

ILLINOIS POLLUTION CONTROL BOARD
June 17, 1998

IN THE MATTER OF:)
) R98-23
WASTEWATER PRETREATMENT) (Identical-in-Substance Rulemaking -
UPDATE, USEPA REGULATIONS) Water)
(July 1, 1997 through December 31, 1997))

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

Pursuant to Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (1996)), the Board adopts amendments to the Illinois wastewater pretreatment regulations. As discussed more fully below, the amendments incorporate revisions to the procedures for modification of wastewater pretreatment programs incorporated into an National Pollution Discharge Elimination System (NPDES) permit of a publicly-owned treatment works (POTW). In adopting the federal amendments to which the present amendments are "identical-in-substance," the United States Environmental Protection Agency (USEPA) stated that the amendments will reduce the regulatory burden and cost for such modifications.

Section 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/13.3 (1996)) provides for quick adoption of regulations that are identical in substance to federal wastewater pretreatment regulations adopted by USEPA pursuant to Sections 307(b), (c), and (d) and 402(b)(9) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1317(b), (c), (d), 1342(b)(9) (1996)). Section 13.3 also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (1996)), do not apply to this rulemaking. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal wastewater pretreatment regulations are found at 40 CFR 400-499, interspersed throughout the federal wastewater effluent discharge rules.

Section 7.2(b) of the Act (415 ILCS 5/7.2 (1996)) requires the Board to complete its identical-in-substance rulemaking actions within one year of the date of the earliest federal amendments involved in a docket. In this docket, the sole federal action requiring Board action was that of July 17, 1997. That means that the Board must complete its rulemaking activity in this docket prior to July 17, 1998.

On April 16, 1998, the Board adopted a proposal in this rulemaking for publication in the *Illinois Register*. See 22 Ill. Reg. 7465 (May 1, 1998). Upon publication of the proposal, a 45-day public comment period commenced. This public comment period expired on June 15, 1998. No public comments were received during the public comment period. Accordingly, the Board adopts the amendments as proposed.

FEDERAL ACTION CONSIDERED IN THIS RULEMAKING

The amendments adopted today include certain federal revisions that occurred in the period of July 1, 1997, through December 31, 1997. USEPA amended its wastewater pretreatment regulations once during that period. The single set of federal amendments that occurred during the period is as follows:

<u>Federal Action</u>	<u>Summary</u>
July 17, 1997 (62 Fed. Reg. 38406)	<u>Amendments to the Procedure for Modification of a Wastewater Pretreatment Program Incorporated into an NPDES Permit.</u> USEPA amended its wastewater pretreatment rules and NPDES permit rules to streamline the process in order to reduce the administrative burden and cost of program modifications.

DISCUSSION

USEPA amended its wastewater pretreatment regulations on July 17, 1997. See 62 Fed. Reg. 38406 (July 17, 1997). The amendments essentially reduce the administrative burden and cost associated with modification of a wastewater pretreatment program that is incorporated into a POTW's NPDES permit. USEPA undertook a number of amendments to 40 CFR 403 to streamline the procedure for program modification.

Specifically, USEPA reduced the number of categories of modifications that it considers "significant," thus reducing the number that are subject to the public notice requirements. USEPA no longer considers the following modifications "significant": changes in the legal authority of the POTW to operate its pretreatment program that make that authority more prescriptive; revisions in the legal authority that reflect changes in the federal regulations; changes in local pH limits; and reallocations of local limits that do not increase the ultimate discharge of that pollutant by the POTW. These changes are reflected in Section 301.921 of the attached order.

Further, USEPA eliminated some aspects of the notice requirements. First, USEPA amended the type of newspaper required for publication of public notice, so the largest paper in the area is no longer required. See Section 310.542 *infra* at 17. Second, the approval authority, *i.e.*, the Illinois Environmental Protection Agency (Agency) is not required to publish a notice of final program modification where there were no public comments on the notice of proposed program modifications. See Section 310.922 *infra* at 21. Further, as specified in Section 310.923, the POTW is now required to notify the Agency of any non-substantial modifications at least 45 days prior to its implementation by the POTW. If the Agency does not notify the POTW of its decision to approve or deny the modification, or to treat the modification as substantial, within 45 days, the POTW may implement the

modification. Finally, a POTW may change its list of industrial users without prior approval by the approval authority simply by changing the list in its annual report.

The Board has incorporated the federal amendments of July 17, 1997, with only minor deviation from the federal text. This would include those alterations in structure and wording that the Board finds are necessary to adapt the clear substance of the amended federal requirements into the text of the Illinois water pollution control regulations. In addition to the deviations from the text of the federal amendments, the Board has used this opportunity to make a small number of amendments to the base text of the existing regulations that are intended to correct minor, non-substantive faults. These minor revisions to the base text are intended to make the text comport more fully with Illinois codification requirements and with the most recent trends in codification style employed by JCAR. The Board tabulates below the deviations from the federal text and miscellaneous other amendments not directly driven by the federal amendments at this point. A brief description of each revision is set forth in the table. An asterisk marks Sections that would not be involved in this proceeding but for the indicated non-federally derived revision.¹ Deviations from the text of the federal amendments are indicated by underlining.

Deviations from the Text of the Federal Amendments and Amendments Not
Federally-Derived

Section	Revision(s)
* 310.501	Subpart heading number corrected
* 310.501(a)	Prepositional phrase moved for clarity; “which” changed to “that”; “receives discharges . . . following conditions” added for clarity
* 310.501(a)(1) & (a)(2)	“The POTW” and “discharges” added for clarity; “which” changed to “that”
* 310.501(a)(1) & (a)(2)	“The POTW” added and “discharges” moved for clarity; “which” changed to “that”; ending period added
* 310.501(c)	Cross-reference format updated
* 310.501 Board Note	“BOARD NOTE” capitalized; parentheses removed; ending period added
310.503	“The” capitalized; “BOARD NOTE” capitalized; parentheses removed; <u>“permit” rendered in lower case</u> ; ending period added
310.503 Board Note	“The” capitalized; “BOARD NOTE” capitalized; parentheses removed; CFR citation updated; ending period added
310.510(a)(3)(B)	“Operation” corrected to “operator”
310.510(a)(4)(B)	Cross-reference format updated

¹ The Board would not include amendments to a Section not otherwise affected by underlying federal amendments if the Part were not already opened to make various federally-derived amendments. JCAR staff has advised the Board that the inclusion of the proposed corrective amendments to Section 310.501 is acceptable.

310.510(a)(6)(A)	“POTW’s” corrected to “POTWs” (twice); sentence not appearing in federal regulations deleted
310.510(a)(6)(B)	Cross-reference format updated; Final sentence deleted and wording of new ending sentence revised to agree more closely with the existing text of corresponding 40 CFR 403.8(f)(1)(vi)(B)
310.510(b)(1)	Cross-reference format updated
310.510(b)(2)	Cross-reference format updated
310.510(b)(3)	Cross-reference format updated (twice)
310.510(b)(4)	Cross-reference format updated
310.510(b)(6)	Cross-reference format updated (twice)
310.510(b)(7)(D)	Cross-reference format updated
310.510(f)	“Must” changed to “shall”
310.503 Board Note	CFR citation updated
310.542	“Perform the following actions” added for clarity
310.542(a)	Changed ending punctuation to a period
310.542(a)(1)	“The following actions” added for clarity
310.542(a)(1)(A)	“The following entities” added for clarity
310.542(a)(1)(B)	<u>“Newspaper(s)” changed to “newspaper or newspapers”; added “would provide” for clarity</u>
310.542(a)(3)	Changed ending punctuation to a period
310.542(b)(1)	Cross-reference format updated
310.542(b)(3)	Cross-reference format updated
310.542 Board Note	CFR citation updated
310.612	“POTW’s” corrected to “POTWs”
310.612 Board Note	CFR citation updated
310.921	<u>“the following types of modifications” added for clarity</u>
310.921(b)	<u>“Maximum allowable industrial loading” and “industrial users” rendered in lower case; “for the purposes of this Section” added for clarity</u>
310.921(c)	<u>“As described” changed to “as the control mechanism is described” for clarity</u>
310.921(g)	<u>“On the basis that” changed to “on any of the following bases:”, divided into subsections, and “the modification” added (twice) for clarity; “pretreatment program” and “industrial users” rendered in lower case</u>
310.921 Board Note	CFR citation updated
310.922(c)	<u>“Each of the following conditions is fulfilled” added for clarity; paragraph broken into subsections for clarity</u>
310.922(d)	<u>comma added for clarity</u>
310.922 Board Note	CFR citation updated
310.923(a)	<u>“Its” added for clarity</u>
310.924 Heading	<u>“Incorporation in permit” changed to “incorporation of modifications into the permit” for clarity</u>

PUBLIC COMMENTS

The first notice period commenced on May 1, 1998, upon publication of the order in the *Illinois Register*. See 22 Ill. Reg. 7465 (May 1, 1998). The 45 day public comment period closed on June 15, 1998. No public comments were received relating to this rulemaking proposal. Accordingly, the Board adopts the amendments as proposed in the Board's April 16, 1998, opinion and order, with some minor, non-substantive, stylistic changes that were identified during the course of this rulemaking.

ORDER

The Board directs the Clerk of the Board to cause publication of the following adopted amendments in the *Illinois Register*:

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

PART 310
PRETREATMENT PROGRAMS

SUBPART A: GENERAL PROVISIONS

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

SUBPART B: PRETREATMENT STANDARDS

Section	
310.201	General Prohibitions
310.202	Specific Prohibitions
310.210	Specific Limits Developed by POTW
310.211	Local Limits
310.220	Categorical Standards
310.221	Category Determination Request

310.222	Deadline for Compliance with Categorical Standards
310.230	Concentration and Mass Limits
310.232	Dilution
310.233	Combined Wastestream Formula

SUBPART C: REMOVAL CREDITS

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

SUBPART D: PRETREATMENT PERMITS

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

SUBPART E: POTW PRETREATMENT PROGRAMS

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

SUBPART F: REPORTING REQUIREMENTS

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

SUBPART G: FUNDAMENTALLY DIFFERENT FACTORS

Section

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

SUBPART H: ADJUSTMENTS FOR POLLUTANTS IN INTAKE

Section	
310.801	Net/Gross Calculation by USEPA

SUBPART I: UPSETS

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

SUBPART J: BYPASS

Section	
310.910	Definition
310.911	Bypass Not Violating Applicable Pretreatment Standards or Requirements
310.912	Notice
310.913	Prohibition of Bypass

SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

Section	
310.920	General
310.921	Procedures <u>Substantial Modifications Defined</u>
310.922	<u>Approval Procedures for Substantial Modifications</u>
310.923	<u>Approval Procedures for Non-Substantial Modifications</u>
310.924	<u>Incorporation of Modifications into the Permit</u>

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

SOURCE: Adopted in R86-44 at 12 Ill. Reg. 2502, effective January 13, 1988; amended in R88-18 at 13 Ill. Reg. 2463, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19243, effective November 27, 1989; amended in R89-12 at 14 Ill. Reg. 7608, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7346, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5533, effective April 1, 1996; amended in R96-12 at 20 Ill. Reg. 10671, effective July 24, 1996; amended in R97-7 at 21 Ill. Reg. 5163, effective April 10, 1997; amended in R98-23 at 22 Ill. Reg. _____, effective _____.

SUBPART ~~DE~~: POTW PRETREATMENT PROGRAMS

Section 310.501 Pretreatment Programs Required

- a) The Agency shall require ~~to establish a pretreatment program~~ any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) which that receives discharges which fulfill either of the following conditions to establish a pretreatment program:
 - 1) The POTW rReceives discharges from industrial users ~~pollutants which~~ that pass through or interfere with the operation of the POTW; or
 - 2) The POTW rReceives discharges from industrial users ~~discharges which~~ that are otherwise subject to categorical standards in 35 Ill. Adm. Code 307.
- b) The Agency shall require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if the Agency finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances require a pretreatment program in order to prevent interference or pass through.
- c) Subsections (a) and (b) of this Section notwithstanding, the Agency may, in its discretion, waive the requirement that any POTW develop a pretreatment program.
 - 1) Waivers shall be in writing.
 - 2) The Agency may, in its discretion, rescind any waiver by giving written notice to the POTW, giving sufficient time for the POTW to develop the program.

~~(Board Note~~BOARD NOTE: Derived from 40 CFR 403.8(a) (1986)).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 310.503 Incorporation of Approved Programs in Permits

A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in Section 310.502. ~~¶~~The approved POTW pretreatment program shall be incorporated into the POTW's NPDES permit. The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in Sections 310.541 through 310.547 shall be deemed a minor permit modification subject to Section 310.442.

~~(Board Note)~~BOARD NOTE: Derived from 40 CFR 403.8(c) (198697), as amended at 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 310.510 Pretreatment Program Requirements: Development and Implementation by POTW

A POTW pretreatment program shall be based on the following legal authority and include the following procedures, and these authorities and procedures shall at all times be fully and effectively exercised and implemented:

- a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of this Part and 35 Ill. Adm. Code 307. Such authority may be contained in a statute, ordinance or series of joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:
 - 1) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its NPDES permit;
 - 2) Require compliance with applicable pretreatment standards and requirements by industrial users;
 - 3) Control, through ordinance, permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements, and in the case of each significant industrial users, as defined at 35 Ill. Adm. Code 310.110, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user; such control

mechanisms must be enforceable and contain, at a minimum, the following conditions:

- A) A statement of duration (in no case more than five years);
 - B) A statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or ~~operation~~operator;
 - C) Effluent limits based on applicable general pretreatment standards in this Part and 35 Ill. Adm. Code 307, categorical pretreatment standards, local limits, and local law;
 - D) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards of this Part and 35 Ill. Adm. Code 307, categorical pretreatment standards, local limits, and local law; and
 - E) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; however, such schedules may not extend the compliance date beyond applicable federal deadlines;
- 4) Require:
- A) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and
 - B) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including, but not limited, to the reports required in ~~310~~Subpart F of this Part;
- 5) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under Section 310.634 to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 308 of the CWA;

- 6) Obtain remedies for noncompliance by any industrial user with any pretreatment standard or requirement:
- A) All ~~POTW's~~POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards or requirements. All ~~POTW's~~POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1000 a day for each violation by industrial users of pretreatment standards and requirements. ~~POTW's whose approved pretreatment programs require modification to conform to the requirements of this subsection shall submit a request by November 16, 1989.~~
- B) Pretreatment requirements ~~which~~that will be enforced through the remedies set forth in subsection ~~(a)(6)(A)~~(a)(6)(A) of this Section will include but not be limited to: the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW, this Part or 35 Ill. Adm. Code 307. The POTW shall have authority and procedures (after notice to the industrial user) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Agency shall have authority to seek judicial relief ~~for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a monetary penalty which that the Agency finds to be insufficient. The procedures for notice to industrial users where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision;~~ and
- 7) Comply with the confidentiality requirements set forth in Section 310.105.;
- b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:
- 1) Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory

of industrial users made under this subsection (b)(1) shall be made available to the Agency upon request;

- 2) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subsection (b)(1) of this Section. This information shall be made available to the Agency upon request;
- 3) Notify industrial users identified under subsection (b)(1) of this Section of applicable pretreatment standards and any applicable requirements under Section 204(b) and 405 of the CWA and Subtitles C and D of the Resource Conservation and Recovery Act, incorporated by reference in Section 310.107. Within 30 days ~~of~~ after approval, pursuant to subsection (f) of this Section, of a list of significant industrial users, notify each significant industrial user or its status as such and of all requirements applicable to it as a result of such status;
- 4) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in Subpart D of this Part;
- 5) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplies by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of these activities shall be made available to the Agency upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
 - A) A description of discharge practices, including non-routine batch discharges;
 - B) A description of stored chemicals;
 - C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Section 310.202 and 35 Ill. Adm. Code 307.Subpart B, with procedures for follow-up written notification within five days; and
 - D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building

of containment structures or equipment, measures for containing toxic organic pollutants (including solvents) and measures and equipment for emergency response;

- 6) Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under Subpart D of this Part or as indicated by analysis, inspection and surveillance activities described in subsection (b)(5) of this Section. Sample taking and analysis, and the collection of other information, shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and
- 7) Comply with the public participation requirements of 40 CFR 25, incorporated by reference in Section 310.107, in the enforcement of pretreatment standards. These procedures shall include provision for providing, at least annually, public notification, in a newspaper of general circulation in the unit of local government in which the POTW is located, of industrial users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:
 - A) Chronic violations of wastewater discharge limits, defined here as those in which ~~sixty-six~~66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
 - B) "Technical review criteria" (TRC) violations, which shall mean those violations in which ~~thirty-three~~33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
 - C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
 - D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subsection (a)(6)(B) of this Section to halt or prevent such a discharge;

- E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
 - F) Failure to provide, within 30 days after the due date, required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - G) Failure to accurately report noncompliance; or
 - H) Any other violation or group of violations which the Agency determines will adversely affect the operation or implementation of the local pretreatment program.;
- c) The POTW shall have sufficient resources and qualified personnel to carry the authorities and procedures described in subsections (a) and (b).;
- d) Local limits. The POTW shall develop local limits as required in Section 310.210 or demonstrate that they are not necessary.;
- e) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:
- 1) Describe how the POTW will investigate instances of noncompliance;
 - 2) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
 - 3) Identify (by title) the officials responsible for each type of response; and
 - 4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subsections (a) and (b).;
- f) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in the first ~~paragraph~~subsection of the definition of "significant industrial user" at Section 310.110. The list shall identify the criteria in the first ~~paragraph~~subsection of the definition of "significant industrial user" at Section 310.110 applicable to each industrial user and, for industrial users meeting the criteria in the second ~~paragraph~~subsection of that definition, shall also indicate whether the POTW has made a determination pursuant to the caveat in the second ~~paragraph~~subsection of that definition that such industrial user should not be considered a significant industrial user. ~~This~~ The initial list, and any subsequent modifications thereto, shall be submitted to the Agency

pursuant to Sections 310.521 through 310.533 as a non-substantial program modification pursuant to ~~Subpart K~~ Section 310.923. ~~Discretionary designations or de designations by the control authority shall be deemed to be approved by the Agency 90 days after submission of the list or modifications thereto.~~ Modifications to the list shall be submitted to the Agency pursuant to Section 310.612(a).

BOARD NOTE: Derived from 40 CFR 403.8(f) (19947), as amended at ~~60 Fed. Reg. 33926 effective June 29, 1995~~ 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

Section 310.542 Public Notice and Hearing

Upon receipt of a submission the Agency shall commence its review. Within 20 work days after making a determination that a submission meets the requirements of Section 310.522, and, where removal allowance approval is sought, Sections 310.340 and 310.524, the Agency shall perform the following actions:

- a) Issue a public notice of request for approval of the submission;
 - 1) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include the following actions:
 - A) Mailing notices of the request for approval of the submission to the following entities:
 - i) Federal agencies as designated by USEPA;
 - ii) Regional planning agencies ~~which~~that participate in development of water quality management plans (unless such agencies have specifically requested not to receive such notices); and
 - iii) Any other person or group who has requested individual notice, including those on appropriate mailing lists; and
 - B) Publication of a notice of request for approval of the submission in the largest daily newspaper or newspapers of general circulation within the jurisdiction or jurisdictions served by the POTW that would provide meaningful public notice.

- 2) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission.
 - 3) All written comments submitted during the 30 day comment period shall be retained by the Agency and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Agency; ~~and~~.
- b) Provide an opportunity for the applicant, any affected state, any interested State or federal agency, person or group of persons to request a public hearing with respect to the submission.
- 1) This request for public hearing shall be filed within the 30 day (or extended) comment period described in subsection (a)(2) of this Section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.
 - 2) The Agency shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.
 - 3) Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under subsection (a)(1)(B) of this Section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

BOARD NOTE: Derived from 40 CFR 403.11(b) (198897), as amended at ~~53 Fed. Reg. 40613, October 17, 1988~~ 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART F: REPORTING REQUIREMENTS

Section 310.612 Annual POTW Reports

~~POTW's~~ POTWs with approved pretreatment programs shall provide the approval authority with a report that briefly describes the POTW's program activities, including activities of all

participating agencies, if more than one jurisdiction is involved in the local program. The report required by this Section must be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter. The report must include, at a minimum, the following:

- a) An updated list of the POTW's industrial users, including their names and addresses or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list must identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list must indicate which industrial users are subject to more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.
- b) A summary of the status of industrial user compliance over the reporting period.
- c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period. ~~And,~~
- d) ~~Any other relevant information requested by the Agency.~~ A summary of changes to the POTW's pretreatment program that have not been previously reported to the Agency.

BOARD NOTE: Derived from 40 CFR 403.12(i) (1997), as ~~added~~ amended at ~~53 Fed. Reg. 40614, October 17, 1988~~ 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Amended at 22 Ill. Reg. _____, effective _____)

SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

Section 310.921 ~~Procedures~~ Substantial Modifications Defined

Substantial modifications include the following types of modifications:

- a) Modifications that relax POTW legal authorities (as described in Section 310.510(a)), except for modifications that directly reflect a revision to this Part or to 35 Ill. Adm. Code: Subtitle C, and are reported pursuant to Section 310.923;
- b) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant,

which are reported pursuant to Section 310.923. For the purposes of this Section, “maximum allowable industrial loading” means the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge pursuant to limits developed under Section 310.210;

- c) Changes to the POTW's control mechanism, as the control mechanism is described in Section 310.510(a)(3);
- d) A decrease in the frequency of self-monitoring or reporting required of industrial users;
- e) A decrease in the frequency of industrial user inspections or sampling by the POTW;
- f) Changes to the POTW's confidentiality procedures; and
- g) Other modifications designated as substantial modifications by the Agency on any of the following bases:
 - 1) The modification could have a significant impact on the operation of the POTW's pretreatment program;
 - 2) The modification could result in an increase in pollutant loadings at the POTW; or
 - 3) The modification could result in less stringent requirements being imposed on industrial users of the POTW.

~~POTW pretreatment program modifications must be accomplished as follows for substantial modifications, as defined in Section 910.922.~~

- a) ~~The POTW shall submit to the Agency a statement of the basis for the desired modification, a modified program description (See Section 310.510) or such other documents the Agency determines to be necessary under the circumstances.~~
- b) ~~The Agency shall approve or disapprove the modification based on the requirements of Section 310.510, following the procedures in Section 310.542.~~
- e) ~~The modification must be incorporated into the POTW's NPDES permit after approval pursuant to 35 Ill. Adm. Code 309.Subpart A.~~

- ~~d) The modification becomes effective upon approval by the Agency. Notice of approval must be published in the same newspaper of the original request for approval of the modification under Section 310.542(a)(1)(B).~~

BOARD NOTE: Derived from 40 CFR 403.18(b) (1997), as ~~added~~ amended at 53 Fed. Reg. 40615, October 17, 1988 ~~62~~ Fed. Reg. 38414 (July 17, 1997).

(Source: Repealed and new Section added at 22 Ill. Reg. _____, effective _____)

Section 310.922 Approval Procedures for Substantial Modifications

- a) The POTW shall submit to the Agency a statement of the basis for the desired program modification, a modified program description (see Section 310.522), or such other documents the Agency determines to be necessary under the circumstances.
- b) The Agency shall approve or disapprove the modification based on the requirements of Section 310.510 and using the procedures in Sections 310.542 through 310.546, except as provided in subsections (c) and (d) of this Section. The modification shall become effective upon approval by the Agency.
- c) The Agency need not publish a notice of decision under Section 310.545 provided each of the following conditions is fulfilled:
- 1) The notice of request for approval under Section 310.542(a) states that the request will be approved if no comments are received by a date specified in the notice;
 - 2) No substantive comments are received; and
 - 3) The request is approved without change.
- d) Notices required by Sections 310.542 through 310.546 may be performed by the POTW, provided that the Agency finds that the POTW notice otherwise satisfies the requirements of Sections 310.542 through 310.546.
- ~~a) The following are substantial modifications for purposes of this Section:~~
- ~~1) Changes to the POTW's legal authorities;~~
 - ~~2) Changes to local limits, which result in less stringent local limits;~~

- ~~3) Changes to the POTW's control mechanism, as described in Section 310.510(a)(3);~~
 - ~~4) Changes to the POTW's method for implementing categorical pretreatment standards (e.g. incorporation by reference, separate promulgation, etc.);~~
 - ~~5) A decrease in the frequency of self monitoring or reporting required of industrial users;~~
 - ~~6) A decrease in the frequency of industrial user inspections or sampling by the POTW;~~
 - ~~7) Changes to the POTW's confidentiality procedures;~~
 - ~~8) Significant reductions in the POTW's pretreatment program resources (including personnel commitments, equipment and funding levels); and~~
 - ~~9) Changes in the POTW's sludge disposal and management practices.~~
- ~~b) The Agency may designate other specific modifications, in addition to those listed in subsection (a) as substantial modifications.~~
- ~~c) A modification that is not included in subsection (a) is a substantial modification for the purposes of sections 310.920 through 310.922 if the modification:~~
- ~~1) Would have a significant impact on the operation of the POTW's pretreatment program;~~
 - ~~2) Would result in an increase in pollution loadings at the POTW; or~~
 - ~~3) Would result in less stringent requirements being imposed on industrial users of the POTW.~~

BOARD NOTE: Derived from 40 CFR 403.18(c) (1997), as added amended at 53 Fed. Reg. 40615, October 17, 198862 Fed. Reg. 38414 (July 17, 1997).

(Source: Repealed and new Section added at 22 Ill. Reg. _____, effective _____)

Section 310.923 Approval Procedures for Non-Substantial Modifications

- a) The POTW shall notify the Agency of any non-substantial modification at least 45 days prior to its implementation by the POTW, in a statement similar to that provided for in Section 310.922(a).
- b) Within 45 days after the submission of the POTW's statement, the Agency shall notify the POTW of its decision to approve or disapprove the non-substantial modification.
- c) If the Agency does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under Section 310.921(g), the POTW may implement the modification.

BOARD NOTE: Derived from 40 CFR 403.18(d) (1997), as added at 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 310.924 Incorporation of Modifications into the Permit

All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit shall be modified to incorporate the approved modification in accordance with this Part and 35 Ill. Adm. Code 310.

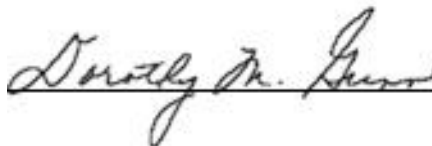
BOARD NOTE: Derived from 40 CFR 403.18(e) (1997), as added at 62 Fed. Reg. 38414 (July 17, 1997).

(Source: Added at 22 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion and order was adopted on the 17th day of June 1998 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board