board received some specific comments which will be discussed below in connection with specific Sections.

The Board also received a general comment from the Agency as to which USEPA Subparts, or subcategories, the Board is required to adopt. The Agency recommends that the list of industrial categories be limited to those listed in 40 CFR 403, Appendix C. (IEPA) Apparently adoption of rules for these categories would be sufficient for authorization.

At first sight this seems to be a minor change, since many of the optional provisions just require compliance with general requirements, which would be the same result as omitting the categories. However, under Sections 310.401 and 310.501, the existence of a categorical standard makes the discharger subject to the pretreatment permit requirement and the receiving POTW subject to the pretreatment plan requirement.

The "identical in substance" mandate of Section 13.3 of the Act is similar to the mandate of Sections 13(c) and 22.4(a) with

respect to UIC and RCRA. It is not related to USEPA's standard for deciding whether the pretreatment program is sufficient for authorization. The Board has not interpreteted the UIC and RCRA mandate as being one of adopting a minimally sufficient program. Indeed, the Board has held that the UIC mandate is "to maintain its rules as nearly verbatim as possible with the UIC rules as applied by USEPA in States where USEPA administers the UIC program." (R85-23, Opinion of June 20, 1986). Therefore, the Board will not attempt to restrict the categorical standards to those which are necessary for program approval, but will adopt all USEPA standards which appear to apply in Illinois.

DEFINITIONS

A "definitions" subsection follows "applicability" in the outline of each subcategory. The Board has incorporated by reference any special definitions applicable to the subcategory. If there is no special definitions Section in the USEPA rules for the subcategory, the Board has inserted "none" after the heading for definitions.

Some of the special definitions reference the special definitions used for another subcategory. This raises the possibility of an imbedded forward incorporation by reference. For example, see 40 CFR 419.31/ Section 307.2903, which reference 40 CFR 419.11/ Section 307.2901. In these situations, as provided by Section 307.1001, the Board's incorporation of the USEPA reference is to be construed as a reference to the equivalent Board rule, rather than the imbedded USEPA reference. If the Board has not adopted the equivalent, the reference will be to the USEPA rule at the time of adoption of the reference.

PRETREATMENT STANDARDS

The next portion of the general outline is the incorporation by reference of the pretreatment standards for existing sources ("PSES") and for new sources ("PSNS"). There are five possibilities, all of which exist in the rules:

1. There are no pretreatment standards for any subcategory in a category, but only surface discharge standards.

2. There are pretreatment standards for at least one subcategory within a category, but another subcategory has no pretreatment standards.

3. There is a PSNS, but no PSES for a subcategory.

4. There are both a PSNS and a PSES for a subcategory.

5. There is a PSES, but no PSNS for a subcategory.

In the first case, the Board has completely excluded those industry categories for which there are no pretreatment standards in any subcategory. An example is the coal mining category, for which there are surface discharge standards only. Any dischargers to a POTW in these categories would have to comply with the general and specific pretreatment rules.

In the second case, in which there are pretreatment standards for some, but not all subcategories, the Board has adopted a Section defining each USEPA subcategory. If there is no pretreatment standard for a subcategory, the Board has provided a reference to the general and specific pretreatment standards of Subpart B.

In the third case, where there is a PSNS but no PSES, the Board has incorporated the PSNS by reference, and provided a reference to the general and specific pretreatment standards of Subpart B for existing sources.

In the fourth case the Board has incorporated the PSES and PSNS by reference.

In the fifth case USEPA has promulgated a standard for existing sources, but none for new sources. Where USEPA has proposed no new source rule, all sources are "existing sources," including those built after the existing source standard is adopted. In the proposal, the Board provided a heading for "new sources," and provided that they were subject to the PSES. This was not quite accurate, since strictly speaking, there are no new sources. The Board has modified this to provide that all sources are regulated as "existing sources." (USEPA and MSD) This format may have produced a problem which is discussed below in connection with Sections 307.2300.

Some of the USEPA standards reference other standards. This carries a risk of an imbedded forward incorporation by reference similar to that discussed in connection with the definitions above. Where the reference is to another pretreatment standard which the Board is incorporating elsewhere, the Board will construe these as referencing the related Board standard. If the Board has not adopted the referenced provision, the reference will be construed as a reference to the USEPA rule as it existed when the Board referenced it.

NEW SOURCE DATES

As noted above, the USEPA rules define "new source" in terms of the date the proposal to regulate the subcategory appeared in the Federal Register. As noted above, these dates are not readily available to the public. The Board has therefore adopted for each subcategory a definition of "new source" containing the actual date.

These dates go back to 1973. There may be people who have been in business for as much as 14 years who are to be regulated as new sources. The Agency indicated that it has only a "rudimentary" pretreatment program in Illinois. (IEPA). There may be thousands of dischargers subject to these rules who have not yet been brought into a formal pretreatment program. It seems to be asking a lot for each of them to journey to a major law library to discover whether they are a new or existing source.

In the Proposed Opinion the Board noted a number of problems with ascertaining what these dates are, and solicited comment. USEPA has apparently reviewed these rules, and has noted some specific problems which are discussed below. USEPA urged the Board to review the dates and make sure they are correct. (USEPA) On the other hand, IEPA simply recommended that the dates be deleted. (IEPA). The uncertainty these agencies have for whether the Board's dates are correct underscores the problem which the public would face if it were forced to research the dates.

COMMENTS ON SPECIFIC SECTIONS IN PART 307

The following are responses to comments on specific Sections in the categorical pretreatment standards portion of Part 307. Comments which just address typographical errors in the Order are not discussed here.

Section 307.2004

40 CFR 410.50 is reflected in the language of Section 307.2005(a). (USEPA).

Section 307.2300

The applicability Section for the electroplating industry has been updated to include amendments at 51 Fed. Reg. 40421, November 7, 1986.

The electroplating rules are a category for which USEPA has promulgated a PSES, but no PSNS. As noted above, the Board has modified the format to provide under the heading "new sources" that all sources are regulated as existing sources. (USEPA)

The Agency has renewed and explained an obtuse comment made earlier by the Metropolitan Sanitary District concerning Sections 307.2300 and 307.4300. (PC 11 and IEPA Motion for Reconsideration) It appears that although there are no "new source" electroplaters, certain types of electroplaters, including job shop electroplaters and printed circuit board manufacturers are instead subject to the metal finishing standards if "new." (Note that "new" is as defined in the metal finishing standards.) Section 307.4300 back references Section

307.2300. However, it appears that possible confusion could result if someone read only Section 307.2300. The Board has therefore added a reference in Section 307.2300(a)(4), although this is really fixing a problem which exists in the USEPA rule.

In addition, the Board has fixed a cross reference error in the first sentence of Section 307.2300.

Section 307.2501

The Board has generally edited the applicability statements to remove language relating to the surface discharge program and to establish a uniform style. The Board believes that the applicability statement in this Section is identical to the substance of 40 CFR 415.10 as applied to pretreatment. (USEPA).

Section 307.2801

The Water Quality Act has recently been amended to mandate the repeal of the NSPS for phosphate fertilizer manufacturing. This has not yet been reflected in amendments to 40 CFR 418. Since this standard applies only to four facilities in Louisiana, the Board will not attempt to modify its rules until USEPA modifies Part 418. (USEPA)

Section 307.3000

This Section has been modified to include a reference to removal credits, which are discussed below in connection with Section 310.300 et seq.

Section 307.3100

The Board has reviewed the applicability statement for the nonferrous metals manufacturing category against 40 CFR 421.1. The Board deleted material concerning surface discharges, and edited the statement to remove unnecessary circular language. The Board cannot find any difference in the substance of this and the USEPA Section. (NSSD)

This Section has been modified to include a reference to removal credits, which are discussed below in connection with Section 310.300 et seq.

Section 307.4300

This Section has been updated to include USEPA amendments at 51 Fed. Reg. 40421, November 7, 1987.

Section 307.6500

This Subpart has been updated to include USEPA amendments at 51 Fed. Reg. 44911, December 15, 1986, which resulted from a

remand of the pesticide chemicals category standards. The amendments virtually eliminate this Subpart. (USEPA)

Section 307.7700

This Section has been modified to include a reference to removal credits, which are discussed below in connection with Section 310.300 et seq.

PART 309: MODIFICATION OF EXISTING PERMIT REQUIREMENT

Subpart B of existing Part 309 requires construction and operating permits for certain pretreatment facilities. (IEPA) As is discussed below in connection with Section 310.401 et seq., the Board has modified the proposed pretreatment permit requirement to track the existing permit requirements of Part 309. Since this would create a duplicative permit requirement, the Board has modified Part 309 to exempt discharges covered by Part 310 permits. As adopted, this would include both pretreatment permits issued by the Agency as the control authority, and authorizations to discharge issued by the POTW.

Part 309 includes both a construction and an operating permit requirement. Because Part 310 does not include an explicit construction permit requirement, the Board will retain the Part 309 construction permit requirement. (IEPA) Therefore, new pretreatment facilities will continue to require an Agency construction permit, even if the discharge is to a POTW with an approved pretreatment plan. However, the Part 310 pretreatment permit or authorization to discharge will replace the Part 309 operating permit.

PART 310: PRETREATMENT PROGRAMS

Part 310 establishes the pretreatment program. It specifies how POTW's set up pretreatment programs, and sets requirements which users must meet to get "authorizations to discharge" from the POTW, or "pretreatment permits" from the Agency in some cases.

Part 310 is drawn from 40 CFR 403. Immediately following is a general discussion of how Part 403 was modified to form Part 310. Following on this is a detailed discussion of the Sections involved.

40 CFR 403 serves a larger function than Part 310: In addition to the functions noted above for Part 310, Part 403 specifies how a state obtains approval of its pretreatment program from USEPA, specifies certain minimal requirements which must be present in state law for program approval, specifies how USEPA acts in certain situations with an approved state program and how USEPA acts in the absence of an approved program. Part 403 also includes broad introductory material and statements of

purpose relating to the national program. This type of material has generally been deleted. In particular, Part 310:

1. Assumes that the Agency will administer an approved program. (See 40 CFR 403.3(c))

2. Does not purport to regulate actions to be taken by USEPA. (See 40 CFR 403.6(a)(4))

3. Does not purport to specify which offices within USEPA approve various aspects of the pretreatment program. (See 40 CFR 403.6(a)(4))

4. Does not include introductory material or statements of intent broader than the Illinois program. (See 40 CFR 403.13(b))

5. Specifies what State law is to be applied in pretreatment permits. (See 40 CFR 403.4)

6. Specifies procedures to be followed in situations in which USEPA allows a range of procedures within an approved program. (See 40 CFR 403.6(a)(1))

7. Adopts substantive requirements in situations in which USEPA requires that a rule be adopted, but allows a range of options. (See 40 CFR 403.12(b))

8. Translates general directives into specific State requirements. (See 40 CFR 403.9(g))

9. Specifies procedural steps which must be taken under State law. (See 40 CFR 403.13)

10. Modifies Part 403 to the extent necessary to comport with Illinois constitutional, statutory and administrative law. (See 40 CFR 403.8(e))

11. Rewords provisions for clarity.

The text of Part 310 is drawn from Part 403 as nearly verbatim as possible. The text is in nearly the same order as in Part 403. However, in order to comply with codification requirements, the first level of subdivision of USEPA sections has been promoted to Sections in Part 310. USEPA Sections generally correspond with Subparts in Part 310. The Board has added notes to each Section referencing the Part 403 subsection from which it is drawn.

Section 310.101

This Section has no close USEPA counterpart. It has been added to state the applicability of the Part in a short fashion

to aid readers. Commenters objected that the proposed Section seemed to change the scope of the program from the federal. (USEPA and IEPA). The Board has rewritten this Section to address these concerns in two ways. First, the Board has added a statement that this Section is only a general guide to aid the reader. Second, the Board has modified the language to more closely track and cite the operative Sections.

Section 310.102

This Section is drawn from 40 CFR 403.2. Unnecessary USEPA introductory material has been deleted. Some of the provisions have been reworded for clarity.

The Board's objective is to comply with the mandate of Section 13.3 of the Act. The Board has added a statement to that effect.

Section 310.103

The Board received several comments from IEPA and USEPA concerning interaction with USEPA following program approval. Among the matters mentioned are the following:

1. Are pretreatment programs approved by USEPA prior to approval of the Illinois program valid?

2. Does the proposal extend federal compliance dates?

3. Do the rules prevent USEPA from having access to records?

4. Do the rules prevent USEPA from conducting inspections and sampling after authorization?

As a specific example, USEPA suggests that it be added to the definition of "approval authority," which is discussed below in connection with Section 310.110, to recognize that it will actually approve program submissions until the Illinois program is authorized. This would imply that USEPA would be acting pursuant to Board rules when it approved program submissions prior to authorization of the Illinois program. This would violate two of the general propositions discussed above: the rule would place the Board in the position of regulating USEPA, and would regulate activities prior to the time the Agency is authorized to administer the program. Since nobody objected to the general propositions, which were stated in the Proposed Opinion, the Board will retain them and attempt to reconcile the comments within the general framework.

Another example is federal compliance dates. The Board could attempt to adopt past compliance dates as State law retroactively. These probably would not withstand appeal. It

will probably be a more efficient use of enforcement resources to provide for federal enforcement at the outset. In R86-46, USEPA has indicated that in RCRA these dates are strictly federally enforceable.

In response to these comments, the Board has added a Section dealing specifically with the relationship to federal law. This appears to be preferable to attempting to restate what may be very complex at several points within the rules.

Section 310.103(a) first states the obvious intent to adopt an identical in substance program meeting the mandate of Section 13.3 of the Act.

Section 310.103(b) provides that the Clean Water Act and USEPA rules continue in effect after authorization. Specifically, USEPA retains the right to inspect and take samples. (IEPA Motion for Reconsideration)

Section 310.103(c) provides that the Board's rules are not to be construed as exempting anybody from compliance with federal law prior to authorization. Specifically, as suggested by USEPA, USEPA's compliance dates will be enforceable as federal law for violations prior to authorization. Also, NPDES and Part 309 pretreatment permit conditions established pursuant to Section 307.105 will continue to be enforceable under State law.

As noted above, the Agency presently manages the pretreatment program under contract with USEPA. Section 310.103(d) provides that programs approved by USEPA through this mechanism will automatically become approved Illinois programs, unless the Agency objects within 60 days after Illinois program approval. The Board has also allowed 60 days after USEPA approves a program, to cover the possibility that USEPA will continue to retain some approval authority after authorization, as it does with NPDES permits. This provision will probably never be used, since the Agency works closely with USEPA in approving pretreatment programs.

Section 310.103(e) provides that the memorandum of agreement (MOA) will control USEPA's access to records and information in the possession of the Agency. USEPA will have to agree to abide by the confidentiality requirements associated with such information, which are discussed below in connection with Section 310.105. This rule is not necessary, since the Agency has independent authority under the Act to enter into a memorandum of agreement. However, the Board has included it since it was an issue in USEPA's comments.

Under the rules USEPA has two methods to get information from POTW's and industrial dischargers: it can inspect or request information directly under Section 310.103(b), or it can ask the Agency to request the information and obtain it through the MOA.

Section 310.104

This Section is drawn from 40 CFR 403.4. The USEPA rule has been applied to the Illinois situation, but is not repeated.

The USEPA rule governs conflicts between State, and local, law and USEPA rules. USEPA allows more stringent State or local law to override its requirements. With respect to State requirements, the Board has identified the more stringent requirements.

Section 5 of the Act requires the Board to "determine, define and implement the environmental control standards applicable in the State." The Board cannot subdelegate this authority to local government. The POTW must apply the Board rules in the issuance of pretreatment permits. However, as is discussed below in connection with Sections 310.210 and 310.211, the POTW must evaluate its system and develop more stringent standards based on its capacity to treat discharges, from the cumulative effect of actual dischargers, so as to avoid interference or pass through.

The pretreatment program should not be construed as in any way superseding any existing powers of a unit of local government to charge a user fee or to refuse to accept discharges which it does not believe the treatment plant can handle.

As discussed above, there are three types of prohibitions and standards. In Section 307.1101 the Board combined the USEPA general and specific pretreatment requirements with the existing Board general requirements. POTWs and users will be able to refer to this rule without further consideration of stringency, unless there is a local requirement. Sections 307.1102 and 307.1103 contain concentration based standards for mercury and cyanide which will apply to all POTWs. Sections 307.1501 et seq. include the USEPA categorical standards, which are often expressed as mass discharge limits dependent on production rates. Because of the different method of expressing the standards, the POTW will have to apply each set of rules to a given situation to decide which type of standard is more stringent. For example, it may be necessary to determine a production rate, calculate an allowable mass discharge limit and divide by flow to obtain a concentration limit to compare with the Board standards. (Peabody Coal v. IEPA, PCB 78-296, 38 PCB 131, May 1, 1980.)

Section 310.105

This Section is drawn from 40 CFR 403.14. The USEPA rule has been applied, rather than repeated.

Section 310.105(a) is drawn from 40 CFR 403.14(b). It provides that "effluent data shall be available to the public without restriction." In the proposed Opinion the Board asked for comment as to what this means in the context of the pretreatment program. The Board received no response, except from IEPA, which said it was important. The Board has left this in, since it doesn't seem to hurt anything. However, if it's effluent data, it is governed by Part 309, rather than 310.

Section 310.105(b) provides that, for information in the hands of the Board or Agency, confidentiality is governed by Part 120, if it deals with trade secrets. The Board notes that Sections 120.102 and 120.330 of its trade secrets rules allow for the program anticipated here. The Agency has asked that the Board reference the Agency's Part 161 rules at this point. The Board declines to do so. For other confidential matters, the Agency should use its confidentiality rules to the extent applicable without a Board rule. (IEPA).

PCTWs will need to adopt procedures to protect confidentiality before pretreatment programs are approved. The Agency will review these procedures to assure that they meet the minimum requirements specified by this Section, 40 CFR 403.14 and other State and federal laws governing disclosure. Section 310.105(c) has been modified to make it clear that the Agency itself is subject to the same minimum requirements. (USEPA).

Confidential information will often first come into possession of the POTW from a discharger, subject to the POTW's confidentiality rules, which will have been approved with the program. The Board, Agency and USEPA will protect this information unless there is a final determination that the POTW's decision to protect the information was wrong under applicable State and federal laws, or under the POTW's own rules. (NSSD).

Section 310.107

This Section will include all materials which must be incorporated by reference for use in the later Sections. The Board has incorporated the Standard Industrial Classification Manual in that SIC Codes are requested in a subsequent Section.

Section 310.110

The 40 CFR 401 definitions have been consolidated with the Part 403 definitions for inclusion in Section 310.110. Definitions which seem to apply only to NPDES discharges have been omitted. The Board has added a number of definitions appropriate to the Illinois program.

The definition of "approval authority" has been modified on the assumption that the Agency will administer an approved program in Illinois. Therefore, "approval authority" is

equivalent to "Agency". The Board has addressed USEPA's concerns in Section 310.103 above. (USEPA).

"Approved POTW pretreatment program" is drawn from 40 CFR 403.3(d). It has been modified on the assumption that the Agency will be the approval authority. The USEPA rule includes a condition that the program meet the criteria for approval, as well as having been approved. This has been omitted as redundant. The Agency cannot approve a program unless it meets the criteria. Once approved, a program will remain "approved" until the Agency takes steps to cancel the approval.

Under Section 310.103, programs which have been approved by USEPA will become "approved" programs unless the Agency objects. (USEPA).

The Board has added a definition of "authorization to discharge" in response to several comments concerning ambiguities created by use of the term "pretreatment permit" to describe the action taken by the POTW to allow a discharge. As is discussed below in connection with the definition of "pretreatment permit," the Board has reserved that term for the document issued to the discharger by the Agency as the control authority, and will use the term "authorization to discharge" to describe the POTW's action. The "authorization to discharge" may consist of a permit, license or ordinance, as specified in the approved pretreatment program. The specific comments will be discussed below where they occur.

At first sight the term "discharge of pollutants" appears to belong with the pretreatment rules. (40 CFR 401.11(h)) However, on closer examination, it applies only to effluent discharges.

In the July 16 Opinion the Board suggested that the rules could be made much simpler and clearer if the term "industrial user" were defined globally and used to replace "discharger," "user" and "non-domestic source." The Board suggested using the definition implied by Section 310.401, which was drawn from the Agency's comments. (IEPA) In its motions for reconsideration, the Agency endorsed this change. (IEPA Motion for Reconsideration)

As modified, the definition of industrial user specifically includes certain types of discharger. The specifications are taken from the existing pretreatment permit requirement of 35 Ill. Adm. Code 309.Subpart B. Specifically included are persons who: discharge toxic pollutants; are subject to a categorical standard; discharge more than 15% of the flow or biological loading to the POTW; have caused pass through or interference; or, have presented an imminent endangerment to the health or welfare of persons.

In the body of the rules the Board has generally changed "discharger" to "industrial user." The Board has retained "user" as a shortened form where "industrial user" has already been used in the subsection and it is clear from the context that "industrial user" is intended. The Board has retained "non-domestic source" in the definition of "indirect discharge." This is a reference to terminology used in the Clean Water Act, and serves in part to define "industrial user."

The Board has added a definition of "industrial wastewater." This is a shortened term used in place of "industrial wastes of a liquid nature," which is used in several places in the USEPA rules. This follows the general terminology used in the Board rules, under which "wastewater" is regulated under Subtitle C, while "wastes" are regulated under Subtitle G.

The definition of "interference" is drawn from 40 CFR 403.3(i), which was amended at 52 Fed. Reg. 1586, January 14, 1987. The Board has defined a term "sludge requirements," which is discussed below.

40 CFR 401.11(m) defines "municipality" by reference to the CWA. As is discussed below, the Board has replaced this with the term "unit of local government," an all-inclusive term defined by Art. 7, Sec. 1 of the Illinois Constitution. As is discussed below, different Illinois statutes govern "municipalities" and "sanitary districts," both of which are "units of local government." (IEPA) Use of the term "municipality" in the rules to mean something other than what is meant in a closely related statute would invite confusion.

The Board has added definitions of "municipal sewage" and "municipal sludge," undefined terms used at several places in the USEPA rules. There is a possibility of confusion in Illinois because of the term "municipal," which could be construed as related to "municipality," discussed above. "Municipal sludge" has been defined as the sludge produced by a POTW. "Municipal sewage" is the sewage received by a POTW, exclusive of its industrial component.

The term "new source" is drawn from 40 CFR 401.11(c). The USEPA definition references the date a proposal for a categorical standard appeared in the Federal Register. As is discussed above, the Board has proposed to specify these dates in Part 307. The comments on this definition are also discussed above. (IEPA and USEPA).

"Permit" has been stricken as an alternative to "NPDES Permit." This could cause confusion with "pretreatment permit." Whenever the rules mean "NPDES permit," they will so state. (IEPA).

The definition of "pass through" is drawn from 40 CFR 403.3(n), which was amended at 52 Fed. Reg. 1586, January 14, 1987.

The definition of "person" is drawn from 40 CFR 401.11(m) and the CWA. The Board has used the term "unit of local government" in place of the types mentioned in the USEPA definition. The CWA definition does not include the U.S. Government. However, the definition in 40 CFR 122.2, applicable to the NPDES program, which seems to be based on the same CWA definition, specifically includes the U.S. Government. The Board received no comment in response to its solicitation in the Proposed Opinion.

Section 13(h) of the Act provides that no person shall discharge to a sewer except in compliance with Board rules. Section 13.3 requires the Board to adopt identical in substance rules. The Board construes this to mean that it is to adopt a definition of "person" consistent with the USEPA program, and that that definition will control the the scope of Section 13(h). If the definition of "person" found in the Act were to control Section 13(h), the scope of the pretreatment program might be different than the program mandated by USEPA, violating Section 13.3.

The definition of "pollutant" is drawn from 40 CFR 401.11(f). That definition specifies discharges into "water", and as such seems to be inapplicable to the pretreatment program. However, in that the term is essential, the Board has modified the definition to include discharges to "sewers." The Board has also omitted the exclusion of injections to facilitate oil production and sewage from vessels. These seem to be relevant only to the surface discharge program. It would not be physically possible to facilitate oil production by injecting water or other material into a sewer. Also, it would seem appropriate to apply the pretreatment rules if sewage from a vessel were somehow discharged to a sewer.

The Board has added a definition of "pretreatment permit" in response to comments indicating confusion as to whether this encompassed authorizations to discharge issued by a POTW. As defined, the term will apply only to permits issued by the Agency as the "control authority." Authorizations issued by a POTW will be called "authorizations to discharge," which is defined above.

The definition of "pretreatment standard" is drawn from 40 CFR 403.3(j). The Board has dropped the equivalent term "national pretreatment standard." As these terms are used in the rules, more stringent Board standards would also be "national," which would be confusing. There is no need for terms distinguishing the USEPA standards from the Board standards, since their function does not depend on their origin.

The Board has conditioned this definition on adoption of USEPA standards by the Board. Therefore additional categorical standards will not become "pretreatment standards" until the Board adopts them as State rules.

"Pretreatment standard" also includes local limits which are part of an approved pretreatment program pursuant to Section 310.211. (USEPA, IEPA, MSD).

The definition of "POTW" is drawn from 40 CFR 403.3(o). It has been made more specific so it applies in Illinois. It has been simplified through the addition of definitions for "treatment works" and "unit of local government".

The definition of "schedule of compliance" is referenced in 40 CFR 401.11(m). It has been set out in the rules, with some modification as is discussed below. The rules allow the Agency and POTW to establish compliance schedules in permits within certain bounds.

The Board has modified this definition in response to comment. (NSSD). A "schedule of compliance" can be included either in an "authorization to discharge" issued by a POTW, or in a "pretreatment permit" issued by the Agency. (Section 310.510(a)(4) and 310.444). "Schedules of compliance" to develop a pretreatment program can also be placed in the POTW's NPDES permit. (Section 310.504)

A sentence has been added referencing the sources of schedules of compliance. The traditional methods of establishing such schedules in Illinois have been temporary hardship variances and Board enforcement Orders. As is discussed above, Board variances are the equivalent of USEPA's schedules of compliance, and are not comparable to USEPA's FDF or net/gross "variances," since Board variances are temporary and must include a plan for eventual compliance. Any variances granted by the Board would have to meet the conditions imposed on schedules of compliance, as well as the conditions for grant of a variance under Title IX of the Act and 35 Ill. Adm. Code 104. (USEPA)

The Board has added a definition of "SIC Code", a term which is used in the rules.

The Board has added a definition of "sludge requirements" as a part of the modification of these rules to add removal credits, which is discussed in detail below in connection with Section 310.300. The definition was contained in the definition of "interference" in the July 16, 1987 proposal. The Board has made this a global definition to be used both in defining interference and in limiting removal credits. The Board has specified the Part 309 sludge application permits, RCRA permits and Part 807 solid waste permits as those, which if violated, would result in interference. These are the State equivalents of the federal

programs listed in the USEPA definition of "interference." In addition, the Board has retained references to the federal TSCA and Marine Protection Acts, which have no State equivalents. The Board has omitted the Clean Air Act, since it does have a State equivalent, but the Board is not aware of any Clean Air Act limitations on sludge disposal.

The Board has reviewed the text of Part 310 to identify and replace various phrases which appear to mean the same thing as the defined term "sludge requirements." For example, "applicable requirements for sewage sludge use or disposal" in Section 310.201(b)(2)(B) has been changed to "sludge requirements." Other examples occur in Section 310.210.

The definition of "submission" has been narrowed from that of 40 CFR 403.3(t). As defined, it will include only the request from the POTW to the Agency for approval of a pretreatment program. The references to removal credits have been dropped throughout. The submission from the Agency to USEPA for approval of the State program is not the subject of these rules.

The USEPA rules use "submittal" as a substitute for "submission" in several places. The Board has used the defined term throughout. Also, it should be noted that the USEPA rules actually use "submission" in contexts other than those listed.

The Board has added a definition for "treatment works", a term that is essential to the applicability of the pretreatment program. The definition is implied by the definition of "POTW," which references Section 212 of the CWA. The Board has defined the term by reference to the CWA, with the first sentence of the CWA definition set out in full for clarity. The rest of the definition in Section 212 seems to be specifying what is or is not eligible for the grants program, and is not particularly appropriate for inclusion.

The definition of "unit of local government" replaces the definition of "municipality" in 40 CFR 401.11(m), which references the CWA. The definition has been modified to use the term "unit of local government," an all-inclusive term defined by Art. 7, Sec. 1 of the Illinois Constitution.

Section 310.201

This Section includes the general prohibition against introduction of pollutants which pass through or interfere with the operation of the POTW. This Section is drawn from 40 CFR 403.5(a), which was amended at 52 Fed. Reg. 1586, January 14, 1987. Some of the provisions have been reworded for clarity.

One comment suggested substituting "non-residential" for "non-domestic" source, but did not provide a definition. (NSSD) The January 14 amendments use "user," the term which has been adopted here and elsewhere in the proposal.

The Board has revised this and the following Section to utilize the defined term "sludge requirements."

Section 310.202

The "general and specific" prohibitions of 40 CFR 403.5(b) have been combined with the similar existing Board requirements in Section 307.1102. These are part of the "general and specific" pretreatment requirements of Subpart B of Part 307.

Section 310.210

This Section is drawn from 40 CFR 403.5(c), which was amended at 52 Fed. Reg. 1586, January 14, 1987. It has been reworded for clarity. POTW's which are required to develop pretreatment programs have to evaluate their system with respect to the cumulative effect of discharges upon it. They may have to develop and enforce more stringent specific limits based on this evaluation. The Board has modifed the language in Section 310.210(a) to make it clear that this evaluation and the more stringent limits are to be a part of the pretreatment program submission. As such, the limits will be reviewed by the Agency and subject to appeal to the Board.

As is discussed above, IEPA and USEPA have filed comments which indicate confusion over program approval versus authorization to discharge and over permit appeal versus variances. IEPA has acknowledged that, if this Section deals with program approval, which it does, then appeal to the Board is proper. USEPA states that:

> If local limits have been developed and approved according to approved IEPA/USEPA procedures, there is no basis for appeal to the IPCB of local limits. Please remember that the only variances consistent with the §403 regulations are FDF's and net/gross calculations. (sic)

As noted above, the Board does not grant variances through the permit appeal route. In a permit appeal the question would be whether the local limits had been developed according to approved procedures. This goes to the merit of the appeal, rather than to the question of jurisdiction.

As is discussed above in connection with Section 310.104, only the Board has authority to adopt environmental control standards. The Board has therefore added Section 310.210(d) to the USEPA text. The Board has modified the text in response to comment. (IEPA and USEPA). Specific limits developed by the POTW are to be based on the characteristics and treatability of the wastewater by the POTW, effluent limitations which the POTW must meet, sludge disposal practices, water quality standards in the receiving stream and the Part 307 pretreatment standards.

There is an important distinction between environmental control standards and standards based on evaluation of a given system. New categorical pretreatment standards would be based on evaluation, or reevaluation, of treatment technology similar to that done by USEPA in adopting the categorical standards. On the other hand, treatment technology would be a secondary consideration for the POTW after evaluation of its system. Also, the Board, and USEPA, have developed effluent standards, water quality standards and effluent guidelines which the POTW must meet to protect the environment beyond its point of discharge. The local limits must be designed to meet these environmental control standards, but should not reevaluate them.

IEPA states that MSD has authority to adopt environmental control standards, but cites no authority. MSD did not comment on this Section.

IEPA has cited as authority for local limits Ill. Rev. Stat. 1985, ch. 24, par. 11-141-7 and ch. 42, par. 317(h). These are consistent with the Board's interpretation that its role is to develop environmental control standards, while the unit of local government is to meet these standards and protect its system.

One comment asked for greater specificity as to the method of calculating the limits and giving notice. The Board does not believe it can adopt additional requirements under its identical in substance mandate. The method of giving notice should be tailored to local needs, and reviewed by the Agency in the program submission. (NSSD).

40 CFR 403.5(c)(2) refers to the POTW developing "specific discharge limits for industrial users, and all other users, ..." However, as defined in 40 CFR 403.3(h), "industrial user" is the equivalent of "user." To avoid the interpretation that there is yet another class of "users," Board has deleted the phrase "and all other users." Note that as defined above, "industrial user" includes persons who have caused pass through or interference, so that the POTW would be able to develop specific limits directed at such industrial users, which is probably what the USEPA rule means.

Section 310.210(c) is drawn from 40 CFR 403.5(c)(3), which the Board reworded for clarity. As reworded, the Section reads in part:

> Prior to developing or enforcing ... limits, POTW's shall give ... individual notice ...

USEPA wants this changed to "developing and enforcing." However, its reason is that it "is not the intent of §403.5(c) to give interested parties a chance to comment on pending enforcement actions." The suggested change would accomplish precisely that result. The intent of the USEPA Section can most efficiently be

stated simply by deleting the phrase "or enforcing." The notice has to be given before the limits are developed. If they are not correctly developed, they are not enforceable.

Section 310.211

This Section is drawn from 40 CFR 403.5(d). The additional pretreatment standards which the POTW develops from the characteristics of the treatment plant and discharges will function the same as categorical pretreatment standards.

The Board reworded Section 310.211 so that it reads:

> If a POTW develops ... limits, such limits shall be deemed pretreatment standards for purposes of this Part.

40 CFR 403.5(d) actually reads, "Where." USEPA suggests that the Board change this to "When." The Board believes that "If" captures the true intent best. As provided in other Sections, some POTW's have to develop local limits, others do not. "If" captures the meaning of a true conditional with no connotation of place or time. The specific problem with "When" is that it seems to imply that the local limits become pretreatment standards at the moment they are "developed," as opposed to when the Agency approves the program submission.

Section 310.212 (Not adopted)

This proposed Section was drawn from 40 CFR 403.5(e). It would have required a 30 day notice before the Agency could assume enforcement responsibility if a POTW failed to take action. The Board has deleted this as inconsistent with the Agency's right to enforce under the Act. (IEPA). The Agency and USEPA will address specific enforcement responsibilities in the MOA. (USEPA).

40 CFR 403.5(f) sets a compliance date for the USEPA rules. This has been omitted, since it is long since past. These rules will become effective when filed and the program authorized. As noted above, the USEPA rules will continue in Illinois until program authorization.

Section 310.220

This Section is drawn from 40 CFR 403.6. This general, introductory material is unnecessary, but seems to provide a useful cross reference to Part 307. (IEPA). The Board has corrected an erroneous cross-reference. (NSSD).

Section 310.221

This Section is drawn from 40 CFR 403.6(a). A user can request a category determination after a new categorical standard is adopted.

The Board has modified Section 310.221(a)(1) in response to comments to change the deadline for submission of the category determination request. (USEPA) For standards adopted by USEPA prior to Illinois program authorization, category determination requests should be made pursuant to USEPA rules within 60 days after USEPA adoption. After Illinois is authorized, the deadline will be keyed to the Board's adoption of the standard, which will happen a few months after USEPA acts. This will avoid giving another 60-day period for category determination requests with respect to old USEPA standards adopted by the Board at the beginning of the program, but will not ask industrial users to monitor the Federal Register as well as the Illinois Register for future actions.

Section 310.221(a)(3) has been modified to change "submission" to "application," the term used in the next paragraph. (USEPA).

Section 310.221(b)(2) allows either the industrial user or the POTW to request a category determination. No action is necessarily required of the POTW. (NSSD).

Some of the provisions have been reworded for clarity. Paragraph (d)(1) has been edited to allow for the possibility that the Agency might determine that a submission is not complete.

The Board edited this Section on the assumption that the Agency will be delegated the authority to make these category determinations. IEPA and USEPA apparently agree that IEPA will be delegated the basic authority, although USEPA has indicated that it will not waive oversight authority, as is allowed under 40 CFR 403.6(a). (USEPA) The Board has edited to delete this possibility.

USEPA will retain a case-by-case oversight authority on category determinations. If the Agency refuses or fails to make a determination, the action can be appealed to the Board. Agency determinations, however, are subject to review by USEPA. If USEPA accepts the Agency determination, the determination is appealable to the Board for 35 days after notification of the Agency decision to the user. To avoid confusion, the Agency should not notify the user of a determination until USEPA review is complete. If USEPA modifies the Agency determination, the user must utilise USEPA procedures to challenge USEPA's decision. The user cannot appeal the USEPA action to the Board, or appeal the Agency's action to the Board if modified by USEPA.

Paragraph (d)(2) has been edited so that it does not purport to regulate actions by USEPA, but only actions by the POTW and IEPA prior to the time the Agency forwards its decision to USEPA, and actions taken in the absence of USEPA modification. However, IEPA says this Section "limits USEPA's oversight authority" and

"makes the USEPA determination subject to Board authority." USEPA did not comment on this aspect of the Board proposal. Since the Agency's problems are not clear, and the language is acceptable to USEPA, the Board will not modify it.

Section 310.222

This Section is related to 40 CFR 403.6(b). Compliance dates were discussed above. For the earlier standards, USEPA was silent as to the compliance date. 40 CFR 403.6(b) operated to give three years for existing sources to come into compliance with new standards. For the more recent standards, USEPA has specified the compliance dates with the categorical standards.

Compliance dates at the State level are somewhat more complex. The standards are not enforceable as State law until the Board has adopted them or incorporated them by reference, and until USEPA has approved the Illinois pretreatment program.

The Board cannot adopt the text of the USEPA rule. First, it would not adequately state the situation with respect to compliance dates at the State level. Second, since USEPA now specifies the dates with the standards, there would be a possibility of a conflict between this Section and the date specified by USEPA. Indeed, 40 CFR 403.6(b) is best interpreted as a formula used by USEPA to decide what dates to include with the standards. The Board cannot adopt a rule which purports to regulate USEPA. For these reasons the Board has drafted a State rule with no close federal counterpart.

There are basically three situations with respect to compliance dates. Where compliance is already required at the federal level, compliance will be required at the State level as soon as USEPA approves the Illinois program. For standards which are adopted after program approval, the Board will adopt or incorporate the USEPA compliance date with the standard. The intermediate case is the most complex: categories for which compliance will be required at the USEPA level during the pendency of program approval. For these sources compliance will be required as of the latest of the following dates: USEPA compliance date; Board adoption or incorporation; and program approval.

This scheme assumes that USEPA will continue to specify the compliance date with the standards, as is its current practice. If USEPA stops doing this, it will be necessary for the Board to determine the date and specify it when it incorporates the standard. In the absence of a specified date, immediate compliance will be required upon adoption or incorporation by the Board.

As is discussed above, this Section refers only to compliance dates for purposes of enforcement of Board rules. The

Board has added Section 310.222(c) to make it clear that these standards are enforceable as federal law prior to authorization of the Illinois program. (USEPA, IEPA, NSSD). Also, as discussed above, NPDES and pretreatment permit conditions established pursuant to Section 307.105 will remain enforceable as State law.

Section 310.230

This Section is drawn from 40 CFR 403.6(c). The Board has dropped introductory language reflecting USEPA's intentions in adopting categorical standards. The Board has also edited "effluent" to "discharge" in the last sentence. (IEPA)

Section 310.232

This Section is drawn from 40 CFR 403.6(d). This contains the anti-dilution rule. The USEPA rule is limited to "categorical" pretreatment standards. The Board proposed to make this applicable to all the pretreatment standards, including the Board's concentration-based standards for mercury and cyanide. The Agency supported applying the anti-dilution rule to these standards, but pointed out that, as worded, the anti-dilution rule would also apply to local limits. The Agency suggested that this was beyond the Board's authority, while MSD specifically endorsed it. (IEPA and MSD)

35 Ill. Adm. Code 304.121(a) prohibits dilution "of the effluent from a treatment works or from any wastewater source." This applies to the Board's existing Part 307 standards. As far as these standards are concerned, there is no change from the existing rules by making this Section apply to all standards.

With respect to local limits, it is possible that dilution might be an acceptable treatment, although this would be highly unusual. The Board has added a sentence allowing the POTW to override the anti-dilution rule. However, the Board will leave it as a general rule which applies if the PCTW is silent in its ordinance.

Section 310.233

This Section is drawn from 40 CFR 403.6(e). It specifies the methods for deriving discharge limits where wastewater from more than one source is combined prior to discharge.

Most of the changes to this Section involve format. The symbols in the formulas have been modified to avoid the use of subscripts and superscripts, which inevitably cause problems in the printed version of Board rules. For similar reasons, the sigma sign for summation has been replaced with the "SUM" function, which is defined in the rule. The formula has been written in a one line format, also to avoid proofreading problems.

Section 310.233(a) defines "average daily flow" as a "reasonable measure of the average daily flow for a 30-day period." One commenter suggested insertion of "minimum" in front of "30" because USEPA sometimes insists on a five year average. The Board believes that this would change the intent of the rule. Under some circumstances it might take a five year average to get a reasonable measure of average daily flow, while under other circumstances a single day's measurement might be a reasonable measure, depending on the variability. The purpose of the 30-days is to indicate that the average daily flow is to take account of such things as weekends and work cycles over that period. (NSSD).

Section 310.233(c) spells out the type of self monitoring required to show compliance with an alternative standard set under the formula. It does not deal with the question of whether a program submission should provide for self-monitoring. This is contained in Section 310.510. (NSSD).

40 CFR 403.6(e) contains two large asides in the definitions of the terms used in each of the formulas. It is impossible to meet codification requirements with this format. The asides have been moved to Section 310.233(d) and (e). This also avoids unnecessary repetition of the asides.

Section 310.233(d) has been modified to remove discretionary language. The control authority will have to make the dilution determination if the user asks for one. This does not mean that the control authority has to decide that the wastestream "should be classified as diluted." All it means is that, if asked, the control authority has to say yes or no.

The Agency has commented that the control authority "should be able to require installation of a sampling point prior to mixing with other discharges if it does not desire to collect all of the information required by the formula to determine compliance." (IEPA). This does not appear to have anything to do with the language of this Section.

Section 310.301 Removal Credits

As was discussed above, the Board received a motion to reconsider from IMA and Steel requesting that the Board add removal credits based on 40 CFR 403.7. Eventually IMA and Steel filed proposed language with the Board, and the Agency concurred as to the desireability of addressing removal credits in this Docket. On September 4, 1987, the Board granted the motion to reconsider, vacated the July 16 Opinion and Order and indicated that it would adopt this Proposed Opinion and Order including removal credits.

Removal credits were adopted by USEPA at 46 Fed. Reg. 9439, January 28, 1981. This version can be found in 40 CFR 403.7

(1983). USEPA suspended these rules as a result of litigation. USEPA revised the removal credits rules at 49 Fed. Reg. 31212, August 3, 1984. This resulted in an appeal in the federal courts. NRDC v. USEPA, 790 F. 2d 289 (Third Circuit, 1986) The result is a remand to USEPA with instructions to correct deficiencies in the removal credits provisions. USEPA has not acted on the remand.

The pretreatment program is designed in part to prevent toxic pollutants discharged by industry from passing through a POTW to be discharged to "navigable waters," and to prevent contamination of POTW sludge. A POTW may be able to remove toxic pollutants to a certain extent without contaminating its sludge. If this is so, 40 CFR 403.7 would allow the POTW to apply for authorization to grant "removal credits." If authorized, a POTW could allow dischargers to increase pollutant loadings beyond that allowed by the categorical standards. For example, assume a categorical standard allowed a user to discharge up to 20 lbs per day of a pollutant and that the POTW has a 60% removal efficiency for that pollutant. The POTW could allow the user to discharge up to 50 lbs per day of the pollutant pursuant to a removal credit. 50 lbs/day with a 60% removal results in the discharge of 20 lbs/day from the POTW.

The Appeals Court remanded the rules to USEPA based on several flaws. First, the method of measuring the removal efficiency of the POTW had a lower confidence level than that required for USEPA effluent guidelines, violating a specific requirement of the Clean Water Act. Second, the rules ignore the effect of direct discharge of toxic pollutants by way of sewer overflows. Third, the rules allow the approval authority to withdraw from the POTW authorization to grant removal credits only if the POTW's removal rate drops consistently and substantially below the rate claimed in the application. Fourth, USEPA has not yet promulgated sludge disposal rules, a condition precedent to granting removal credits under the Clean Water Act.

There are two ways to construe the effect of NRDC v. USEPA: One could view the removal credits provisions as null and void pending USEPA action on the remand; or, one could view the rules as operative as modified by the Court's opinion. The opinion is not clear as to which was intended.

Based on the Agency's earlier comments, and on the Agency's and USEPA's lack of comment on the Board's earlier proposed rules in this Docket, the Board believes that adoption of the removal credits rules is not required at this time to satisfy USEPA requirements or to obtain program review and authorization. However, as noted above, the Board believes that the "identical in substance mandate" of Section 13.3 of the Act requires it to go beyond adoption of a minimally approvable program. The Board attempts to adopt a regulatory program which has the same

substance as the rules applied by USEPA in states without authorization. The question is therefore whether USEPA views the removal credits rules a null and void or, on the other hand, as operative as modified by the opinion in NRDC v. USEPA.

IMA and Steel have produced a letter from Lawrence J. Jensen, Assistant Administrator of USEPA to Jon Olson, Chairman, Conference on Removal Credits, dated June 5, 1987. (IEPA Amended Response of August 19, 1987). The letter states that USEPA views the removal credits as operative, with the 1981 regulatory language substituted for the 1984 language where indicated in the Court's opinion. IMA and Steel have furthermore drafted a regulatory proposal which purports to accomplish this modification. The Agency has concurred in this interpretation, and given a preliminary endorsement to the proposed language. The Board has therefore modified the proposal to include language similar to that proposed by IMA and Steel. The Board will adopt this unless pursuaded to do otherwise as a result of an additional comment period.

The Board notes that it is accepting this approach and the attendant delay only because it has been requested by the Agency, which has the responsibility of pursuing the program authorization. The evil consequences, cited by IMA and Steel, of failure to adopt removal credits at this time would not have happened. The Agency would have requested authorization of the program less the removal credits. USEPA would have retained removal credits authority when delegating program authority to the Agency. USEPA would have continued to approve this portion of POTW program submissions pursuant to whatever law it thinks applies, and POTW's could have continued to grant removal credits wherever authorized by USEPA. Indeed, it is possible that USEPA will refuse to delegate this portion of the program until its rules are revised to accommodate the Court's opinion, regardless of any action the Board takes.

The Board also wishes to distinguish this action of attempting to anticipate the result of a remand to USEPA in the original adoption of a program from attempting to anticipate such action during the ongoing maintenance of "identical in substance" programs. If the Board, after a successful federal appeal, were to adopt a program which was at odds with the result of the appeal, the Board would be taking an affirmative action which could be challenged on appeal. This is different from inaction on existing State rules pending USEPA action on the the remand. In such a situation, the Board views the federal Court opinion as applying to the derivative Board rule pending Board action in adopting the USEPA revisions resulting from the opinion.

The Board's proposal for the most part follows the IMA and Steel proposal (which will be referred to as "the proposal" in the remainder of the discussion of this Subpart). The Board has renumbered the Sections so as to leave space for the inevitable

USEPA renumbering. Two of the Sections have been internally renumbered as noted below. This Opinion will generally follow the current numbering of the Order. References to certain numbers "in the proposal" will be understood to refer to the equivalent Sections in the IMA and Steel proposal.

The Board has made general edits to the proposal along the same lines as discussed above for the rest of this Part.

The proposal included only a single reference from the remainder of the rules into the removal credits. The Board has identified about another dozen such references. These are discussed with the Sections where they occur. It may be worth noting that, because of these omissions, under the proposal there would have been no method to apply for removal credit authorization, or for the Agency to have granted the authorization to POTW's.

The Board has added Section 310.301 to the proposal. This is based on 40 CFR 403.7(a), which contains definitions applicable only to removal credits. The proposal suggested making all of the 40 CFR 403.7 definitions global by adding them to Section 310.110. The Board has instead proposed to keep most of them as local definitions; specifically to keep the prohibition on dilution in "removal" from affecting other portions of the rules.

The Board has moved "sludge requirements" to Section 310.110. USEPA uses similar language in its global definition of "interference." The Board believes that USEPA intends the sludge requirements to be the same in both places. The Board wants to consolidate these references in a single place to make certain that its rendering is consistent in both places. Note that the Board earlier proposed to modify the definition of "interference" to specify State sludge programs, and that these modifications were accepted by all participants without comment.

The Opinion in NRDC v. USEPA cites the lack of USEPA sludge disposal regulations as a flaw in the USEPA rules. However, the proposal drew on the 40 CFR 403.7(a) definition in the remanded rules without any apparent changes. The Board believes that it has addressed the concerns in the Court opinion to some degree by citing specific State programs, which are far more specific and detailed than current USEPA rules.

The definitions of "consistent removal" and "overflow" are not found in the current version of 40 CFR 403.7. The proposal draws on the 1981 amendments, as mandated by the opinion in NRDC v. USEPA.

40 CFR 403.7 contains frequent references to "industrial user(s)" and "pretreatment standard(s)." This type of unconventional usage has come under attack in the 1987 edition of

the Administrative Code Style Manual. The Board has added definitions to make it clear that the singular means the plural, so as to avoid this usage.

Section 310.303

The Board has used the defined term "sludge requirements," instead of attempting a partial redefinition here.

Section 310.310

The Board has rewritten the formula to use percents and so that it all fits on a single line. The formula of 40 CFR 403.7(a)(4) requires the removal credit to be expressed as a fraction, which is confusing since it is defined below in the rules, and universally expressed, as a percent. The Board has placed the formula on a single line to avoid editing problems which inevitably arise otherwise.

Section 310.311

This Section is drawn from 40 CFR 403.7(b), with modifications to meet NRDC v. USEPA, which criticized the method required to establish "consistent removal". The proposal is based on the 1981 rules.

The Board has restored the USEPA subsection headings indentation levels, which were deleted and modified in the proposal. Although this makes it harder to reference the proposal, it is much easier to compare the Order with the 1981 USEPA rules.

Section 310.311(c)(2)(B), which was Section 310.304(d) of the proposal, allowed the use of historical data "amassed prior to the effective date of this Section" as a substitute for sampling. This was copied from the USEPA rule, which was effective in 1981. The Board has inserted that date to avoid the problems noted above in connection with advancing USEPA dates. However, the Board solicits comment as to whether it is now appropriate to allow the use of historical data more than seven years old. Would it not be more appropriate for the State rule to allow use of data amassed pursuant to 40 CFR 403.7 prior to the effective date of the State rule?

Section 310.311(e) references the test methods of 40 CFR 136. The Board has added a reference to the incorporation by reference in Section 307.1003. The Board has also referenced 40 CFR 403.12(b) for the USEPA determination allowing other analytical techniques. This is discussed below in connection with Section 310.602.

Section 310.312

This Section is drawn from 40 CFR 403.7(c). It allows the POTW to grant provisional removal credits to new or modified facilities, subject to a demonstration of consistent removal within 18 months after the discharge commences. The Board has restored the final sentence, which was omitted from the proposal. This requires the Agency to terminate authority to grant removal credits under certain circumstances.

Section 310.320

This Section is drawn from 40 CFR 403.7 (1983), pursuant to NRDC v. USEPA. It requires the POTW to compensate for overflow of untreated wastewater between the user and the POTW. The removal credit either has to be reduced to compensate for overflow events, or the users have to cease discharging in anticipation of overflow events.

The Board has restored the USEPA subsection headings and the levels of indentation in this Section. This again complicates references to the proposal.

The proposal provided that the Section does not apply if users "can demonstrate" that overflow does not occur between the users and the POTW. The Board has changed it to "demonstrates" to make it clear that the Section contemplates an actual prior demonstration by the user.

The proposal would also have allowed the Agency to grant allowances where the POTW "submits to the Agency evidence" that, for example, users have the ability cease discharging to prevent overflows. The Board has modified this to make it clear that the POTW has to "demonstrate" such ability. The language of the proposal was subject to the interpretation that the allowance had to be granted if there was any evidence to support it, as opposed to the usual practice of requiring the Agency to weigh the evidence before it. For example, under the proposed language, the Agency would have been required to accept the POTW's word that flow diversion equipment existed, even if its inspection revealed that the equipment did not exist.

The formula of Section 310.320(b)(1) has been modified so it can be written on one line.

Section 310.340

This Section is drawn from 40 CFR 407(e)(1)-(4), which specifies the contents of the application from the POTW to the Agency for authority to grant removal credits. Section 310.340(d)(5) requires certain information concerning sludge removal practices at the POTW. The Board notes that 40 CFR 403.7(d)(5) and (6) (1983) gave the approval authority considerably more information about sludge practices. The Board solicits comment as to whether NRDC v. USEPA requires these provisions in the rules.

Section 310.351

This Section is drawn from 40 CFR 403.7(f)(5) (1983), as required by NRDC v. USEPA, instead of 40 CFR 403.7(f)(4) (1986). This governs modification or withdrawal of removal credit authority from the POTW, and credits from users. The Agency can withdraw authority if it determines that the POTW has granted credits in violation of the rules, or if credits granted are causing pass through or interference.

Section 310.400 Pretreatment Permits

The Agency suggested alternative language for this entire Subpart. (IEPA). The Board has made extensive changes in response to comments, mainly from the Agency.

The Board has added a preamble in the form of Section 307.400. This will help avoid the incorrect interpretation that this Subpart applies in the presence of an approved POTW pretreatment program. (NSSD).

The Agency pointed out that many users would be subject to the construction and operating permit requirement of 35 Ill. Adm. Code 309.Subpart B. The Board has added a reference to that Subpart, which has been amended as discussed above. Users who have pretreatment permits will be exempt from the Part 309 operating permit. However, new construction will continue to require a Part 309 construction permit.

The following Sections govern issuance of pretreatment permits by the Agency. These permits will be required of dischargers unless and until the Agency approves a pretreatment program. These rules are based on 40 CFR 403.10(e) and (f). However, they do not follow the text of the USEPA rule, which specifies the contents of the program submission which IEPA will give to USEPA. The Board rules will be a portion of this submission, which will also include things out of the Board's jurisdiction, such as the adequacy of funding for inspections.

Section 310.401

The March 5, 1987 Proposal used the term "non-domestic" source to state the scope of the pretreatment permit requirement. Pursuant to the Agency's comments, the July 16 rules drew on the language of the existing 35 Ill. Adm. Code 309.Subpart B pretreatment permit requirement to state the scope of the new Part 310 requirement. In the July 16 Opinion the Board noted that the rules could be greatly simplified and clarified if the term "industrial user" were defined globally, drawing on the language of existing 35 Ill. Adm. Code 309.Subpart B. As is discussed above in connection with the definitions in Section 310.110, the Board has made this change. As a result of

this change much of the language of Section 310.401 is now found in the definition of "industrial user." However, there is no substantive change from the July 16 rules.

There are three categories of industrial user which are addressed in Section 310.401.

The first category is for dischargers to a POTW with an approved program. These users will be exempt from the pretreatment permit requirement, and will have to obtain an authorization to discharge from the POTW pursuant to whatever mechanism is approved in the program submission.

The second category are users who meet any of the criteria for an operating permit under Section 309.202(b). Pretreatment permits will be required if the user discharges "toxic pollutants," if the user is subject to a categorical standard or if the user discharges more than 15% of the total hydraulic flow or organic loading to a plant. Rather than reference the Clean Water Act for the definition of "toxic" and for the categorical standards, the Board has referenced the equivalent rules adopted in this Docket in Part 307.

The third category includes users who don't meet the above criteria, but whom the Agency determines have caused pass through or interference, or have presented an imminent endangerment to public health. This category is again drawn from Section 309.202(b), although the Board has used the terminology of the new rules instead of referencing the Clean Water Act. The Board has also added a requirement of notice to the discharger before a permit is required, in order to give the discharger time to apply before being in violation of the permit requirement itself. Once the discharger causes pass through or interference, he will have to apply for a pretreatment permit within 30 days, as well as being subject to enforcement for the specific incident.

The Agency also suggested a specific exclusion for persons with NPDES permits. This seems to be unnecessary in the context of Part 310. (IEPA)

Section 310.402

Pursuant to the Agency's comments, the Board has added a Section specifying that applications must be received at least 90 days before a permit is needed, or 90 days before a permit expires. These times coincide with the 90 days the Agency has to review applications under Section 39(a) of the Act. If the user files a timely, complete application, he will be able to continue to discharge pending Agency action (Section 310.422).

Section 310.403

The Board has added this Section to make sure the Agency has authority to address imminent endangerment to public health. Section 34(a) of the Act allows the Agency to declare an emergency and seal facilities "upon a finding that episode or emergency conditions specified in Board regulations exist." Section 34(b) allows the Agency to take similar action "in other cases in which the Agency finds that an emergency condition exists creating an immediate danger to health." Section 34(b) is probably sufficient to allow the Agency to take action in the absence of a Board rule. However, the Board has adopted the "imminent endangerment" language in this Subpart to make it clear that the Agency can act under Section 34(a) under the same standard as USEPA.

Section 310.410

This Section contains the minimum information requirements to get a pretreatment permit. This is drawn from the Agency's comment. The Agency will be expected to promulgate application forms. The Agency can request additional necessary information either in the forms or through individual requests to applicants. The Agency has authority to adopt procedures for pretreatment permit issuance pursuant to Section 39(a) of the Act.

Section 310.411

As suggested by the Agency, the Board has added a Section requiring that the user obtain from the POTW and owners of any intervening sewers certifications that they have capacity to transport and treat the discharge.

Section 310.412

As suggested by the Agency, the Board has specified the identity of the persons who can sign the application. This is drawn from other signatory requirements, such as 40 CFR 403.12(i).

Section 310.413

The Board has added this Section at the Agency's suggestion. If the Agency determines that a site visit is necessary to evaluate the application, it should notify the discharger. If this is done within 30 days after receipt of the application, the failure to allow a site visit results in an incomplete application, which the Agency can deny.

Section 310.414

The Board has added a Section on completeness at the Agency's suggestion. The Board has added a requirement that the Agency notify the applicant of an incomplete application within

30 days after receipt. This is drawn from Section 309.225(a). If the Agency fails to so notify, it cannot reject the application as incomplete, although it can deny it for failure to provide adequate proof.

Section 310.415

The Board has added this Section after reflecting on Section 310.402. This references the 90-day decision period of Section 39(a) of the Act. It also states the result of Section 16(b) of the APA.

Section 39(a) provides that the applicant "may deem the permit issued," but does not say for how long. The Board has construed this consistent with the purposes of the Act and the APA. The decision period is intended to avoid inconvenience to the public from delays by the Agency, but is not intended to provide a reward for Agency errors. (See R81-18, Opinion and Order of September 4, 1987.)

If the application is for renewal of a permit, Section 310.415 provides that the old permit continues in effect pending issuance of the new permit. If the application is for a new permit, the applicant may deem the permit issued for a period of one year, starting at the end of the 90-day period. This should allow adequate time to restart the application process. It should be noted that the deemed issued permit does not excuse the discharger from compliance with the pretreatment standards.

Section 310.420

The Board proposed the classical standard for permit issuance, that the applicant prove that the discharge will meet regulatory requirements. At the Agency's suggestion the Board has expanded this to specifically authorize the Agency to issue permits with compliance schedules, and other conditions which will result in compliance, to users who cannot demonstrate present compliance. The Board has retained the classical standard to make it clear that the Agency can deny permits when, for example, it does not have enough information to establish conditions leading to compliance.

Section 310.421

Pursuant to the Agency's comments, the Board has added a Section specifying the form of the Agency's final action. This will either be a written permit or a letter of denial with the reasons as specified in Section 39(a).

Section 310.430

The Board has retained this Section, although the Agency asked that it be shortened to the general statement of conditions

the Agency can impose. The Board believes that the Agency should have a list of conditions similar to that which the POTW should have in the program submission.

The Board has added Section 310.430(e) to allow inspections at reasonable times upon presentation of credentials, consistent with existing Section 309.147. (USEPA).

The Board has added references to three additional types of conditions referenced in the Agency's comments. Section 310.430(f), (g) and (h) reference more extensive rules on expiration dates, compliance plans and modification. These are discussed below.

Section 310.431

As suggested by the Agency, the Board has provided that pretreatment permits can be issued for up to five years. The Agency can shorten this to coordinate with future compliance dates. The Agency can also issue short-term permits for experimental processes and to cover emergency situations.

Section 310.432

The Board has added a Section on compliance plans at the Agency's suggestion. This is drawn from 40 CFR 403.8(d), which applies to the POTW's program submission.

The Board has added a specific reference to variances and enforcement orders, which are traditional methods of establishing compliance schedules in Illinois. This is similar to Section 309.184. The Board will be subject to Clean Water Act limitations in establishing compliance schedules. If the Agency is the control authority, the schedule will be included in the pretreatment permit.

Section 310.441

The Board has added this Section in response to Agency comments. Pretreatment permits will function only as a defense to the permit requirement. Permit compliance will not excuse a person from complying with the underlying rules.

Section 310.442

The Board has added a Section on modification at the Agency's suggestion. Paragraph (a) makes it clear that modification at the request of the permittee is always allowed. Paragraph (b) allows the Agency to reopen the permit if it obtains new information, or if new rules are adopted. The Agency has to give notice to the permittee that it is reviewing the application, and allow the permittee to file a new application. As noted above, the Board has added a requirement to Section

310.430 that the Agency include a modification condition in each permit to make sure that everybody is aware of this.

Section 310.443

At the Agency's suggestion the Board has added a Section on revocation. This references the Act and Board procedures for enforcement. It includes a list of causes for revocation which is drawn from existing Section 309.182(b) and 309.264.

Section 310.444

The Board solicited comment on whether pretreatment permits were subject to third party appeals. The Board has reviewed the Act in light of the comment and concluded that pretreatment permits are best characterized as Section 39(a) permits required by Section 13.3 of the Act and Board rules necessary to implement Section 13.3, rather than as ancillary to the POTW's NPDES permit. There is no right of third party appeals for such permits. (USEPA and IEPA)

Section 310.501

This Section is drawn from 40 CFR 403.8(a). This Section determines which POTW's are required to develop pretreatment programs: those above 5 mgd which receive from industrial users pollutants which pass through or interfere with the POTW, or which receive discharges from users which are subject to pretreatment standards. The Agency can also require smaller POTW's to develop programs under certain stated circumstances.

This Section has been reworded from the comparable federal language. The Board solicited comment as to whether the revisions resulted in any changes in meaning. The Board received only positive comment. (USEPA).

The Board has changed Section 310.501(a)(2) to make it clear that it references the categorical standards of 35 Ill. Adm. Code 307.

40 CFR 403.8(a) exempts POTW's if the State assumes direct responsibility for pretreatment permits. The Board questioned whether the Agency wanted to exercise this option. The Agency indicated that it did. (IEPA). The Board has therefore added Section 310.501(c) to allow the Agency to waive the requirement that POTW's develop programs. The waiver has to be written. The Agency will have to allow the POTW time to develop a program if it rescinds a waiver.

The Board has worded this Section so that POTW's are required to develop programs under objective standards, subject to a discretionary waiver. The language suggested by the Agency made the requirement to develop a program discretionary, inviting

confusion between POTW's which didn't need a program because they were small versus POTW's which needed a program, but were in a situation such that the Agency preferred to administer the program.

Section 310.502

This Section is drawn from 40 CFR 403.8(b). The USEPA rule requires POTW's to develop pretreatment programs no later than July 1, 1983, which has already passed. The Board proposed to substitute July 1, 1988, as the Illinois deadline, and solicited comment. The Board received adverse comment. (IEPA and USEPA). The Board has adopted the Agency's suggestion of keying the deadline for having an approved program to one year after the issuance of an NPDES permit requiring program development.

Section 310.503

This Section is drawn from 40 CFR 403.8(c). The USEPA rule treats modification of the POTW's NPDES permit to incorporate an approved pretreatment program as a "minor modification." As such it is not subject to the detailed procedures for permit issuance of 40 CFR 122. The Agency asked the Board to delete this provision, noting that any future program approvals will come years after the programs should have been in place under 40 CFR 403, and therefore should be treated as major. (IEPA). The Board agrees.

One commenter asked that the Board allow POTW's with multiple treatment works to establish a pretreatment program in the NPDES permit for only one facility. (NSSD). This appears to be contrary to the intent of the federal rules.

Section 310.504

This Section is drawn from 40 CFR 403.8(d). If the Agency issues an NPDES permit for a POTW required to establish a pretreatment program, but which has not done so, the Agency is to include a compliance schedule in the permit. The compliance schedule is to lead to an approved program within one year for consistency with Section 310.502. This date is intrinsically keyed to permit reissuance. (IEPA).

Section 310.505

This Section is drawn from 40 CFR 403.8(e). It requires the Agency to modify or reissue permits to incorporate an approved pretreatment program or to place the POTW on a compliance schedule leading to an approved program.

The USEPA rule uses the phrase "revoke and reissue" instead of "reissue" to describe the process by which the Agency replaces an earlier permit with a new permit. The Board has modifed the

term to avoid confusion with permit revocation as a penalty for violation of the Act. This modification is consistent with the terminology adopted in the RCRA rules in R86-1 (Opinion and Order of June 20 and July 11, 1986.)

The Board has deleted references to coordination with the grants program, since grants are no longer available anyway. (IEPA).

The Board has added a reference to the removal credits program rules of Subpart C. (Section 310.505(e).)

Section 310.510

This Section is drawn from 40 CFR 403.8(f). This Section establishes the requirements for an approvable pretreatment program.

40 CFR 403.8(f)(1) establishes the legal authority which a POTW must have for program approval. Generally the POTW has to have legal authority to enforce Parts 307 and 310. The Board has specified in Section 310.510(a) only its own rules, without requiring the POTW to have the authority to enforce the USEPA rules or CWA directly.

40 CFR 403.8(f)(1)(v) requires that the POTW have authority to enter any place where records are required to be kept under 40 CFR 403.12(m). The correct reference should be to Section 403.12(1), whose equivalent is Section 310.634.

40 CFR 403.8(f)(1)(vi) requires that POTW's have authority to seek civil or criminal penalties against dischargers which do not comply with pretreatment requirements if the state has laws which allow POTW's to seek such penalties. If the state does not allow actual penalties, POTW's have to contract with dischargers specifying penalties. USEPA has proposed to repeal this option at 51 Fed. Reg. 21479, June 12, 1986. (IEPA).

Municipalities may pass ordinances with fines and penalties of up to $500 and six months imprisonment. (Ill. Rev. Stat. 1985, ch. 24, Sec. 1-2-1 and 1-2-1.1). Sanitary Districts have similar powers. (Ill. Rev. Stat. 1985, ch. 42, Sec. 305.1, and Section 46(c) of the Act. (IEPA). Note that both are "units of local government" as defined above.

The Board has deleted the option of regulating through contracts from the proposal. Units of local government appear to have adequate authority to regulate by ordinance, and this seems to be the clear preference of all commenters. (USEPA, IEPA, NSSD and MSD).

40 CFR 403.8(f)(1)(iii), reflected in Section 310.510(a)(3), requires the POTW to control discharges through "permit,

contract, order or similar means." One commenter pointed out that this appears to be inconsistent with control through ordinances. (MSD). The Board has therefore added "ordinances" to the list, and removed "contracts". There are similar problems in several other sentences in this Section.

40 CFR 403.8(f)(2) contains several provisions requiring the POTW to share information with USEPA or the State agency. As is discussed above in connection with Section 310.103, USEPA will retain authority to request information pursuant to federal law. Information sharing between IEPA and USEPA will be governed by the MCA. (IEPA and USPEA).

40 CFR 403.8(f)(2)(vii) requires notices to be published in the largest daily newspaper "published" in the unit of local government in which the POTW is located. This is reflected in Section 310.510(b)(7). The Board has modified this to track Section 309.109(a)(2)(C). There are situations in Illinois in which newspapers are "published" in certain municipalities, but are wholly inappropriate for a notice of local importance. (IEPA) The Board has dropped the requirement of publication in a daily newspaper, recognizing that less frequently published papers may actually be the most appropriate place for notice. (IEPA Motion for Reconsideration).

40 CFR 403.8(f)(3), reflected in Section 310.510(c), includes language which allows POTW's to have limited program approval without adequate funding. This has been deleted since further delays are not appropriate at this late date. (IEPA).

Section 310.522

This Section is drawn from 40 CFR 403.9(b). The Board has changed "city attorney or a city official acting in a comparable capacity ... " to "attorney or official acting in a comparable capacity for the unit of local government". (MSD).

Section 310.524

This Section is drawn from 40 CFR 403.9(d). The Board has added this Section to require the POTW to submit the removal credits application. The reference in 40 CFR 403.9(d) to Section 403.7(d) should be corrected to read 403.7(e).

Section 310.531 and 310.532

These Sections are drawn from 40 CFR 403.9(e) and (f). The Board has added references to the removal credits program rules of Subpart C.

Section 310.533

This Section implements 40 CFR 403.9(g). The Section is simple because the Agency is the water quality management agency in Illinois.

The Board has adopted no equivalent of 40 CFR 403.10, which governs the IEPA's submission of the State program to USEPA. These rules should be submitted to USEPA as a part of the program submission under this Section.

Section 310.541

This Section is drawn from 40 CFR 403.11(a). This and the following Sections set up the procedures which the Agency follows in approving pretreatment programs. As provided above, this results in a modification of the POTW's NPDES permit.

The Board has added references to the removal credits program rules of Subpart C. The references in 40 CFR 403.11(a) to 40 CFR 403.7(d) and 403.9(b) should be corrected to read Sections 403.7(e) and 403.9(d).

Section 310.542

This Section is drawn from 40 CFR 403.11(b). The Board has implemented the USEPA rule by specifying certain agencies which are to receive public notice of the pretreatment program. The Board has specified that regional planning agencies responsible for water quality management plans are to receive notice. This recognizes the interest of the regional planning agencies, such as NIPC, in water quality management plans.

The Board has added a reference to the removal credits program rules of Subpart C.

Section 310.544

This Section leads into 40 CFR 403.11(d). The Board has not adopted the USEPA text, since it specifies only procedures to be followed by USEPA.

USEPA has the right to object to a proposed pretreatment program. The program proposal has to be modified to meet this objection. The POTW can contest the objection in accordance with USEPA rules, but cannot appeal the USEPA objection to the Board.

The Board has added a reference to the removal credits program rules of Subpart C. USEPA has the authority to object to each removal credit application from the POTW, as well as to the basic pretreatment program.

Section 310.545

This Section is drawn from 40 CFR 403.11(e). The Board has added a reference to the removal credits program rules of Subpart C. The notice of approval of the pretreatment program has to identify any removal credits authorized.

Section 310.547

POTW pretreatment program approval will be a part of NPDES permit issuance pursuant to Part 309. The program can be appealed to the Board only as a part of the appeal of a final NPDES permit action. (IEPA).

Section 310.601

This and the following Sections specify reporting requirements. Section 310.601 is drawn from 40 CFR 403.12(a). It contains a definition of "control authority:" the POTW after the pretreatment program has been approved, and the Agency before. The Board has adopted this as a global definition in Section 310.110, since the term is used throughout the Part.

As is discussed above, the Board has changed "approval authority" to "Agency" throughout these rules, which will become effective upon program authorization. Until that time USEPA will act as the approval authority pursuant to 40 CFR 403. (USEPA)

Section 310.602

This Section is drawn from 40 CFR 403.12(b). It requires the user to prepare a "baseline report" describing the wastewater and wastewater source.

Section 310.602(e)(1) requires the industrial user to identify the applicable pretreatment standards. Of course the user may be wrong. This is for the control authority to decide. (NSSD)

Section 310.602(e)(6) governs sampling and analysis. 40 CFR 403.12(b)(5)(vi) appears to contain a reference to future amendments to 40 CFR 136. The Board believes these are precluded by the APA. The Board has incorporated the current version of Part 136 in Section 307.1003, which will be referenced at this point. That Section will be periodically updated as these rules are maintained.

The USEPA rules allow the Administrator to approve alternative sampling and analysis methods. USEPA has indicated that it will retain authority to approve alternative sampling techniques. (IEPA and USEPA)

The Board has added a reference to the removal credits program rules of Subpart C. (Section 310.602(g)). Industrial user's compliance schedules should to take account of any removal credits.

The Board has changed "and/or" to "or", which appears to convey the correct meaning in this context. "And/or" has come under recent attack from the Administrative Code Unit.

Under the federal rule, existing industrial users are required to prepare a "baseline report" within 180 days after adoption of a new pretreatment standard, or within 180 days after a category determination is made. The Board has moved the time provisions to subsection (h) since they are too complex at the State level to be included in the introductory paragraph

In Section 310.602(h) the Board has followed the general approach discussed above in connection with compliance dates. Up to the time of program authorization, baseline reports are to be submitted to USEPA pursuant to 40 CFR 403. For standards adopted by USEPA after the Illinois program is authorized, the baseline report due date will be keyed to the time Illinois adopts the standard, which will be a few months after USEPA. In particular, the Board will not require new baseline reports for the standards it adopts with the initial program. (USEPA)

Section 310.605

This Section is drawn from 40 CFR 403.12(e), which allows the control authority to "agree" to alter the requirement of reports in June and December at its discretion, in consideration of such things as budget cycles. It is not clear with whom the agreement is to be made. The Board has simplified and clarified the language, to provide that the control authority "may alter" the due months. The reports will still be due every six months, except for the initial period in which an alternative schedule is established.

Section 310.610

This Section is drawn from 40 CFR 403.12(g). The first sentence of the USEPA rule contains a "therein" which has been rendered as "in the discharge" for clarity. For the reasons noted above, the Section has been edited to reference USEPA procedures for approval of alternative sampling methods. (IEPA and USEPA)

Section 310.631

This Section is drawn from 40 CFR 403.12(i). The introductory language has been modified to replace "may be" with "is" in the definition of "authorized representative."

Section 310.634

This Section is drawn from 40 CFR 403.12(l). Paragraph (c) has been modified so that the Agency will control retention of documents by the PCTW. As is discussed above, USEPA will retain

control pursuant to 40 CFR 403 and will be able instruct the Agency to request longer retention pursuant to the MOA. (IEPA and USEPA)

One commenter suggested that this be amended to allow the POTW to extend the retention period. (MSD). This is clearly not provided under the federal rules. The POTW could provide for this by ordinance.

Section 310.701

This Section is drawn from 40 CFR 403.13(a). This and the following Sections deal with "fundamentally different factors" ("FDF") variances. The Board has modified the rules to avoid describing these as "variances," a term which would be confusing in light of Board variances granted pursuant to Title IX of the Act. The Board has instead used "determination" to describe the fundamentally different factors process.

Board variances grant temporary relief from a rule when a petitioner demonstrates arbitrary and unreasonable hardship. The petitioner must have a plan for eventual compliance. On the other hand an FDF determination results in a permanent limitation, with no plan for eventual compliance. The variance procedures are clearly inappropriate. There is still a question as to whether the FDF determination is the equivalent of determining an environmental control standard, and hence an action reserved to the Board by Sections 5(c) and 13(a)(2) of the Act, or whether it is implementation of a Board rule as a part of permit issuance, and hence an action reserved to the Agency by Sections 4(g), 4(l) and 39 of the Act. If the decision were reserved to the Board, the appropriate procedure would be the adjusted standards of Section 28.1 of the Act.

As is explained in the introductory material to 40 CFR 403.13(b), the need for FDF determinations arises because of the method USEPA chose to establish pretreatment standards. USEPA chose to regulate by industry categories, rather than by pollutant. Industry categories, established by SIC codes, are mainly defined by products, without consideration of pollution potential. This raises the possibility that a discharger may meet the definition for inclusion in an industry category, yet have little in common with the industries which USEPA sampled in establishing the pretreatment standards for the category. USEPA has provided a mechanism by way of the FDF determination for arriving at permit limitations for users which fit into a regulated category, but which have factors fundamentally different than those looked at by USEPA in arriving at the categorical pretreatment standards.

Sections 310.703 et seq. spell out in great detail the factors to be considered by the Agency in making an FDF determination. Section 310.722 allows the requester to appeal a

denial to the Board. The specified factors appear to be sufficiently detailed to allow the Board to review the Agency's decision in a meaningful way. The Board therefore concludes that the FDF determination is in the nature of a permit review action which is within the Agency's authority.

The Board retains the authority to issue variances pursuant to the Act for arbitrary or unreasonable hardship. These would have to be consistent with federal law. A variance would have to meet the requirements of a delayed compliance plan, as well as the requirements specified under the Act and Part 104.

The Agency has questioned whether the FDF variance rules need to be adopted at all, since the Board has not adopted an equivalent with respect to the NPDES program. (IEPA). However, the pretreatment program differs from NPDES in an important respect. While Section 39(b) of the Act requires the Agency to apply federal law directly in writing the NPDES permit, Section 13.3 requires the Board to adopt identical in substance regulations. Once the Board takes this step, some sort of sign off is required at the State level before waivers are granted. Moreover, the Board has seen NPDES permit appeals which, at a minimum, would have been simpler if the FDF mechanism had been specifically provided in the Board rules. (Stepan Chemical v. IEPA, PCB 79-161, 39 PCB 130, 416, July 24 and September 4, 1980.)

The Agency's comments seek to place the Agency in the position of simply assembling the materials and recommending a decision to USEPA. As adopted, the rules require the Agency to actually make a decision to grant or deny, subject to USEPA approval. USEPA did not object to this aspect of the Board's proposal.

Section 310.702

This Section is drawn from 40 CFR 403.13(b). Much of the basic introductory material, which was referenced above, has been dropped. This relates to the rationale of USEPA in adopting the categorical standards, and is not appropriate in the Board rule, since the Board has merely incorporated the standards by reference.

Section 310.703 and 310.704

USEPA asked that the Board remove references to treatment costs from the FDF factors to comply with recent amendments to the Clean Water Act. (USEPA). These occur in 40 CFR 403.13(c) and (d). Based on the specific request from USEPA, the Board has done this. However, this may cause confusion when USEPA actually amends its rules.

Section 310.706

This Section is drawn from 40 CFR 403.13(f), which allows more stringent State and local requirements to override FDF determinations. Rather than repeat the directive of the USEPA rule, the Board has implemented it by stating the Illinois law on this. The Agency cannot grant an FDF determination with respect to the more stringent requirements established pursuant to independent Board authority. This presently consists of the cyanide and mercury standards discussed above. Also, the FDF determination could not be used to override any more stringent local limitations based on an evaluation of the system and discharges to it.

Section 310.711

This Section is drawn from 40 CFR 403.13(g), which sets the application deadline for FDF requests. The Board has modified this consistent with the above discussion of compliance deadlines and category request deadlines. Prior to program authorization, FDF requests will be directed to USEPA pursuant to 40 CFR 403. The Board rules will apply only to USEPA standards adopted after program authorization, and times will be keyed to the date of Board adoption. The Board will not allow a new FDF period for the old standards adopted with the program. (USEPA and IEPA).

Section 310.713

This Section is drawn from 40 CFR 403.13(i). It has been reworded for clarity.

Section 310.714

This Section is drawn from 40 CFR 403.13(j). For the reasons noted above, the Board has implemented the USEPA notice requirements with a more specific list of entities to be notified.

Section 310.722

This Section is drawn from 40 CFR 403.13(l). The preceding Section requires the Agency to notify the requester if it denies an FDF determination, or to otherwise forward the request to USEPA with an approval recommendation. Section 310.722(a) references the USEPA procedures for review of FDF determinations, but does not purport to specify them. Section 310.722(b) prohibits the Agency from granting any FDF approval unless USEPA approves.

Section 310.722(c)(1) allows the requester to appeal to the Board any finding of the Agency that FDF do not exist. Note that the most the Board could do would be to direct the Agency to forward the FDF request to USEPA. Section 310.722(c)(2) provides that the requester may contest USEPA decisions only as allowed by USEPA.

Section 310.801

This Section references the USEPA procedures of 40 CFR 403.15 for adjusting categorical standards to reflect the presence of pollutants in intake waters.

Section 310.901 et seq.

These provisions are drawn from 40 CFR 403.16, governing "upsets." An upset is an affirmative defense in the event of an enforcement action. However, to claim an upset, the discharger has to notify the POTW within 24 hours after the upset, and provide certain specified information. If the discharger fails to notify the POTW within 24 hours, the discharger is barred from later claiming that non-compliance resulted from an upset.

Section 310.905 provides that the Agency is to review upset claims, although any determinations are not final actions subject to review. The only review would come in the event of an enforcement action, at which time the Board would decide whether an upset occurred.

JCAR QUESTIONS

The JCAR questions consist of three identical questions for each Part, Parts 307 and 310. These are general questions, and the response is the same for each Part. The Board will therefore answer them in this section of the Opinion.

JCAR first questions how a rule can be adopted more than 180 days after USEPA has adopted it. JCAR asks if Section 5 of the APA applies after 180 days. The Board held that Section 5 does not apply in its Opinion and Order of July 16, 1987, in R86-46. (See also R87-3,4; Resolution of June 25, 1987.) In addition, most of the USEPA rules involved in R86-44 were adopted long before the authorizing statute, P.A. 84-1320. It was impossible for the Board to have met the 180 day requirement during this intitial rulemaking.

The second question concerns the statement of statewide policy objectives in the notices in the Register. Section 13.3 of the Act gives the Board no alternative but to adopt the rules in question. The policies behind the decision to adopt the rules are those of the General Assembly and not the Board. The policy objectives were set forth in Section 11 of the Act, which was referenced in the Notice, as required by the APA.

Recognizing that the pretreatment program will have a major impact on units of local government, the Board elaborated on the policy objectives in the notice in the Register.

The third question concerns whether the Board "received" any public comment, and whether it ever considers changing a rule in response to comment. The public comment is detailed above. As is detailed above, the Board has made numerous changes in response to comments.

This Opinion supports the Board's Proposed Order of this same day. The Board will mail copies of the Opinion and Order to persons on the mailing list, and receive public comment through October 30, 1987.

M. Nardulli abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 1st day of October, 1987, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 4, 1987

IN THE MATTER OF:)
) R86-44
PRETREATMENT REGULATIONS)

ORDER OF THE BOARD (by J. Marlin):

On August 20, 1987 the Board entered an Order postponing action on this matter for 14 days to allow the Environmental Protection Agency and the Chicago Association of Commerce and Industry, Illinois Manufacturer's Association, LTV Steel and Acme Steel to file a proposal including removal credits. The Board has received a partial proposal from the industry group, and an endorsement from the Agency on September 3, 1987. The Board will grant the Agency's amended motion for reconsideration of August 18, 1987. The Board will therefore vacate the July 16, 1987 Opinion and Order. The Board will revise the Opinion and Order to include removal credits, and will make other changes in response to motions received. The Board will adopt a new proposed Opinion and Order as soon as possible establishing a comment period to allow other interested persons to review the entire package, including the removal credits.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of September, 1987, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
August 20, 1987

IN THE MATTER OF:)
)
PRETREATMENT REGULATIONS) R86-44
)

ORDER OF THE BOARD (by J. Marlin):

On July 16, 1987, the Board adopted a final Opinion and Order in this matter. At that time, the Board indicated that it would withhold filing the pretreatment rules with the Administrative Code Unit until after August 5, 1987, to allow for motions for reconsideration by the agencies involved in authorization. The Board has received the following motions since the July 16 Order:

> Motion to Withhold Filing of Rules Pending Receipt of Removal Credits Regulatory Proposal filed by Chicago Association of Commerce and Industry, Illinois Manufacturer's Association, LTV Steel and Acme Steel ("IMA and Steel") on August 5, 1987.
>
> Motion for Reconsideration filed by Illinois Environmental Protection Agency, ("Agency" or "IEPA") on August 6, 1987.
>
> Response to Motion to Withhold Filing of Rules, filed by the Agency on August 18, 1987.
>
> Amended Motion for Reconsideration, filed by the Agency on August 18, 1987.
>
> Motion to Extend Time to File Removal Credit Proposal filed by IMA and Steel on August 19, 1987.
>
> Motion to Withdraw Agency's Response of August 14, 1987 and to File Agency Amended Response Instanter filed by the Agency on August 19, 1987.

The Board hereby grants the Agency's motion to withdraw its August 14th response to IMA and Steel's August 5 motion. In addition, the Board grants the Agency's motion to file its Amended Response instanter.

In its Amended Response the Agency states:

> The Agency is in receipt of a letter from Lawrence J. Jensen, Assistant Administrator of USEPA, to Jon Olson, Chairman, Conference on Removal Credits, dated June 5, 1987 which describes the context in which federal removal credit regulations currently exist...

The letter at page 2 states:

> Thus, the 1981 versions of the provisions defining consistent removal, listing the criteria and procedures for modifying or withdrawing removal credits authority, and requiring an adjustment to a POTW's removal credits to account for combined sewer overflows are again in effect. The remainder of the 1984 regulation continues to be in effect.

In light of these statements in this USEPA letter, the Agency agrees with the Participants that the Board should amend its proposed Pretreatment Regulations (R86-44) to incorporate necessary federal removal credit regulations which are currently in effect.

Tne Agency will hereby request a 14-day extension for the Agency and other interested participants to review the Participant's [IMA and Steel's] removal credits submissions and to submit Agency comments on the necessary removal credit rules for the Board's Pretreatment Regulations.

(Agency Amended Response, page 1-2).

Pursuant to the Agency's request, the Board will postpone further action in this docket for 14 days. This effectively allows IMA and Steel to file its Removal Credits Proposal, as requested in its August 5 Motion, by September 3, 1987 as it requested in its August 19 motion.

Any outstanding motions will be ruled upon when the Board takes action in response to comments and proposals filed since its Opinion and Order of July 16, 1987.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of August, 1987, by a vote of 6-0.

Dorothy M. Gunn/mm.
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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